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# LEGAL EMPOWERMENT OF THE POOR: FROM CONCEPTS TO ASSESSMENT



MARCH 2007

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Cover Photo: Courtesy of USAID. At a village bank in Djiguinoune, Senegal, women line up with account booklets and monthly savings that help secure fresh loans to fuel their small businesses.

# LEGAL EMPOWERMENT OF THE POOR

## FROM CONCEPTS TO ASSESSMENT

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### **DISCLAIMER**

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# ACRONYMS AND ABBREVIATIONS

ADR	Alternative dispute resolution
CSO	Civil society organization
DFID	(UK) Department for International Development
EU	European Union
FAO	United Nations Food and Agricultural Organization
HDI	Human development index
HLCLEP	High Level Commission for the Legal Empowerment of the Poor
ILD	Institute for Liberty and Democracy
ILO	International Labor Office
LEP	Legal empowerment of the poor
NGO	Nongovernmental organization
UNDP	United Nations Development Program
USAID	United States Agency for International Development





# 1.0 DEFINING LEGAL EMPOWERMENT OF THE POOR

The relatively modest literature that bears an explicit “legal empowerment of the poor (LEP)” tag has developed since 2000. It came into being in reaction to what was seen as an excessively narrow concept of legal and judicial reform in the rule of law literature.<sup>1</sup> A number of LEP strategies (law reform, judicial reform, legal aid and literacy, democratization, and formalization) are currently jockeying for position within the general concept, which is as yet poorly bounded and integrated.

There is also substantial overlap among the literature on LEP, particularly in governance and human rights.<sup>2,3</sup> The latter has older and more substantial literature associated with it, while the broad concept of LEP only received its first relatively full expression in 2001, in an Asia Foundation study (initially commissioned as a legal literacy study) published in the annual report of the Asian Development Bank’s Legal Department.<sup>4</sup> The concept’s adoption by the United Nations Development Program (UNDP)-based Commission on Legal Empowerment of the Poor in 2005 dramatically raised its public profile and stimulated a number of papers from development institutions on the topic (e.g., the 2005 World Bank Strategy Statement).<sup>5,6</sup>

Different sources have offered varying definitions of the concept (see Box 1); these definitions vary because the definers attach or emphasize different meanings to the terms *empowerment*, *legal*, and *poor*—specifically, whether (1) empowerment is viewed primarily as a strategy, a means to an end, or both; (2) legal describes the means of empowerment or describes the end result (legal empowerment); and (3) the definition of the poor includes only the economically poor or other marginalized populations. These ele-

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<sup>1</sup> Stephen Golub cites as examples of a too-narrow focus here on state institutions and their activities: Humberto Martinez, Nestor, 1998. Rule of Law and Economic Efficiency. In *Justice Delayed: Judicial Reform in Latin America*, Edmundo Jarquin and Fernando Carrillo (Eds.), Washington, D.C.: Inter-American Development Bank. (pp. 3); DFID. 2000. *Justice and Poverty Reduction*. London: DFID; DFID. 2002. *Safety, Security, and Accessible Justice: Putting Policy into Practice*. London: DFID. July (pp. 12); and Golub, Stephen. 2003. Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative, *Carnegie Paper* No. 41. October (pp. 26).

<sup>2</sup> See, for example, Ribot, Jesse C. 2002. Local actors, powers, and accountability in African decentralizations: A review of issues. Paper No. 8, UNRISD Programme on Democracy, Governance, and Human Rights. The Hague: UNRISD.

<sup>3</sup> See, for example, Organization for Economic Cooperation and Development. 2006. Integrating Human Rights into Development; Donor Approaches, Experiences, and Challenges. Paris: OECD.

<sup>4</sup> Golub, Stephen and Kim McQuay. 2001. Legal Empowerment: Advancing Good Governance and Poverty Reduction. In *Law and Policy Reform at the Asian Development Bank*, 2001 Edition. Manila: Asian Development Bank (pp. 5).

<sup>5</sup> While the focus of the commission was clear from its name, its first authoritative statement of purpose and principles is: High Level Commission for the Legal Empowerment of the Poor (HLCLEP). 2005. Co-Chair’s Outcome Document. First Meeting of the HLCLEP, 20–21 January 2006. New York: HLCLEP.

<sup>6</sup> Palacio, Anna. 2006. Legal Empowerment of the Poor: An Action Agenda for the World Bank. Washington, D.C: World Bank.

ments need to be carefully examined before further considering how they are integrated in the concept of LEP and acquire a shared life in LEP programming.

#### BOX 1. DEFINITIONS OF LEGAL EMPOWERMENT OF THE POOR

**Asian Development Bank (ADB):** “[Legal empowerment of the poor] involves the use of law to increase disadvantaged populations’ control over their lives through a combination of education and action.” (Golub and McQuay, 2001, p. 7)

**Carnegie Endowment:** “Legal empowerment of the poor is a rights-based strategy for improving governance and alleviating poverty ... [and involves] ... the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.” (Golub, 2003 [pp. 3])

**World Bank (WB):** “Legal empowerment promotes safety, security, and access to justice and helps poor people solve problems and overcome administrative barriers.” (Palacio, 2006 [pp. 15])

**High Level Commission for Legal Empowerment of the Poor (HLCLEP):** “Legal empowerment of the poor expands the rule of law to the benefit of all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people, or other minorities.” (Palacio, 2006 [pp. 15])

**USAID:** “Legal empowerment of the poor refers to actions and processes, including but not limited to legal reforms, by which the poor are legally enabled to act more effectively to improve their economic situation and livelihoods, allowing them to alleviate or escape poverty.” (Bruce et al., 2006 [pp. 9])

**Empowerment.** In a major World Bank study, Ruth Alsop, Mette Bertelsen, and Jeremy Holland (2006) define empowerment as “the process of enhancing an individual’s or group’s capacity to make purposive choices and to transform those choices into desired actions and outcomes.” This involves strengthening the ability of actors to envisage and purposively choose options (largely predicted by their assets, which include property, capacity, and attitudes), and ability that is framed by the opportunity structures they face under the *rules of the game* (the set of rules, laws, and regulatory frameworks that govern the operation of political processes, public services, private organizations, and markets). This is empowerment as a process, but as this study points out, empowerment is also an end in itself.<sup>7</sup> Empowerment as an objective can be seen as a critical link between a process and the ultimate goal of poverty alleviation; this needs to be included in any clear definition.

**Legal Empowerment.** How is legal empowerment different from empowerment generally? In the previous paragraph, rules and laws are indicated as potential constraints to be overcome in the process of empowerment. The legal empowerment literature instead sees law as a major tool for enabling the poor; however, the concept is not well-defined and is still evolving. Legal empowerment in the development literature consists of an expanding collection of specific strategies. It certainly includes legislative, regulatory, judicial, and dispute resolution reforms that empower the poor and, as Golub and McQuay (2001) stress, “the use of any of a diverse array of legal services for the poor.”<sup>8</sup> But empowerment is not just a matter of stronger rights for the poor or even helping them exercise those rights, but of giving them the power to realize old rights and acquire new ones by tackling the systemic pathologies that limit access to rights possession and rights enforcement (see Box 8, p. 30).

<sup>7</sup> Alsop, Ruth, Mette Bertelsen, and Jeremy Holland. 2006. *Empowerment in Practice: From Analysis to Implementation*. Washington, D.C.: The World Bank. The empowerment literature draws on Sen’s notion of expanding human capabilities and freedoms to “enhance the substantive choices they have” (Sen, Amartya K. *Development as Freedom*. New York: Knopf, 1999). The “rules of the game” are used here in the sense of North, D.C. *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press, 1990.

<sup>8</sup> Golub and McQuay, 2001 (pp. 76).

In defining legal empowerment, one fundamental issue is whether the term “legal” qualifies empowerment as a means or an end. Is the empowerment legal because it uses law and other measures of a legal nature to empower the poor or because the poor in the end have greater legal power as a result? Most of the definitions mentioned above seem to tend toward the former view. The World Bank document involves a more expansive vision, seeing empowerment as an intermediate result and focusing attention on the need to create new legal power for the poor that enables them to both protect existing rights and pursue new rights through political processes.<sup>9</sup>

**The Poor.** The poor are the designated beneficiaries of LEP. In Box 1, the ADB uses the term *disadvantaged*; Palacio suggests that this is perhaps preferable but is outweighed by the visibility of the term *poor*.<sup>10</sup> In addition, *disadvantaged* requires judgments about fairness, whereas *poor* is easier to apply, especially if it is thought of in exclusively economic terms. But of what does poverty consist? Is it simply a lack of income and economic assets, as is the assumption in most development literature? The terms *disadvantaged* and *control over one’s lives* can suggest an escape not only from economic but also social and political deprivation in pursuit of freedom, respect, and status. Some economists, such as Sen, would certainly agree.<sup>11</sup> Should not our concept of poverty be inclusive, and should not legal empowerment be seen as a potential way to address relative deprivation in all these forms?

There is one issue of importance that is not adequately addressed in any of the existing definitions but deserves addressing in a reconsidered definition: Who empowers the poor? The wording of most of the existing definitions imply that this is something done **for** the poor, presumably by governments and various non-state actors. Only the ADB definition suggests that the poor must play a role. Should the poor then participate in their own empowerment to achieve legal empowerment in the way the concept is intended? What roles in particular should they play to achieve desirable LEP outcomes? And, who should judge the outcome of whether the poor have been empowered? At a minimum, if the poor do not participate in the measures to empower them, should they at least be the ones that judge the outcome?

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<sup>9</sup> Palacio, 2006 (pp. 8): “LEP should be envisaged as a broad concept in which ‘legal’ extends far beyond the confines of the purely formal legal system. It is a concept in which empowerment is understood as part of ‘political empowerment’ that provides citizens with a stake in the state,” and pp. 24: “LEP involves poor people (i) knowing and understanding their rights and (ii) being able to effectively assert and enforce their rights. This, in turn, requires stronger voice, ability to organize collectively, and greater state responsiveness.” A similarly broad ambit is suggested in a paper prepared recently for the High Level Commission for the Legal Empowerment of the Poor: “The word ‘power’ refers to authority, strength, ability, or right. Legal empowerment would therefore mean to bring the poor to a position of authority, strength, ability, and right within the meaning of the law. Such position would serve as a legitimate *medium* to engage the state and other entities and institutions towards individual and group goals. It would serve as a *platform* to make claims from the state and other members of society, and a *protective shield* against violation of their rights.” Ngondi-Houghton, Connie. 2006. Access to Justice and the Rule of Law in Kenya, a Paper Developed for the High Level Commission for the Empowerment of the Poor. Nairobi (pp. 1).

<sup>10</sup> Palacio, 2006 (pp. 3).

<sup>11</sup> Sen, Amartya K. *Development as Freedom*. New York: Knopf, 1999.



## 2.0 SUBSTANTIVE DIMENSIONS OF LEGAL EMPOWERMENT

It is important that those seeking legal empowerment of the poor understand the full depth and width of the concept. Past initiatives seeking to legally empower the poor have suffered from a narrow definition of objectives or have been based on a narrow reform domain, such as property rights or the judiciary. By considering poverty in terms of the deprivation of capabilities and opportunities rather than solely a function of income, the rationale for a broader understanding of LEP becomes clear.<sup>12</sup> In this broader context, *poverty* refers to the extent to which an individual's capacity and opportunity to exercise and shape his/her basic rights are limited by external constraints. Thus, holding other factors constant, a reduction in opportunity deprivation (i.e., an increase in one's freedom) is the analog of the income growth objective in an income-based approach.<sup>13</sup> A narrow sectoral initiative (such as granting real property rights to the poor) has the potential of empowering them, but this broader lens on empowerment and development should also avoid seeing such initiatives as sufficient, "magic bullet" solutions.<sup>14</sup> In addition, legal empowerment involves economic, social, and political dimensions (see Box 2).

### BOX 2: A SAMPLER OF LAWS THAT LEGALLY EMPOWER THE POOR

Legal reforms play an important role in legal empowerment of the poor, but what kind of legislation specifically makes a difference? Some laws aim to empower the poor, while others empower the poor along with everyone else, but with special importance for the poor. It is impossible to be exhaustive, but some examples are:

- **Property:** Laws that expand access to credit by providing for immovable/intangible guarantees; provide for registration and facilitate use of moveable property as loan security; provide property rights unencumbered by conditions, consents, and bureaucratic procedures; prohibit public takings of property without full and prompt compensation; allow informal occupants to acquire rights to the land they occupy by peaceful occupation, even in the case of state land; provide due process to land occupants, informal or formal, who face foreclosure or eviction; and eliminate legal discriminations against members of socially disadvantaged groups.

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<sup>12</sup> Sen, 1999. (pp. 87).

<sup>13</sup> Such conceptualizations of poverty and welfare do not ignore the importance of income in determining an individual's well-being, but rather reclassify variables such as gross national product per head as *means* for development rather than the ultimate objective.

<sup>14</sup> Sachs, Jeffrey D. *The End of Poverty: Economic Possibilities for Our Time*. New York: Penguin Press, 2005.

