

# WORKING P A P E R S

## BEYOND RULE OF LAW ORTHODOXY

### The Legal Empowerment Alternative

*Stephen Golub*

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## EXECUTIVE SUMMARY

The international aid field of law and development focuses too much on law, lawyers, and state institutions, and too little on development, the poor, and civil society. In fact, it is doubtful whether “rule of law orthodoxy,” the dominant paradigm pursued by many international agencies, should be the central means for integrating law and development. As most prominently practiced by multilateral development banks, this “top-down,” state-centered approach concentrates on law reform and government institutions, particularly judiciaries, to build business-friendly legal systems that presumably spur poverty alleviation. Other development organizations use the rule of law (ROL) orthodoxy’s state-centered approach to promote such additional goals as good governance and public safety. The problems with the paradigm are not these economic and political goals, per se, but rather its questionable assumptions, unproven impact, and insufficient attention to the legal needs of the disadvantaged.

An alternative, more balanced approach often is preferable: *legal empowerment—the use of legal services and related development activities to increase disadvantaged populations’ control over their lives*. This alternative paradigm, a manifestation of community-driven and rights-based development, is grounded in grassroots needs and activities but can translate community-level work into impact on national laws and institutions. It prioritizes civil society support because it is typically the best route to strengthening the legal capacities and power of the poor. But legal empowerment engages government wherever possible and does not preclude important roles for dedicated officials and ministries. It also addresses a central reality that ROL orthodoxy overlooks: In many developing countries, laws benefiting the poor exist on paper but not in practice unless the poor or their allies push for the laws’ enforcement.

Legal empowerment is more than an alternative to the dominant paradigm; it should be integrated into many mainstream socioeconomic development efforts that generally do not address ROL or the legal needs of the poor. Though still exceptions to the rule, there are increasing instances of this “mainstreaming” taking place in ways that benefit human rights, development, and project performance. Examples include initiatives addressing natural resources management in Ecuador, public health in South Africa, land reform in the Philippines, women’s literacy and livelihood in Nepal, reproductive health in Senegal, and gender equity in Bangladesh.

This alternative approach puts community-driven and rights-based development into effect by offering concrete mechanisms, involving but not limited to legal services, that alleviate poverty, advance the rights of the disadvantaged, and make the rule of law more of a reality for them. So far, however, legal empowerment efforts mainly consist of diverse civil society initiatives rather than deliberate donor programs. As a result, it is underappreciated and underused.

The upshot for ROL development practitioners is that they need to think less like lawyers and more like agents of social change. Conversely, development practitioners in other fields could benefit from thinking a bit more like lawyers and human rights advocates. The dual changes in perspective will open up vistas for using law to make a greater contribution to development, breaching the programmatic isolation represented by ROL orthodoxy.

Both groups also should stop assuming that assistance to state institutions yields greater impact and more sustainable outcomes than does support for civil society. In key respects, the opposite is the case.

Legal empowerment differs from ROL orthodoxy in at least four additional ways: (1) attorneys support the poor as partners, instead of dominating them as proprietors of expertise; (2) the disadvantaged play a role in setting priorities, rather than government officials and donor personnel dictating the agenda; (3) addressing these priorities frequently involves nonjudicial strategies that transcend narrow notions of legal systems, justice sectors, and institution building; (4) even more broadly, the use of law is often just part of integrated strategies that include other development activities.

Numerous studies by academics and development organizations highlight the importance of building the capacities, organization, or political influence of civil society—all of which legal empowerment contributes to—in improving the lives of the disadvantaged. A growing array of qualitative and quantitative research more specifically suggests that legal empowerment has helped advance poverty alleviation, good governance, and other development goals. It accordingly merits substantially increased financial and political support. Such assistance can be provided: (1) as aid specifically directed at legal empowerment; (2) in conjunction with ROL promotion; or (3) as part of mainstream socioeconomic development work.

Despite its drawbacks, I do not claim that ROL orthodoxy is the wrong path to take under all circumstances; nor is legal empowerment a panacea. Nor are the two mutually exclusive. Those of us concerned with law and development do not know enough to be so absolutist about these matters.

But we do know enough to raise questions—and that is precisely one point of this paper: ROL orthodoxy's many problematic features make the prevalent devotion to it a remarkable state of affairs. In numerous countries, law-oriented development aid goes mainly to a narrow range of state institutions, whereas the legal priorities of the poor often lie elsewhere. The international community needs a paradigm shift in how it integrates law and development.

## INTRODUCTION: AN INITIAL COMPARISON

THE INTERNATIONAL AID FIELD OF LAW AND DEVELOPMENT focuses too much on law, lawyers, and state institutions, and too little on development, the poor, and civil society.<sup>1</sup> In fact, it is doubtful whether the dominant rule of law (ROL) paradigm pursued by many international agencies should be the main means for integrating law and development. An alternative approach often is preferable: *legal empowerment—the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.*<sup>2</sup> Legal empowerment is not the only alternative, but it merits serious consideration as a major vehicle for poverty alleviation.

The dominant paradigm—or “rule of law orthodoxy”—takes a “top-down,” state-centered approach through which development agency personnel design and implement law-oriented projects in cooperation with high government officials.<sup>3</sup> As principally practiced by multilateral development banks, which are major sources of ROL aid, it concentrates on law reform and government institutions, particularly judiciaries.<sup>4</sup> The banks aim to build more business-friendly and investment-friendly legal systems that presumably help spur economic growth and poverty alleviation. Other development organizations sometimes use ROL orthodoxy to promote such additional goals as good governance and public safety, whether as ends in themselves or as steps toward reducing poverty. The problems with the paradigm are not these economic and political goals, per se, but its questionable assumptions, unproven impact, and insufficient attention to the legal needs of the disadvantaged.<sup>5</sup>

*As a specific strategy*, then, the dominant paradigm comprises a series of assumptions, a chain of reasoning, and a group of activities that promote the rule of law to presumably achieve economic progress. *As a set of programs* that similarly take a top-down, state-centered approach to achieve a diversity of additional goals, however, ROL orthodoxy cuts an even broader swath through the field of law and development. This wide array of initiatives tends to exclude supporting civil society or building the legal capacities and power of the poor.

Thus, some bilateral, multilateral, and privately funded organizations that eschew the banks’ development philosophies nevertheless pursue similar practices through their law programs in many countries. And while some of the banks and other aid agencies are laudably undertaking more civil society initiatives and other creative endeavors through their law-oriented work, these generally pale in view of their agencies’ orthodox orientations and funding priorities.

In contrast with the dominant paradigm, legal empowerment is more balanced in nature. It is grounded in grassroots needs and activities but can translate that community-level work into impact on national laws and institutions. It generally strengthens civil society and the legal capacities and power of the poor in order to address their priorities, but wherever possible involves cooperation with government. This alternative approach also addresses a central reality that ROL orthodoxy overlooks:

In many developing countries, laws benefiting the poor exist on paper but not in practice, unless the poor or their allies push for the laws' enforcement.

Legal empowerment differs from ROL orthodoxy in at least four additional ways: (1) attorneys support the poor as partners, instead of dominating them as proprietors of expertise; (2) the disadvantaged play a role in setting priorities, rather than government officials and donor personnel dictating the agenda; (3) addressing these priorities frequently involves nonjudicial strategies that transcend narrow notions of legal systems, justice sectors, and institution building; (4) even more broadly, the use of law is often just part of integrated strategies that include other development activities.

Legal empowerment is not only an alternative to ROL orthodoxy; it should be an element of many mainstream socioeconomic development efforts (regarding, for example, public health, gender, rural development, irrigation, education) that generally do not address ROL or the legal needs of the poor.<sup>6</sup> For instance, the field of natural resources management often witnesses the unfortunate phenomenon of “parks on paper”—zones whose protected status means little in reality. Especially when undertaken in conjunction with conservation, protection, and livelihood activities, strengthening the legal capacities of the disadvantaged can help convert these parks from legal fictions into actual protected areas. The combination can decrease poaching by park residents, encroachment by outsiders, and illegal deforestation or fishing by both.

Nevertheless, I do not maintain that legal empowerment is the correct path to pursue under all circumstances. Nor is the dominant paradigm always inapplicable. Furthermore, the two are not mutually exclusive. Those of us concerned with law and development do not know enough to be so absolutist about these matters.

But we do know enough to raise questions, and that is precisely one point of this paper: ROL orthodoxy's numerous problematic features make the prevalent devotion to it a remarkable state of affairs. There is a clear imbalance in the international development community's use of resources. Many development agencies that profess pro-poor priorities invest far more in building up government legal institutions and elites than in fortifying impoverished populations' legal capacities and power.<sup>7</sup> In the process, they often insufficiently heed the priorities of the poor, the experience of successful efforts to empower them, and the need to build up civil society if governments and their legal systems are to become responsive and accountable.

The great resources poured into the dominant paradigm, to the relative exclusion of alternatives, represent a great gamble—or, as McAuslan puts it, “an act of faith.”<sup>8</sup> Today's heavy emphasis on judges, lawyers, and courts is analogous to what the public health field would look like if it mainly focused on urban hospitals and the doctors staffing them, and largely ignored nurses, other health workers, maternal and public education, other preventive approaches, rural and community health issues, building community capacities, and nonmedical strategies (such as improving sanitation and water supply).

In contrast, a growing array of qualitative and quantitative research suggests that legal empowerment has helped advance poverty alleviation, good governance, and other development goals. This alternative paradigm offers the added value of putting community-driven and rights-based development into effect by offering concrete mechanisms, involving legal services, for advancing the rights of the poor. Legal empowerment accordingly merits substantially increased



financial and political support, whether directly or under the rubrics of ROL or mainstream socioeconomic development initiatives.

Legal empowerment both advances and transcends the rule of law. It advances ROL in the sense that where the poor have more power they are better able to make government officials implement the law and influential private parties abide by it. Such power also enables disadvantaged groups to play a greater role in local and national law reform. In these crucial respects, it builds good governance.

But legal empowerment also is about far more than ROL or governance: It is about poverty alleviation, broadly defined to include empowerment as well as material improvement. Many of its goals and results vindicate or expand the rights of the poor, whether framed in terms of local, national, or international law. But this is not always the same as their gaining greater control over their lives—sometimes dramatically, but often in subtle or apparently minor ways that nevertheless mean a great deal to people scraping to get by. Thus, the key concept in legal empowerment is not law; it is power.

The upshot of all of this is the need to scrutinize ROL orthodoxy, examine alternatives such as legal empowerment, and pursue a paradigm shift in integrating law and development.

## **RULE OF LAW ORTHODOXY: A PROBLEMATIC PARADIGM**

### **Key Features of Rule of Law Orthodoxy**

The rule of law orthodoxy embraced by much of the international donor community should not be confused with the rule of law itself. In the view of the World Bank

While defined in various ways, the rule of law prevails where (i) the government itself is bound by the law, (ii) every person in society is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by law, and (iv) justice is accessible to all.<sup>9</sup>

ROL orthodoxy, by contrast, is a set of ideas, activities, and strategies geared toward bringing about the rule of law, often as a means toward ends such as economic growth, good governance, and poverty alleviation.

This paradigm comprises a *mélange* of goals, assumptions, activities, and strategies. Many of these vary according to context, are ill-defined, or are only implicit. The characterization offered here, then, seeks to distill some common traits without identifying them with any one institution, project, or country.

The paradigm's programs and goals are not confined to the economic sphere, though that often is most salient in development discourse and among the multilateral financial institutions that today are major sources of funds for ROL programs. This central stream of ROL orthodoxy considers the rule of law essential for long-term development because it provides security for foreign and domestic investment, property and contract rights, international trade, and other vehicles for advancing economic growth.

Martinez accordingly asserts that “the liberalization of market economies...requires a legal order that is fair, efficient, easily accessible, and predictable.”<sup>10</sup> This line of thought further holds

that properly functioning courts and other legal institutions nurture a favorable business climate by protecting investments and by enforcing contracts and property rights. Foreign and domestic enterprises are more likely to establish and expand operations that manufacture goods and provide services under such circumstances, the reasoning goes. Among other benefits, this in turn provides jobs, increases the output of goods and services, yields a ripple effect of additional business for and employment by local enterprises that serve expanding domestic and foreign firms, brings about technology and skills transfer, and increases foreign exchange reserves.

As a strategy for presumably alleviating poverty by promoting business and investment, ROL orthodoxy is substantially linked to globalization. It seeks to further the national adoption of international legal standards and practices, as well as the integration of national economies into the world economy.

ROL orthodoxy has an even wider reach, however, as a set of programs that emphasize top-down, state-centered approaches for pursuing a diversity of goals, beyond building better business environments. It infuses many law programs supported by the U.S. Agency for International Development (USAID), for example, which seeks to advance the rule of law as part of its democracy and governance (DG) program.<sup>11</sup> Much of the law-oriented work of the United Kingdom's Department for International Development (DFID) emphasizes state institutions as vehicles for promoting the poor's personal safety, security of property, and access to justice (SSAJ).<sup>12</sup>

USAID and DFID do not pursue orthodox approaches exclusively or everywhere (nor do other aid agencies that focus on state legal institutions). In a number of countries, both of these donors fund legal services for the disadvantaged. Furthermore, DFID's SSAJ program explicitly aims to address the poor's urgent legal needs. In prioritizing personal safety, for instance, the program certainly responds to many disadvantaged populations' vulnerability to criminal violence. But it mainly works through the state in doing so. This is despite the fact that informed, organized citizens may be as essential as training or pay raises to deterring police misconduct or encouraging police professionalism. A rural resident whom law enforcement personnel extort rather than serve when he seeks their help is in a far better bargaining position if he belongs to a well-connected, well-informed farmers' association. More generally, the point is that law projects undertaken under the rubrics of DG, SSAJ, and other rationales nevertheless manifest ROL orthodoxy where they exhibit its top-down, state-centered emphases, even though the underlying justifications differ from those of the multilateral banks.

