

Legal Empowerment Working Papers

What is Legal
Empowerment?

An Introduction

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Series Editor



International Development Law Organization
Organisation Internationale de Droit du Développement

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ABOUT THE PROJECT

This project has involved the preparation of a series of qualitative and quantitative empirical articles culminating in an edited volume on approaches to integrating justice and development in ways that benefit the poor and other disadvantaged populations.

The resulting printed volume and online series of chapters, both entitled *Legal Empowerment: Practitioners' Perspectives*, are part of the IDLO book series *Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries*. Consistent with the thrust of the book series, the legal empowerment book and online papers seek to identify successes, challenges and lessons springing from the integration of law and development.

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WHAT IS LEGAL EMPOWERMENT? AN INTRODUCTION

Stephen Golub

1. Questions and situations

What is legal empowerment? Why is it important? What research methods can ascertain and improve its impact? The chapters that constitute *Legal Empowerment: Practitioners' Perspectives* answer these questions to various extents and in various ways. The perspectives are offered by authors defined as practitioners by virtue of their full-time or part-time work with development agencies or related organizations. Taken as a whole, the book illuminates an emerging, potentially significant development field.

Here are examples (some of which are discussed or alluded to in the chapters) of the kinds of situations, actions and impact that characterize legal empowerment:

- A farmers' association helps its members gain greater control of their land, increasing their incomes.
- A local women's organization uses law and advocacy to combat domestic violence, enhancing the physical security and independence of wives in their area.
- Parents learn how to register the births of their children, ensuring their access to education later in life.
- A government public health program enables impoverished beneficiaries to understand and act on their rights to basic medical services, thus reducing infant mortality.
- A non-governmental organization (NGO) works with grassroots groups to gradually make traditional justice systems – the only law many rural poor can access, afford and understand – less gender-biased.
- Market vendors negotiate the right to operate legally and free of harassment, protecting their livelihoods.
- Paralegals (non-lawyers with specialized legal knowledge and skills that enable them to educate or aid disadvantaged people concerning law-oriented issues) help indigent defendants, often jailed unjustly or for years without trial, obtain fair hearings or their freedom.
- Minority groups, human immunodeficiency virus (HIV) victims or the urban poor partner with public interest lawyers to win judicial, regulatory or legislative victories.

2. An overview of the concept of legal empowerment

Perhaps the most basic matter to understand about legal empowerment efforts is that they typically go by other names. The term was first coined in a 2001 Asia Foundation report¹ for the Asian Development Bank (ADB). It later achieved greater salience through a 2008 report² of the Commission on Legal

¹ S Golub and K McQuay, 'Legal Empowerment: Advancing Good Governance and Poverty Reduction', in *Law and Policy Reform at the Asian Development Bank*, 2001.

² Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Volume One, Report of the Commission on Legal Empowerment of the Poor* (2008).

Empowerment of the Poor (CLEP). But NGOs across the globe have in effect been undertaking legal empowerment work for decades – albeit with relatively limited funding. To a lesser degree, and typically not as their highest priorities, a host of multilateral development agencies and bilateral donors have supported or engaged in such work – although, like NGOs, often describing the work in other ways. Thus, legal empowerment partly or wholly overlaps with initiatives that, for example, go under the rubrics of legal services for the poor, public interest law, alternative lawyering, developmental lawyering, social justice, social accountability, women’s empowerment or strengthening the poor’s land tenure security.

Yet another question could be asked: If such work has been around for decades, why the enhanced focus on it now? CLEP deserves substantial credit for raising the profile of legal empowerment. In addition, several other factors have started to broaden the range of development agency approaches to addressing how the law can best serve the poor and other disadvantaged populations. The many developments contributing to this trend include a greater appreciation of the importance of traditional justice systems, as well as the research and pilot projects of both the United Nations Development Programme and the World Bank’s Justice for the Poor (J4P) program.