- **Business:** Laws that create programs that provide advice and support to new small businesses; create business opportunities under government contracts for small and starting businesses; eliminate criteria in competitive bidding that provide inherent advantages for large-scale operators; and eliminate burdensome or unduly expensive licensing requirements or discriminatory quality control provisions.; corporation laws that protect shareholder rights.
- **Labor:** Laws that create rights for workers to organize and negotiate collectively with employers; set out due process requirements for firings; and guarantee democratic processes within labor unions.
- **Family:** Laws that recognize some forms of common law marriage; abolish minority status for adult women; strengthen rights of widows, divorcees, and their children to property; and protect land and other rights of orphans against family members and guardians.
- **Political rights:** Laws that enhance freedom to organize for political purposes; extend the right to vote; eliminate barriers to voting (such as identity documentation that works against the poor); require that ballots and information be available in local languages; enable citizens to hold their elected officials accountable; and provide for citizen participation in local budgeting.
- **Enforcement:** Laws that promote alternative dispute settlement by modern or traditional mediators and give recognition to agreements reached; reduce court costs by speeding up court procedures; allow for other than documentary proof of contracts and transactions; and allow contingency fees for lawyers.
- **Procedural rights:** Laws that require public consultation or create rights to a public hearing; require an opportunity to be heard or comment for those directly affected; allow representation other than by a registered legal practitioner; allow oral evidence to be presented and credited on par with written evidence; and create minimum notice periods before prejudicial actions are taken.

## 2.1 ECONOMIC DIMENSIONS

The economic dimensions of LEP are probably those most broadly recognized, but the current consensus on the strong correlation between rule of law, strong institutions, and income growth glosses over a long historical debate over the appropriate role of the state in creating the legal foundations for economic growth (see Box 3). The ineffectiveness of past initiatives to promote economic growth by means of legal reform has often stemmed from failure to sufficiently account for non-legal factors in determining human and corporate behavior. Attributes such as strong property rights or limited personal liability for that of a corporation contribute to economic growth not through the legal text per se, but through the coordinative influence they impose on actual behavior. Changes of legislative text in the absence of even basic considerations of enforcement and incentives do not provide sufficient means to increase the predictability of commercial transactions or provide the economic security critical to investment in productivity.

Indeed, the cost of doing business and of the creation and enforcement of property and labor rights are crucial issues to be tackled in order to empower the poor. Lack of access to legal and effective commercial institutions increases the cost of doing business by increasing the cost associated with enforcing property or labor rights. When the cost and time involved in starting a business are too large, the business fails, ideas are not transformed into enterprises, and jobs are not created. The same rationale can be extended to cases where expensive and time-consuming licenses are required to operate, or when bribes are regularly demanded. In other cases, the market may obstruct “easy” entry or exit affecting both business creation and consumers by increasing the prices paid for usually low-quality products.



The right to own and trade assets is an important element for empowering the economic rights of the poor. The factual possession of assets is typically not sufficient, for to be able to make transactions with assets, the legal and social systems need to recognize ownership or other secure property rights. If one has physical possession but not recognized rights to an asset, at least three consequences typically follow. First, the person may have to spend more time and effort defending his/her possession against others. Second, it will be more difficult—perhaps even impractical—to make a transaction with the asset. Third, the asset will have lower value (i.e., even if the possessor can transact the asset, he/she is likely to receive a lower price). Thus, recognition of property rights to land and moveable and intangible property is crucial for empowering the poor, and in the commercial sphere where transactions have high commercial value, this usually means “legal” recognition.

There are also many settings where secure transactions occur between parties that are not sanctioned by law but have validity because they are “socially” recognized.<sup>15</sup> And, in spheres where the poor are likely to find themselves sidelined in an informal economy, or perhaps where they seek harbor to avoid the formal economy deemed unjust or oppressive, making rights real means much more than simple recognition in the formal legal system. Legal recognition can help pave the way for social recognition, but it requires legal and social legitimacy to be effective. Hence, in many non-commercial spheres, recognition of property rights to land and moveable and intangible property is crucial for the poor’s empowerment, but recognition may draw its weight from formalization and/or social acceptance.

Legal recognition of the poor’s property rights—in particular, land rights—has appropriately received considerable attention in the literature. However, legal recognition of other property possessed by the

### BOX 3. THE HISTORICAL DEBATE ON ROLE OF THE STATE IN CREATING EFFICIENT INSTITUTIONS

The primary disagreements on LEP concern not so much the *potential* efficacy of law in enhancing welfare, but rather the manner by which rule of law, institutions, and income growth are addressed. Despite recognition of the critical role that law and institutions play in a capitalist society dating back as far as David Hume (1740), there have since been many views and disagreements on the appropriate role of the state in the commercial sphere, in particular whether its contribution is detrimental or advantageous to the creation of efficient economic institutions.

In the efficient-institutions paradigm, a society will develop economic institutions that are socially efficient. Much of the intellectual foundation for this argument comes from the Austrian school scholars, most notably Carl Menger and Friedrich Hayek. Rather than assigning a critical role to government, Hayek articulated the state’s appropriate role as one of inaction, arguing in the vein of Adam Smith that, “it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner”—in essence, efficient institutions emerge by spontaneous order. Ronald Coase (1960) provides a theoretical metric for assessing the state’s participation in securing contract and property rights, calling for the state’s intervention in instances in which intervention reduces transaction costs below what would be present without intervention.

Conversely, Max Weber (1968) makes the case for vigorous formalization of law, citing its critical role in combination with formalization of organizational action (i.e., the creation of strong firms and institutions) in promoting capitalism. In the West, the state played such a role, known formally as formalistic juristic rationalism, noting that institutions have characteristics that sometimes prevent their formation by private means, regardless of the benefit that would derive from their existence. It is in this school, which assigns a more activist role to the state, that the more recent proposals have come. One of the primary scholars, advocates, and practitioners of these reforms, Hernando de Soto, has argued formalization measures to be successful in promoting economic development and reducing poverty.

*Sources:* Smith, 1776; Carl Menger, see, for example, Menger, 1892; Friedrich Hayek, see, for example, Hayek, 1964; Hume, 1740; Weber, 1921; Coase, 1960.

<sup>15</sup> The rights need not be individual. Many communities and indigenous social movements are demanding collective rights to land, which can have the effect of empowering the poor as a community.

poor can also be important. In certain cases, the poor may have access to movable or intangible assets such as inventories, future crops, or account receivables that could possibly serve as collateral to secure loans with the appropriate legal framework.<sup>16</sup> Property rights recognition can make it easier for the poor to access credit because they can provide security.<sup>17</sup> It can also enable the poor to engage in transactions such as leases, buy-outs, pledges, and trusts. In sum, legally and socially recognizing property rights of the poor can result in numerous beneficial outcomes, including higher asset values, lower private costs of enforcement, greater investment, access to government programs and services, better access to credit, and greater transactability.

Recognition of workers' rights is also critical for empowering the poor. The right to organize and bargain collectively is central, but equally important is the need to eradicate the opprobrious cases of working children and poorly compensated women (although eliminating these phenomena could make families worse off unless effective substitutes are provided). Similarly, many poor are self-employed, but many survive on low wages, little job security, and working conditions that are often unsafe and unhealthy. Lack of education, information, and involvement in social networks combined with high vulnerability restrict their capabilities to attain a higher wage, more secure, and healthier work. Lack of rights and rights enforcement is a deterrent to exiting poverty. Onerous labor laws can also create an unnecessary burden on small business, preventing them from growing.<sup>18</sup> For LEP sustainability, a "smart" pro-poor policy must move beyond shared coexistence between business and the poor to a genuine partnership.

One rather large issue of rights equality remains, for in many areas of the world, tenure insecurity or breadth of rights is not the problem; it is rather the unequal distribution of wealth that is disempowering. In many societies, the poor remain poor not because of the rights they have, but because those rights are confined to few assets and employment opportunities. Tenure and land reform programs are important policy and program mechanisms to broaden access to rights, assets, and employment opportunities in ways that favor the poor. Transferring ownership of natural resources or state-owned companies from the public sector to citizens also has the potential to significantly empower the poor by enhancing their natural, material, or financial assets.<sup>19</sup> However, care needs to be taken in how such transfers occur such that the benefits of privatization are not captured principally by the wealthy and powerful.

## 2.2 SOCIAL DIMENSIONS

The majority of issues and measures raised in the previous section treat LEP and the poor in a top-down fashion and ignore the issue of the capacity to claim or act on their rights once supplied or delivered. Legally empowering the poor requires more than legal reform aimed at broadening rights and opportunities for the poor. Social dimensions include:

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<sup>16</sup> See, for example, de la Peña, Nuria, and Heywood Fleisig. 2002. SMEs and Collateral. *Center for the Economic Analysis of Law (CEAL) Issues Brief*, Washington, D.C.; Fleisig, Heywood. 1995. "The Power of Collateral: How Problems in Secured Transactions Limit Private Credit for Movable Property." Viewpoint series, Note 43. World Bank Group, Private Sector Development Vice Presidency, Washington, D.C.; or Fleisig, Haywood, and Nuria de la Peña. 2002. "Microenterprises and Collateral." *Center for Economic Analysis of Law (CEAL) Issues Brief*, No. 2, Washington, D.C. September. [http://www.ceal.org/ceal-organization/publications/IB\\_02.pdf](http://www.ceal.org/ceal-organization/publications/IB_02.pdf).

<sup>17</sup> Even when collateral is offered, banks can be quite reluctant to lend to the poor who tend to lack regular income streams; small loan transaction costs also make lending to the poor unattractive. Moreover, if the poor lose land or a house because they were unable to repay a loan, they lose their major source of livelihood security, a very disempowering outcome.

<sup>18</sup> World Bank and International Finance Corporation. 2006. *Doing Business 2006*. <http://www.doingbusiness.org/>.

<sup>19</sup> Shleifer, A. and R. Vishny. *The Grabbing Hand—Government Pathologies and their Cures*. Cambridge, MA: Harvard University Press, 1998. See also Garcia-Bolivar, Omar. 2006. *Entre la Libertad y la Igualdad: Una propuesta de fortalecimiento para los pobres de Venezuela*, *Revista de la Facultad de Ciencias Políticas y Jurídicas de la Universidad Central de Venezuela*, No. 125. Caracas.



- **Law and Order.** The lack of a system that guarantees law and order (and thus security) to the poor's assets and personal lives also deprives them of opportunities. Crime and violent conflict not only take away physical and human resources, but also negatively affect the flow of economic activities and decrease people's capacity to secure their rights. This is true in Colombia, where violence not only strips people of their property and lives, but also paralyzes poor people's capacity to organize and defend their rights, as armed groups target those who are seen organizing.<sup>20</sup>
- **Inclusion.** Social exclusion can negatively affect poor people. The most obvious examples of this are rules that exclude the poor and other marginalized groups from decision making. In many countries, women are officially or unofficially excluded from participation in exercising rights that their male counterparts take for granted. The same is often true of indigenous peoples and historically disadvantaged groups. Minority status as well as lack of information on law, rules, and procedures in an accessible language can deny access to opportunities, as can enforcement institutions that are either unsympathetic or located far away.<sup>21</sup>
- **Education.** Education in numerous areas and at various levels is important, but literacy is a particular problem. People who cannot gain access to information through reading will have great difficulty knowing and advocating for their rights, opportunities, and legal protection.
- **Health.** Unhealthy people cannot advocate for or defend their rights, let alone take advantage of opportunity. Limited public access to health services; lack of protection for the handicapped; and high rates of mortality due to epidemics, poor nutrition, and lack of clean water<sup>22</sup> and affordable shelter can negatively affect any initiative designed to empower the poor.<sup>23</sup>
- **Social Security.** Lack of food and income safety nets, employment protection, and pension schemes can hamper the poor in fulfilling their basic needs and securing their livelihoods. Weak social security is also a hindrance to poor people's capacity to access their rights and political participation. When faced with a high degree of livelihood risk, people find time to do little else besides ensure basic survival. They will sometimes endure rights violations if they fear that doing otherwise could compromise their survival (e.g., widows who do not complain when in-laws grab their property because doing so could put them and/or their children in an even more precarious situation).

Whereas rule of law and social inclusion have more immediate, direct impacts on the effectiveness of legal empowerment measures, education, health, and social security of the poor act to constrain or enable the poor's realization of legal empowerment and can be invested in over time to improve LEP.

## 2.3 POLITICAL DIMENSIONS

The poor are frequently excluded from rule-making and other social and political decision-making processes. Limited democracy and lack of education affect the ability of the poor to effectively voice their needs.<sup>24</sup> Effective participation in political processes is critical to the poor's longer-term legal empowerment.

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<sup>20</sup> Knox, Anna. Personal experience in Colombia.

<sup>21</sup> Sen, op. cit. supra.

<sup>22</sup> Clean water is a right. 2006, November 11. *The Economist* (pp. 67).

<sup>23</sup> Sachs, op. cit. supra.

<sup>24</sup> Even in democracies, rules (whether formal or informal) often either purposely exclude or create high-entry barriers for the poor to enter the political process and gain political power. It is unusual, for example, that grassroots representatives of poor people's interests gain access to public debate on legal reforms, let alone be given the floor in those debates. Many "rules" make it such that a "dollar" is more important than a vote.