To be fair, international aid agencies increasingly consult with the disadvantaged and civil society in setting priorities, and a few are broadening their perspectives on legal systems. DFID's policy papers, for example, emphasize how crucial it is to ascertain the legal needs of the poor and the multifaceted ways in which dysfunctional legal systems perpetuate their poverty.<sup>13</sup> But civil society consultation is far different than supporting civil society to serve the disadvantaged and build their legal capacities. DFID, USAID, and a limited number of other organizations also have expanded their characterizations of the justice sector to embrace traditional dispute resolution mechanisms. However, they still tend to exclude administrative agency and local government decisions that boil down to matters of law and that the poor often consider crucial matters of justice.<sup>14</sup>

In short, key features of ROL orthodoxy include:

- A focus on state institutions, particularly judiciaries.

- This institutional focus is largely determined by the legal profession, as represented by a nation's jurists, top legal officials, and attorneys, and by foreign consultants and donor personnel.
- As a result, a tendency to define the legal system's problems and cures narrowly, in terms of courts, prosecutors, contracts, law reform, and other institutions and processes in which lawyers play central roles.
- Where civil society engagement occurs, it usually is as a means toward the end of state institutional development: consulting nongovernmental organizations (NGOs) on how to reform the (narrowly defined) legal system, and funding them as vehicles for advocating reform.
- A reliance on foreign expertise, initiative, and models, particularly those originating in industrialized societies.

These features translate into funding a distinct array of activities, including:

- courthouse construction and repair;
- purchase of furniture, computers, and other equipment and materials;
- drafting new laws and regulations;
- training judges, lawyers, and other legal personnel;
- establishing management and administration systems for judiciaries;
- support for judicial and other training/management institutes;
- building up bar associations; and
- international exchanges for judges, court administrators, and lawyers.

### Questionable Assumptions

ROL orthodoxy is built on a number of questionable assumptions. Not all are necessarily wrong or automatically inapplicable in all contexts. Taken together, however, they form an unstable foundation on which to base the dominant paradigm for integrating law and development. Even if only some of them are flawed, we need to reassess our faith in the orthodox approach.

***ROL's Impact on Poverty Alleviation: A Lack of Evidence.*** The bottom line for assessing the dominant paradigm must be its impact on the poor. Poverty alleviation is the main goal of many development organizations. Reducing poverty is the greatest reason why taxpayers, governments, and international institutions pour substantial funds into the legal field. But so far, at least, there has been a paucity of proof that the rule of law necessarily reduces poverty. There is evidence that ROL goes hand in hand with favorable development indicators, such as lowered infant mortality and higher incomes and literacy.<sup>15</sup> What such evidence does *not* demonstrate is cause and effect: whether strengthened rule of law brings about poverty alleviation, or vice versa.

There is some historical evidence and analysis arguing for a causal connection between the establishment of the rule of law and overall socioeconomic development, not least Weber's linking of

law and legal systems to the growth of capitalism in Europe. But why assume that what (presumably) transpired in Europe several centuries ago applies to Asia or Africa or Latin America today? As North points out, “Economic (and political) models are specific to particular constellations of institutional constraints that vary radically both through time and cross sectionally in different economies.”<sup>16</sup> A fundamental tenet of development principles and practice is that the elements of success in one society do not necessarily translate into success elsewhere—particularly where the gap between the two comprises several centuries, thousands of miles, and vastly different political, economic, and cultural contexts.

Thus, as Perry argues in summarizing literature challenging the notion that developing countries must adopt Western laws and legal institutions, “Law reform projects seem to be based on the unspoken Weberian assumption that because a particular legal system is found in countries which are developed, that legal system will help countries to be developed. There is no proof of this.”<sup>17</sup> She also notes that those projects “ignore evidence [such as businesses’ informal commerce-facilitating and development-promoting practices] which demonstrates, as a matter of fact, that there are limits to the importance of law in economic transactions.”<sup>18</sup>

In a separate summary of relevant research, Messick similarly finds that “the question of the direction of causality” has not been settled by cross-country regression analysis.<sup>19</sup> Reviewing what we do *not* know about law and development, Carothers sees “a surprising amount of uncertainty [about whether]...promoting the rule of law will contribute to economic development and democratization...[and] about how the rule of law develops in societies and how such development can be stimulated.”<sup>20</sup> Other sources agree that we lack evidence to know whether legal reform and legal systems improvement spur development,<sup>21</sup> or suggest that such legal change may be an effect of development rather than a cause of it.<sup>22</sup>

Actual experience in today’s developing and transitional societies also undercuts the Weberian model. Several nations that have achieved significant economic growth and attendant poverty alleviation in recent decades have done so in the absence of Western-style rule of law. China is a leading example.<sup>23</sup> Indonesia, Thailand, and South Korea also thrived for years—and were hailed as success stories by international institutions—before the 1997–1998 Asian economic crisis (which was brought on by factors other than the flawed legal systems of these countries).<sup>24</sup>

Indeed, the success of the East Asian model was rooted in good policy decisions and other factors, not the rule of law. And even as recently as a decade ago, some observers argued that authoritarian governments, regimes often quite abusive of the rule of law, are inherently better than democracies at implementing successful economic policies. Haggard laudably challenges that conclusion, but it is noteworthy that ROL does not figure in his analysis.<sup>25</sup> In a study for the Asian Development Bank, Pistor and Wellons suggest that law (both on the books and in actual practice) is more a dependent than causal variable, asserting that it is “embedded in culture” and that “to be effective law has to be embedded in the overall economic policy framework.”<sup>26</sup>

Perry’s case study of foreign enterprises in Sri Lanka, which includes a survey of those enterprises, disputes an important element of the “rule of law alleviates poverty” argument: the assumption that ROL is a crucial factor affecting foreign direct investment (FDI). She concludes that “the role of legal systems as a determinant of FDI is neither straightforward, nor proven, nor uniform.”<sup>27</sup> Drawing in part on his work as a practicing lawyer in Eastern Europe, Hewko agrees. He asserts that “the existence of real business opportunities and the overall visceral perception...of a host country” are much more important to many foreign investors than extensive ROL reforms.<sup>28</sup> Hewko argues,

in fact, that once such investors set up operations on the ground they can identify specific FDI-facilitating changes better than can foreign aid institutions and their consultants.<sup>29</sup> At the very least, it would seem that the supposed link between ROL and investment has not been demonstrated.

Some maintain that to move further forward, China and other countries need to get their legal houses in order. Others might contend that the world has changed in ways that require fully functional legal systems for development to unfold, even if they were not necessary before. Upham counters such arguments by pointing out that neither the United States nor Japan, two leading examples of relative prosperity, embody what he calls “formalist rule of law—that is, regimes defined by their absolute adherence to established legal rules and completely free of the corrupting influences of politics.”<sup>30</sup> In fact, the inconsistent and inequitable operations of the U.S. legal system are “not a failure of execution, the inevitable falling short of an ideal. On the contrary, it is the result of...conscious choice” reflected in federalism, the political selection of judges, the jury system, and inadequate access to justice for many Americans.<sup>31</sup> Operating in an equally intentional manner, “the Japanese system kept the formal legal system out of economic policy making...Additionally, the settlement of individual disputes occurred through a broad system of informal mechanisms that kept most disputes out of the court system altogether.”<sup>32</sup>

Without necessarily advocating the Japanese approach, Upham nevertheless suggests that “if one had to choose [between the U.S. and Japanese models], it would be the informal systems of Japan that would seem most useful to developing countries.”<sup>33</sup> He maintains that the U.S. model, in many respects the system propagated by ROL orthodoxy, is far more expensive to adopt and far more likely to undermine functional indigenous institutions. Echoing Perry’s point about viable but informal business practices, Upham even posits that “formalist rule of law could actually inhibit foreign investment in developing countries, since doing business in courts could be more expensive than using effective, informal systems of dispute resolution.”<sup>34</sup> Though we should be aware of the gender and other biases infecting many informal systems (not to mention many formal ones), we still can recognize that ROL orthodoxy tilts heavily—and perhaps counterproductively—toward formalism.

***ROL Promotion’s Weak Track Record.*** Even if the rule of law does help reduce poverty, this does not mean that *intentional foreign efforts* to build ROL will do so. It could be that ROL and its attendant benefits might only flow from a society’s internal changes rather than external inputs such as foreign aid for ROL promotion.

What, then, is the impact of those foreign efforts? There is no evidence of poverty alleviation and little evidence of other results that would necessarily lead to reducing poverty or advancing other development goals. External reviews of ROL aid efforts have been highly critical. The U.S. General Accounting Office found serious flaws in USAID’s largely state-oriented ROL work in parts of Latin America.<sup>35</sup> In a book on various Latin American countries’ progress in (often donor-supported) judicial reform, Prillaman offers a bleak assessment of all except Chile, which he views as having a mixed record.<sup>36</sup> Summing up the track record of U.S. government work with judiciaries across the globe, Carothers asserts that “what stands out about U.S. rule-of-law assistance since the mid-1980s is how difficult and often disappointing such work is.”<sup>37</sup>

As critical as Prillaman and Carothers are, there are respects in which they may be too charitable in their assessments. Prillaman sees Chile as a partial, favorable exception to the rule of collapsing

reform efforts. Yet Chile and other partial success stories, such as Costa Rica, may be exceptional not because of donor efforts, but rather because of underlying, enduring legal cultures that transcend reform strategies or even regimes. For his part, Carothers concludes that “some learning is occurring, particularly among aid officials and consultants working in Latin America, the region in which the United States has labored most intensively on rule-of-law aid.”<sup>38</sup> Whether that learning is translating into actual impact on Latin Americans’ lives is a matter he does not substantially address. In addition, it is worthwhile to ask whether the foreign “aid officials and consultants,” rather than domestic actors, do most of the learning under orthodox ROL programs (I return to this issue of intellectual ownership below).

Blair and Hansen’s USAID-commissioned study of rule of law assistance in six Latin American and Asian countries advises against a “legal system strengthening/institution building strategy”—and implicitly, against ROL orthodoxy, which resembles that strategy—unless a number of elements already are in place in a country.<sup>39</sup> The most fundamental of these elements are the absence of rampant corruption in its justice system and the absence of major human rights violations in the society. Where such abuses are prevalent, they argue against any ROL assistance.

Blair and Hansen more specifically advise against the orthodox, institution-oriented strategy where a country’s political leadership lacks the will to pursue reforms. They further find that this crucial political will is missing in most situations. They reluctantly maintain that in many countries “constituencies and coalitions may be so fragmented and fractious, and the political environment may be so inimical to judicial reform (perhaps even to the notion of ROL), as to eliminate any effective program activity.”<sup>40</sup> These conclusions—that ROL assistance will prove unproductive under many circumstances and (implicitly) that ROL orthodoxy is inappropriate in even more situations—both weigh against the dominant paradigm.

Despite this bleak assessment, there may be respects in which Blair and Hansen, like Prillaman and Carothers, may be too optimistic about the prospects for ROL programs producing large-scale change. Even the greatest amount of political will is sometimes insufficient to implement lasting legal system reforms in the face of recalcitrant bureaucracies and improper but powerful external influences.

Hammergren’s subsequent USAID review in effect seeks to rebut elements of the Blair/Hansen study but essentially is much more a thoughtful “how to pursue reform” document rather than a documentation of impact.<sup>41</sup> She asserts that by addressing more technical and politically manageable issues, practitioners of ROL assistance can establish progress, credibility, and insights that help them tackle more fundamental obstacles to reform.<sup>42</sup> In effect, they can build political will even where it is missing. This is a credible argument, but whether it will prove true in practice in many places, particularly to help alleviate poverty, is questionable. It optimistically implies that foreign reformers will outlast and outsmart domestic opponents in a process that can take many years or will cultivate domestic partners who can sustain change in challenging contexts. It also represents a programmatic gamble on the ability of reformers to cultivate local political will.

The consulting firm Management Systems International (MSI) recently undertook for USAID an explicitly achievement-oriented assessment of USAID’s ROL programs.<sup>43</sup> In addition to describing some support in some countries for civil society and legal services for the poor, the study reports apparent progress with state institutions—the kind of results Hammergren refers to as “system changes [such as shifts from written to oral testimony in court cases] or first level behaviors (number



of bankruptcies filed and settled following the passage of a new law, reduction in time to judgment, etc.).<sup>44</sup> Other changes are more a matter of outputs than outcomes—cross-border cooperation and training involving the U.S. and Mexican judiciaries, for example.<sup>45</sup>

Though the assessment represents a thorough effort to tackle a daunting task, various sources' analyses cast doubt on whether many of the beneficial changes it detects are truly significant or lasting. Prillaman sees a downward spiral in Latin American judicial reform, MSI's favorable findings about USAID's work in that region notwithstanding. Bohmer implicitly differs with MSI's conclusions concerning Argentina, criticizing the "many top-down approaches to legal reform" in that country's history, "which focus entirely on government institutions" but which have largely ignored the country's legal culture and the anti-reform incentives in those very institutions and the legal community.<sup>46</sup> And as described below, Blackton's perspective on the Egyptian judiciary and the impact of his work on a USAID-supported project in that country is much more critical than that of the MSI assessment. Finally, as Carothers suggests in generally commenting on USAID's ROL efforts, beneficial changes may pale in comparison with enduring realities: limited access to justice, vested interests devoted to the status quo, corruption, clientelistic appointments, etc.<sup>47</sup>

Carothers is not alone in this critique. Other observers imply or assert that the kind of impact ROL orthodoxy achieves may not address the fundamental problems plaguing many countries' legal systems. In one of the most in-depth scholarly studies of a given judiciary's operations—a scrutiny of the civil courts in the Indian state of Uttar Pradesh—Moog concludes that the "conventional explanations for the functioning of the district-level courts [too few jurists, insufficient funding, inadequate rules of court, overly complex legislation, excessive litigiousness] are largely unsatisfactory."<sup>48</sup> He points instead to a host of external and internal forces that constrain the courts' performance.

Kauffman similarly "challenge[s] the prominence given to the traditional 'long list' of obstacles to proper rule of law/judiciary performance in the literature and in practitioners' writings—such as the conventional focus on budgetary resource constraints, cumbersome procedures, process delays, caseload management, traditional training approaches, study tours, and the like."<sup>49</sup> He asserts that "there are forms of corruption (such as state capture) which rather than being a *symptom* of more fundamental weakness, can in themselves be the *cause* of a dysfunctional judiciary"<sup>50</sup> [emphasis in original]. The upshot of these analyses is that ROL orthodoxy's impact might reflect winning some battles but losing the war—or even perhaps fighting the wrong battles.