But what does the term “legal empowerment” mean? Even a casual perusal of relevant development literature turns up more than a dozen definitions and descriptions of the concept. Here are several:

- The aforementioned 2001 report by the San Francisco-based Asia Foundation defines legal empowerment as “the use of law to increase the control that disadvantaged populations exercise over their lives.”³
- A 2003 paper for a Washington, D.C. policy institute, the Carnegie Endowment for International Peace, modifies the Asia Foundation definition to encompass “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.”⁴
- A 2007 study by the London-based International Institute for Environment and Development, on protecting local resource rights with respect to foreign investment in Africa, states that “[e]mpowerment is the process whereby disadvantaged groups acquire greater control over decisions and processes affecting their lives. Legal empowerment is empowerment brought about through the use of legal processes.”⁵ Lorenzo Cotula of IIED contributed a chapter to this book.
- A 2007 report produced for the U.S. Agency for International Development by the consulting firm Associates in Rural Development suggests that:

[I]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.⁶

³ S Golub and K McQuay, above n 1.

⁴ S Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace Rule of Law Series, No. 41, Democracy and Rule of Law Project (2003) 3.

⁵ L Cotula, *Legal Empowerment for Local Resource Control: Securing Local Resource Rights Within Foreign Investment Projects in Africa* (2007) 18.

⁶ J W Bruce et al, *Legal Empowerment of the Poor: From Concepts to Assessment* (2007).

- Launched in Indonesia in 2007 as the first and largest UNDP legal empowerment initiative, the Legal Empowerment and Assistance for the Disadvantaged (LEAD) Project employs a functional definition, stating that the project's aim is "to increase access to justice across Indonesia through support to legal services, legal capacity development, legal and human rights awareness and related development activities for the poor and other disadvantaged groups."⁷ LEAD features a grant-making process through which the project awards funds to Indonesian NGOs. It also has been instrumental in helping the country's national planning agency set priorities and policies concerning access to justice.
- The aforementioned CLEP report emphasizes four "pillars" of legal empowerment. Three of the pillars are livelihood-oriented, involving property rights (mainly involving land), labor rights and (mainly micro and small) business rights. The fourth is an enabling framework constituting access to justice and the rule of law, with legal identity (for persons otherwise denied legal status, and thus certain rights and benefits) as a cornerstone. The report is not limited to these pillars, however. Consistent with the approaches and definitions described above, it describes legal empowerment more broadly as "a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens."⁸
- In a 2009 paper summing up the World Bank's engagement with legal empowerment and access to justice, J4P official Vivek Maru, who has contributed a chapter to this book, "adopts as a working definition [of legal empowerment] the uses of law to bolster human agency."⁹ (The term "agency" has been defined as "the capacity, condition, or state of acting or of exerting power."¹⁰)
- The 2009 report of the United Nations Secretary-General to the U.N. General Assembly, "Legal empowerment of the poor and the eradication of poverty", echoes the Commission in a key respect, by defining legal empowerment as "the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors."¹¹ It attaches importance to CLEP's four pillars. However, as discussed below, the Secretary-General's report takes an even broader view of legal empowerment. It assigns gender a more central role than does CLEP, for example. It also incorporates various additional goals, such as addressing how climate change impacts the poor.

3. The Secretary-General's report

The U.N. Secretary-General's report on legal empowerment is noteworthy because it stands as the most authoritative, detailed guidance on legal empowerment for the United Nations system and its institutions. It also carries weight as a resource for the U.N. member governments, their official aid agencies and the entire international development community. The evolving nature of the

⁷ UNDP Indonesia, 'Project Facts: Legal Empowerment and Assistance for the Disadvantaged' (2007) 2.

⁸ Commission on Legal Empowerment of the Poor, above n 2.

⁹ V Maru, *Access to Justice and Legal Empowerment: A Review of World Bank Practice*, Justice and Development Working Paper Series, 9/2009 (2009) 2.

¹⁰ Merriam-Webster's Dictionary, available at <<http://www.merriam-webster.com/dictionary/Agency>>.