Some critical factors are:

- **Human Rights.** While the rich have influence and connections to protect themselves from abuses by the state and private actors, the poor must rely on enforceable rights. It is not only the recognition of human rights that is needed, but also the real possibility of enforcing those rights through accessible and effective institutions. Political rights are of paramount importance because they are fundamental to participation in the law-making process.<sup>25</sup> Lack of freedom of speech or rights to government information will deny them the information necessary to legal empowerment, and lack of freedom to organize or assemble will adversely affect participation in political processes. The poor also need ways to hold officials accountable, and they need to know how to access these accountability mechanisms.
- **Democratization.** In the absence of democratic institutions, the poor face obstacles in the process of forming, shaping, and enforcing their rights. For rights to match with their priorities, the poor need to be able to participate in the decision-making process. That is only possible with democratic institutions that provide the right to participate. This goes well beyond elections for political office, extending, for example, to the ability of peasants, workers, and small producers to organize themselves through associations, unions, and policy forums that promote and affect commercial activity. This also calls for participatory policy-making institutions that include the poor and for measures that counteract often strong power imbalances that exist even in democratic political processes.<sup>26</sup>
- **Vested Interests.** While disadvantages in wealth, education, access to information, and social networks challenge the inclusion of the poor in governance at various levels, those who do occupy decision-making positions or have the ear of those decision makers often have few incentives to invite the poor to the table or to help them surmount those challenges. Overcoming this resistance is both a matter of the poor carving those spaces and altering the political landscape for themselves as well as altering the incentives and mentalities that feed the formation of interest groups and contribute to resistance.
- **Weak Institutions.** Rights that cannot be enforced or can be only partially or conditionally enforced are not truly effective. In many cases, the responsible institutions are weak for lack of relevance, as is the situation in authoritarian regimes where institutions are only a formality. In other cases, institutions are weak because they are captured by vested interests. For example, when institutions are not independent or are controlled by a political party or interest group, the poor cannot influence the political agenda to protect their own interests. Excessive centralization of decision making and monopolization of the political arena by existing parties have a similar effect.<sup>27</sup>

An intrinsic disequilibrium in many countries between the rich and poor affects and distorts the political process that defines the distribution of rights in society, how they are enforced, and ease of access to supporting institutions. This is not an outcome that the wealthy necessarily promote or espouse, but whether by purposeful design or benign neglect, the outcome for the poor is the same. In the absence of a framework that offers poor people the economic, social, and political tools to secure their legal rights, poverty is much more likely to prevail. The corollary is that poverty reduction involves enhancing not just the economic but also the social and political “assets” that expand the poor’s capabilities and opportunities, so that they can function on a level playing field with those having greater assets and capabilities.

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<sup>25</sup> Golub, op. cit. supra

<sup>26</sup> Cotula, Lorenzo. *Making Law Work for the Poor. Sustainable Development Opinion*. London: IIED and RING, 2005.

<sup>27</sup> Ibid.

## 3.0 INITIATIVES TO LEGALLY EMPOWER THE POOR

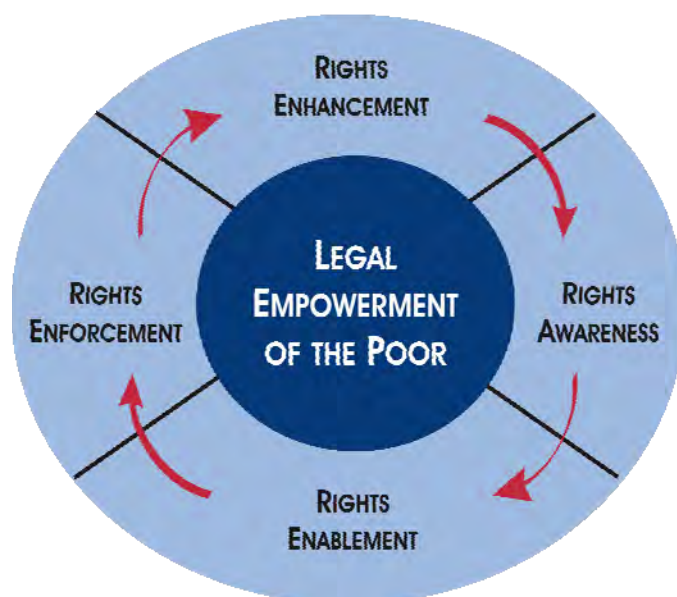
If the ways in which the poor can be legally empowered are diverse, so are the initiatives by which empowerment can be pursued. This chapter seeks to identify and explore the diverse measures that can contribute to LEP. Law and legal reform are part of the story. Their role is potentially important to the poor because it structures economic opportunities and aspires, under most modern social and legal systems, to treat people the same without reference to whether they are poor or wealthy. However, beyond issues posed by substantive fairness or unfairness of legal provisions and rules, costs of accessing and using the law interpose themselves in ways that make it hard to achieve effective equality under law. LEP needs to realize that aspiration.

LEP should thus involve four tasks:

1. **Reforming Law and Giving the Poor Voice:** Ensuring that the poor are able to influence the development of policy and law and enhance their rights through democratic and transparent political processes—**rights enhancement**.
2. **Providing Knowledge as a Means for Empowerment:** Making sure that the poor understand their rights and the processes by which they can be exercised and enforced—**rights awareness**.
3. **Leveling the Playing Field:** Ensuring that the poor are able to overcome bureaucratic and cost barriers that broadly affect their access to economic opportunity and wealth generation—**rights enablement**.
4. **Providing Access to Enforcement:** Making sure that the poor can protect their rights in and access to opportunities and assets through affordable, fair mechanisms for enforcement of rights and contracts and dispute resolution—**rights enforcement**.

The above tasks are linked to policy and program mechanisms to legally empower the poor, as shown in Figure 3.1, which illustrates both interactions and the dynamics involved.

**Figure 3.1 LEP Components**



### **3.1 RIGHTS ENHANCEMENT**

From the standpoint of legal empowerment of the poor, the potential of law lies in its ability to change behavior. Policies reflect the hopes and plans of governments of the day and are often ephemeral, but laws are decisions that transcend changes in governments, remaining in force until lawfully changed. Laws have no magical power, but they place the authority and resources of the state—or the smaller community making the rules—behind demands for certain behavior. Laws are orders to citizens and officials to behave in certain ways, and they take their force from incentives for compliance, sanctions for non-compliance, or in some cases from social consensus. They can also release potential and allow the pursuit of human aspirations—this is when they are most powerful.<sup>28</sup>

Law can be also be used as easily to reinforce privilege and constrain opportunity as to empower the poor and reduce inequality. Laws come into being through a process of negotiation, and more powerful groups are often in a better position to influence what the laws say and how they are implemented.<sup>29</sup> Law is a neutral force, and if it has any inherently pro-poor character, it lies in the concept of the rule of law: that the powerful are not “above the law.”<sup>30</sup> How then can legal reform empower the poor?

#### **3.1.1 Reforming the Substance of Law**

First and most obviously, legal reform can create legal rights that confer new legal power on the poor. A reform may seek to *establish rights favorable to the poor where none existed or clarify ambiguously conceived or poorly articulated rights*. Progressive taxation systems, formal recognition of common law mar-

<sup>28</sup> Seidman, Anne, Robert B. Seidman, and Thomas W. Wilde, eds. 1999. *Making Development Work: Legislative Reform for Institutional Transformation and Good Governance*. Kluwer Law International.

<sup>29</sup> Cotula, 2005.

<sup>30</sup> Cotula, in his paper *Making Law Work for the Poor*, also highlights the role of law in empowering poor countries, for instance, through WTO rules. However, the capacity to use these rules to one's benefit also is linked to one's economic power.

riage, and intellectual property rights protecting indigenous knowledge are examples of legal reforms that help the poor by securing economic and social rights. The poor are also often empowered by legislation that is not primarily focused on legal empowerment. For example, a law may provide a right to information. It may create a right to vote. It may create a right to force officials of government, corporations, or unions to account for their actions. It may create a right to organize to negotiate salaries and other terms of work. It may create the possibility of using one's bicycle to secure a small loan. It may create a right to have one's informal landholding titled and registered. When coupled with focused legislation, broadly conceived legal reforms with multiple objectives such as the decentralization of government can also (by impact if not always by design) create new opportunities for the social and political participation of the poor.<sup>31</sup>

A special case of providing new rights through legal recognition concerns rights under customary law. Customary law is a body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members. That polity and/or its norms may or may not be recognized by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. They come with administrative institutions and powerful advocates, and have deep cultural resonance. An example is customary land tenure: many African states have asserted state ownership of all land, refused to provide recognition to customary rights, but then failed to provide an effective alternative tenure regime. The result is a wide gap between national law and the law-in-action, which remains custom. Recognition of customary rights is potentially empowering to the poor, but must be approached with some caution: a particular customary tenure system may have undemocratic governance systems, lack transparency and accountability, and reflect strongly patriarchal values.

Second, legal reform may eliminate restrictions that disadvantage the poor. A law can abolish a servile status. It can lift restrictions that economically disadvantage the poor, such as quality control regulations that are framed so that only large established businesses can hope to satisfy them. It can allow proof of land rights by oral evidence in a society where the poor hold their land by informal or customary arrangements that are only rarely reduced to writing. It can reduce costs of meeting the legal requirements for entry into a market or eliminate a poll tax or simplify processes so that the poor are, for the first time, able to take advantage of rights they have always enjoyed in theory.

Third, legal reforms can strengthen other dimensions of the legal empowerment framework: rights awareness, rights enablement, and rights enforcement. For example, reforms can create more accessible and user-friendly dispute settlement and opportunities. The types of reforms associated with these components are discussed in their respective sections below.

Fourth, in addition to these substantive categories, law spells out how both citizens and officials must behave in the pursuit and enforcement of rights. These rules are sometimes embedded in laws themselves (see Box 4) but are more often found in regulations and administrative instructions. In some countries, party documents and policy statements play this role as well, and they have the force of law. Procedural rules are critical to fairness. Substantive rights of the poor can be neutralized and lost in processes that disadvantage the poor. This applies to procedures in courts and other enforcement bodies, such as notice requirements, rights to be heard, rights to prompt hearings, and rights to require access to information held by others. But procedural rules are not just a matter of courts. Administrative law similarly creates procedures that must be followed by officials dealing with citizens, and corporate law creates procedures that corporate officials must observe in dealing with shareholders. Examples are the rules governing the

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<sup>31</sup> For example, India implemented a policy of decentralized governance by establishing a uniform, democratically elected local government (*panchayat*) structure throughout the country. Decentralization served a variety of objectives, but specific legislative terms that require local elections at five-year intervals, reserved seats on the *panchayat* for women and members of scheduled castes and scheduled tribes, and established the *gram sabha* (an assembly of villagers to serve as a watchdog over the governing bodies) provided the poor with new opportunities to impact local government. Constitution of India, Article 243 (73rd Constitutional Amendment of 1992); see Jha, Shikha. 2002, June 29. Strengthening Local Governments: Rural Fiscal Decentralisation in India. *Economic and Political Weekly* (pp. 2612).

filing of complaints, rules designed to ensure efficiency in processing claims or requests, and rules on response time or conduct, such as those applicable to the police. It cannot be emphasized too strongly that these rules governing process are as critical to the realization of rights as the substantive law creating the rights, and that law reforms requiring good process have potentially large pay-offs in terms of LEP.

#### **BOX 4: PROCEDURAL RULES: LAND LAW AS ADMINISTRATIVE LAW**

Patrick McAuslan, drafter of the most recent Tanzanian land legislation, argues for a “painstakingly detailed” approach to legislative drafting, in which considerable procedural detail is included in the land law itself rather than in regulations under the land law. He writes:

[O]fficials armed with powers and subject to few or no restraints cannot be relied upon to behave reasonably ... but at least where there are rules and procedures which have to be followed, a challenge can be mounted to unreasonable behavior. In much of Africa, the allodial title to land is vested in the state ... this means that the citizen has to obtain land from the state and its organs, with state officials managing the land as landlords or trustees. In such cases as these, land law ceases to be a private matter, but becomes part of public law; it is in fact, administrative law. Administrative law or administrative justice requires that official power be bounded by legal rules, be exercised in accordance with certain principles of fairness, allows for hearings and appeals, and be subject to review. [A further] reason for supporting an approach of “more” rather than “less” law is, paradoxically perhaps, the existence of the market. [O]nce the land law recognizes and protects private rights, and facilitates dealing with those rights in the market place, the law has to be much more specific, detailed and clear. The crucial issue ... is to find the right balance between public and private law for each problem.”

*Source:* McAuslan, 2003 (pp. 255–58).

Fifth, law determines the participation of the poor in the law-making process itself. This is somewhat different than the categories mentioned above, as it involves a number of them. Law determines who is a member of the law-making community. It determines who has access to that community and what those access channels are. It determines how decisions are made about its content. It determines whether the poor can participate in that decision making process, the means by which they participate, and the costs they must incur for their participation. It can impose penalties on those who seek to deny the poor their right to participate. This participation is critical both because it increases the opportunities for law reform to work in favor of the poor and also because such participation itself, by developing the capacity of the poor, empowers them.

Changes in the law that empower the poor will often imply changes in the distribution of economic benefits and power. Bureaucrats, judges, and economic elites have great influence over what legal reforms are enacted and how far they are implemented. Laws that promote legal empowerment of the poor may threaten jobs and power by decentralizing roles and decision making, and threaten rent-seeking opportunities by reducing complexity and discretion. Preliminary stakeholder analysis of the legal reform process can reveal important pockets of potential resistance and guide reformers about how to manage it effectively, such as creating new opportunities for those who stand to lose employment or status, or by building in performance-based incentives that reward service to the poor.

### **3.1.2. Reforming the Process of Law Making**

In empowering the poor, the process by which law is changed can be as important as the substance of the changes. Processes that involve the poor in the design of legal reforms pay off in three ways: they assure that the priorities of the poor, as perceived by the poor, are inserted into these discussions; they strengthen democracy by building the poor’s capacity to engage as proactive citizens; and they enhance possibilities for the development of a social consensus concerning law reforms that make effective implementation more likely.

Box 5 outlines a sequence through which government may involve the poor in changing law.

The first significant opportunity to engage the poor is through applied research that can involve organizations and social movements seeking to represent the poor. Input at this stage is particularly important, because it contributes to problem identification and can influence the framing of the issues to be resolved.

A public information campaign that precedes the public consultation gives people, down to the local level, time to think about the issues. This should include public meetings and consultations with members and representatives of vulnerable groups who may be reticent in meet publicly. The public consultation process on a preliminary policy document is the most important opportunity to engage the poor, and it is best that it focuses on defining the problems, reviewing options, and proposing solutions rather than technical content. Input from the poor and those who represent them is critical at this early stage in the process because it provides the poor with an opportunity to shape the content of the law before the legal drafting stage when it is less comprehensible and potentially less mutable.