Thus, what is seen as progress in terms of ROL orthodoxy does not automatically translate into more general advances for development. For instance, USAID boasts of its role in helping to increase judicial budgets in parts of Latin America. Yet an application of the analyses of Moog and Kauffman suggests that in at least some settings this is an inappropriate focus. The funds might be better devoted to other needs outside the legal field (such as education or health), within it (legal services for the poor), or issues that straddle legal and other fields (such as targeting the widespread problem of violence against women). The more general point is that working with the courts is not necessarily the most effective, efficient, or viable method of addressing the legal needs of the disadvantaged in ways that alleviate poverty or serve other development goals.

In addition, with the exception of support to legal aid and related services for the disadvantaged, the MSI-documented impact on the actual lives of the poor ranges from scattered to indiscernible. To be fair, as Hammergren correctly points out, "the impact [of law projects] on economic variables, whether of the growth or poverty type, is really hard to trace...We are not even terribly clear about

how improvements in court performance will affect the poor or any other economic group.”<sup>51</sup> And as the World Bank’s Legal Vice Presidency notes, “the [law and justice] sector poses certain special problems for measurement, not the least of which are the lack of any consensus on what a well-functioning system looks like, uncertainties as to the extent of its impact on extra-sectoral goals, and the fact that a large part of its success ultimately comes down to what it deters (conflict, illegal behavior), not what it does.”<sup>52</sup>

These are valid points. But if “lack of consensus” on the nature of a well-functioning justice system and uncertainty of “its impact on extra-sectoral goals” (such as poverty alleviation) are the case, they are problems not just for measuring impact but for undertaking ROL orthodoxy at all. The presence of so much uncertainty weighs in favor of diversifying the international community’s approaches to integrating law and development.

***Altar of Institutionalization.*** The rationale for ROL orthodoxy also has intellectual roots in a general emphasis on the roles of institutions in development. The general notion in the development literature is that institutions are so fundamental that they must be addressed by international actors for development to unfold.<sup>53</sup>

But there is a difference between how the concept of institutions is considered in development literature and how it is applied in development practice, at least in the legal field. North defines institutions as “the rules of the game in a society, or...the humanly devised constraints that shape human interaction...both formal constraints—such as rules that human beings devise—and informal constraints—such as conventions and codes of behavior.”<sup>54</sup> He further distinguishes between institutions as “the underlying rules of the game” and organizations (legislatures, regulatory bodies, firms, universities, unions, etc.) that both influence and are influenced by institutions.<sup>55</sup> In ROL programs, however, the emphasis on institutions typically reflects how the term commonly is used—including how I use it here: institutions *as* organizations, with a particular focus on state institutions/organizations such as judiciaries.

This is not to suggest that a divergence between development theory and practice is at play in ROL orthodoxy, hinging on a semantic distinction. But the way in which this matter plays out in the legal sphere merits attention. The programmatic focus of the dominant paradigm is on the judiciary and other state organizations, as well as laws as institutions. The result is that the paradigm places great faith in a narrow view of the legal field: worshipping at the altar of institutionalization, as it were.

In contrast, a full-fledged scrutiny of how the rules of the game affect the poor would consider the historical, cultural, social, and political factors that shape both the formal and informal manifestations of how the poor interact with the law and would take both formal and informal types of law into account. That analysis might in turn learn from and apply strategies that enable the poor to affect the rules of the game and how they potentially can do so. Formal laws and state organizations of course would play important parts in this analysis. But the view of how they operate—and whether and how they can be reformed—would only be part of the picture. Underlying factors that shape their operations and alternative strategies that do not wholly or mainly rely on state organizations would be taken into account.

An additional difficulty with the focus on state institutions is that it ignores the institutional flaws in the very international development agencies that maintain this focus. As a USAID colleague remarked



to me several years ago, “Given the way this institution works, I can’t believe we’re in the business of institutional development.” Critics of the World Bank, some with experience working there, offer comments such as “There’s a big disconnect between World Bank operations and World Bank research,” and “You get the sense that the left hand doesn’t know what the right hand is doing at the World Bank.”<sup>56</sup>

Of course, such problems are not confined to the development community: One can find insiders making analogous comments about the U.S. Congress, the Pentagon, many corporations, and a host of other entities. Furthermore, personnel at USAID, the World Bank, and other aid organizations can justifiably boast of organizational strengths and successes, despite institutional flaws. But it is ironic and perhaps a bit self-deluding to aim for sweeping reforms in developing countries’ legal institutions when many funding agencies are themselves so resistant to change.

A final problem with the focus on state institutions is that it ignores the opportunity costs of pursuing alternative strategies, such as focusing directly on the poor as a means of improving justice delivery (with related impact on poverty alleviation and other goals). Where donors provide support, civil society can and does play a central role in such strategies. Under ROL orthodoxy, however, civil society is seen as an adjunct, at most, to state-oriented institutionalization: useful for building up constituencies for reform so that the “real work” of changing legal institutions can take place. That NGOs, community-based organizations (CBOs), informal institutions, and religious institutions can facilitate the delivery of justice is minimized. Similarly, the actual and potential roles of media and elements of the private sector are relegated to supplementing state-centered initiatives.

***Supposed Centrality of the Judiciary.*** A key assumption of ROL orthodoxy is that the judiciary is central to serving society’s legal needs: Unless we fix the courts, many other legal reforms will fail. As the World Bank’s Legal Vice Presidency puts it, “The rule of law is built on the cornerstone of an efficient and effective judicial system.”<sup>57</sup> Applying similar reasoning that many development organizations use in many countries, the Asian Development Bank asserts that “although a daunting task, Cambodia has no alternative other than to overhaul the current judicial system if it is to lay a strong foundation for the nation’s future development.”<sup>58</sup> These claims tie in with related assumptions that neither alternative roads to justice nor dysfunctional judiciaries are usable. This package of assumptions, however, is fatally flawed.

Even within the realm of formal legal systems, and assuming ROL’s (unclear) causal link to development, there are many nonjudicial institutions and processes that affect economic progress. These include administrative law, national and local governments’ legislation and legal decisions, and the many arrangements through which international trade and investment disputes are handled by forums outside developing countries.

Moreover, as a review for the Danish Agency for Development Assistance (Danida) of its judicial and related aid concludes, support for the formal legal system “does have important limitations and trade-offs: the majority of the population is often not in a position to access the formal legal system for various cultural, linguistic, financial or logistical reasons . . . Their access to justice largely depends on the functioning of informal systems, which have been neglected in terms of external support.”<sup>59</sup> Although the report stops short of challenging Danida’s attention to the formal system, it nevertheless finds “little connection between the justice, constitution and legislation assistance and the overriding poverty orientation of Danish assistance.”<sup>60</sup>

DFID concurs with the Danida evaluation's assertion about the limits of the formal system, estimating that "in many developing countries, traditional or customary legal systems account for 80% of total cases."<sup>61</sup> This clearly is not a precise calculation. But taken together with the many disputes and other legal matters handled by formal but nonjudicial forums, one can reasonably conclude that perhaps 90 percent or more of the law-oriented problems involving the poor are handled outside the courts in much of the developing world. One could argue that judiciaries are nevertheless more important than these alternatives—an assertion that, to make a very long debate short, might be true in some respects and false in others. The point simply is to put the courts in perspective, particularly the perspective of the poor.

Interest in informal systems is slowly growing. DFID recently completed a multicountry study of the subject, which should soon be available online. There is a stirring of interest in the matter within the World Bank. Some donors are supporting NGO efforts to use and reform these mechanisms in countries such as Bangladesh.<sup>62</sup> But although informal systems are the main avenues through which the poor access justice (or injustice), such systems remain programmatic stepchildren to the judiciary and other official institutions.

Furthermore, as described below in the discussion of legal empowerment, the actual experience of the poor comprises numerous issues that as a matter of law or strategy should be handled outside the courts. Some issues involve informal systems, some formal but nonjudicial forums.

Even flawed judiciaries offer opportunities for the poor to address some issues in some countries. The very fact that a battered woman has a lawyer advising her, or even other community women backing her, can deter her husband from continuing to abuse her. Like most people in most disputes everywhere, he may have an avid desire to avoid courts. The likelihood that the courts are gender-biased does not spare him from the expenses involved and does not guarantee him a favorable outcome.

In addition, even where judicial operations need drastic improvement, experience indicates that public interest litigation can still score major victories. Such litigation is not the poor's first choice in most countries, nor even a viable choice in many, but this has far less to do with operational inadequacies than with the conservative orientations of the judges. The point is that a dysfunctional judiciary is not an automatic bar to securing justice for the poor, often outside the courts but sometimes even through them.

***Judicial Reform as an End in Itself.*** Some advocates of court-centered programs might argue that a functional judiciary is necessary for a modern society.<sup>63</sup> The goal may not be poverty alleviation or even the rule of law, but improving judicial performance as an end in itself. Who could argue against the desirability of this?

This argument, however, bumps up against the need to set priorities. It would be one thing to pursue judicial reform in a world of unlimited resources. It is quite another matter to invest so heavily in the courts when there are many other legal options for serving the poor, particularly in view of the opportunity costs of excluding those options out of preference for judiciaries. The opportunity cost problem becomes all the more acute in view of the questionable track record of judicial assistance programs.

Moreover, the notion of such programs as ends in themselves conflicts with the explicit goal of many development institutions: poverty alleviation. Entering the World Bank lobby, one sees large, stirring words about its vision for a world free of poverty, not a world free of judicial delay.

***Underestimating the Obstacles, Overestimating the Potential.*** The faith in state institutions partly stems from donors' devotion to the notion that they can bring about societywide impact despite the huge obstacles they face and the relatively limited resources they possess. In certain contexts the international community may be up to this challenge. But those situations are exceptions to the rule.

So it may be possible for a UN force of several thousand foreign police officers to stabilize Kosovo and train a new local police force, given that the United Nations was able to start with a clean slate (in the sense that it did not need to work with a preexisting institution and leadership) and administrative control over a population of less than two million—though the ultimate effectiveness of that effort remains to be seen. The typical development or transitional context, however, involves far larger polities, no administrative control by international agencies (though such control would not guarantee wise or successful programs by any means), and deeply ingrained forces dictating the operations of judiciaries, police, and other justice institutions. As Anderson notes, “Constitutionalism and the rule of law depend upon sustained political support.”<sup>64</sup> Such support is lacking in many societies, not least among those persons responsible for upholding the rule of law.

Thus, in addition to depicting widespread corruption and favoritism, Blackton's summary of the Egyptian judiciary's proclivities paints a picture of a self-serving institutional culture in the developing country that receives the largest amount of U.S. aid, including substantial ROL assistance:

One area in which the [Supreme Judicial] Council is very active is in protecting the “family guilds” within the Egyptian judiciary...

The council is cautious in approving disciplinary actions against the “sons of counselors” and sympathetic to requests for multi-year leaves of absence and overseas secondments for these favored members of the judicial family...

Family influence and gratuities are significant elements in the assignment process, first at the Ministry where assignment lists are prepared and later amongst members of the Supreme Judicial Council where the log-rolling is intense and the final lists are approved...

The Ministry of Justice and the Judges Clubs are institutional mechanisms for accessing scarce government resources—apartments in Cairo, villas on the Mediterranean and the Red Sea, subsidized automobile loans, free medical care in Europe or America for a judge or a judge's family member.<sup>65</sup>

Half a world away, in the Philippines, Soliman similarly portrays an institutional culture whose undue influences similarly transcend widespread corruption:

A chief obstacle to judicial independence is the pervasive culture of personalism, and the repetitive cycle of debt-of-gratitude (*utang na loob*) that besets public service. Personalism refers to decision-making based on personal, kinship, familial or other ties (coming from the same province, ethnolinguistic group, sorority, fraternity or social club), rather than on the merits of the case, the evidence presented and the impersonal application of the law on the facts. Personalism is aggravated by perceived debts-of-gratitude, extended to persons who have helped the judge along his professional career... Personalism is further reinforced by feelings of guilt, shame or embarrassment (*hiya*) when the judge does not render a decision in favor of the

person to whom he owes the debt-of-gratitude. Filipino social norms dictate that the proper behavior is to return the favor (*pagbigyan*) to persons to whom we owe such “debts.”<sup>66</sup>

Where problems run so deep, reforms may themselves prove problematic. A UN Development Programme (UNDP) paper finds reported corruption in the Indonesian court system “so pervasive that proposals have been put forward recently to dismiss the entire judiciary,” with other justice sector institutions similarly infected.<sup>67</sup> Recent reform efforts have perpetuated or exacerbated the problem. Rather than improving its performance, a judicial independence law instead served to insulate the institution from accountability. And “the new commercial courts, which were intended to serve as a model in which cases are handled competently, expeditiously, transparently and with integrity are developing a reputation for delivering similar standards of justice as those elsewhere in the court system.”<sup>68</sup>

Some donor personnel and agencies simply overlook such problems by virtue of viewing legal systems development in a purely technical, rather than a political, manner. They undertake superficial international exchanges, such as high-profile conferences of Supreme Court justices, whirlwind tours for top officials, and consultancies that involve boilerplate transfer of laws from industrialized societies to developing ones.

It would be grossly unfair, however, to lump all proponents of the dominant paradigm’s programs into this category. Where they focus on putting in place basic procedures, training, and procurement of supplies, they understandably argue that this technical approach is necessitated by the reality that judiciaries must walk before they can run. This point is true as far as it goes but begs the question of whether these technical improvements put a dent in corruption, bias, and other undue influences, not to mention the opportunity costs of this course or the sustainability of technical improvements once foreign aid for them ends.

Other ROL orthodoxy proponents recognize the tremendous forces at play and correctly portray them in political and not just legal or technical terms. Yet they may still underestimate the power of those problems, ignore how they shape their organizational and individual partners, and overestimate their own capacities to analyze and overcome the obstacles. Proceeding with the best intentions, they nevertheless may skate along the surface of how a foreign society operates.