¹¹ A/64/133, 13 July 2009, para. 3.

legal empowerment field means that the document is not the final word on the topic. But the report is nevertheless of considerable use for efforts to translate the concept into action. Its key features include the following:

An expansive view of access to justice. The report's concept of access to justice is not limited to judicial access, law enforcement agencies and the work of lawyers, as important as they are. For example, it also pays attention to paralegals, property issues and informal dispute resolution, reflecting a broad view of access. With respect to property, this embraces administrative law and processes, such as land titling. Informal dispute resolution includes the wide array of traditional justice systems that for many or most rural poor are the primary mechanisms that they use to settle conflicts within communities and families.

A political economy approach to access to justice. The report goes beyond capacity-building and technical assistance in considering what must be done to make justice systems more accessible. "Recognizing the fundamental importance of access to justice," it explains, "the operational framework of legal empowerment of the poor also focuses on the underlying incentive structures" of state justice institutions.¹² Thus, the report highlights the crucial issue of how justice institutions and the individuals staffing them can be influenced to do their jobs properly.

A broad view of poverty. The report goes beyond defining poverty as a matter of income and assets, or as living below a poverty line of one or two dollars per day:

Poverty is not simply the lack of material goods and opportunities such as employment, ownership of productive assets and savings. It is also the lack of intangible assets and social goods, such as legal identity, good health, physical integrity, freedom from fear and violence, organizational capacity, the ability to exert political influence, and the ability to claim rights and live in respect and dignity.¹³

This definition has important ramifications for legal empowerment of the poor, in that it embraces goals that are not simply a matter of financial well-being, as important as that is.

A social accountability dimension. The report also illuminates the links between legal empowerment and social accountability – that is, the ability of society and its citizens to hold government accountable for service delivery and other functions. Consistent with rights-based development, it frames the matter in human rights terms:

A characteristic of virtually all communities living in poverty is that they do not have access, on an equal footing, to government institutions and services that protect and promote human rights – where such institutions exist in the first place. Often, they are also unable to adequately voice their needs, to seek redress against injustice, participate in public life, and influence policies that ultimately will shape their lives.¹⁴

A grassroots orientation. While mindful of the roles of governments, the Secretary-General takes the fundamentally bottom-up view that "legal empowerment fosters development through empowering and strengthening the voices of individuals and communities, starting at the grassroots and from

¹² Ibid, para. 24.

¹³ Ibid, para. 7.

¹⁴ Ibid, para. 8.

within.”¹⁵ Thus, without denying the important roles that outside assistance can play, the crucial actors in legal empowerment are the poor themselves.

A civil society orientation. Consistent with this grassroots orientation, the report emphasizes the important roles of civil society in legal empowerment in particular and achieving development goals more generally:

Legal empowerment promotes a participatory approach to development and recognizes the importance of engaging civil society and community-based organizations to ensure that the poor and the marginalized have identity and voice. Such an approach can strengthen democratic governance and accountability, which, in turn, can play a critical role in the achievement of the internationally agreed development goals, including the Millennium Development Goals.¹⁶

This support for civil society goes beyond highlighting nongovernmental and community-based organizations, however. It extends to social mobilization, in that the report recommends that legal empowerment initiatives “should support social movements to strengthen the voice of the poor and marginalized people and safeguard their rights.”¹⁷

The central importance of gender equity. Making the point that “the vast majority of the adult poor are women”,¹⁸ the report arguably pays more attention to women’s rights than to any other legal empowerment focus. It accordingly recommends legal literacy, legal aid, legal reform and other initiatives that should be actively pursued in order to advance women’s legal empowerment.

Environmental priorities. In addition to focusing on land and other natural resources for their income/asset-increasing value to the poor, the report also places a premium on related environmental challenges and opportunities. Thus, “[l]egal empowerment can give poor people and communities the legal tools to proactively protect themselves from the effects of climate change, such as droughts, deforestation, desertification, sea-level rise and flooding. At the same time, legal empowerment can give poor people access to new climate financing opportunities such as the carbon markets.”¹⁹

The challenge of legal implementation. Near the outset of the report, the Secretary-General touches on the crucial issue of legal implementation – the need to enforce existing laws. The report accordingly points out that although “there are laws that protect and uphold the rights of the poor, they are often too ambiguous, cumbersome and costly for them to access.”²⁰

4. Core concept

A consensus emerges from the similarities shared by the various definitions of legal empowerment and the Secretary-General’s explication of it: Legal empowerment is broad and multi-faceted in nature; it does not consist of a single strategy and certainly does not constitute a magic pill for alleviating poverty. Nevertheless, the consensus does suggest a core concept: *Legal empowerment is the use of law specifically to strengthen the disadvantaged.* The concept embraces legal empowerment’s key elements:

¹⁵ Ibid, para. 4.