Civil society organizations (CSOs) today play an important role in voicing the concerns of the poor and advocating for law reforms that will aid them. Note, however, that the credibility of such groups as representatives of the poor varies dramatically. Some consist of urban elites pursuing ideological agendas, largely out of touch with the poor. Their legitimacy in terms of representing the interests of the poor must be carefully assessed. Social movements and membership organizations that actually have poor members and legitimately elected officials generally deserve greater credence. The input of any nongovernmental organization (NGO) or CSO will have greater credibility if it engages in systematic consultations with the poor and use these to inform their objectives and actions.

However, good consultation is expensive, time consuming, and requires a certain degree of experience in communicating with and engaging communities in honest dialogue. Donor organizations can enhance the quality of consultation by making the needed funding available and providing technical assistance on the process. Excellent models are available. The prospects for effective inputs by the poor will also be enhanced if a realistic time frame for the law reform process is established at the outset, usually not less than two years. The process by which law is reformed is important because the real objective is not just enactment but effective implementation, and the process has important effects on ownership and the quality of implementation.

Further opportunities for pro-poor inputs exist when a draft law has been prepared and is discussed, but it will only be possible if the new law is given substantial publicity and communicated in terms that are easily understood by those without legal education. A final opportunity for pro-poor input comes through representations to members of the legislature. These last two opportunities, however, are more likely to involve inputs by advocates for the poor rather than direct input by the poor. Finally, the quality of the legal drafting can make a law more or less accessible to the poor and the advocates of their interests.

Elites often do not have the foresight to accept proposed reforms, pursuing their short-term interest in income streams and power over their longer-term interest in constructive change and political stability. Getting reforms enacted and implemented often requires the political mobilization of the poor. What can be

#### **BOX 5: A SEQUENCE FOR INCLUDING THE POOR IN LAW CREATION**

1. Tentative problem identification
2. Research to better understand problems and their parameters
3. Preparation of a preliminary policy document
4. Public information campaign on that document
5. Public consultations on that document
6. Finalization of a policy document and its adoption by government
7. Assessments of existing law in relation to new policy directions
8. Drafting of law or amendments to laws
9. Approval by the executive or other institution originating the draft
10. Public information campaign on the draft
11. Public discussion of the draft
12. Adjustments in the draft to reflect public reactions
13. Finalization and submission to legislature
14. Enactment by the legislature



done to enable the poor to secure seats at the table and soften the resistance of the politically powerful? Box 6 highlights some alternatives.

Probably one of the most effective means of supporting the inclusion of the poor in the political process is investing in the support of those who are seeking this end: champions within government, civil society movements, or visionary leaders. It can involve financial assistance but can also extend to helping leaders and groups gain exposure in the international media and donor publicity materials. It is nevertheless important that these investments be preceded by careful analysis, to ensure that helping to empower one group of the poor does not result in increased marginalization of another.

Laws that mandate the inclusion of the poor (or those who represent them) in decision-making structures and “procedural” laws that hold those responsible for guaranteeing their inclusion accountable are another mechanisms for reshaping the political space. Identifying champions within the government and cultivating a keen sense for political opportunity enable donors to strategically mobilize support for such legal reforms.<sup>32</sup> Enshrining the participation of the poor in the laws of governance makes it much more challenging to exclude them when political circumstances are not in their favor.

Even in a democratic society, money is often the means by which political candidates become known and exert influence among potential constituents in order to be voted into office. While some candidates enter into the decision-making forums with the best of intentions of representing the interests of the poor, their incentives are often geared toward rewarding those who enabled them to get into office in the first place. Measures to weaken these incentives include tax-based public financing to support election campaigns, awarded based on low-cost indicators of public support (e.g., petitions). It is necessary to tackle underlying social values, norms, and structures that feed quests for power and self-enrichment. Greater support is needed for education programs that promote values of public service and appreciation for the “rewards” that come from exerting a positive change in poor people’s lives, including supporting their capacity to shape their own destinies. It is important that such education not only be targeted at those already in the political system, but also youth and future leaders whose values are still in the formative stage and the best opportunities exist for rewarding their tendencies toward idealism. Those seeking to reinforce norms and values of public service can sometime appeal effectively to global norms and values, a prominent example being the Universal Declaration of Human Rights.

Including the poor in the political process and getting the law right for them are only the first steps. Often there is a discouraging gap between the rights the poor already have by law and their ability to realize them. How can that gap be closed?

#### **BOX 6: MEASURES SUPPORTING INCLUSION OF THE POOR IN GOVERNANCE**

1. Investing in political champions, civil society movements, and visionary leaders.
2. Legal reforms that mandate inclusion of the poor.
3. Restructuring incentives toward low-cost indicators of public support for political candidates.
4. Cultivating values of public service within the political system and among future leaders.
5. Leveraging international influence and setting an example.

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<sup>32</sup> Too heavy reliance on a political champion can be dangerous, as illustrated by the difficulties faced by efforts at low-cost formalization of land occupations in Peru after the departure of President Fujimori. Champions are important, but even more important is careful stakeholder analysis and accommodation of stakeholder interests, developing a political consensus for needed reforms, and neutralizing potential opposition.



## 3.2 RIGHTS AWARENESS

The foundation of legal empowerment is awareness of rights. The poor must know their rights and understand contexts in which those rights exist and function. Mere knowledge that a right exists is insufficient to ignite the legal empowerment process. Rather, rights awareness requires both comprehension of the right and concrete understanding of how to assert, protect, and ultimately effect it.<sup>33</sup> As a precondition to and essential component of legal empowerment, rights awareness is necessarily action oriented.

### 3.2.1 Barriers to Awareness

Creating and improving the poor's awareness of legal rights requires informed identification of the barriers and disadvantages they face. Lack of adequate health care, education, economic wealth, and social experience—coupled with an unrelenting pressure to perform daily labor to meet basic needs—isolates the poor economically, socially, and physically.<sup>34</sup> Rural residents, women, ethnic and religious minorities, and the disabled and socially stigmatized are typically further marginalized and well represented among the world's poorest.<sup>35</sup>

The multidimensional isolation attendant to poverty in developing countries dictates the need for intentional and well-considered awareness building. In the developed world, most poor live in an environment saturated with accessible public media and open discussion of legal rights. In contrast, the barriers faced by the poor in developing countries can combine to restrict their awareness. The poorest may never travel beyond the outskirts of their village, town, or the section of a city in which they make their home. They may never read a newspaper, understand a radio broadcast, or access the Internet. Absent intervention, the poor's awareness of legal rights may be limited to anecdotal information gleaned from those with whom they interact in the community. Compounding the potential for receiving inaccurate and incomplete information, the poor often first learn about a legal right under stressful circumstances, such as a death in the family, land expropriation, job loss, or natural disaster.<sup>36</sup> Absent intervention, the poor's awareness of their legal rights is likely to be imperfect in content and ultimately unable to sustain the process of legal empowerment.

### 3.2.2 Accessible Laws and Legal Procedures

Given the prevalence of barriers and disadvantages faced by the poor, the legal empowerment process requires intentionally crafted efforts to create and increase rights awareness. Common awareness-building efforts, such as legal literacy campaigns, attempt to reach the poor where they live. Less common and less evident are methods of building awareness through integrating the poor into mainstream economic, social, and political environments (e.g., through inclusion in union-organizing efforts, requiring resident representatives on slum improvement committees, establishing contract set-asides for small businesses, and setting required percentages of low-income mortgages in a given community). Both types of methods share a need for a foundation of accessible and comprehensible laws and legal procedures.

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<sup>33</sup> Golub, 2001 (pp. 7).

<sup>34</sup> The World Bank's three-volume series, *Voices of the Poor*, captures the relentless, multi-dimensional power of the barriers. See in particular, Narayan, Deepa, Robert Chambers, et al., eds. 2000. *Voices of the Poor: Crying Out For Change*. Washington, D.C: The World Bank (pp. 21–107).

<sup>35</sup> Ibid. See also The World Bank. 2006. *World Development Indicators*. Washington, D.C: The World Bank; and UNFPA. 2006. *The State of the World Population, 2006*, available at <http://www.unfpa.org/swp/2006/english/notes/indicators.html>.

<sup>36</sup> Narayan, et al. (pp. 237–246). See generally Narayan, Deepa and Patti Petesch. 2002. *Voices of the Poor from Many Lands*. Washington, D.C: The World Bank.

For individuals not immersed and trained in the legal and judicial professions, laws are often physically and technically inaccessible. Customary laws are typically unwritten and rarely codified.<sup>37</sup> Written laws and regulations may be poorly produced, written in a different language, inadequately disseminated, and expensive to access. Those who have physical access to written laws in their own language often confront lengthy legislation bloated with terms of art, excessive formality, and convoluted syntactic structures seemingly designed to obscure rather than impart information.<sup>38</sup> Efforts to make the expressions of law more accessible and allow awareness building include drafting laws using plain and simple words; printing laws with large, legible type; requiring laws (or summaries of longer laws) in all local languages; shortening legal procedures to essential steps; and disseminating laws and regulations throughout relevant jurisdictions and in all tribunals with particular attention to those handling cases involving the interests of the poor.<sup>39</sup> These measures can create a foundation for building awareness of legal rights.

### 3.2.3 Legal Literacy Campaigns

Legal literacy campaigns share the objectives of rights awareness: imparting knowledge of legal rights and the exercise of those rights.<sup>40</sup> These campaigns tend to be conceived and executed with relation to specific projects or in the context of broader programs, such as the countrywide formalization of land rights or establishment of legal aid offices in an urban center. Campaign methods include educational messages disseminated through the public media and training programs for providers of services and benefits to the poor, including government officials, professionals, and members of civil society.<sup>41</sup>

Less visible at a national level but potentially highly effective are community-based legal literacy efforts. Operating at the local level, planners can tailor a campaign to the needs of a particular population, which in turn can suggest and generate the content for the campaign.<sup>42</sup> Local legal literacy campaigns can range from community workers advising self-help groups of domestic violence laws to a performance of a tour-

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<sup>37</sup> Examples include the customary laws governing India's tribal people, which comprise approximately 7% of the country's population, and the customary laws of African countries. Formal law may recognize the validity and jurisdiction of customary law, but the law is not reduced to writing. For example, Nigeria's Land Use Act of 1978 allows inheritance of occupancy rights in accordance with the customary law of the area, but the principles of inheritance applied by different tribes and tribal subgroups are unwritten.

<sup>38</sup> See generally Seidman, Ann, Robert B. Seidman, and Nalin Abeysekere. *Legislative Drafting for Democratic Social Change: A Manual for Drafters*. London: Kluwer Law International, 2001. The problem is significant enough to earn its own networks, including Clarity, an international group of lawyers and other interested parties devoted to clarity in legal writing, and the Plain Language Action and Information Network (PLAIN).

<sup>39</sup> Comprehensive guidelines for creating comprehensible legislation and legal documents are included in Sandeep Dave's *Plain Language in Law*, at [www.llrx.com](http://www.llrx.com) and [www.plainlanguage.gov](http://www.plainlanguage.gov), a 2002 USG mandate that all legislation must be written in plain, concise language in order to make it more responsive, accessible, and understandable to the public (see <http://www.plainlanguage.gov/whatispl/govmandates/memo.cfm>).

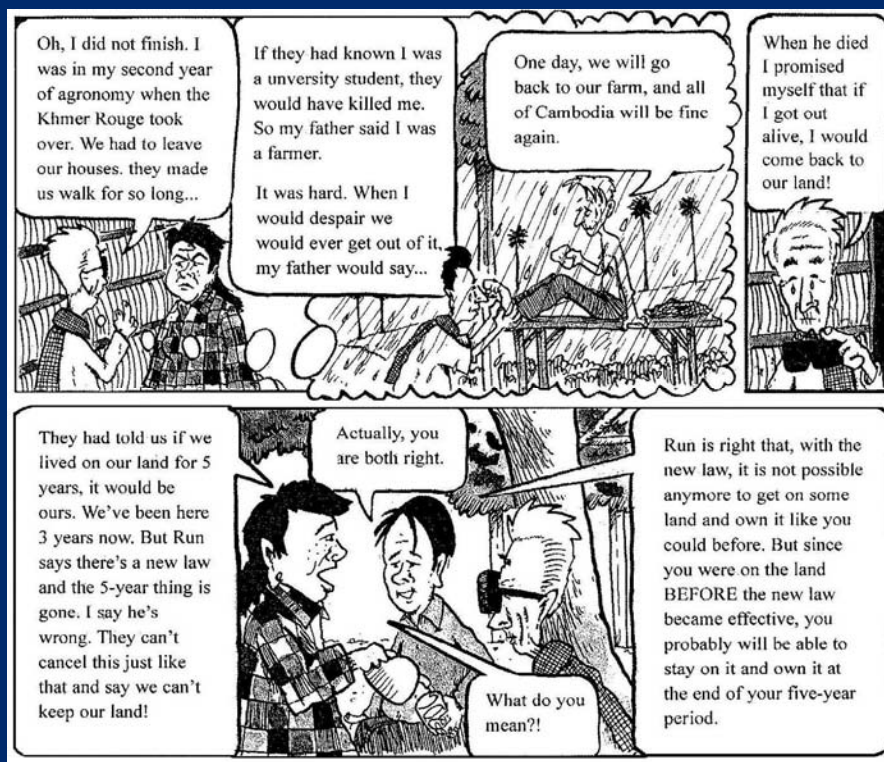
<sup>40</sup> Legal literacy has been defined as substantively equivalent to legal empowerment. Golub and McQuay, 2001, at pp. 8. To avoid confusion, we use the term in this paper with reference to legal literacy campaigns—one type of rights awareness-building activity. A classic example of a legal literacy campaign is the radio broadcast designed by Women's Feature Service (WFS), a Delhi-based NGO to provide women with information about their legal rights. WFS broadcasts 28 weekly segments, discussing issues such as dowry, domestic violence, life insurance, and sex worker laws. Each program included legal advocates explaining the law in lay terms, call-in question and answer sessions, and advice on how to proceed with a claim or defend a right. The program is described in the Communications Initiative at <http://www.comminit.com/experiences/pdsaug/experiences-679.html>.