Soliman highlights this issue in pointing out that “the sources of judicial interference [in the Philippines]...may not be openly opposing the reform measures (in fact, nobody in his right mind would dare oppose these measures). It is just that these measures will be disregarded or slowly be implemented, to the point that it becomes meaningless.”<sup>69</sup>

Many development practitioners can tell tales of misplaced faith in local partners who paid lip service to reform. My own experience includes work by my (then) office with Filipino judicial reformers subsequently identified with criminal conduct—in one case a supreme court justice was forced to resign and in another a trial judge was involved with covering up violent assaults by a relative (the son, in fact, of a former chief justice). In evaluating work with the Cambodian judiciary, I was told by a U.S.-based NGO of its great progress with courts in a particular province, only to have independent Western and Cambodian sources volunteer (without prompting) that those courts were particularly corrupt. Although technical progress can take place even in the face of undue influences, where such influences are widespread they tend to trump the value of the technical change.

Perhaps the most illuminating illustration of this point, however, comes from a different international field: drug control. For a good part of the late 1980s and early 1990s the U.S.

government's efforts to staunch the flow of illegal drugs from Mexico relied considerably on that country's top officials. That confidence culminated in U.S. drug policy chief Barry McCaffrey praising Mexico's top anti-drug enforcement officer as "an honest man and a no-nonsense field commander."<sup>70</sup> The commander was arrested eight days later and subsequently charged with having protected a top drug lord. In such a high priority arena and with all of its intelligence resources at its disposal, the U.S. Drug Enforcement Agency could not detect the true nature of its hero. Operating with much less information and funding, what are the prospects for practitioners of ROL orthodoxy to know the real intents of the government officials who are their local partners? This is particularly challenging when the real issue is not whether such officials are corrupt—in many or most instances they are not—but whether they really are dedicated to reform. Although the same can be said of NGO personnel, it is often easier to observe their direct work with the disadvantaged than it is to assess high officials' dedication to reforms that constitute only a part of their jobs.

There are certainly numerous honest, sincere chief justices, attorneys general, and other justice sector officials across the globe. But in working with them, even those donors that acknowledge the shortcomings of an institution-centered approach still tend to underestimate the problem: The challenge is not just the institutional culture itself, but also the societal milieu from which the institution springs. Egyptian and Philippine judges frequently favor their relatives and others with special connections because that is what one does to be a good family or community member in Egypt and the Philippines. Personal probity or even sincere dedication on the part of a high official may not be sufficient to outlast or outwit influences that are societal, rather than organizational, in nature. Thus, strengthening the Indonesian judiciary's independence and organizing a new commercial court there do not reform that judiciary's injustices out of existence.

The tendency to underestimate the obstacles to institutional reform is mirrored by an inclination to overestimate the potential impact. The dominant paradigm promises the realization of the rule of law. Yet it is unclear how the multilateral development banks' business-promoting version of the paradigm can even theoretically bring about the equal treatment, dignity, and access for all that the World Bank's definition of ROL promises. Furthermore, even proponents of ROL orthodoxy grant that this is inevitably a slow, problem-plagued process.

Of perhaps even greater importance, there is often less than meets the eye in the nominal successes along the way. The adoption of a new law or new rules of court may be hailed as a great step forward, but the reality in many developing and transitional societies is that laws and rules are only rarely enforced. Training of judges might seem an important endeavor, unless of course most judges make little use of their new knowledge. Simply working with a national institution such as the judiciary can become confused with bringing about national changes in its operations or can trigger changes that do not necessarily benefit the poor. Thus, reforming a law or ostensibly revamping a judiciary offers the allure of national impact but in reality may affect few judges, cases, or citizens.

***Myths of Sustainability.*** An important argument for investing in state legal institutions is that only such a course can offer sustainable development. The assumption is that, once reformed, the institutions will deliver improved services without continued donor input. The converse assumptions are that NGOs and other civil society groups do not merit ongoing development support because they are inherently unsustainable organizations or that they must generate funding themselves after a few years of donor financing.



The DFID Bangladesh (DFIDB) office accordingly illuminates a tension and assumption that many development agencies struggle with in many countries:

...a striking conclusion is that there are few DFIDB projects with government that are making a higher-level impact for poor people...Thus, DFIDB faces a dilemma; it can achieve a more direct impact on poor people in the short term (possibly up to 2015) by working outside government, but for the long term only sustained improvement in delivery of public services will reach the majority of the population. A balance needs to be struck between the short and long-term goals.<sup>71</sup>

At least as applied to the legal field, three development myths account for this understandable but questionable assumption about the nature of sustainable change. The first is that support for state legal institutions will yield self-sustaining reforms and enduring improvements in services. As already suggested, however, the undertow of societal forces may undo promising changes: If legal systems' operations are in fact more the effect than the cause of social conditions, many systems that experience temporary improvements may revert to form. In addition, the chief justices, ministers of justice, and other officials who lead or agree to reforms often come and go rather rapidly—ironically, more rapidly than the leaders of supposedly unsustainable NGOs. The dedication to reform sometimes resides in those officials, not their institutions.

Often, however, even that personal dedication is not present. Commenting on a USAID project's short-term cuts in delay in pilot courts in Egypt, consultant and former USAID official John Blackton asks:

Will that hold up when we leave? Will our changes move from our court clusters to the nation as a whole? Have we brought about a genuine change in judicial culture—one in which reducing case delay is valued? I fear that the answer will, three years after we are gone, be “no” to most if not all of my questions. The expat and Egyptian professionals organized within the construct of “the project” are the ersatz substitute for political will and a new judicial culture. We [the project team] are in fact, variables in the experiment. Our presence strongly impacts the results. Donors don't like to admit how much this is true, but in justice projects in settings like Egypt, I believe it is significantly so.<sup>72</sup>

This problem often manifests itself from the very outset of projects, with donor organizations and personnel, rather than those of recipient countries, initiating and driving ROL programming. It is not as though chief justices, ministers of justice, and their staffs typically analyze their legal systems' problems on their own and present resulting proposals to funding agencies. More frequently, the agencies initiate the dialogue, commission the consultants, and design the projects. Of course, donors often have access to the intellectual capital that can undertake these tasks. And recipient institutions' personnel certainly are consulted and in some cases become very engaged in the planning and implementation of projects. But to return to Blackton's point, the funding agencies often supply “the ersatz substitute for political will and a new judicial culture.” The result is a lack of intellectual ownership among recipients.

Proponents of ROL orthodoxy sometimes acknowledge that short-term reforms may hinge on persons rather than institutions and that intellectual ownership is an issue, but they legitimately argue that legal systems development must be seen as a long-term process. It accordingly will take many years or even decades before it becomes clear whether and to what extent sustained impact transpires. Fair enough, but this argument exposes a second sustainability myth: the notion that government initiatives should always be seen as potentially sustainable and that civil society efforts

should not. If state institutions merit such ongoing support, especially with highly uncertain outcomes, then why exclude civil society from the long-term mix?

In reality, legal services NGOs and other civil society groups can outlast the appointments of the personnel heading and staffing many government agencies and acquire a greater knowledge of their fields. Over the course of many years, such NGOs often develop track records that enable them to obtain funding from a range of donors. It is even conceivable that long-term societal changes could generate in-country resources for them in some countries, whether from their governments or private sources. With support from the Ford Foundation and other sources, over the past several years the Asia Foundation has pursued an initiative to encourage the growth of indigenous philanthropy in many Asian nations.

The third sustainability myth is that, such philanthropy-promoting efforts aside, legal services and related NGOs in many developing nations must have the potential to become wholly self-supporting if medium-term outside support is to be justified. In fact, NGOs engaged in challenging the status quo may always depend on foreign sources for funding in many parts of the developing world, just as equivalent groups depend on foundations and other outside sources in many far more affluent industrialized societies. It is questionable whether developing country NGOs should even seek government or private money in many contexts, in view of the strings and uncertainty that could come attached.

This does not mean that a given funder should automatically commit itself to many years of support to a given NGO. But it should be open to the possibility of such ongoing assistance if the recipient shows sufficient promise and impact. It *does* mean that donors and other development agencies should move beyond repeatedly uttering the “NGOs must make themselves sustainable” mantra and take more responsibility for assisting worthwhile partner organizations to move toward sustainability. This can include providing support that expands the fund-raising and financial management capacities of civil society groups, as well as connecting such groups with industrialized society donors that otherwise would be logistically unable to support overseas development.<sup>73</sup> Yet another mechanism is self-sustaining endowments. Organizations such as the Ford Foundation, USAID and most recently the ADB have established such funds for selected high-impact organizations and important fields in certain countries.<sup>74</sup> The endowment approach merits further, broader consideration as a mechanism for ensuring ongoing funding of civil society efforts in the legal field.

We also need to rethink what we mean by sustainability. Rather than *organizational sustainability*, which biases funding toward often ineffective state institutions, a key consideration should be *sustainability of impact*. If a given legal services NGO serves enough people, or builds enough capacities for the poor to effectively assert their own rights, or affects enough laws—such impact is sufficient to justify past and future donor investment. It would be unfortunate for such an organization to cease operating down the line, but its existence would still be validated by the poverty it has helped alleviate and the justice it has helped secure. This patient approach has implicitly guided some of the better donor support for NGO legal services and has enabled recipient NGOs to build expertise and experience that translate into impact over time.

### **Other Bases of the Paradigm**

Given the problematic nature of this series of assumptions, it is important to ask why the dominant ROL paradigm has taken hold so strongly. Some reasons lie in the assumptions themselves, of

course. Many individuals and organizations operating in this field manifest a sincere dedication to the paradigm because they believe in many or most of its premises. But it would be misleading to attribute ROL orthodoxy's predominance to these intellectual factors alone. It is important to identify other influences, which are at least as important as the intellectual bases, to start to move beyond the paradigm.

***Rule of Lawyers.*** ROL orthodoxy assumes the centrality of the judiciary in particular and other formal legal institutions (for example, ministries of justice, prosecutorial services, police) more generally because the main actors involved in rule of law aid are lawyers and judges. Unlike development professionals in some other fields, many Western ROL practitioners have little or no prior experience in developing and transitional societies before entering this arena through the legal door. They naturally see the problems and prospects for legal systems development in terms of their experience in their own countries, experience that typically features the courts and other forums through which they work with legal colleagues. The single greatest category of funding, then, focuses on assistance for judiciaries.

The upshot for the field is the “rule of lawyers.” It carries with it the powerful tendency to minimize, usually not intentionally, the many other factors and actors that affect legal systems development and that can be brought to bear to improve it. Attorneys and judges are not blind to such considerations, but their perspectives and experience undercut giving nonlawyers and nonlegal tools the full weight they deserve. This contributes to such phenomena as the fixation on courts and other institutions, and working with fellow lawyers and judges.

The rule of lawyers also overlooks the ways in which attorneys are sometimes part of the problem rather than part of the solution. Bar associations in some societies are self-serving guilds that effectively limit access to justice, or that work against social and economic equity. These associations may vocally advocate political freedoms and judicial independence, but be much less sensitive to the needs and priorities of the poor, particularly where those priorities challenge the interests of prosperous clients or the attorneys themselves.

Of course, we all tend to view the world through the lens of prior experience and professional orientation, so lawyers and judges are by no means unique in this regard. The impact, nevertheless, is that ROL orthodoxy is guided by a perspective that is either blind to the many influences and possibilities that lie beyond a narrow institutional perspective, or that can see such factors only dimly. Ironically but not coincidentally, some of the best people involved with funding agencies' law-oriented programs are nonlawyers. The Ford Foundation, for example, has used a number of such individuals as program officers engaged in its human rights and social justice work.

This is not to dismiss the roles of lawyers and judges, of course. They are crucial for an array of purposes pertaining to the poor, not least as part of legal empowerment mechanisms discussed below. They serve a vast array of other societal purposes. But the development community does, after all, prioritize poverty-alleviation, pro-poor programs, and community-driven and rights-based development to various degrees. This is not reflected in the programmatic rule of lawyers.

***Bureaucratic Inertia.*** Another influential factor fueling ROL orthodoxy is bureaucratic inertia. As with most institutions in most fields, initial programs, personnel, and perspectives can lead to similar



subsequent initiatives, regardless of whether they are appropriate to new contexts (or were appropriate in the first place). Thus, USAID focused on judicial operations and other state legal processes in Latin America in the 1980s. Though initially driven by political forces swirling about controversial U.S. policies concerning Central America, USAID's law program gradually took on a life of its own.

The impact of the Latin American roots of USAID's ROL program is instructive. The personnel who accumulated the early experience in this field were based in Latin America and accustomed to seeing the ROL through the lenses of judicial and state-centered operations. They have acquired considerable expertise in the process, but for some it has come at the expense of a broader perspective on law and development.

Of course, many funding institutions have taken similar approaches, without the legacy of this geographical focus. Even so, as an early and major actor in this field, USAID may have influenced them by virtue of its example.

More generally, institutional inertia may play a role even for the many organizations on which USAID has no influence. In many cases, other funding agencies commissioned lawyers and judges to offer advice and design programs as the agencies initially explored work in this field. The legacy of their initial rule of lawyers, then, was to set in place programs and personnel that continue to shape priorities and perspectives.

***Improper Incentives.*** Though many development practitioners talk in terms of “getting the incentives right” in developing country governments and systems, an irony of ROL orthodoxy is that it is substantially a product of improper incentives in funding institutions. In some cases, career rewards are more closely linked to initiating programs—loans in the case of the multilateral banks—than whether the programs benefit the poor.

A related improper incentive, perhaps particularly at the banks, is that the dominant paradigm can easily consume large amounts of money and that this is considered a good thing. A colleague working with a problematic judiciary once described it to me as a “black hole” for funding. Though this was a complaint, the problem can also be an asset for donor personnel. Although criticism in some quarters of ROL orthodoxy's allegedly boilerplate approach may be overheated, the approach nevertheless involves a standard set of activities that make it easier to move money.

Some funding agencies also present their personnel with de facto “use it or lose it” requirements. That is, a given field office's or division's future resources hinge partly on whether it spends all of what it has been allocated during the fiscal year. Many activities supported by ROL orthodoxy—constructing courthouses, buying computers, training judges, retaining consultants, and the like—can be funded in ways guaranteed to exhaust annual allocations. This creates an additional incentive to pursue this approach.