¹⁶ Ibid.

¹⁷ Ibid, para. 17.

¹⁸ Ibid, para. 77.

¹⁹ Ibid, para. 9.

²⁰ Ibid, para. 2.

- *“The use of law”* involves not just legislation and court rulings, but the many regulations, ordinances, processes, agreements and traditional justice systems that constitute the law for the disadvantaged. The livelihood issues highlighted by CLEP, for example, are handled through ministries and regulations more often than through courts and legislation. For the rural poor in many countries, village-based customary systems – which should be neither idealized nor condemned out of hand – represent the law far more than distant courts whose processes are incomprehensible or unaffordable.
- *“Specifically”* captures the reality that legal empowerment features activities and strategies that focus on the disadvantaged. Such efforts include legal reforms exclusively or mainly aiming to benefit disadvantaged populations. Even more crucially, they embrace legal services and other efforts that aim to have good laws actually implemented by or for the disadvantaged.
- *“Strengthen”* captures the empowerment aspect of the concept; increasing people’s control over their lives. The term also reflects the fact that legal empowerment is both a process and a goal. As a matter of process, legal empowerment includes legal reforms and services that improve the bargaining positions of: farmers seeking secure land tenure; indigent criminal defendants pursuing due process; women battling domestic violence; and communities pressing for the delivery of medical, educational or other government services to which they are entitled. As a goal, it strengthens such populations in terms of their income, assets, health, physical security and/or, most generally, freedom. The essentially bottom-up nature of legal empowerment means that it aims to build such populations’ capacities to act on their own, although without precluding the reality that often outside actors work directly with them to provide help. It should be further emphasized that “strengthen” is a relative term – given how protracted the process of change can be, the impoverished or marginalized may become stronger in only a slow, incremental manner, with setbacks along the way.
- *“The disadvantaged”* includes the poor, but also women, minorities, certain castes, indigent criminal defendants, victims of human rights abuses and other populations afflicted by discrimination or other injustices.

In seeking to reduce the concept to its key elements, this approach does not aim to be the last word on what constitutes legal empowerment. As a specific focus of inquiry, the field is still new; the meanings and nuances of legal empowerment are still emerging.

What legal empowerment is not

Part of the task of defining legal empowerment involves defining what it is not. If in fact one accepts that the work specifically aims to benefit the disadvantaged, there are many potentially worthwhile law- and development-oriented activities that do not qualify, as follows:

- Judicial administration reforms only indirectly aid the disadvantaged and serve many other ends as well; they accordingly do not constitute legal empowerment.

- Similarly, the impact of law reforms pertaining to contracts, property, foreign investment, bankruptcy and a host of other financial matters may trickle down to benefit disadvantaged populations, but do not specifically focus on them.
- Projects that offer incentives to landlords to abide by land titling laws, which could indirectly benefit impoverished farmers, target the landlords rather than the farmers. Even if worthwhile, such projects would not fall under the rubric of legal empowerment.
- In a related vein, efforts to promote more honest, transparent and accountable performance by government personnel do not specifically strengthen the disadvantaged, even if the disadvantaged stand to benefit.
- Perhaps most difficult, but still worth addressing, is the case where the government or an NGO may only be paying lip service to legal empowerment while ignoring or abusing the rights of women, farmers, low-income workers, indigent criminal defendants, minorities or other disadvantaged populations. Under such circumstances, crucial considerations can include the intent of the institution in question, its prior record in aiding or undermining the disadvantaged and the results that ensue.

Again, in a new development field, and even in many older ones, there is room for and benefits from healthy disagreement about what work does and does not fit into a definition. But it is necessary to start excluding as well as including certain approaches for the field to take form.