<sup>41</sup> Asian Development Bank. *Technical Assistance for Legal Literacy for Supporting Governance*. Manila: ADB, 1999.

<sup>42</sup> In the state of Gujarat, India, the NGO the Centre for Social Justice (CSJ) employs and trains residents of selected regions to work as paralegals. The paralegals provide education awareness training in the community, conduct investigations, and assist circuit lawyers. As an organization, CSJ undertakes various topics for on which it develops educational materials, conducts training, undertakes test cases, and supports legislative reforms. The topics are often chosen from those identified by community residents and paralegals. The program is described in the CJS pamphlet, *Taking Justice to the People: Law as a Tool for Social Engineering*. Ahmedabad: Centre for Social Justice (on file with the Rural Development Institute).

ing theater troupe advocating the right to vote. Campaigns may include a mixture of approaches: coping with a public health crisis; a health ministry broadcasting a radio announcement nationally to alert its citizens to the legal rights of HIV-positive individuals; a local NGO advising patients in a village clinic how to file a claim against their employers for unpaid wages when their illness prevents continued work. Effective legal education should use media that engage the interest of those to be informed; cartoons that highlight legal problems and solutions are a good example. Box 7 shows a panel from a publication in Cambodia.<sup>43</sup>

### BOX 7: TEACHING LAW WITH COMICS: A PAGE FROM PACT CAMBODIA'S LEGAL LITERACY PUBLICATIONS



Source: Cambodian Ministry of Land Management, Urban Planning, and Construction and the Ministry of Justice. 2003. From the comic book called "Our Land," in Khmer and English produced in Cambodia to advance public knowledge of the 2001 Land Law. Produced in cooperation with the East-West Institute, supported by the Asian Development Bank.

Selecting the most effective method to create and increase awareness of legal rights begins with identifying the intended audience. The size, composition, and characteristics of the audience will shape the content and ultimately narrow choices for effective methods for communication of the message.<sup>44</sup> If a targeted poor audience lives and works in a community with no television or radio and high illiteracy, campaigns might use posters illustrating the message with graphics or rely solely on personal contact. If

<sup>43</sup> See also the publications of Pact Cambodia, which include posters, booklets, personal stories, and picture books addressing legal and social issues, are designed to be used in combination in order to reach all corners of a population on an issue. See, for example, poster entitled, *Helping People Living with AIDS*, and a picture book depicting the legal rights of persons with HIV/AIDS, *We Participate Together for our Safety and Security*, available at <http://www.pactcambodia.org/publications>.

<sup>44</sup> See generally Rice, Ronald E., and Charles K. Atkin. *Public Communication Campaigns*, 3d Ed. New York: Sage Publication; Balnaves, Mark, James Donald, et al. 2001. *Media and Information: Key Issues and Global Trends*. New York: Penguin, 2000.

the audience is economically and socially diverse, campaign designers must identify barriers faced by marginalized sections and consider creating and delivering communications separately to those groups.<sup>45</sup>

In addition to communications intended for the poor, campaigns may need to raise legal awareness among those who interpret and administer the law, including judges, lawyers, police, and administrative officials. In some settings, campaigns effectively target traditional leaders in order to raise awareness of formal law in an effective and respectful manner, while also exploring possible ways of merging or otherwise reconciling customary and formal law in a manner designed to establish, extend, and protect the rights of indigenous populations, including women and other marginalized persons.<sup>46</sup>

In designing campaigns, planners often need to balance the need to reach a large audience with the need to ensure understanding among the poor. The broader the dissemination area, the more diverse the audience will be, requiring a more generic message.<sup>47</sup> Smaller audiences allow for more tailored messages that can provide information about the methods of exercising legal rights specific to a community, but may not reach a significant number of people. This challenge of promoting legal literacy is further confounded in countries with many languages and no widely known national language.

### 3.3 RIGHTS ENABLEMENT

The processes of rights enablement are those measures and mechanisms that can assist the poor in using the law and legal tools to expand their opportunities. Enabling processes, such as legal reforms and legal aid services, can facilitate the poor's ability to assert and defend their rights. In the context of legal empowerment, however, the goals of enablement extend beyond ensuring the ability of the poor to exercise a legal right; the processes of enablement are the means through which the poor can access the legal, economic, and social opportunities attendant to that right. As such, enablement is the core process of legal empowerment.

As with effective awareness-building, enablement processes respond to the barriers and disadvantages faced by the poor. The barriers that occlude and obscure the poor's awareness of legal rights<sup>48</sup> pose similarly persistent barriers to the process of rights enablement. In addition, laws and policies, deeply rooted customs and traditions, and market economies and evolving social structures can harbor unanticipated barriers for the poor. Competing formal and customary legal frameworks, institutional incapacity and resource deficiencies, market imperfections and failures, and the costs of corruption can perpetuate the poor's economic, social, and political disenfranchisement.

Those same laws, mechanisms, and institutions can, however, also serve as agents of rights enablement and ultimately, legal empowerment. Policies, legislation, government, civil society, and all manner of

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<sup>45</sup> In efforts to educate the poor about issues such as family laws, gender equity, dowry, and domestic violence, implementers find that raising the issues separately with women and men before conducting any mixed gender communication essential to an effective campaign. See, for example, ICRW, 2002. *Innovative, Women-Initiated Community-Level Responses to Domestic Violence: A Study of Nari Adalat, Baroda, and Mahila Panch, Rajkot*. New Delhi: ICRW (on file with the Rural Development Institute).

<sup>46</sup> Tripp, Aili Mari. 2004. Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda. *African Studies Quarterly*, Vol 7, No. 4. See also Land Equity Movement of Uganda. 2005. *Titling Customary Land*, LEMU Policy Discussion Paper No. 2. <http://www.landinuganda.org>.

<sup>47</sup> For example, the population of Angola speaks a dozen or more different languages, and literacy rates are low, especially in rural areas. Key excerpts from the country's family laws relating to marriage, divorce, and the obligations of parents to children are available in a picture book form, which allows community workers and local officials to use the text throughout the country. People's Republic of Uganda. *Assemblei do Povo*. 1989. *Codigo da Familia*. Luanda: *Centro de Documentacao e Biblioteca*.

<sup>48</sup> These barriers and disadvantages include lack of adequate education, health care, economic assets, and social experience. See discussion in Section 3.2.



groups and individuals—including the poor themselves—can facilitate the exercise of legal rights by eliminating barriers, providing the poor with the means to recognize barriers and dismantle or circumvent them, or compensating the poor for impenetrable barriers. Such enabling efforts, which can occur alone or in combination, can take the form of (1) procedural assistance for the poor; (2) integration and affirmative action; (3) institutional and individual capacity building; and (4) the provision of compensatory benefits.<sup>49</sup> As described below, the enabling measures can assume dramatically different forms, but as tools of legal empowerment, they share a common objective: providing the poor with the means to escape poverty.

### 3.3.1 Procedural Assistance

Among the most visible enablement efforts are those extended by individuals and organizations providing the poor with procedural assistance in exercising their rights. Legal aid, which provides low- or no-cost legal assistance to the disadvantaged,<sup>50</sup> plays a central role in providing procedural assistance. Individuals and entities offering legal aid services are highly diverse and can include activities ranging from completing forms and deconstructing regulations to representing the poor in legal and administrative proceedings. Despite the diversity of potential activities, legal aid efforts usually share core objectives: in the area of procedural assistance, legal aid bridges the gap between rights granted to poor populations and their ability to exercise those rights effectively.<sup>51</sup>

As a process enabling legal empowerment, the bridge provided by procedural assistance must actively engage the poor rather than simply serve their legal needs. Most prominent of such engagement are programs that employ local residents to work as paralegals. Paralegals serve not only as efficient providers of procedural assistance, but their presence in the community creates a local base of legal knowledge and experience with legal matters that can expand within those communities.<sup>52</sup>

Collaborative programs that identify untapped potential within institutions and communities can be equally effective processes of enablement. Legal aid clinics that train local traditional leaders and elders to serve as advocates for their constituents can create a powerful presence in their communities.<sup>53</sup> With a modest amount of training and appropriate incentives, court system employees can help the poor complete forms and fulfill processing requirements. Teachers and educated members of communities can help with reading and interpreting legal documents. Regular visitors to remote communities, such as health care workers and NGOs, can provide transportation for the poor to visit government offices and courts. These types of ad hoc efforts may lack the disciplined approach of organized legal aid, but what they lack in substance, they may make up for in proximity, understanding of local circumstances, and creating a body of knowledge, legal experience, and capacity within communities and the institutions that serve them.

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<sup>49</sup> The discussion of the reform of law and policy as an enabling process is contained in Section 3.1.

<sup>50</sup> Kessler, Mark. *Legal Services for the Poor: A Comparative and Contemporary Analysis on Interorganizational Politics*. New York: Greenwood Press, 1987. See, for example, the key objective of South Africa's Legal Resources Centre, which is "[e]nabling the vulnerable and marginalized to assert and protect their rights" <https://www.lrc.co.za>.

<sup>51</sup> Committee on Legal Services for the Poor in Developing Countries, ed. *Legal Aid and World Poverty: A Survey of Asia, Africa, and Latin America*. New York: Praeger, 1974.

<sup>52</sup> The system used by the Alternative Law Groups (ALGs) in the Philippines is an example of legal aid services enabling a community to assert its rights. ALGs partner with communities to address issues within those communities, such as the need to file land reform applications with the Department of Agrarian Reform in order to secure land rights. ALGs trained selected residents to assist farmers in gathering the necessary evidence, preparing, and presenting the applications. Golub, Stephen. Participatory Justice in the Philippines. In *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World*, Mary McClymont and Stephen Golub, Eds. New York: Ford Foundation, 2000. (pp. 213); Golub, 2000 (pp. 297–314).

<sup>53</sup> A World Bank-funded legal aid program in Kyrgyzstan trained local leaders to be successful advocates for their communities. World Bank. 2003. *Legal Rights to Land for Rural Residents in Kyrgyzstan: Case Studies of Legal Rights Advocacy Empowerment of Local Leaders Project*. Bishkek: The World Bank (pp. 1–7).

### 3.3.2 Integration and Affirmative Action

Integrating the poor in public processes and environments is usually a more individualized method of creating rights awareness than technical revisions to legal language and legal literacy campaigns. Least controversial are integration methods that pull another chair up to the table by consciously including the poor in public processes.<sup>54</sup> Methods can be voluntary, such as policy makers canvassing the poor for opinions and priorities in the process of establishing policy, or government officials including the poor in decisions on the allocation of project benefits.<sup>55</sup> Other methods of including the poor may be mandated, such as legislation requiring public notice and hearings in all communities to be affected by a public works project or private development with environmental impact.<sup>56</sup>

More controversial are methods creating mandatory reservations for the poor, which provide guaranteed space at a policy- or decision-making forum with a limited number of seats.<sup>57</sup> The methods, which are often broadly referred to as affirmative action, create controversy because for every poor person included, someone seemingly more advantaged appears to have been displaced. In some cases, the method has created hostility toward or further stigmatized the poor. The ultimate impact of the method on poverty alleviation is debated.<sup>58</sup>

Barriers to awareness-building processes are echoed in processes to integrate the poor into government meetings, forums for policy making on project planning, and other mainstream environments. The poor may experience difficulties attending scheduled meetings on a regular basis, understanding the proceedings, and expressing themselves in an effective manner.<sup>59</sup> Nonetheless, undervaluing the use of integration methods in rights-awareness building does a disservice to the process of legal empowerment. While the methods are often more labor intensive, individualized, and considered less scalable than broad legal literacy campaigns, by their nature they require the active involvement of the poor in the process.<sup>60</sup> That involvement can create the engagement necessary for empowerment.

### 3.3.3 Institutional and Individual Capacity Building

Capacity building<sup>61</sup> creates and expands the ability of individuals, communities, and institutions to support the poor's exercise of legal rights and use of legal tools. Capacity building helps ground legal knowl-

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<sup>54</sup> Schneider, Hartmut. 2006. *Participatory Governance: The Missing Link in Poverty Reduction*, OECD Development Centre Policy Briefs, No. 17, OECD Publishing doi:10.1788/888041015581 (pp. 7).

<sup>55</sup> See, for example, Claeys, Anja. 2001. Engaging the Poor in Policy-Making on Poverty and Social Exclusion in Flanders (Belgium), OECD Working Paper (pp. 129–133): <http://www.oecd.org/dataoecd/54/10/2537007.pdf>.

<sup>56</sup> See, for example, South Africa's mandatory public participation processes contained in the 1998 National Environmental Management Act (NEMA).

<sup>57</sup> Examples include reservation of *panchayat* (local governing body) seats for members of scheduled castes, scheduled tribes, and women in India. Constitution of India, op. cit. supra.

<sup>58</sup> A recent summary of the nature of affirmative action methods and results is Sowell, Thomas. *Affirmative Action Around the World: An Empirical Study*. New Haven: Yale University Press, 2004.

<sup>59</sup> Claeys, 2001 (pp. 136).

<sup>60</sup> Schneider, 2006.