Political pressure also drives ROL programming. Particularly in the wake of wars or transitions from dictatorships to democracies, there are demands from high officials in donor governments to help new leaders turn around their nations' ineffective legal institutions. Those officials may evince little patience for sound programs that take proper account of constraints and opportunities. This typically translates into a “don't just stand there, do something” perspective, even in situations where, realistically, there is little to do.

**Structural Biases.** Various structural biases built into aid organizations also push ROL assistance toward the dominant orthodoxy. Due to explicit mandates and governing structures, some organizations view national governments as their partners, rather than the poor. It is no coincidence, then, that some of the more effective multilateral agencies, such as the U.N. High Commissioner for Refugees and the U.N. Children's Fund (UNICEF), focus on serving particular populations, rather than governments.

The multilateral development banks labor under an additional, obvious structural burden: Recipient governments naturally require control over how their loans are spent. Most governments are much more prone to use these resources for state projects and personnel, rather than having them diverted to potentially troublesome civil society groups. In addition, policy parameters dictate that development banks sometimes can more easily fund capital projects or offer lower rates on loans for such projects.

In reality, the situation of the banks is a bit less rigid than their loan-making nature implies. They have access to grant funds, largely from bilateral donors, that can complement loans in a flexible manner. They also have some leeway in negotiating loans with recipient governments, not least because of many loans' heavily discounted nature and repayment terms. Whether they are prepared to use the grant funds and leeway to move beyond ROL orthodoxy is another matter, of course.

Another structural bias stems from constraints on taking a political approach to development work. The World Bank is supposed to focus on economic issues. It is prohibited from considering political factors in its policies and projects. The other multilateral banks are similarly restricted. In reality, as the staffs of these institutions acknowledge, their work is politically charged in countless ways. And over the past decade the World Bank and, to varying degrees, the other multilateral banks have begun to grapple explicitly with issues such as corruption and human rights that were previously taboo. But the economic focus nevertheless acts as a brake on confronting some of the most pervasive problems plaguing ROL.

Yet another structural shortcoming is the project approach, the way many development agencies plan how to spend their funds. Tremendous amounts of time and resources go into designing projects, often leaving too little flexibility to respond to new developments or to learn and apply lessons as the projects unfold. This is an issue that reaches far beyond the legal field, but it strongly resonates in this field. Once a project has started, it is very difficult to back away from work with chief justices or government ministers even if they fail to demonstrate the desired political will. Barring extreme circumstances, the funding organization is "locked in," both politically and financially.

A related bias stems from what might be called "the view from the hotel window." Particularly during project development, when the very nature of the project is decided, many agencies rely on visiting consultants rather than in-country staff. This can lead to a superficial analysis of what ails a legal system and what legal issues confront the disadvantaged. To put the point mildly, a society seen from a hotel is far different from one experienced every day.

As a consultant myself, I may be in the position of the person living in a glass house (or hotel) throwing stones at its windows. But the visiting consultant bias is exacerbated when taken together with the other influences that steer ROL work toward a state-centered approach. Because ROL orthodoxy is geared toward working with state institutions, the visitors' meetings with NGOs and representatives of disadvantaged populations (to the degree that such meetings take place at all) focus on how to fund such institutions, rather than whether to do so and what alternative initiatives

might be possible. The typical judicial administration consultant, for example, does not go tromping through the boondocks to learn how the poor perceive the judiciary, what their lives are like, what legal problems they face, or how they handle those problems.

A fundamental structural barrier involves the sectoral walls that divide much development work. Even though development issues often transcend sectors such as irrigation, natural resources management, urban housing, education, and the like, there is relatively little cross-fertilization of ideas, not to mention integration of approaches. Again, this is not unique to the legal field but severely constrains integration of law and development.

***Lack of Applied Research.*** One final consideration merits mention because it is so crucial: In many organizations that support law-oriented work, there often is a reluctance to support research that will scrutinize whether and how such work is doing any good or that will otherwise inform its efforts.<sup>75</sup> It is ironic, in fact, that some organizations that fund extensive research on legal systems or human rights conduct virtually none on the impact of their own law-oriented programs. It can be far more rewarding to report anecdotal progress to the higher levels of an institutional hierarchy than it is to undertake the kinds of in-depth quantitative and qualitative inquiries that might contribute to learning and impact, but that also might yield negative results. This is not confined to ROL orthodoxy, but it is most striking in view of the resources it consumes.

In fairness, as discussed above, constructing studies that would probe the successes, failures, and lessons of ROL initiatives is no easy task. And as the aforementioned divisions within the World Bank demonstrate, there is no guarantee that applied research will actually inform programs. Until such research is valued as contributing to progress even if it reveals problems, law-oriented work will lag behind other development fields in terms of both sophistication and impact.

## LEGAL EMPOWERMENT: AN ALTERNATIVE APPROACH

### The Nature of Legal Empowerment

*Legal empowerment is the use of legal services and related development activities to increase disadvantaged populations' control over their lives.* It is consistent with a more general concept used by the World Bank: "In its broadest sense, empowerment is the expansion of freedom of choice and action."<sup>76</sup> The distinguishing feature of legal empowerment is that it involves the use of any of a diverse array of legal services for the poor to help advance those freedoms. At the same time, this legal work is often only a part (and not necessarily the most important part) of an integrated strategy that features other development activities—group formation, literacy training, or livelihood development, for instance.

In contrast with ROL orthodoxy, a strategy of fostering legal empowerment typically involves:

- An emphasis on strengthening the roles, capacities, and power of the disadvantaged and civil society.
- The selection of issues and strategies flowing from the evolving needs and preferences of the poor, rather than starting with a predetermined, top-down focus on judiciaries or other state institutions.

- Attention to administrative agencies, local governments, informal justice systems, media, community organizing, group formation, or other processes and institutions that can be used to advance the poor's rights and well-being, rather than a focus on a narrowly defined justice sector.
- Civil society partnership with the state where there is genuine openness to reform on the part of governments, agencies, or state personnel, and pressure on the state where that presents an effective alternative for the disadvantaged.
- Great attention to domestic ideas and initiatives, or experience from other developing countries, rather than Western imports.

**Legal Services.** As defined here, legal services for the poor include:

- counseling, mediation, negotiation, and other forms of nonjudicial representation;
- litigation, both on an individual basis and through public interest lawsuits designed to affect policies, effect precedents, or otherwise benefit large numbers of people;
- enhancing people's legal knowledge and skills through training, media, public education, advice, and other mechanisms;
- development of and services by paralegals (laypersons, often drawn from the groups they serve, who receive specialized legal training and who provide various forms of legal education, advice, and assistance to the disadvantaged); and
- advocating, advising on, and building the poor's capacities regarding legal, regulatory, and policy reform.

In many country contexts, litigation is only one of numerous options used by legal services organizations, and often constitutes a course of last resort. As discussed above, most legal issues affecting the poor are handled not by judiciaries but by administrative law, local governments, alternative dispute resolution, and informal processes. And even where the courts are an option, the poor often prefer these alternatives because they are far more accessible (both geographically and financially) and comprehensible.

**Related Activities.** The "related activities" in legal empowerment's definition are any that complement legal services, but which themselves are not inherently law-oriented in nature. They include community organizing, group formation, political mobilization, and use of media. They may also involve development-oriented endeavors, such as livelihood development, microcredit provision, literacy training, reproductive health services, and natural resources management.

Legal services can in and of themselves constitute and produce legal empowerment, but experience indicates that greater impact frequently flows when they are integrated with related activities. Some links may be indirect, implicit, or initially unplanned, as in the case of a group formed for another purpose (such as microcredit) that later makes use of legal services.

**A Process and a Goal.** Legal empowerment is both a process and a goal. As a *process*, it involves activities aimed at increasing disadvantaged populations' control over their lives. As a *goal*, legal

empowerment refers to their actual achievement of that control. Thus, the process can take place even if the goal has yet to be achieved.

***Nexus with Poverty Alleviation and Other Goals.*** Legal empowerment ultimately is about poverty alleviation, both in the narrow and broader meanings of the term.

It contributes to poverty alleviation, narrowly defined, by improving material standards of living and accordingly addressing what is often called “income poverty.” Thus, women may be less poor and have more control over their lives if they gain the right to work (and resulting employment) or a fair share of inheritances. The same applies to farmers and urban populations who respectively obtain land ownership and secure housing.

UNDP and most of the development community also view poverty alleviation more broadly, however, often using the term *human poverty* and reflecting the fact that the poor “often define their own lot not so much in terms of ‘lack of money’ as an absence of empowerment.”<sup>77</sup> Poverty alleviation accordingly includes increasing the capacities (such as legal knowledge and skills), participation, opportunities, and, most fundamentally, power of the poor concerning actions and decisions that affect their lives. Women are less poor and have more control to the extent that they affect government or family decisions, whether effecting gender equity or halting domestic violence. Minority groups similarly may benefit where their cultures are respected or they influence majority perspectives and policies. Legal empowerment helps achieve those goals.

Legal empowerment should also be viewed in the context of evolving thinking that illuminates how empowerment, human rights, freedom, development, and poverty alleviation blend in practice: Reaching one such goal often equals achieving another. In *Development as Freedom*, Sen addresses the processes through which people assume increasing control over their lives.<sup>78</sup> UNDP has similarly linked human development, human rights, and seven essential freedoms.<sup>79</sup> The World Bank advocates “facilitating empowerment” as a key means of attacking poverty.<sup>80</sup> Thus the notion of control contained in the definition of legal empowerment is equivalent to both freedom and power for the poor.

A number of donors have in effect endorsed the kind of cross-sectoral integration represented by legal empowerment, though carrying it out in practice has been more problematic. A USAID study found that the linkages of its democracy and governance sector (which includes law programs) “with other sectors are an emerging development success story.”<sup>81</sup> DFID policy guidance highlights how its justice sector work can pursue entry points through public health, rural livelihood, or urban development projects.<sup>82</sup>

The potential benefits of legal empowerment work are implied in various academic studies that point to the importance of civil society capacity building, organization, or political influence in improving the lives of the disadvantaged.<sup>83</sup> Other research identifies vibrant NGOs’ roles in successful development efforts, especially when they are able to engage or collaborate with government.<sup>84</sup> By building the poor’s legal capacities, organization, and NGO links, legal empowerment may be particularly promising in connection with views of community-driven development articulated by Gupta et al.<sup>85</sup> For instance, it can help forge useful links with higher level government officials in situations where their local subordinates serve local vested interests. This can enhance project monitoring, accountability, and performance and of course serve broader development goals.

**Central Role of Civil Society.** Civil society usually plays a central role in legal empowerment for a diversity of reasons. This is reflected in both the aforementioned research and the fact that the most successful and creative legal services for the poor across the globe generally are carried out by NGOs, often in partnership with CBOs, or occasionally by law school programs that effectively function as NGOs.<sup>86</sup> This does not absolutely preclude a central role for the state: Sufficiently motivated government units also can carry out legal empowerment programs. However, civil society groups typically demonstrate more dedication, flexibility, and creativity than state institutions and personnel. Despite the best intentions of many such personnel, various actors and factors, not least their co-workers, may block them from doing their jobs properly. Related considerations that frustrate government responsiveness to the poor's legal and other needs include inappropriate resource allocation, excessive bureaucracy, corruption, patronage, gender bias, and general resistance to change.

My aim here is not to replace ROL orthodoxy with a similarly rigid civil society paradigm that naively glorifies NGOs as a panacea for poverty or presents them as universally altruistic and honest. It is crucial for donors to separate the wheat from the chaff in supporting civil society. Where civil society is weak, it is important to put in place long-term programs that help build it. Furthermore, legal empowerment is often about good governance; state institutions are extremely relevant. Legal empowerment can involve NGOs in building the capacities of state institutions and their personnel, through training and other devices.

What NGOs and their partner populations can do far more effectively than donors, simply by virtue of civil society efforts to extract cooperation from state institutions, is identify government agencies and personnel who manifest dedication, working with them and around their reform-resistant colleagues. In this way, civil society acts as a supportive force for cooperative elements in the state and as a countervailing force against anti-reform elements. Legal empowerment catalyzes this progress in the many contexts where legal knowledge and action are important parts of reformist strategies.

Again, this certainly is not to suggest that all development NGOs are effective, competent, and dedicated. Some are far more interested in developing their own resources than in helping the populations they purportedly serve. Others are so small as to limit their effectiveness (though we should not underestimate the ability of modestly staffed legal services NGOs to generate ripple effects of impact through paralegal development, working in partnership with other civil society elements, and contributing to policy and law reform advocacy coalitions). But where these constraints apply, they constitute arguments for such steps as involving responsible international NGOs, expanding the pool of persons who could sincerely engage in legal empowerment work (through law school programs, for example), and gradually building up civil society reach and capacities.

In some wartorn, politically oppressed, or particularly impoverished societies, the presence, power, and capacities of NGOs that could engage in legal empowerment are limited. One would not expect assertive advocacy of women's rights, for instance, in areas controlled by many Afghan warlords. How development agencies might cautiously support legal empowerment under such circumstances is a matter to which I will return in this paper. For now, suffice to say that the same obstacles constricting the work of legal services NGOs in problematic contexts similarly limit the prospects for building effective judiciaries and other legal institutions. Precluding support for the former while pushing ahead with the latter is a lopsided approach to justice and development.



***Nexus with a Rights-Based Approach to Development.*** Among its other applications, legal empowerment should be seen as a strategy for implementing a rights-based approach to development. As the Office of the High Commissioner for Human Rights (OHCHR) has noted, “There is no single, universally agreed rights-based approach, although there may be an emerging consensus on the basic constituent elements.”<sup>87</sup> The OHCHR expands on this to suggest that “while a State is primarily responsible for realizing the human rights of the people living within its jurisdiction, other States and non-State actors are also obliged to contribute to, or at the very least not to violate, human rights.”<sup>88</sup> It also highlights empowerment, participation, international human rights’ universality, and numerous other concepts and activities as key elements of the approach.

In a crucial way, legal empowerment *is* a rights-based approach: It uses legal services to help the poor learn, act on, and enforce their rights in pursuit of development’s poverty-alleviating goal. And as indicated above, the realization of empowerment, freedom, and poverty alleviation typically equals enforcement of various human rights.