5. The chapters

The chapters of this book offer diverse perspectives on legal empowerment strategies, activities and research. The following comments on the chapters identify certain key features, without summarizing all of the many fine points the authors make.

In the opening chapter, Caroline Sage, Nicholas Menzies and Michael Woolcock demonstrate that justice for the poor – both the specific J4P World Bank program with which they are associated and, more generally, a far-reaching array of issues and activities – means far more than a narrow focus on courts and lawyers. Drawing on J4P’s research and related work concerning intra-communal conflict in Kenya, labor disputes in Cambodia and mining rights in Sierra Leone, they argue that the law constitutes more than government-approved rules and that justice for the poor goes beyond what development agencies call the “legal sector”. Their perspective is all the more noteworthy for emerging from the World Bank, an institution normally associated with a narrower view of the relationship between law and development.

Adam Stapleton’s perspective complements that of those three World Bank personnel by illuminating how the work of an NGO, the Paralegal Advisory Services Institute (PASI) in Malawi, goes against much conventional wisdom about development and how to build the rule of law. This conventional wisdom relies on lawyers and governments; further, it focuses on the Millennium Development Goals (MDGs) as setting priorities for development agency action. Yet, PASI, which evolved from a project started by the international NGO Penal Reform International and which has become a model for similar efforts elsewhere in Africa and even Bangladesh, instead relies on paralegals and civil society to aid indigent criminal defendants who languish in jail without trial. As Stapleton further points out, the combined effect of the MDGs (which give little attention to

justice concerns) and the 2005 Paris Declaration on Aid Effectiveness (which donor personnel use as guidance in often concentrating funding in government hands) tend to counterproductively diminish donor support for the kinds of civil society efforts that can advance justice for the poor. (Ironically, subsequent to Stapleton writing the paper, PASI's operations and the incarcerated defendants' well-being suffered when the U.K. Department for International Development—which does merit praise for providing support—stopped funding the NGO directly and instead channeled assistance through Malawi's government.)

Both praising and critiquing CLEP, Tiernan Mennen's chapter in turn complements Stapleton's in key respects. He challenges conventional wisdom about the advantages of the state assuming justice delivery functions, for example, by asserting how the Bolivian government take-over of a promising community justice project has proven counterproductive (as in Malawi concerning PASI's funding). In addition, as a complement to the case made by Sage and her colleagues, he argues for a broader approach to justice than that taken by the Commission, one that goes beyond livelihoods and economic opportunity (as important as he feels those are). Mennen further advocates such steps as engaging law students and young lawyers, working with community justice systems and recognizing the importance of paralegals and civil society in carrying out legal empowerment programs.

Vivek Maru provides an additional, and in some respects groundbreaking, view of legal empowerment by emphasizing the benefits of integration with social accountability projects, including the mutual learning of both fields. He cites, for example, the experience of the NGO Timap for Justice in Sierra Leone. He further draws on data from Uganda, indicating that where community groups, are enabled to understand and act on their right to monitor medical clinics' delivery of mandated services, infant mortality rates drop and other improvements ensue. This kind of legal empowerment-type intervention includes community scorecards and can improve health, education and other service delivery projects elsewhere. Maru further argues that legal empowerment-oriented organizations could learn much from social accountability research methodologies.

Ewa Wojkowska and Johanna Cunningham next highlight another emerging area for legal empowerment engagement – the operations of customary justice systems. Their chapter makes the common-sense but necessary argument that efforts to build access to justice for the poor should take into account the forums they most often use. Neither idealizing customary justice systems for their community roots nor condemning them as beyond possible improvement due to their rights-negating aspects – nor, for that matter, generalizing about systems that vary tremendously across the globe – they argue for approaches that decrease such systems' biases and increase their respect for human rights.

Jamie O'Connell probes yet another field that could benefit from greater attention to legal empowerment – transitional justice in the wake of dictatorships and violent conflicts. Analyzing a field that grapples with how societies should deal with the past, he addresses how to build for the future. He addresses, for example, the need for both one-time initiatives to help rebuild nations (such as constitutional provisions protecting the rights of disadvantaged groups) and longer-term efforts (such as paralegal legal aid programs). O'Connell additionally urges that transitional justice mechanisms such as Truth Commissions analyze and otherwise address the relationships between atrocities and disadvantage in a society.

