

Legal Empowerment Series

The advent of legal empowerment approaches

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Particularly since the 1990s, international development assistance has focused on programming aimed at strengthening the rule of law in both developing and conflict-affected societies. It is estimated that US\$1 billion has been spent on such activities over the past 20 years.¹ Such investment can be linked to three objectives:

- Promoting political stability and conflict resilience.
- Access to justice as a human right, as well as a bridge to other rights.
- A functional legal system as a prerequisite to economic growth and development.

The dominant approach has been activities geared towards strengthening the formal justice system, for example, legislative reform, training judges, equipping courtrooms and computerising case management systems. In the last decade, the impact of such programming began to be questioned. Rates of international and civil conflict, as well as rapid progress in countries such as China and Chile, cast doubt on the direct linkages between the rule of law, stability and economic growth. A further concern was that such programming was not benefiting the majority: the estimated 4 billion people who are excluded from the rule of law.² From such concern emerged a new way of thinking about law, development and access to justice: legal empowerment.

The emergence of legal empowerment

In 2005, a Commission on Legal Empowerment of the Poor was established to re-examine the poverty

¹ T Carothers 'The Rule of Law Revival', *Foreign Affairs*, 77(2), 1998, pp. 95-106.

² Commission on Legal Empowerment of the Poor, 'Making the Law Work for Everyone', Final Report of the CLEP, 2008, p. 39.

challenge from the perspective of the poor. Its work followed the proposition that these people could not climb out of poverty because, lacking the protections and rights afforded by law, their resources could not be protected or leveraged. The Commission's emphasis on livelihoods-related rights was ultimately criticised as overlooking the more complex forces that prevent the poor from accessing justice, as well the powerful vested interests in maintaining the status quo. Despite these issues, the Commission placed legal empowerment on the global map. It established a link between poverty, injustice and legal exclusion, and drew attention to how business, labour and property rights impact the poor.



Poverty persists partly because the poor do not enjoy legal rights.

What is legal empowerment?

Legal empowerment is grounded on the idea that poverty persists partly because the poor do not enjoy legal rights or the power to exercise those rights. Breaking this cycle requires more than a strengthening of the formal justice system; it requires a reliable and efficient framework that addresses the specific needs of vulnerable groups. The theory of change is that giving people power in the form of information, skills and tools, they will be able to protect and uphold their rights, access services equitably and demand accountability.

How is legal empowerment different from orthodox approaches?

- While legal empowerment is about the use of law, the "law" is interpreted in very broad terms

to include legislation, court rulings, regulatory processes and traditional justice systems.

- Legal empowerment is specifically geared towards benefiting disadvantaged populations.
- Legal empowerment aims to cultivate the agency of individuals and communities and level the playing field. Initiatives are usually run by communities, and activities are decentralised.
- Legal empowerment is multi-disciplinary and it integrates with other development fields such as natural resources management, gender and health.

Entry points for legal empowerment

- Awareness raising, for example through TV, radio, print and social media, awareness sessions, education, theatre and film.
- Legal aid and counselling provided through NGO offices, hotlines or mobile clinics
- Paralegals and NGOs providing dispute resolution and mediation.
- Assisting people to navigate government processes through low literacy materials, help desks, translators, fee reduction and capacity building.
- Organising for collective action through advocacy, demonstrations, and class actions.

Legal empowerment and the WANA region

While legal empowerment has expanded in many regions, in West Asia and North Africa the emphasis remains on orthodox approaches aimed at strengthening the formal justice system. Arguably, however, legal empowerment represents a proactive, realistic and timely opportunity to confront many of the

challenges facing the region, particularly poor access to justice, low levels of confidence in the justice sector and institutional failure. The consequence of this situation graphically played out in 2011 where poor access to basic resources and limited economic opportunity, coupled with weak accountability, translated into widespread instability.

Why legal empowerment makes sense for the WANA region:

- The principles of legal empowerment are foundational to the Islamic legal tradition, which emphasises rights protection of the marginalised such as orphans, widows, elderly, disabled and the poor; the ability to seek accountability for rights violations; justice and equality before the law; the right to own and inherit property, including for women; the right to a clear individual legal identity; labour rights; and a just economic system.
- Legal empowerment is a preventative measure and builds conflict resilience. By levelling the playing field and providing equal opportunity, legal empowerment promotes a more effective social system and partnerships.
- Legal empowerment takes a political economy approach to justice. It acknowledges that giving the legal and political elite responsibility for development and poverty reduction is not realistic because of the vested interests in play. Instead it gives responsibility to the poor and marginalised to level the playing field and recalibrate power holdings.
- Legal empowerment recognises that the marginalised have the biggest stake in obtaining access to basic resources and services, securing and retaining fair conditions of employment, and protecting themselves from violence, criminality and exploitation. It is logical, therefore, for them to assume the lead role.



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Naomi joins the WANA Institute to work on legal empowerment and access to justice related research. Naomi is also a final year PhD candidate at Otago University, New Zealand, where her thesis explores post-conflict rule of law and access to justice programming. She has previously worked in Indonesia, Sri Lanka and Papua New Guinea with International IDEA, International Crisis Group, International Development Law Organisation, and UNORC. She is currently an Executive Committee Member of Global Unites, a youth conflict transformation movement.