<sup>61</sup> In the development context, capacity building is the process of providing individuals and groups with the knowledge, skills, and understanding necessary to perform effectively and bring about desired change. At a group level, capacity building includes improving the group's ability to organize and manage itself, establish values, set priorities, create strategic plans based on models and opportunities, and implement the plans. At an institutional level, capacity building may involve creating administrative and legal frameworks and implementing changes to enable the institution to enhance its capabilities to meet objectives. See compilation of definitions prepared by Global Development Resource Center, *Defining Capacity Building*, at

edge and experience in a community and within institutions, creating environments in which the poor can actively participate in the development, exercise, and enforcement of their rights.<sup>62</sup>

Whether directed at the poor, at professionals serving the poor, or at institutions such as local government bodies, effective capacity building may initially require attention to creating awareness of the legal rights of the poor and the processes for exercising those rights. Once awareness is established, capacity-building approaches will often be tailored in accordance with the target group. Community-level programs are often created and implemented by activists for the poor, and practical methods for the poor to assert their rights dominate the curriculum. Some programs focus on forming groups around common concerns and interests and educating group members on how to use laws and institutions available to them to forge social change.

Within the government, capacity building focuses on institutions responsible for creating, implementing, and enforcing the legal rights of the poor. Those with whom the poor interact regularly, such as local government officials who have responsibility for public works and police who enforce local laws, often lack understanding of the rights of the poor and barriers faced by the poor. As critically, these frontline officials often have no incentive to interact with the poor and serve their needs equitably. They may instead succumb to real and perceived disincentives to provide equitable service, such as the poor's limited ability to pay legitimate and illegitimate fees, the time and cost necessary to visit remote areas when the poor live, and concerns over visiting uncomfortable and unhealthy impoverished areas.

To similar disabling effect, the legal profession and judiciary's experience with issues relating to the poor's exercise of legal rights and access to justice may be quite limited. Judicial reforms are often focused on correcting administrative inefficiencies and promoting rule of law reforms designed to attract investment and encourage economic growth—reforms that while not inherently inimical to the interests of the poor, are not targeting the specific barriers faced by the poor.<sup>63</sup> Judges and court officials often lack any knowledge of the daily circumstances of the poor. Canceling a hearing without prior notice may cause the poor litigant to abandon the case. Similarly, lawyers, who often come from rarified, economically secure, urban backgrounds, may better serve the poor (and may, indeed, consider a career of public service) with understanding of the poor's circumstances.<sup>64</sup> Capacity-building programs seek to create recognition of the poor's experience and work with officials, institutions, and professionals to design practical mechanisms to eliminate barriers and provide alternatives.

One of the distinguishing features of capacity-building programs within a framework of legal empowerment is the effort to establish opportunities for the poor to participate in public processes representing their own interests. User groups, cooperatives, and coalitions often serve as the foundation, with those groups in turn supplying representatives to decision-making bodies. Establishing forums in which the poor and members of institutions such as local government meet regularly to address issues and discuss

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<http://www.gdrc.org/uem/capacity>. See also Light, Paul C. and Elizabeth T. Hubbard. 2002. *The Capacity Building Challenge* Brookings Institute Working Paper (pp. 2–3): <http://www.brookings.edu>.

<sup>62</sup> For example, a legal aid lawyer may initially help a poor, rural woman navigate the court system to bring an inheritance claim against a family member, but ideally, accessible, user-friendly, effective processes supporting women's inheritance rights should be institutionalized within the police, court system, and civil society so that all women have an equal ability to exercise their rights, regardless of the availability of legal aid services.

<sup>63</sup> See discussion in Golub, 2003 (pp. 39).

<sup>64</sup> Programs based in law schools, which provide law students with hands-on experience serving the poor, provide excellent opportunities to expand the experience of future lawyers. One example of such a program is Wuhan University's Center for the Protection of Rights of Disadvantaged Citizens, which engages 45 undergraduate and graduate law students each year. Liebman, Benjamin L. 1999. Legal Aid and Public Interest in China, *Texas International Law Journal*. Spring ed. (pp. 233–35).

possible solutions creates opportunities to institutionalize the process of capacity building even as the group addresses the issues of the community.<sup>65</sup>

### 3.3.4 Compensatory Benefits

Processes of enablement also encompass measures designed to compensate for barriers faced by the poor. Compensatory measures are designed to provide the poor with access to an opportunity denied them because of their economic status. Mechanisms can include many of the integration efforts that can assist in awareness building,<sup>66</sup> such as reserving a percentage of seats on a local governing council for the poor or creating employment guarantee programs. In areas where imperfections in the labor and land markets artificially depress laborer wage rates and raise land prices to the extent that the poor are precluded from purchasing land, programs subsidizing the purchase of agricultural land by the poor, or programs providing tax credits to financial services cooperatives extending credit to the poor, serve as enabling processes.<sup>67</sup>

Compensatory programs are often less favored than the other types of enabling methods. On a conceptual level, compensating the poor for disadvantages suffered potentially places the poor in the role of passive beneficiaries and may not encourage the effort necessary to improve their economic and social position. Even if the financial benefit is a one-time payment or benefit, arguably the poor may accept it as an entitlement rather than an incentive—an attitude at odds with the empowerment process.

The same criticism could, however, be directed at all enabling efforts to some degree: in order for enabling efforts to support the process and objective of legal empowerment, the poor must become active participants in the process of exercising their legal rights and recognizing resulting economic and social opportunities. Equal social rights and entitlements must include the right to participate in decision making and in shaping the set of social rights to meet their particular needs.<sup>68</sup> Absent that engagement, any enabling process has the potential to deflate and its ability to encourage empowerment reduced to that of any other benefit program. Those enabling efforts that integrate the poor at every stage—in setting priorities and establishing agendas, conceiving of necessary legal reforms, creating rights awareness campaigns, and designing processes through which the poor can exercise their rights—will be best positioned to foster legal empowerment.

## 3.4 RIGHTS ENFORCEMENT

Recognition of civil, economic, social, and political rights will lack weight and credibility without procedural rights. People need pathways to enforce their rights. These pathways need to be known, easily followed, and economically affordable. Slow, expensive, and corrupt judicial systems undermine the protections and rights provided by law. Frequently, the government fails in its responsibility of providing a sound dispute settlement mechanism, and the private sector then incurs additional costs to solve conflicts. As a result, businesses do not flourish, rights are not enforced, and poverty prevails.<sup>69</sup> The poor are par-

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<sup>65</sup> The Islamabad-based NGO, Rozan, conducts a training program for police designed to enhance the relationship between the community and police and improve understanding of issues such as domestic violence. See description of Rabta program at <http://www.rozan.org/rabta>.

<sup>66</sup> Discussed in Section 3.2.

<sup>67</sup> See Deininger, Klaus. *Land Policies for Growth and Poverty Reduction*, Washington, DC: The World Bank, 1993, (pp. 115–31).

<sup>68</sup> Ibid.

<sup>69</sup> Koehling, Wolfgang. 2002. The Economic Consequences of a Weak Judiciary: Insights From India. *Law and Economics* 0212001. EconWPA.



ticularly disadvantaged in the face of corruption, lacking both economic resources to pay bribes and social/political status with which to influence judges.

The courts are the traditional venue for vindication of rights, but their inadequacies as a means of recourse for the poor are manifest. They are commonly slow and expensive, their processes complex, and their language arcane. Law reforms can improve this, simplifying processes and creating more accessible and user-friendly adjudication opportunities. They can also provide other more promising approaches to dispute settlement, including alternative dispute resolution (ADR, emphasizing mediation and arbitration) and opportunities for field adjudication of rights, such as those during systematic land titling. Law reforms can also establish institutions and mechanisms that help the poor hold to account those who administer the law. These would include creating ombudsmen or community watchdog groups to supervise the performance of local officials, or creating the right to file complaints and call public meetings that local officials are required to attend and respond to grievances. These innovations all require law reform, even in the case of ADR (which is consensual), because legal authorization is needed for the state to fund ADR and to ensure court enforcement of resolutions arrived at through this process.

While the courts are traditionally an important mechanism for rights enforcement, there may also be a need of administrative reform, particularly when rights are demanded vis-à-vis the government.<sup>70,71</sup> Efficiency is paramount for the stakeholders; of particular concern are inefficient institutions that create bottlenecks and increase costs, such as when courts are slow or corrupt and when the lack of procedural rules makes the possibility of enforcing rights unreal.<sup>72</sup>

Corruption is another important issue. Impartiality is essential for rights enforcement; judges or administrative officers who make decisions based on factors other than the facts are in essence denying rights. The best international practice in this field shows that the criteria and process for judge and officer appointment are critical. Judges appointed based upon political affiliations, with no previous credentials and who can be removed at the will of political operators, are not independent and are often prone to bribes. In Nicaragua, for example, judges are constantly criticized for lacking independence.<sup>73</sup> The potential of a clear and predictable judicial appointment process should not be underestimated. Civil society at large should be involved in that process, and the poor, if they organize to do so, can play an important role by nominating and scrutinizing candidates. Good salaries, permanent training, high ethical standards, and a clear and stable career path are all elements that have proven to be useful in promoting transparency among judges and administrative officers.<sup>74</sup>

Specialization and ease of access may also improve dispute settlement. Experience has shown that specialized courts are much more efficient in this area. For example, Rwanda created specialized chambers in trial courts for litigation related to business, financial, and tax matters. It was able to reduce delays by

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<sup>70</sup> "Important" is stressed because there are many other mechanisms and institutions that potentially come into play. Conventional wisdom often assumes that in developing countries the courts are the only or primary mechanism/institution through which the rights can be enforced, and yet people—especially poor people—often go to many institutions first before going to the courts. These institutions can include traditional authorities such as family, clan, or village elders, or formal authorities such as the police or local non-judicial government.

<sup>71</sup> Brunetti, Aymo, Gregory Kisunko, and Beatrice Weder. *Institutions in transition: Reliability of rules and economic performance in former Socialist countries. Policy Research Working Paper Series 1809*. Washington, D.C., The World Bank, 1997.

<sup>72</sup> Slow courts often do benefit those who prefer the status quo. In India, for example, the rich and powerful often use the courts for just this reason. By filing a case, they can delay threatening change for years, decades, or even forever. Thus, slow courts are not necessarily bad for everyone, but they almost always are for the poor.

<sup>73</sup> Booz Allen Hamilton. 2004. *Nicaragua Central America Free Trade Agreement*. Booz Allen Hamilton for USAID. <http://www.bizlawreform.com>.

<sup>74</sup> Field, Martha A. and William W. Fisher III. *Legal Reform in Central America, Dispute Resolution, and Property Rights*. Harvard Studies in International Development (pp. 78).

22%.<sup>75</sup> In other cases, small claims courts have proven useful in creating accessible mechanisms to enforce rights. Decentralization is an important element toward making justice accessible to everyone in all parts of the country.<sup>76</sup> For example, until mobile courts were implemented in remote areas of Brazil, it had been impossible to access the judicial system.<sup>77</sup> In the absence of effective dispute settlement mechanisms, people resort to their own ways of enforcing rights. Experience with customary rules and tribal chiefs as mechanisms of enforcing rights in some parts of Africa has been positive.<sup>78</sup>

In many countries, mechanisms have been designed to bypass the courts to enforce certain rights through agreements of the parties. That is the case of Albania, where in the context of moveable guarantees, parties can agree that the lender can take possession of the collateral directly with no need of court intervention if the borrower defaults.<sup>79</sup> In other cases, court procedures have been reformed, experience showing that an oral process tends to be more transparent and faster than written dispute settlement, a factor that diminishes enforcement costs. In Venezuela, enforcing labor rights in courts used to take around 10 years. With the passing of a new law that promotes mediation and oral procedures, more than 80% of the labor disputes are settled before going to trial and court cases are now decided in no more than four months.<sup>80</sup> Legal clinics and aid organizations have proved useful in helping the poor to enforce their rights; however, legal aid programs frequently lack funds to make their services available to all, are unknown by those that need it the most, or are not available in all locations.

Even when a court decision has been obtained, it sometimes cannot be enforced. The decision then may become a new counter on the bargaining table or, if the loser is powerful enough, it may simply be ignored. In many cases, developing efficient mechanisms to enforce judgments is a pending task to legally empower the poor. For example, in Central America, the potential benefit of arbitration to reduce the burden on the judicial system is eclipsed by the requirement that arbitral awards be enforced by traditional courts.<sup>81</sup>

Likewise, elimination of costly steps and formalities can play an important role. Reduction of costs, such as the need for photocopies or notarization, has proven to be significant for enforcing people's rights.<sup>82</sup> The language used in paperwork can also pose an obstacle; an extensive study of the primary causes for the proliferation of the extralegal economy in Tanzania found that the majority of documents necessary to legally operate a business in that country are found only in English, whereas a majority of the country's citizens speaks only Kiswahili or tribal languages.<sup>83</sup>

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<sup>75</sup> World Bank, 2006 (pp. 62).

<sup>76</sup> Messick, Richard E. 1999. Judicial Reform and Economic Development: A Survey of the Issues. *World Bank Research Observer*, Vol. 14, No. 1. February (pp. 122).

<sup>77</sup> Ibid.

<sup>78</sup> Tanner, Christopher. Law-Making in an African Context: The 1997 Mozambican Land Law. FAO Legal Paper. Rome: FAO, 2002.

<sup>79</sup> Channell, Wade, Boris Divjak, et. al. 2004. Small and Medium Enterprise Interventions and Gap Analysis: Final Report. USAID, May (pp. 16); or Alston, L.J., G.D. Libecap, and B.Mueller. *Titles, Conflict, and Land Use: The Development of Property Rights and Land Reform on the Brazilian Amazon Frontier*, Ann Arbor, University of Michigan Press, 1999.

<sup>80</sup> World Bank. World Development Report 2005: A Better Investment Climate for Everyone. Washington, D.C.: World Bank, 2004, (pp. 87).