Dan Manning in effect applies aspects of O'Connell's transitional justice analysis to a specific situation, post-conflict Bosnia and Herzegovina. A relatively small

legal services NGO, Vasa Prava, has been contributing to restoring stability and prosperity through its work with impoverished, displaced and disenfranchised Bosnians. Manning highlights aspects of the NGO's work concerning housing, income, health care, social services, government accountability and legal reform.

Erica Harper addresses yet another kind of transitional justice situation – that of the Indonesian Province of Aceh after the end of many years of violent conflict, capped by the massive 2004 tsunami that devastated the area. Harper discusses an initial International Development Law Organization (IDLO) project to provide access to justice for women and other disadvantaged populations in a context where aspects of the legal system were being built or rebuilt from scratch. She also describes research techniques designed to start ascertaining progress and impact.

In terms of information-gathering techniques, the chapter by Stephanie Willman Bordat and Saida Kouzzi complements Harper's as it portrays the plights of single mothers and their children born out of wedlock in Morocco and therefore lacking what CLEP identified as a cornerstone of legal empowerment: legal identity. As opposed to Harper's largely quantitative methods, Bordat and Kouzzi take a qualitative approach as they draw on their many years of gender-oriented work in the country and a series of interviews with NGO representatives, government personnel and single mothers. Their inquiries indicate that some strategies for aiding single mothers may not be welcome by the intended beneficiaries; that superficial indications of progress may in fact reveal problems; that pressing government officials to use unclear or unfair laws can prove counterproductive; and that law reform is needed to address a situation that parts of society might prefer to ignore. The point here is not that their methodologies or conclusions are necessarily flawless, but that in-depth familiarity with a society and qualitative inquiries can burrow beneath the surface of a situation in ways that complement quantitative data.

Nina Berg, Haley Horan and Deena Patel discuss women's inheritance and property rights as well as how advancing such rights can contribute to achieving the MDGs. They draw on research from Rwanda and Ethiopia in their analysis. The three authors argue for legal reform, legal implementation and resolution of conflicts between laws in ways that buttress gender equity and support for civil society's multi-faceted roles in these processes.

Hamid Rashid tackles a related but arguably even bigger issue in that it involves both women and men – how legal empowerment can contribute to land rights and the MDGs. He marshals a broad array of research to document the importance of protecting and expanding these rights to help reach a variety of goals. He particularly emphasizes access to land and the enhancement of tenure security as valuable processes. One of the many approaches he recommends for strengthening access and tenurial arrangements is participation, organization and advocacy by the poor.

Jeffrey Hatcher, Lucia Palombi and Paul Mathieu complement Rashid's overview of the importance of land rights by discussing a range of case studies compiled by the Food and Agriculture Organization of the United Nations (FAO) in African countries. Their chapter first articulates the importance of legal empowerment for securing land rights. It then discusses indications of impact drawn from those studies. The countries covered by these case studies include Niger, Madagascar and Mozambique.

In the next chapter, Lorenzo Cotula discusses a multi-country project coordinated by an international NGO, the International Institute for Environment and

Development (IIED), which sometimes collaborates with FAO. The focus of IIED and its African partner organizations in this project is foreign investment in natural resources. More specifically, the thrust of the effort is to help Africans influence and benefit from such investment. Although it is too early to draw conclusions about the effectiveness of this legal empowerment initiative, the chapter discusses some initial insights and possible future steps.

The penultimate chapter, by Anne Grandjean, shifts the focus to a population that is sometimes not considered disadvantaged – children. The author discusses the work of the United Nations Children’s Fund (UNICEF) concerning children’s rights. It describes the Agency’s projects concerning children’s rights in Papua New Guinea, Nepal and the occupied Palestinian Territory. Grandjean addresses the decentralized, community-specific nature of these projects; their multi-disciplinary, multi-partner orientation, including engagement with civil society organizations; and their roles concerning policy advocacy and formulation.