Yet as I emphasized earlier in this paper, legal empowerment is about power and freedom even more than it is about law. True, in practice the goal of advancing the rights of the poor often is one and the same as alleviating their poverty. And much activity toward this end is rights-based in nature: teaching them relevant laws; building their capacities to use those laws themselves; providing legal representation where necessary; drawing on such rights as freedom of speech, assembly, and association. But legal empowerment also often involves related development activities such as community organizing, group formation, livelihood development, and literacy training. Thus, legal empowerment uses various mechanisms, many rights-based but some not, as means toward the *end* of making human rights a reality for the poor.

## **Impact and Activities**

An expanding array of studies document legal empowerment’s impact in both qualitative and quantitative terms. Most of that impact falls under the broad rubric of poverty alleviation. But as noted above, in many instances it also can be framed in other general terms (such as justice, human rights, freedom, and, of course, empowerment) or more specific goals (such as improved governance, gender equity, or environmental protection).

***Multicountry Documentation of Impact.*** In recent years, a few international studies have illuminated legal empowerment’s manifold approaches and types of impact. A seven-nation, year-long examination of legal empowerment, conducted by the Asia Foundation for the Asian Development Bank, concludes that this work “helps to advance good governance and to reduce poverty in both substantial and subtle ways.”<sup>89</sup> The documented benefits range from Thai constitutional and consumer protection reforms to implementation of Pakistani women’s voting rights and access to credit.

A multicountry review for the World Bank describes the poverty-alleviating impact of legal services NGOs and, by implication, of legal empowerment.<sup>90</sup> It highlights, *inter alia*, how such NGOs help enforce social and economic rights, facilitate the poor’s engagement with local governance, assist women to reform laws that bar them from participating in development, and promote recovery in postconflict countries.

Finally, the Ford Foundation's eighteen-month review of legal services and related work by its grantees across the globe finds considerable positive impact on equitable and sustainable development, as well as on human rights, civic participation, and government accountability.<sup>91</sup> The resulting book describes the impact of university-based legal aid clinics, paralegals, public interest litigation, and law-related research, even in China, Eastern Europe, and other areas where civil society is relatively weak.

***National Impact.*** The picture I so far have sketched of legal empowerment mainly depicts community-oriented work, but legal empowerment can build on that work to have national impact (as well as impact on the state and province level, which in some countries is where important policy and legal decisions are made). The Ford Foundation, World Bank, and Asia Foundation/ADB reports, as well as other sources, document that impact to various degrees, describing numerous instances in which legal empowerment has helped generate such macrolevel reform.

For example, the approximately two dozen Philippine legal services NGOs collectively known as Alternative Law Groups (ALGs) have contributed to scores of national regulations and laws concerning agrarian reform, violence against women, indigenous peoples' rights, environmental protection, and a host of other issues.<sup>92</sup> Arguably, they have played roles in the bulk of such pro-poor reforms over the past decade, providing legal expertise and other assistance for coalitions of NGOs, national federations of poor people's organizations, and (sometimes) religious groups.

The ALGs derive their expertise and credibility from working on a grassroots level, where they make the most of existing laws while learning what reforms might make sense and, most crucially, what reforms the disadvantaged might want. They heavily engage in paralegal development, community training, and advocacy. Typically partnering with CBOs—and strengthening those groups' internal cohesiveness in the process—ALGs help farmers to avail themselves of land reform; fishing associations to guard their waters against outsiders' environmentally destructive practices that cut into their catch; community associations to understand and participate in local budgeting and governance; and other disadvantaged groups to act on local needs and priorities. So much of their work involves helping the disadvantaged interact with local elected and administrative officials that it is appropriate to think of the ALGs in terms of governance as well as law.

The ALGs largely have not worked through the Philippine courts for several reasons: judicial conservatism and corruption; the suitability of administrative, legislative, and other noncourt mechanisms to address partner populations' needs; and the fact that these populations are more legally self-sufficient when noncourt approaches are used.

Nevertheless, legal empowerment strategies can effectively use public interest litigation (PIL) in those circumstances where there are prospects of winning and implementing favorable decisions, where it does not exclude the disadvantaged from decision making, and where its use does not preclude complementary approaches. This approach can be found in South Africa, where PIL has built on a base of community and political activism. This has yielded a string of landmark court victories stretching over more than two decades, both vindicating South Africans' rights and increasing their control over their lives.

Under apartheid, the Legal Resources Centre (LRC), the university-based Centre for Applied Legal Studies (CALs), and their allies used PIL to undermine restrictions on blacks' residence and



travel rights, abuse of prisoners in detention, and the state policy of establishing black “homelands” in resource-poor parts of the country. In recent years, newer legal services NGOs have joined with LRC and CALS to have significant impact on housing, land, and health rights and a host of other issues. Similarly oriented NGOs in neighboring countries, such as Namibia’s Legal Assistance Centre, have also had notable success in this vein.

It is important to emphasize, however, the degree to which public interest litigation draws on and works with community concerns, not least in the identification of clients and cases. As explained by the head of LRC’s Constitutional Litigation Unit:

We work closely with community advice offices, which are sometimes an important focus for community organisation, public education and advocacy.

Our clients are often a community—for example in land restitution claims or a large eviction case.

We work in partnership with other NGOs which themselves are involved in supporting community organisation—most classically [under Apartheid], when we supported communities resisting forced removal from their land, we worked very closely with...Black Sash [an NGO that provides grassroots paralegal assistance and training], which used community workers and field workers.

We represent organisations which are themselves the focus for a social movement—for example the Treatment Action Campaign, which is mobilising and leading the campaign for the provision of anti-retroviral drugs to prevent transmission of HIV, and to treat HIV/AIDS.<sup>93</sup>

Though activist, sophisticated civil society certainly facilitates both grassroots and national legal empowerment initiatives—witness South Africa and the Philippines—legal empowerment can have national impact even in less conducive settings. The Sustainable Use of Biological Resources Project (SUBIR) in Ecuador, undertaken by the international NGO CARE in collaboration with local Afro-Ecuadorian groups in the remote northwest part of the country, has generated national reforms and local benefits. The government banned division of communal land into individual lots in response to these groups’ identifying such changes as threatening their identity and way of life. The communities also successfully lobbied for Afro-Ecuadorian recognition in the national constitution, including protection for their collective rights as indigenous peoples.<sup>94</sup>

As with the Philippines and South Africa, the national impact of this legal empowerment initiative in Ecuador has built on a base of localized work and impact. These community-level results include:

- The paralegals have formed, and themselves joined, higher level organizations focused on conflict management, land titling, and community advisory services.
- Fifty communities have obtained legal status, a prerequisite to formal recognition of property rights.
- Some three dozen communities have secured title to approximately 50,000 hectares of their traditional lands.<sup>95</sup>

In a far different context, Senegal, UNICEF provided financial and communications support that helped local NGOs and village women mobilize against female genital mutilation (FGM). The efforts facilitated the women learning about both their rights and the health implications of FGM. The result was the parliament’s adoption of legislation banning the practice.<sup>96</sup>

Once again, the national reform was linked to local mobilization, in this case:

...teaching women first about their human rights, followed by other modules related to problem solving, health, and hygiene...Although the project had originally targeted 30 villages...project organizers, facilitators and participants succeeded in expanding its reach. In November 1999 approximately 80,000 people from 105 villages participated in a ceremony during which they issued a public declaration ending the practice...<sup>97</sup>

To return to a general point about legal empowerment, even where foreign initiative has been involved in these cases, it seems to respond to local needs and priorities. In contrast, whatever the justifications for most ROL orthodoxy endeavors, it would not seem that the poor would see better courthouses or judicial administration as issues to rally around.

The Ecuador and Senegal experiences indicate that where local civil society requires assistance, international organizations can play important facilitating roles regarding legal empowerment. In the end, this work must respond to community priorities, perhaps even more so when the implications are national rather than local. And preferably, the only foreign support that is needed is financial. But as with other development initiatives, there is room for other assistance (such as capacity building) where necessary.

At the same time, it is important not to become too enthralled with national impact, for the reasons suggested above in the critique of ROL orthodoxy: Changes in laws and policies mean little to the poor if they are not enforced, and enforcement is the exception rather than the rule in most developing countries. Both the Ford Foundation and Asia Foundation/ADB studies emphasize *implementation* of reform and not simply reform per se for this reason. A value of legal empowerment is that it can constitute a feedback loop, through which grassroots experience feeds legal and regulatory change, which further grassroots work in turn converts from reform on paper to reform in practice.

***Quantitative Research Indicating Impact.*** With the caveat about national impact in mind, it is useful to turn to survey research, sometimes complemented by focus groups and other mechanisms, that documents legal empowerment's community-level results. A World Bank assessment of an NGO legal services program it supported for poor women in Ecuador found, inter alia, that as compared to demographically similar nonclient populations, clients experienced significantly less domestic violence, higher rates of child support payments, and enhanced self-esteem.<sup>98</sup> These results have powerful, positive implications for poor women and children. For instance, above and beyond its immediate damage, the poverty-exacerbating impact of violence against women has been well documented by the World Bank and other sources.<sup>99</sup> Reducing the violence yields numerous benefits.

The Asia Foundation/ADB study similarly used quantitative inquiries in two of the seven countries it covered, with similarly favorable results. Survey research, focus groups, and interviews with government officials in the Philippines all indicated that farmers who received NGO capacity-building and related legal services—from Kaisahan, one of the aforementioned ALGs—brought about more successful implementation of a government agrarian reform program than did farmers who did not receive such services. The research also suggested follow-on impact, in terms of greater productivity, income, farm investment, and housing quality among those recipients of legal services.<sup>100</sup>

In Bangladesh, the Asia Foundation/ADB study determined that two broad-based NGOs that integrate legal services with mainstream development work achieved manifold poverty-alleviating impact. Based on comparisons between their member populations and demographically similar control groups, these results included: restraining the widespread but illegal practice of *dowry*;<sup>101</sup> successful citizen participation in joint actions and in influencing local government decisions; fostering positive community attitudes toward women's rights and participation in governance; use by the poor of government-managed lands that local elites otherwise seize; and dramatically less reliance on those elites for dispute resolution. The same research found that a third NGO, a legal services group that specializes in community-level mediation, achieved modest impact in some of these regards and an even greater impact on reducing elite dominance of dispute resolution.<sup>102</sup>

Finally, quantitative research on a USAID-funded Women's Empowerment Program in Nepal similarly suggests the value of integrating legal and socioeconomic development work. The program combined literacy classes, arithmetic education, microenterprise development and training, microcredit access, nonformal legal education, and advocacy-oriented group strengthening for 100,000 women. An impact study found that women involved with this project benefited in several ways when compared to control populations. They initiated eight times as many actions for "social change" (such as community development and health projects, and campaigns against domestic violence, alcohol, and gambling by men), participated 30 percent more in family and independent income allocation decisions, and better understood the importance of keeping their daughters in school.<sup>103</sup> A subsequent review concluded that literacy was a key element in the women's empowerment but reaffirmed the value of integrating legal and quasilegal (advocacy-oriented) components with the literacy training and other mainstream development activities.<sup>104</sup>

The findings of these various studies should be approached with some caution, because the methodologies may well benefit from refinement in the future. These inquiries, therefore, should be seen as modest initial forays into issues that merit far more scrutiny. Still, the results suggest the possibility of a powerful impact that affects poverty more directly and cost-effectively than does the dominant ROL paradigm. Those results also indicate that legal empowerment holds great potential for mainstream socioeconomic development efforts.

***Paralegal Development as a Multifaceted Resource.*** Though this paper cannot detail the many forms that legal empowerment takes, paralegal development merits special mention because it transcends many societies and sectors. As noted above, paralegals are laypersons, often drawn from the groups they serve, who receive specialized legal training and who provide various forms of legal education, advice, and assistance to the disadvantaged. Their education also includes learning through experience, often by soliciting advice from NGO lawyers or other NGO personnel (themselves paralegals) as concrete issues arise. Perhaps, then, the notion of paralegal training should give way to one of "ongoing paralegal development," including but not limited to training.

Depending on their level of sophistication and the needs of the populations they help, paralegal activities may range from providing basic information and advice on the one hand to representation in administrative processes and assisting litigation on the other. The training similarly is pitched to the paralegals' sophistication and levels of prior education.

Toward the more basic end of the paralegal skills spectrum, then, in India, the Karnataka Women's Legal Education Program:

mainly works through what are known as *sanghas* (collectives) to provide women with paralegal training. A *sangha*, typically composed of twenty to twenty-five community members, often is formed by a small local NGO in order to help it address livelihood, family planning, or credit needs. [The Program] conducts paralegal workshops for both selected *sangha* members and NGO personnel.

A fundamental feature of *sangha* training in India is the emphasis on attitudinal change. Given the deeply ingrained feelings of inferiority that the culture inculcates in both *dalits* (untouchables) and women, NGOs seek to broaden their perspectives. [The Program] does this, in part, by emphasizing gender considerations such as the value of women's reproductive and household work.<sup>105</sup>

Drawing on this legal training and attitudinal change, the women report that they are able to band together against domestic violence in their communities. Armed with basic knowledge of minimum wage laws, they also negotiate better farm wages from local landlords—not necessarily as high as legally required, but better than what they previously were paid.

At the more sophisticated end of the spectrum, South Africa's Black Sash Trust, an NGO, uses professional paralegals to assist citizens with a diversity of problems, such as obtaining government benefits to which they are legally entitled and detecting illegal conduct by government personnel. It also trains volunteer, community-based paralegals. Black Sash builds on both kinds of experience to pursue policy advocacy and press for government accountability on national and state levels, often in partnership with other groups. Its work contributes, for example, to public interest litigation launched by LRC.

A recent review of Kenyan access to justice projects supported by DFID summarizes three key elements of how paralegal operations further the empowerment of disadvantaged individuals and groups in Kenya:

Paralegal Networks are an important component of community empowerment. They are unique in the [Access to Justice] Sector in that they seek to achieve the objective through setting up a local resource-base of knowledge and seek to facilitate action by local communities to resolve their own problems in a sustainable manner. The focus in this assessment is on three main categories of paralegal work...