<sup>81</sup> Garcia-Bolivar, Omar. 2006. Dispute Resolution Process and Enforcing the Rule of Law: Is Arbitration a Viable Alternative to Solving Disputes in Central America? *Southwestern Journal of Law and Trade in the Americas*. Vol. 12.

<sup>82</sup> Garcia-Bolivar, Omar. Personal experience in El Salvador.

<sup>83</sup> Institute for Liberty and Democracy. 2005. Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law. Lima, Peru: ILD.

Rights enforcement through administrative bodies, such as requests for public services, is often affected by inefficient procedures as well. It is common in many countries for service requests to be backlogged for years on the desks of officers with no decision being taken. Those delays are, per se, denials of rights. An international best practice that is becoming popular in many countries is the device called “affirmative silence,” in which administrative procedures must be decided within a specified time period. If the relevant officer has not made a decision by that time, the request is considered to be approved.<sup>84</sup>

Other mechanisms that can assist the poor are group-based action strategies to encourage rights enforcement, toll-free hotlines that provide immediate information on rights enforcement options and procedures, ombudsmen or other officials dedicated to serving the poor in justice institutions, police stations and public health offices, and the establishment of ADR systems.<sup>85, 86, 87</sup> These types of mechanisms and institutions create avenues for informal, local, and low-cost processes that enable the poor to exercise and enforce their rights.

ADR mechanisms such as arbitration, mediation, or conciliation can be useful in bypassing inefficient rights enforcement mechanisms.<sup>88</sup> There is a potential utility in associating binding arbitration provisions with certain contractual agreements in order to lessen the burden on formal courts.<sup>89</sup> Besides reducing the administrative burden on judicial systems, binding arbitration is a useful catalyst for the formation of commercial associations within a country.<sup>90</sup> Georgia, the country that realized the greatest year-to-year gain in the World Bank Governance Indicators, has not only rewritten its labor regulations to provide mobility for workers and reduced the required entitlement contributions made by employers, it has also set up specialized commercial courts using ADR to allow willing firms to resolve disputes by means other than the formal judicial system (which is of poor quality).<sup>91</sup>

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<sup>84</sup> Garcia-Bolivar, Omar. Personal experience in Lesotho.

<sup>85</sup> In India's Gujarat state, hundreds of women used networks of self-help groups to protest police failure in arresting government officials who had raped several local women. The public protests resulted in the dismissal and arrest of several officials and the creation of a joint community action committee. Nielsen, Robin. Personal communication with Sejal Dand, Executive Director, Anandi, October 2004.

<sup>86</sup> A critical actor for LEP in Colombia is an Attorney General dedicated to upholding the rights of civil society when those rights are violated or ignored by the government. This position has proven to be an outstanding champion for the rights of the poor, especially indigenous populations.

<sup>87</sup> ADR systems usually include options for negotiation, mediation, and arbitration—mechanisms that are more conciliatory and less adversarial than formal litigation. USAID. 1998. *Alternative Dispute Resolution Practitioners' Guide*. Center for Democracy and Governance Technical Publication Series (pp. 4–7). For a classic work that makes the point that alternative dispute resolution is widely practiced traditionally in many developing societies in the third world, see Nader, Laura and Harry Todd, Jr. *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press, 1978.

<sup>88</sup> Field, Martha A. and William W. Fisher III. 2001. *Legal Reform in Central America, Dispute Resolution, and Property Rights*. Harvard Studies in International Development (pp. 161).

<sup>89</sup> Posner, Richard A. 1998. Creating a Legal Framework for Economic Development. *World Bank Research Observer*. Oxford University Press, Vol. 13(1). February (pp. 1–11).

<sup>90</sup> Casella, Alessandra. 1996. On Market Integration and the Development of Institutions: The Case of International Commercial Arbitration. *European Economic Review* 40(1) (pp. 155–86).

<sup>91</sup> During the period Georgia was able to reduce the unemployment by 2%. World Bank and International Finance Corporation. 2007 *Doing Business 2007: How to Reform*. <http://www.doingbusiness.org/>.



# 4.0 LEGAL EMPOWERMENT RECONSIDERED

This paper began by examining a variety of definitions of LEP, analyzing their elements, and noting that LEP was in fact both a process and an objective. In this final chapter, the paper suggests a revised definition, drawing on insights from the preceding chapters, and then turns to two other key challenges: how those seeking to support LEP can program more effectively for its achievement, and how they can assess whether it is being achieved, both as a process and an objective.

## 4.1 A REVISED DEFINITION

On the basis of the foregoing discussion, we propose a refined definition of LEP:

*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 law and legal tools to escape poverty and marginalization. Empowerment is a process, an end in itself, and a means of escaping poverty.*

This definition helps reduce some of the vagueness of LEP definitions offered by other important sources (see Section 1 and Box 1). It includes elements noted in earlier definitions: (1) empowerment as a strategy; (2) identification of law as a means to empowerment; (3) specification of the poor as those to be empowered; and (4) an objective of escape from poverty.

The new definition expands and further specifies, however, in these respects:

1. The source of the empowerment could be government or it could be the poor and others.
2. The means used may be legal or not legal (administrative, physical, other).
3. Empowerment is not empowerment in general but empowerment to use law and legal mechanisms.
4. Legal empowerment is achieved through not only economic, but also social and political means.

The most fundamental vagary addressed by the revised definition is point 2: whether in legal empowerment, the term legal refers to the means used or the nature of the power created. The definition presented in this section comes down in favor of power. In fact, the means to empowerment will often be legal (conferring power to use law is naturally often accomplished by a legal means—for instance, new legislation or legal aid), but they need not be. Placing voting stations in poor neighborhoods can be legally empowering for the poor. The empowerment, however, must be the power to better use law and legal means. A measure that confers a simple material benefit, such as a tax cut, even if accomplished by a legal means, would not fit the definition.

## 4.2 OPERATIONAL IMPLICATIONS

From a programming standpoint, interventions that seek to legally empower the poor can be categorized by the extent to which they require changes in the law. Interventions to legally empower the poor can be divided into four categories: (1) those that involve major constitutional or legislative change; (2) those that involve major institutional change (which will usually require major legal change); (3) those that only require changes in regulations or ministerial instructions or that can be accomplished within the ministry or other agency concerned; and (4) measures that can be undertaken without any legal change or through contractual means.

This breakdown is helpful from a programming standpoint because of varying lead times and considerations. Interventions that involve major legal or institutional change potentially have big payoffs but require substantial preparation and often require major resources for implementation, so they should be approached cautiously and selectively. Within any given country, there are likely a number of legal reforms, in a variety of substantive areas, which could benefit the poor. Which of these is encouraged and supported by donors will depend upon the donor's program objectives and, to a significant extent, opportunity; legal reforms are not something that donors can create out of whole cloth. These reforms begin with a local conviction of the need for them, the result of processes of popular demand, studies, consultations, and the careful balancing of stakeholder interests, and they generally take years to accomplish. In spite of careful efforts to foster them on the part of donor organizations, success or failure relies to an important degree on events beyond the control of those seeking the legal change, such as the political survival of a champion of the legislation.

In addition, major legal and institutional reforms, however potentially empowering, can come to nothing if implementation follow through is lacking. Most major legal reforms are not self-executing; many require considerable work on the part of officials, politicians, and others before there is real change on the ground. These potential costs should be assessed early on, and legal reforms should only be pursued if the prospect of implementation funding is available. It would be irresponsible for a donor to press for costly reforms if it is unwilling to provide follow through and support, an area that has often been found lacking.<sup>92</sup> This is unfortunate, because unimplemented new laws only undermine the rule of law.

Unlike law reforms that must be carried out by parliament or the presidency, the competent ministry acting on its own can change regulations and instructions or the contractual forms used. These latter reforms are thus much easier to attain, and reform advocates should ask if their objectives can be achieved this way before resorting to major law reforms. Even if minor legal changes are needed (for instance, in regulations), they can be agreed upon up front. Because the work significantly involves the existing legal framework, different questions need to be asked. Is the legal framework adequate to make moving forward with LEP efforts in this context worthwhile? Does it have that potential and offer significant opportunities? Are the institutions involved reliable, or do they need capacity building to play the roles envisaged? Is the Rule of Law sufficiently established so that programming that relies on law and legal institutions and expects the poor to benefit from legal change can be pursued with a degree of confidence?

These are hard choices. Failure to tackle a legal empowerment reform issue at a deep enough level—for instance, by failing to press for fundamental institutional reform—can result in failure (see Box 8). Ambitious reforms, on the other hand, risk running into the walls of vested interests, and if they fail, an opportunity to work at a more modest level may have been foregone. But is it necessary to choose, or can some

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<sup>92</sup> For example, in both Uganda and Mozambique in the 1990s, USAID invested heavily in a research and policy development buildup to the passage of new land laws, but after their passage, declared victory and moved off in other program directions. As a result, only a modest part of the potential of these laws, recognized as landmark enactments, has been achieved.

of these interventions for LEP be combined in useful ways that avoid foregoing important but risky opportunities?

There are potential complementarities among various types of LEP interventions that have not been systematically exploited. Usually, a legal aid program is undertaken in isolation from law reform, or vice versa. There is nothing wrong with this, in that one intervention alone is needed, but there are important opportunities to program mutually-enhancing combinations of the different LEP interventions examined in this paper. For example:

- It is common to combine rights enablement elements such as legal literacy and legal aid in a single program, but it may also be possible to use a legal aid program to diagnose needs for legal change, to build popular support for such changes, to develop the poor's capacity to articulate demands, to support policy dialogue with government, or to educate government officials in charge of implementing new laws about the new legal framework. A recent USAID Central Asia land tenure reform project, under its Kazakhstan component, utilized information generated by a legal aid program to highlight flaws in the Land Code and engage government on issues that, in the abstract, they were not willing to explore.<sup>93</sup>
- In Cambodia, where the Asian Development Bank in recent years has supported a successful land law and regulatory framework reform, a complementary World Bank land titling project has provided funding for a national structure for administrative mediation/decision of land titling disputes. GTZ, a partner in the titling project, has provided funding to local legal NGOs to support poor and disadvantaged peoples in making their claims before the land commissions.<sup>94</sup>
- In Andhra Pradesh state of India, the land component of a World Bank-funded rural poverty alleviation project seeks to address the past implementation gaps in the government's allocation of more than 4 million acres of land to the poor. In approximately 30% of the cases, the beneficiaries on record had not received both legal and physical possession of the government land. Many of these cases lie stuck in the administrative (revenue) courts, and a good portion are still there because the allocated land was not surveyed and partitioned. The project has innovatively trained groups of paralegals and "community surveyors" to work together to identify and solve the implementation gaps.

These are examples, and other configurations can be imagined. What is urged here is a more holistic imagining of such projects, employing in an integrated fashion a fuller range of tools for LEP.

#### BOX 8. JUDICIAL REFORM AND POWER

In examining U.S. democratization initiatives abroad, Thomas Carothers of the Carnegie Endowment for International Peace emphasizes what he calls "the missing link of power" as one key factor undermining change efforts. Giving short shrift to structures of power and interests, he points out, has led to program failures in many cases, from efforts of judicial reform to campaigns for legislative change.

"... aid providers responding to the lack of formal justice in a country assess the judicial system, for example, and conclude that it falls short because cases move too slowly, judges are poorly trained and lack up-to-date legal materials, the infrastructure is woefully inadequate, and so on. The aid providers then prescribe remedies on this basis: reform of court administration, training and legal materials for judges, equipment for courtrooms, and the like. What they tend not to ask is why the judiciary is in a lamentable state, whose interests its weakness serves, and whose interests would be threatened or bolstered by reforms. The assistance may temporarily alleviate some of the symptoms, but the underlying systemic pathologies remain."

Carothers (1999) quoted in Veneklas and Miller (2002:40).

<sup>93</sup> Li, op. cit supra.

<sup>94</sup> Bruce, et al., op. cit supra.



### 4.3 ASSESSING LEGAL EMPOWERMENT OF THE POOR

The preceding sections paint with a very large stroke the types of issues associated with LEP and the means to secure it. Yet, design of policy and program intervention for any problem must start with an assessment and diagnosis of the problem (e.g., see Box 6) before envisioning potential solutions. Identifying the scope and severity of LEP deprivation among the poor would be greatly eased if one could rely on a set of reliable indicators as a basis for characterizing the state of LEP. The value of indicators is not only in their ability to improving donor programming in response to one situation, but also in enabling donors to evaluate different situations in a consistent manner leading to greater coherency across contexts in the programming applied to remedy or add value to a given situation.

Indicators also significantly facilitate the ability to assess change and progress by allowing direct comparison of their states over time. Quantitative indicators tend to be especially attractive because they permit measuring change with greater degrees of precision and are easy to compare and record. Objective indicators likewise facilitate comparison. Developing indicators for LEP and periodically populating them with data would suggest whether a country's policies and investments are contributing to legal empowerment or disenfranchising the poor even further. Over time, such measures can be used to help countries realize the need to make corrections. Time series indicators can also suggest how committed a country is to change and even serve to motivate that change. This is especially so when several countries are measured according to the same criteria and the results of these assessments are made public. Hence, LEP indicators could have a role in forging legal empowerment of the poor where vested interests might otherwise stymie its realization. The World Bank's *Doing Business* report is an example of how indicators have been effective in motivating country commitment to reform.

This paper suggests that LEP, or an LEP index, can be represented by the following general equation:

$$\text{LEP} = \text{RH} + \text{RA} + \text{RE} + \text{RN},$$

where RH refers to *Rights Enhancement*, RA refers to *Rights Awareness*, RE refers to *Rights Enablement*, and RN refers to *Rights Enforcement* (i.e., the four components identified in Figure 3.1). Conceptually, each component might be thought of as a bundle of "issues" represented by a set of indicators that cumulatively capture the essence of the component in its entirety. Table 4.1 suggests clusters of general indicators for each of the four components, though it does not attempt to develop specific and measurable indicators, be comprehensive nor to prioritize these. The table further divides the indicators into those which reflect efforts to deliver LEP, and those which measure the realization of LEP. This differentiation can help governments, donors, and civil society alike appreciate when their actions are yielding the expected results and when they are not. If they are not, this may indicate either of problems in the provision mechanism, or weaknesses in terms of the poor's capacity or willingness to take advantage of what is available.