Finally, the intersection of legal empowerment with medical matters – an issue broached by the Maru chapter’s discussion of how legal empowerment helped curtail infant mortality in Ugandan communities – is illustrated by David Stephens’s and Mia Urbano’s chapter on the use of law by and for persons infected with HIV. The authors explore how legal empowerment can advance the rights of persons who have the virus or who are vulnerable to infection. Viewing the situation from a public health perspective, Stephens and Urbano discuss how legal empowerment can be of help concerning prevention, treatment and care.

6. Some common themes

Certain common themes emerge from most or all of the chapters, including:

Beyond the legal sector. As flagged by Sage, Menzies and Woolcock at the outset of the book, and as confirmed by Maru, Stephens, Urbano and others throughout it, legal empowerment should reach beyond what development agencies typically identify as the “legal sector” or even the “justice sector”. Its relevance to public health is discussed in the chapters by Maru and by Stephens and Urbano. The point is further reinforced by Maru’s discussion of social accountability, as well as the actual work of J4P and other agencies in integrating legal empowerment into other development fields. The most significant implications and impact of legal empowerment may accordingly lie beyond the justice sector, in the use of law to strengthen the disadvantaged concerning health, education, irrigation, forestry, governance and other services and projects.

Beyond livelihoods. Although CLEP merits praise for putting legal empowerment on the development map, in some respects it contradicted its own broad definition of the concept by narrowly emphasizing the three livelihood-oriented “pillars” of legal empowerment. True to the Commission’s definition as well as many others, the chapters embrace a broad approach, one that benefits public health, social accountability, children, infants lacking identity papers, persons affected by foreign investment in natural resources and a host of other concerns.

Paralegals. A number of chapters refer to the help that paralegals provide. They do not completely obviate the roles of lawyers by any means, but they do provide cost-effective complements or alternatives to attorneys for many tasks.

Civil society. Most chapters also feature the lead or contributory roles of NGOs, grassroots groups or other civil society organizations in legal empowerment initiatives. In fact, Stapleton and Mennen even point out the counterproductive impact of a government taking over or complicating the work of an NGO under

many circumstances. The various roles of civil society for legal empowerment—training, organizing, service delivery and advocacy—combine with the limited will or capacities of some governments to weigh in favor of donors funding NGOs and other civil society groups, and not simply as adjuncts to government-centered projects.

A two-way street. In some quarters, legal empowerment is sometimes thought of as being mainly about legal implementation and grassroots activism. In others, it is viewed primarily in terms of legal reform and government action. As Grandjean, Manning, Bordat, Kouzzi and others illuminate to various degrees, legal empowerment operations and impact can cut both ways. True, legal empowerment is more bottom-up than top-down; it often must feature legal implementation, so that good laws do not only exist on paper but are also enforced on the ground. But this does not preclude participation, and even leading roles, by the poor and their allies in legal reform. Furthermore, legal implementation efforts can inform and fuel legal reform, and vice versa.

More country-specific voices. Due to a confluence of factors, this book mainly features chapters by practitioners operating on an international level. Further inquiries into legal empowerment should seek to include more country-specific voices.

Further research. One final insight that most chapters highlight, whether directly or indirectly, regards the need for applied research in demonstrating legal empowerment initiatives' impact (or, in some instances, lack thereof) and lessons. To varying degrees, the papers in this book attempt to illuminate lessons and impact. But like most law-oriented and social justice initiatives, the field of legal empowerment has a great distance to travel to build up a body of rigorous research that NGOs, governments, development agencies and policy-makers can draw on. This situation may partly be a product of the gap between development practitioners and scholars, with perhaps the former concentrating too much on prescriptions and the latter on descriptions. Regardless, development agencies and other funding sources can help close the knowledge gap through increased support for applied qualitative and quantitative research. This will involve more time and resources than currently go into understanding legal empowerment impact and lessons. For some research efforts it will also involve patience, a quality that ironically (given the long-term nature of the field) is often in short supply in international development. But the potential results—in terms of poverty alleviation, improved governance and increased control by the disadvantaged over their lives—could well justify the investment.