[1] Paralegal workers are playing an important and relevant role in the civic education process, especially in relation to promoting rights awareness...

[2] For rights to be meaningful and for people to adhere to and to trust in the rule of law, the ordinary person must have access to the formal legal system. In the context of the communities within which the paralegals operate, however, the informal legal system (those run by the chiefs and other administrators and the elders and other community-based leaders and informal group mechanisms) are just as important as the formal ones in terms of addressing day-to-day issues...

[3] The empowering influence of rights awareness is a catalyst for social organization and community-driven development. The activist function recognizes that legal rights...can often [best] be achieved working outside of the [formal, narrowly defined legal system] and particularly through articulation of rights using advocacy and lobbying in an activist manner. The point is that the legal system itself can sometimes work against the best resolution of a particular problem.<sup>106</sup>

One could quibble with that final point, by positing a broad definition of the legal system, embracing the impact of advocacy and lobbying on rights and government decision making. Regardless, the substance of the insight remains the same: paralegal efforts (and other activism) sometimes achieve the most when they transcend conventional confines of legal systems and legal work.

Although on initial reflection it might seem that the circumstances of prisoners militates against legal empowerment—they hardly can benefit in the ways described by the DFID Kenya review and by definition they do not control their circumstances—experience indicates that paralegal development can help even this kind of population.

More specifically, in Malawi, a Paralegal Advisory Service (PAS) organized by Penal Reform International (PRI), four national NGOs, and the Malawi Prison Service operates in the country's four main prisons, where 75 percent of the country's 8,500 inmates reside. Providing basic legal information, advice, and assistance to the prisoners, PAS particularly focuses on:

...remand prisoners who have overstayed or are being held unlawfully or inappropriately. Priority is given to vulnerable groups (women, women with babies, young people in conflict with the law, foreign nationals, the mentally and terminally ill, and the elderly). Paralegals assist prisoners in filling out bail application forms and then lodge them with the relevant court, and advise convicted prisoners who wish to appeal against their sentence...

In 2002 an independent evaluation report found that prisoners had become more sophisticated in their understanding of the law and court procedure. In addition, the PAS facilitated the release of over 1000 prisoners, whether through bail, discontinuance or discharge...

According to the evaluation report...since they do not seek to find fault with individual agencies in the system, but to assist the system as a whole to function better, [the paralegals] are valued by the police, courts and prisons.<sup>107</sup>

The project assumes greater salience, given that inadequacies in many criminal justice systems cause innocent individuals to be imprisoned or guilty persons to be jailed longer than is legally warranted. The paralegal services become all the more valuable in view of these realities.

Of course, not all paralegals can achieve the array of results described here. Their effectiveness often hinges on their levels of education, the degrees to which their communities are organized, the extent to which government is responsive, and the overall political milieu within which they operate. But even modest initial achievements can set the stage for more dramatic impact down the line, as conditions and capacities develop.

***Integration and Mainstreaming.*** Legal empowerment often operates best when it integrates various activities so that the whole is greater than the sum of the parts. This takes place in two ways. The first involves the integration of different kinds of legal services, so that public education, community training, paralegal development, negotiation, mediation, legal advice, litigation, and law reform reinforce one another.

For instance, paralegals engaged in negotiation or mediation can call on lawyers to take cases to court as a last resort; litigation is not usually used but increases the negotiating power of the parties being assisted by the paralegals. Even where a judicial system is terribly flawed, the possibility of going to court can alleviate the power imbalances that usually tip against women and the poor.

The other type of integration takes place where legal services blend with group formation, community organizing, and other activities pursued under the rubric of “mainstream” socioeconomic development fields—for example, rural development, public health, reproductive health, housing, natural resources—and address the goals and concerns of those fields. Most of the above illustrations involve such mainstreaming. The work of the Philippines ALGs, for example, is sometimes called “development lawyering” or “developmental legal services” for this reason.

But it is not only legal services NGOs that take the lead in this work. Other NGOs conduct legal empowerment work, sometimes in combination with legal services groups but also on their own. Banchte Shekha, a women’s movement based in rural Bangladesh, has improved its members’ capacities and well-being through a combination of literacy training, rights education, livelihood development, consciousness raising, organizing, and alternative dispute resolution (ADR). By building on all of these other activities, the Banchte Shekha ADR—a reformed version of a traditional dispute resolution process called *shalish*—both addresses mistreatment of women and ameliorates the power imbalances that often tilt ADR against them. The Asia Foundation/ADB survey research cited above documents the NGO’s positive impact on dowry, women’s status, and other issues.

A regrettably short-lived, USAID-supported initiative in the 1990s further illustrated the value of integrating law and mainstream development, in this instance legal and family planning services. Communities whose members were already familiar with reproductive health NGOs readily accepted the integrated programs. In introducing legal services, those NGOs drew on the goodwill established through many years of contact with the communities. An evaluation of the project confirmed the mutually beneficial relationship of the two kinds of work.<sup>108</sup>

One of the more significant forms of mainstreaming takes place where legal services facilitate agrarian reform and other land tenure improvements for the disadvantaged (for example, helping women with land claims stemming from divorce or inheritance). As the aforementioned Asia Foundation/ADB study demonstrates, NGO lawyers and paralegals can contribute to the success of agrarian reform programs. The Rural Development Institute (RDI) similarly documents the positive contribution of legal services to such programs.<sup>109</sup> It also highlights the roles civil society can play more generally, urging aid donors to “provide technical assistance and financial support to indigenous non-governmental organizations, labor organizations, and other broad-based groups that are able to conduct essential grassroots education and organizing on the land reform issue.”<sup>110</sup> The manifold benefits of agrarian reform include poverty-alleviating increases in crop production, nutritional welfare, and incomes; ripple effects on economic growth; and contributions to democratic development and stability.<sup>111</sup>

***Law Students: Expanding Legal Empowerment’s Pool of Attorneys.*** Although this paper has discussed certain respects in which lawyers play supportive rather than leading roles regarding legal empowerment, they of course are essential for a number of activities that strengthen disadvantaged populations’ control over their lives. The best way to engage attorneys in this kind of work is to expose them to such activities and perspectives while they are in law school, through clinical legal education and related activities.<sup>112</sup> Beyond expanding legal services to the poor, this approach expands the students’ perspectives, experience, and contacts in ways that enable many to work with the disadvantaged over the long haul.



In South Africa, the University of Natal-Durban's Campus Law Clinic, which operates much like an NGO, tackles many cases and issues that represent the interests of groups rather than individuals. Through both classroom instruction and actual practice, it familiarizes students with legal issues outside the ambit of the traditional curriculum.

Support by the Open Society Institute, the Ford Foundation, and USAID for clinical legal education in Eastern Europe and the former Soviet Union appears to be contributing to the growth of public interest law in those transitional societies. In Poland and some other countries, this includes building up a nucleus of future attorneys dedicated to progressive legal practice.

The Philippines may be particularly noteworthy because many of the attorneys leading and staffing the ALGs first received exposure to development work while in law school. The Ateneo Human Rights Center, an NGO based at a leading law school, has been particularly instrumental in this regard. But other law schools' programs, as well as ALGs' paid positions and internships for law students, have also contributed to sustaining this integration of development and law.

Coincidentally, the University of Dhaka Faculty of Law is now running a similar program for leading law students from across Bangladesh, immersing them in field research that exposes them to the lives and legal needs of disadvantaged populations. A number of alumni of this effort, and of a clinical legal education program that provides brief placements with NGOs, have gone on to staff legal services groups after graduation.

Finally, the integration of law and development in law schools is also taking hold in some programs in Latin America. As the Dean of Argentina's University of Palermo Law School notes, "the economic crisis in Argentina put us in a new situation where we could not just do public interest litigation, for we could not assume that the bankrupt state could respond to [the court decisions]...so we need to work with grassroots and poverty organizations in additional ways" that include paralegals and basing legal service lawyers in poor neighborhoods.<sup>113</sup>

## **TOWARD A PARADIGM SHIFT**

### **Building a Legal Empowerment Program**

Though detailing a legal empowerment program is far beyond the parameters of this paper, it is possible to sketch some potential elements. A "model" program would comprise a mix of features: prioritizing the needs and concerns of the disadvantaged; emphasizing civil society, including legal services and development NGOs, as well as community-based groups; using whatever forums (often not the courts) the poor can best access in specific situations; encouraging a supportive rather than lead role for lawyers; cooperating with government wherever possible, but pressuring it where necessary; using community organizing or group formation; developing paralegal resources; integrating with mainstream socioeconomic development work; and building on community-level operations to enable the poor to inform or influence systemic change in laws, policies, and state institutions.

This model program inevitably gives way to the reality that legal empowerment work must vary from country to country, issue to issue, and even community to community. In the Philippines, this multifaceted work has featured community organizing and typically deals with administrative law and local governance; in Bangladesh, alternative dispute resolution and informal justice systems; in

South Africa, public interest litigation and broad-based mobilization. Paralegal development and law reform cut across numerous legal empowerment initiatives, but there are many exceptions to this rule and many locally determined ways of undertaking these activities.

Legal empowerment programs should take a long-term perspective: It can take at least a few years to start producing impact and even longer for that impact to broaden and deepen. A long-term approach also involves building a public interest bar by supporting law school and NGO programs that engage law students and young attorneys in legal services and that teach them the skills and perspective of development lawyering: how to both teach and learn from the poor; how to view them as partners rather than (subservient) clients; how to analyze problems politically, culturally, and from a gender perspective, rather than just legally; and how lawyers can advance social change. Conversely, exposing other development fields' young professionals to human rights and legal empowerment considerations could expand their capacities to integrate law and development in their work. In-country and international exchanges also can open up vistas for disadvantaged populations' leaders, NGO lawyers, law students, law professors, development practitioners, and government officials to learn from pertinent experience elsewhere.

Regardless of the exact nature of a legal empowerment program, it can be undertaken under at least three rubrics: (1) as aid specifically directed at legal empowerment; (2) in conjunction with ROL promotion; or (3) as part of mainstream socioeconomic development work.

The program's effectiveness will hinge not just on *what* work is supported, but *how* it is supported. NGOs that show sufficient progress and potential merit ongoing core funding that enables them to pursue their own agendas in accordance with evolving circumstances and partner populations' priorities, rather than in response to sometimes rigid donor requirements. Similarly, it is best for funding agencies to take a flexible, foundation-like approach. This approach involves gradually identifying grantees, making grants, and building programs as situations evolve. It is in contrast to the project approach that tends to lock in activities at the outset. This is not to say that bilateral and multilateral donors can or should restructure to resemble foundations. But they should set up foundation-like assistance windows for supporting legal empowerment.

This can involve channeling bilateral aid funds to local and international NGOs familiar with grant making, legal empowerment, civil society or grassroots development, as well as to those multilateral development agencies whose mandates and operating styles aim to serve the poor rather than their host governments. Funding for legal empowerment work should not be administered by aid agencies that are constrained by their policies or orientations to work through official channels rather than civil society, unless they can open appropriate funding windows or otherwise modify their operations. Although it would be a great step forward for multilateral banks to mainstream legal empowerment work into their socioeconomic development projects, the funds for that work should be grants rather than loans under most circumstances and should flow through organizations that can best take a foundation-like approach.

### **Striking a Balance in Rule of Law Aid**

Despite this paper's critical tone toward ROL orthodoxy, it does not aim to dismiss all assistance to state legal institutions. The objective, instead, is to press for a more skeptical stance and a better balance in ROL aid. The best intentions of some donor and government officials notwithstanding,



state institutions often are burdened by counterproductive incentives and constraints that outweigh or outlast efforts to ameliorate them. These include entrenched bureaucratic structures, inefficient use of resources, corruption, patronage, gender bias, general aversion to change, and other factors that work against, rather than for, the disadvantaged. Many aid organizations' law programs either do not address the legal priorities of the poor or do so ineffectively because of excessive reliance on state institutions and top-down approaches. Though precise calculations are beyond this analysis, some international agencies could be spending as much as 90 percent of ROL funds on activities that address only 10 percent of disadvantaged populations' greatest legal problems.

In view of the dominant paradigm's problematic assumptions and track record, it is best to raise the bar in deciding where and to what degree to work with state legal institutions. The political will for reform should be strong, not simply acquiescent. We should be modest about our expectations for generating and sustaining that political will where it is lacking. Even to the extent that long-term cultivation and support of local reformers in state institutions makes sense, this also weighs in favor of long-term funding of civil society forces that act on their own justice agendas, hold those state institutions accountable, and help them do their jobs whenever possible.

With legal empowerment's accomplishments and potential in mind, it should be the sole focus of some law-oriented programs and a core component of most others. This translates into substantial support for legal services and capacity building for the poor, toward the dual ends of both implementing and reforming laws. Where legal empowerment is the sole focus of a law program, it could be organized around general themes such as gender or agrarian issues, or could more comprehensively support pro-poor legal services. Regardless, a guiding principle is responsiveness to disadvantaged populations' legal needs, rather than a top-down focus on a narrow range of legal institutions. This emphasis is also guided by the fact that domestic civil society's homegrown analyses of problems and solutions are often better informed than those of foreign donors.

As a core component of law programs, legal empowerment can complement work with state institutions. This can take the form of collaboration with both upland populations and ministries of natural resources regarding environmental matters, for example. It can also involve strengthening the knowledge, capacities, and organization of those upland groups (or of farmers, or of women) regarding not just the legal issues specific to them but also the conventional justice sector. For instance, legal services for farmers who are originally organized around agrarian concerns may constitute an important complement to state-oriented efforts to improve police professionalism, where those farmers have sufficient legal knowledge and connections (with lawyers, higher level law enforcement personnel, other officials, politicians, NGO staff) to call police to account. Certainly, vibrant civil society is a valuable, even crucial, resource in promoting police accountability. Law enforcement personnel who are prone to abusive, corrupt conduct require outside, organized groups to ensure that state efforts to reorient them prove sustainable. Those groups typically exist for purposes other than police monitoring per se.

The bottom line, then, is not that government is always the problem and civil society the solution. Rather, part of the necessary paradigm shift is to view the justice sector more broadly, which necessarily results in greater support for civil society efforts that address a broader assortment of legal issues and that help or pressure government to do its job better. This can yield not only greater agrarian, gender, and environmental justice, but a greater likelihood of effecting safety, security, and access for the poor even within narrow notions of the sector.