Nevertheless, developing indicators for a concept as complex as LEP, even when broken down into four components, still poses important challenges. Most data relating to these four components are not currently collected by countries, donors, or international bodies, while the cost of collection of many of the outcome/effectiveness indicators identified in Table 4.1 would be formidable at a scale large enough to be a representative sample for the entire country. This is especially true considering the multiple sectors of LEP and points toward narrowing the scope to one or two sectors when it comes to such assessment. Good indicators capture what they seek to measure in a robust fashion, but are simple and precise; this is difficult in the case of the LEP components. Moreover, several measures are not conducive to quantification undermining potential to monitor small degrees of change over time.

While using indicators holds substantial promise for inducing greater political commitment to LEP, it can also be risky and misleading. A country that has made significant investments in strengthening LEP and has realized significant change as a result may still fall far short of another that has a longer history of LEP but is currently making few investments. Comparative rankings can then serve to dole out rewards



and punishments that are not correlated with current commitments and efforts. Moreover, unless indicators are entirely objective and subject to little interpretation, their population is subject to the bias of the person(s) collecting the information. For most of these indicators, it would not be realistic to have the same set of people evaluating these measures for all countries for which indicators of LEP were desired. Perhaps the most valid basis for comparing LEP across countries is in comparing individual countries' *progress toward* LEP—that is, the degree and rate of change in key indicators rather than the state of the indicators themselves.

By helping us appreciate the direction and degree of change, LEP indicators bring us one step closer in understanding what motivates change. Nevertheless, by themselves, indicators do not point to the causes of the changes they measure. They are merely indicative of the outcomes of a host of factors working together, the breadth of which becomes wider the more removed assumed causes and outcomes are on the chain of causality. This complicates understanding the relationship between the provision of LEP interventions (indicators in the left column of Table 4.1) and their utilization and other outcomes (indicators in the right column). Baseline data gathered at the start of interventions can be compared with post-intervention data to determine degrees of change, but collecting the data necessary to make the causal connections between indicators and interventions implies a substantially greater investment.

## Next Steps

Making the leap from identifying the conceptual elements of LEP and potential indicators to establishing a minimal but robust indicator set for LEP calls for a careful weighing of the benefits and challenges. It also implies mapping out steps that would lead to its realization, including:

- **Conceptual work.** This involves identifying (1) LEP for what sector, type, or rights, and degree of disaggregation; (2) appropriate construction of LEP index and components; and (3) theoretical and functional relationship between different LEP components and indicators.
- **LEP Assessment Methodology.** The feasibility of constructing an LEP index based on widely available data that adequately captures LEP deprivation is extremely doubtful. Most of the dimensions in Table 4.1 will not be found in statistical abstracts produced with regularity in the developing world. There is need for both an LEP assessment approach and LEP assessment tool to guide field level enquiry.
- **LEP Assessments.** Much of the dialogue on LEP, including this paper, has focused on theoretical development. There is need to move beyond concepts to work with the poor to capture their understanding and experience of LEP deprivation. Such assessments or pilots may either be used to develop and test the LEP assessment methodology or be guided by it. In either case, ongoing refinement is needed.
- **Surveys.** Socioeconomic surveys and investment climate surveys will provide lessons on how to measure LEP. These surveys already capture some of the dimensions of LEP outcomes and effectiveness in Table 4.1. Well-designed and well-focused survey instruments ask the respondent to rank perception (e.g., frequency of use, level of access, and attitudes) on a numerical scale. A comparable LEP survey is feasible, asking a sample of the poor and/or representatives of organizations and agencies serving the poor to rank their perceptions on questions related to dimensions of RH, RA, RE, and RN in Table 4.1; the rankings would form the basis for indicators to measure change over time. There would also be need to ask the same questions to the non-poor in the same country to measure and evaluate relative differences between the poor and non-poor groups.
- **Longitudinal Studies and Expert Evaluation.** For the reasons discussed above, assessing change over time holds greater value than assessments that are one-off events, capturing only single snap-

shots. One option is to administer the surveys to the same population of poor and non-poor at multiple points in time. However, the time and expense involved in surveys (whether qualitative or quantitative) can be considerable and beyond the means of governments or donors. An alternative approach is a transdisciplinary expert panel that meets periodically to discuss the status of LEP in a country on the basis of prevailing knowledge and to rank LEP performance at periodic intervals using consistent criteria. If pursued, serious attention will need to be given to sectoral focus, group selection, methodology for assessing LEP progress, and standardizing assessments to enable comparability over time.

- **Piloting Methodology.** Regardless of the methodology chosen, there will be need for an LEP assessment framework that is replicable, easy to use, and affordable if it is to have widespread application. Early piloting will be necessary to test effectiveness and achieve these objectives.

**TABLE 4.1: LEP ASSESSMENT**

DIMENSION	GENERAL "INDICATORS" OF LEP PROVISION/DELIVERY	GENERAL "INDICATORS" OF LEP OUTCOMES OR EFFECTIVENESS
<b>RIGHTS ENHANCEMENT</b>	<ul style="list-style-type: none"> <li>Absence of restrictions that disadvantage the poor and/or existence of legal reforms that eliminate them</li> <li>Existence of law that creates clear legal rights for the poor and confers upon them legal empowerment (see Box 3)</li> <li>Laws securing economic and social rights are simple, easily understood, and enforceable</li> </ul>	<ul style="list-style-type: none"> <li>The poor are consulted on problems, policy, and legal drafts</li> <li>Policy and law as perceived by the poor are robust in the rights conferred, have minimal restrictions, and are relevant to their needs and interests</li> </ul>
	<ul style="list-style-type: none"> <li>Legal reforms are backed by administrative processes that are "user friendly" in terms of easy access and affordability</li> <li>Existence of mechanisms and procedural rules that ensure fairness, rights to be heard, proper conduct, efficiency in processing claims, and holding authorities accountable for upholding their rights</li> </ul>	<ul style="list-style-type: none"> <li>Extent and severity of barriers that impede exercise of these rights and mechanisms by the poor and their use of them</li> <li>The poor are knowledgeable of these rules and mechanisms and make use of them</li> <li>Costs or time requirements involved to secure rights, enter a market, obtain licenses and permits, and enable wage employment or business enterprise are affordable</li> </ul>
	<ul style="list-style-type: none"> <li>Laws guarantee representation by poor and marginalized populations in important policy and rule-making forums</li> <li>Law making and policy formation has been supported by careful and thoughtful public consultation that improve the poor's understanding of law and their input into its design</li> </ul>	<ul style="list-style-type: none"> <li>Extent of representation of the poor (and different segments of the poor) in important policy and rule-making forums</li> <li>Public perception on whether adequate public consultation has accompanied key legislation, procedural rules, and administrative mechanisms</li> </ul>
<b>RIGHTS AWARENESS</b>	<ul style="list-style-type: none"> <li>Government has adequately diagnosed the disadvantages faced by the poor in order to understand their situation</li> </ul>	<ul style="list-style-type: none"> <li>The poor perceive they have been adequately consulted and policy and law are in tune with their needs, interests, and circumstances</li> </ul>
	<ul style="list-style-type: none"> <li>Laws are drafted in plain and simple language that enable easy communication</li> </ul>	<ul style="list-style-type: none"> <li>Extent to which poor people are able to read disseminated materials and tune into media messages</li> </ul>
	<ul style="list-style-type: none"> <li>Legislation exists that requires public notice and hearings on issues directly affecting the poor, and state compliance with those laws</li> </ul>	<ul style="list-style-type: none"> <li>Compliance by the state with these laws</li> <li>Participation of the poor in public hearings</li> </ul>
	<ul style="list-style-type: none"> <li>Mass media campaigns and other forms of legal literacy outreach are frequent, well-targeted, convey appropriate messages, and suit the needs of the poor</li> <li>Rights awareness materials and media spots are produced in local languages and are widely distributed/covered</li> </ul>	<ul style="list-style-type: none"> <li>Participation of poor in legal literacy campaigns and awareness raising venues organized by the state, private sector, and civil society movements (number and frequency of meetings or visits)</li> <li>Knowledge of law and procedures, rights, and obligations, are independently measured</li> </ul>

**TABLE 4.1: LEP ASSESSMENT**

<b>DIMENSION</b>	<b>GENERAL "INDICATORS" OF LEP PROVISION/DELIVERY</b>	<b>GENERAL "INDICATORS" OF LEP OUTCOMES OR EFFECTIVENESS</b>
	<ul style="list-style-type: none"> <li>• Training is provided to judges, lawyers, local authorities, and police on new laws and procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Participation of these target groups in capacity building forums</li> <li>• Changes over time in awareness of key provisions of law by legal and public enforcement officials and administrators</li> </ul>
<b>RIGHTS ENABLEMENT</b>	<ul style="list-style-type: none"> <li>• Free or low cost legal aid services are available to help the poor exercise their legal rights (by geographical area and segment of poor)</li> <li>• Availability (density) of trained paralegals offering procedural assistance to the poor</li> </ul>	<ul style="list-style-type: none"> <li>• Availability, access to, and use of legal aid clinics by the poor</li> <li>• Effectiveness of legal aid in terms of claims lodged and recompense obtained</li> </ul>
	<ul style="list-style-type: none"> <li>• Effort made to target the poor and build their rights awareness through integration into economic, social, and political spheres</li> </ul>	<ul style="list-style-type: none"> <li>• Public participation in associations, societies, unions, slum improvement committees, and small business associations that help provide cooperative action and political power</li> </ul>
	<ul style="list-style-type: none"> <li>• Availability of capacity building programs available that target and help the poor in accessing legal rights</li> </ul>	<ul style="list-style-type: none"> <li>• Participation of individuals and communities in these programs</li> </ul>
	<ul style="list-style-type: none"> <li>• Existence and coverage of capacity building programs targeting government authorities in processing rights claims</li> </ul>	<ul style="list-style-type: none"> <li>• Participation of government authorities in these programs</li> <li>• Effectiveness of government authorities in administering their duties in rights and service delivery</li> </ul>
	<ul style="list-style-type: none"> <li>• Existence of compensatory benefits/programs designed to enable the poor to overcome disadvantages in the exercise of their rights</li> </ul>	<ul style="list-style-type: none"> <li>• Use of compensatory benefits by the poor</li> </ul>
<b>RIGHTS ENFORCEMENT</b>	<ul style="list-style-type: none"> <li>• Judicial system is independent and free of nepotism and corruption</li> <li>• Judges and adjudicators are impartial in applying the law</li> <li>• Judges are paid a reasonable salary, are well trained, have ethical standards, and apply law impartially</li> </ul>	<ul style="list-style-type: none"> <li>• Beneficiaries perceive the operation of courts as free of corruption, nepotism, and abuse of power by the privileged or well-to-do</li> </ul>
	<ul style="list-style-type: none"> <li>• Government provision of multiple avenues that enable the poor to seek justice including decentralized courts, specialized courts, and mobile courts at appropriate levels of decentralization</li> </ul>	<ul style="list-style-type: none"> <li>• Extent to which use is made of these courts by the poor without bias of ethnicity, gender, or creed</li> </ul>
	<ul style="list-style-type: none"> <li>• Existence of low cost and time efficient procedures that enable the poor to realize their rights rapidly and affordably</li> <li>• Degree to which court procedures are simple and low cost in terms of time and fees and permit the use of customary dispute adjudicators</li> </ul>	<ul style="list-style-type: none"> <li>• Average cost, time, and number of steps to process common administrative claims as reported by poor claimants seeking justice</li> </ul>

**TABLE 4.1: LEP ASSESSMENT**

<b>DIMENSION</b>	<b>GENERAL "INDICATORS" OF LEP PROVISION/DELIVERY</b>	<b>GENERAL "INDICATORS" OF LEP OUTCOMES OR EFFECTIVENESS</b>
	<ul style="list-style-type: none"><li>• Existence of ombudsman or special attorney general to enforce the collective rights of the poor (and sufficient funding to back the position(s))</li><li>• Acceptance of ADR mechanisms such as arbitration, mediation and conciliation in law and efforts made by national and local governments to facilitate and support their operation</li><li>• Law makes adequate provision for oral rather than written evidence to expedite settlement</li></ul>	<ul style="list-style-type: none"><li>• Use of this service by the poor</li><li>• Use of ADR by the poor and their beliefs about its fairness and effectiveness</li></ul>

## 5.0 CONCLUSION

LEP is a valuable concept. To the extent that a nation's body of law contains rules that provide all people with undifferentiated opportunities to improve their livelihoods, it holds potential for those who most urgently require positive change, the poor. However, the extent of access to the law and the institutions that uphold and enforce it often depends on one's wealth, education, access to information and inclusion in social networks—areas in which the poor tend to be most disadvantaged or excluded.

But LEP has gained such currency in development discourse that it is being increasingly used with little understanding of the territory it covers and its boundaries. This paper has “unbundled” LEP, characterizing the components—Rights Enhancement, Rights Awareness, Rights Enablement, and Rights Enforcement—and their interconnections. It has sought to refine our definition of the term, and to identify opportunities for USAID programming in this area, not so much within each of the components above (which are now programmed separately in many USAID projects), but through development of projects that capture the potential synergies of pursuing them jointly. Finally, it has examined possibilities for assessing progress toward LEP. This is a challenging task, but if LEP is to serve as a useful development objective, the challenge must be taken.

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