## **Mainstreaming**

Another important component of the paradigm shift—potentially more far-reaching than adjusting the balance within the ROL field—is to mainstream legal empowerment into socioeconomic development projects (for example, natural resources management, irrigation, rural development, public health, gender). Educating and enabling the disadvantaged to deal with legal matters immediately affecting them would positively impact human rights, good governance, and project performance. It could also open doors to their positive involvement with other issues important to them. Filipino farmers and Bangladeshi women organized around agrarian reform and gender concerns, respectively, have been better able to participate in local governance, for example.

One potentially powerful approach to mainstreaming is to build on the group formation that occurs in many socioeconomic development fields. Pulling together disadvantaged persons for purposes of microcredit, livelihood, reproductive health, public health, forest use, irrigation, or literacy training addresses their immediate priorities. It also may be tolerated or even welcomed by local leaders who might resist an initial focus on women's or farmer's rights. Once the group achieves some cohesion and acceptance in the community, members can start discussing legal issues that affect them, with paralegal development and legal activism following further down the line.

If legal services are to be mainstreamed into socioeconomic development, it will be necessary to overcome the sectoral divisions that hinder development effectiveness. One place to start would be the most basic sorts of workshops within development agencies. At these sessions, legal practitioners and those from other disciplines could share experiences about specific projects and resulting lessons. Those in the legal field would have more to learn than to teach about conducting impact-oriented research. On the other hand, they might bring to the table perspectives about ways of advancing rights and alleviating poverty simultaneously, perhaps fleshing out the concept of a rights-based approach to development.

Aid agencies should adopt structural changes to make mainstreaming possible. Their headquarters should launch cross-sectoral working groups to learn about existing civil society efforts and impact concerning legal empowerment, convert these lessons into guidance for field offices, and provide an impetus for those offices to consider launching legal empowerment initiatives.

A related process should take place in these agencies' country offices, with water or forest sector staff, for example, exploring how legal services might benefit their partner populations, as well as their current and potential projects. Conversely, justice sector staff (or governance sector colleagues, who handle law-oriented programs in some organizations) could examine how a broader, cross-sectoral approach could benefit their work. To avoid a top-down approach, these efforts not only should involve consultation with partner groups but also should consider relevant efforts already under way in the country, particularly those of civil society, with a view toward possibly supporting or building on them. The end result of these processes would be initiatives that feature or include legal empowerment.

## **Reaching the Poorest of the Poor**

What of the many situations in which civil society, legal services, and the basic capacities of the poor are torn by war, crushed by repression, stunted by severe poverty itself, or in the early stages of recovering from any of these situations? Admittedly, legal empowerment works best in the presence

of a vibrant civil society. Is it beyond the reach of the poorest of the poor? Legal empowerment (or, for that matter, state legal institutions) should not automatically be included in the initial mix of development efforts. Sometimes basic socioeconomic recovery initiatives should be the priority.

Still, despite these constraints, the building blocks of legal empowerment can be put in place. As discussed above, group formation around basic socioeconomic needs can provide an entry point for mainstreaming subsequent law-oriented work. A long-term strategy of building up a rights-oriented civil society can benefit both development and human rights.

Local conditions permitting, the long road toward the poorest of the poor achieving control over their lives can include introducing them to the very notion that they have rights and the ways in which those rights can benefit their daily existence. Training them regarding these matters should take account of their priorities, their levels of education, and the nature of the laws most relevant to them. This generally translates into the use of interactive, “popular education” methodologies rather than law lectures, and a focus on domestic laws rather than international human rights treaties (unless of course the domestic laws repress rather than serve the poor).

International NGOs may play leading roles in these efforts where local conditions or insufficient capacities bar domestic NGOs and community-based groups from doing so. A goal, course, is to build those domestic capacities over time.

### **Filling the Informational Vacuum**

This paper concludes where it began, both asserting the need for a paradigm shift and acknowledging that those of us concerned with law and development do not know enough to pinpoint the precise contours of that change. Rule of law orthodoxy is characterized by questionable assumptions, unproven impact, and insufficient attention to the legal needs of the disadvantaged. Legal empowerment constitutes an appealing alternative that has contributed to poverty alleviation, good governance, and other development goals. But the legal field remains far behind other development fields in documenting and learning from impact. Along with more general research on law and development, we need to better understand the dynamics underlying legal empowerment, the challenges it faces, and the impact it achieves.

A legal empowerment program, then, should include rigorous research that can help determine the most effective strategies and activities, as well as contribute knowledge to governance, ROL, and socioeconomic development work. Quantitative and qualitative tools such as survey research and rapid rural appraisals should be used to scrutinize the dynamics that contribute to (or constrain) successful legal empowerment work, so as to derive lessons that will help human rights and development organizations build on that experience. At the same time, it is important to avoid becoming consumed by short-term indicators and other bureaucratic mechanisms that can counterproductively dominate monitoring and evaluation.

USAID (in Nepal), the Asia Foundation and ADB (in the Bangladesh and the Philippines), and the World Bank (in Ecuador) have begun to use research to fill the large informational vacuum. But we need more ambitious and varied studies across the globe if the international community is to most effectively integrate law and development so as to benefit the poor.

## NOTES

1. This paper is primarily based on research I conducted under the generous and much-appreciated auspices of an Open Society Institute Individual Projects Fellowship. It also draws on studies and consultancies that I have conducted for other institutions, such as the Ford Foundation, the U.K.'s Department for International Development and the World Bank. Foremost among these studies is a research project for the Asia Foundation and Asian Development Bank: Stephen Golub and Kim McQuay, "Legal Empowerment: Advancing Good Governance and Poverty Reduction," in *Law and Policy Reform at the Asian Development Bank*, 2001 edition (Manila: Asian Development Bank, 2001), available at [www.adb.org/Documents/Others/Law\\_ADB/lpr\\_2001.asp?p=lawdevt](http://www.adb.org/Documents/Others/Law_ADB/lpr_2001.asp?p=lawdevt). For better or worse, however, all analysis and conclusions in this paper are my own and should not be attributed to any of these institutions. I welcome comments, which can be sent to me at [sjg49er@aol.com](mailto:sjg49er@aol.com).
2. Although such organizations as the U.K.'s Department for International Development (DFID), the Asian Development Bank, and the Asia Foundation have started to use the term *legal empowerment*, I use it here to also include a range of initiatives (some described in this paper) that fit the definition but that go by other names—or by no specific title at all.
3. The term *rule of law orthodoxy* was coined by Frank Upham in his *Mythmaking in the Rule of Law Orthodoxy*, Carnegie Endowment Working Paper No. 30, Rule of Law Series, Democracy and Rule of Law Project (Washington, D.C.: Carnegie Endowment for International Peace, September 2002). Upham characterizes ROL orthodoxy as contending "that sustainable growth is impossible without the existence of the rule of law: a set of uniformly enforced, established legal regimes that clearly lay out the rules of the game" (p. 1). I expand the definition so that it includes not just this underlying rationale, but the set of ROL programs and activities geared toward achieving sustainable growth and other goals. In this paper, then, ROL orthodoxy is the same as the dominant paradigm for integrating law and development, and not just the intellectual basis for the paradigm.
4. In ascribing certain orientations to the multilateral development banks and other aid institutions, I of course am generalizing about organizations that have different units proceeding in different ways, some in more creative and less orthodox manners than others.
5. I use the term *disadvantaged populations* in the legal empowerment definition because it could be considered a broader class of persons than the poor. The concept includes the poor, but also those who face discrimination or abuse as a result of their gender, race, ethnicity, or other personal attributes. Still, as discussed in this paper, the consensus characterization of poverty has broadened to include lack of opportunity and power, so that it comes closer to the notion of disadvantaged persons. To avoid further splitting of definitional hairs, however, I use the terms "poor" and "disadvantaged" interchangeably in this paper.
6. Here, the term *mainstream socioeconomic development efforts* refers to the many fields that are organized around the concept of directly improving the social and economic well-being of the poor and that consume the bulk of development funding.
7. For instance, the World Bank's Africa Region Gender and Law Program has laudably implemented a program of matching grants for state and civil society institutions to implement legal services for women, but its funds are very limited and insecure in comparison with what the institution spends on judicial reform. The bank's Legal and Judicial Reform Practice Group has commendably started to undertake support for legal services for the poor, but the effort is constrained by the relative paucity of funds devoted to such services: less than \$400,000 of a \$10.6 million judicial reform project in Ecuador, for instance, and even this project was an exception to the rule. See World Bank, *Impact of Legal Aid: Ecuador* (Washington, D.C.: World Bank, February 2003).
8. Patrick McAuslan, "Law, Governance and the Development of the Market: Practical Problems and Possible Solutions," in *Good Government and the Law: Legal and Institutional Reform in Developing Countries*, ed. Julio Faundez (London: Macmillan, 1997), 25–45, at 30–1.
9. World Bank, *Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency* (Washington, D.C.: World Bank, July 2002), 1.
10. Nestor Humberto Martinez, "Rule of Law and Economic Efficiency," in *Justice Delayed: Judicial Reform in Latin America*, ed. Edmundo Jarquin and Fernando Carrillo (Washington, D.C.: Inter-American Development Bank, 1998), 3.
11. See [www.usaid.gov/democracy/index.html](http://www.usaid.gov/democracy/index.html). DG programs' link to ROL is reflected in the fact that the name of the USAID unit that originally promoted the rule of law in the 1980s was the Office of Administration of Justice and Democratic Development. However, although USAID's DG goals are not inherently business-oriented, one assumption is that good governance creates the proper environment for business to flourish.
12. See, for example, DFID, *DFID Policy Statement on Safety, Security and Accessible Justice* (London: DFID, 2003).
13. See, for example, DFID, *Justice and Poverty Reduction* (London: DFID, 2000).
14. For a thoughtful but nevertheless narrow list of the main components of the justice sector, see DFID, *Safety, Security and Accessible Justice: Putting Policy into Practice* (London: DFID, July 2002), 12.
15. See, for example, Daniel Kauffman, *Misrule of Law: Does the Evidence Challenge Conventions in Judiciary and Legal Reforms?* Draft for discussion, July 2001, at [www.worldbank.org/wbi/governance/pdf/misruleoflaw.pdf](http://www.worldbank.org/wbi/governance/pdf/misruleoflaw.pdf).

16. Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge, U.K.: Cambridge University Press, 1990), 110.
17. Amanda Perry, "International Economic Organizations and the Modern Law and Development Movement," in *Making Development Work: Legislative Reform for Institutional Transformation and Good Governance*, ed. A. Seidman, R. B. Seidman, and T. Walde (New York: Kluwer Law International, 1999), 19–32, at 28.
18. Perry, "International Economic Organizations," 26.
19. Richard E. Messick, "Judicial Reform and Economic Development: A Survey of the Issues," *The World Bank Research Observer*, Vol. 14, No. 1 (February 1999), 117–36, at 122.
20. Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge*, Carnegie Endowment Working Paper No. 34, Rule of Law Series, Democracy and Rule of Law Project (Washington, D.C.: Carnegie Endowment for International Peace, January 2003), 3.
21. See, for example, McAuslan, "Law, Governance," 30–1.
22. See, for example, Richard Posner, "Creating a Legal Framework for Economic Development," *The World Bank Research Observer*, Vol. 13 (Washington, D.C.: World Bank, 1998).
23. China is not an unalloyed example of success, however, in that growing prosperity for hundreds of millions citizens is partly offset by economic insecurity and even deprivation stemming from loss of jobs and the removal of the "iron rice bowl." The positive and negative developments are products of the shift from socialism to capitalism, however, rather than any efforts to institute the rule of law.
24. For an analysis that places responsibility for the crisis mainly on U.S. government and International Monetary Fund decisions rather than East Asian nations' laws and institutions, see Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton and Company, 2002), ch. 4, 89–132. Stiglitz, recipient of the 2001 Nobel Prize for Economic Science, was World Bank chief economist during the crisis.
25. Stephan Haggard, *Pathways from the Periphery: The Politics of Growth in the Newly Industrialized Countries* (Ithaca, NY: Cornell University Press, 1990).
26. Katarina Pistor and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development: 1960–1995* (New York: Oxford University Press, 1999), 19.
27. Amanda Perry, "An Ideal Legal System for Attracting Foreign Direct Investment? Some Theory and Reality," *American University International Law Review*, Vol. 15, No. 6 (2000), 1627–57.
28. John Hewko, *Foreign Direct Investment: Does the Rule of Law Matter?* Carnegie Endowment Working Paper No. 26, Rule of Law Series, Democracy and Rule of Law Project (Washington, D.C.: Carnegie Endowment for International Peace, April 2002), 4.
29. Hewko, *Foreign Direct Investment*, 5.
30. Upham, *Mythmaking*, 7.
31. Upham, *Mythmaking*, 19.
32. Upham, *Mythmaking*, 1.
33. Upham, *Mythmaking*, 32.
34. Remarks summarized from a roundtable on the rule of law at the Carnegie Endowment for International Peace, September 5, 2001, at [www.ceip.org/files/events/events.asp?p=1&EventID=380](http://www.ceip.org/files/events/events.asp?p=1&EventID=380).
35. U.S. General Accounting Office (GAO), *Foreign Assistance: Promoting Judicial Reform to Strengthen Democracies*, Report GAO/NSAID-93-140 (Washington, D.C.: GAO, 1993).
36. William C. Prillaman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (Westport, CT: Praeger, 2000).
37. Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999), 170.
38. Carothers, *Aiding Democracy Abroad*, 176.
39. Harry Blair and Gary Hansen, *Weighing In on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*, USAID Development Program Operations and Assessment Report No. 7 (Washington, D.C.: USAID Center for Development Information and Evaluation, February 1994).
40. Blair and Hansen, *Weighing In*, 51.
41. Linn Hammergren, *Rule of Law: Approaches to Justice Reform and What We Have Learned: A Summary of Four Papers*, USAID Center for Democracy and Governance (Washington, D.C.: USAID, April 1998). Another thoughtful report in this vein, as reflected in its title, is Madeleine Crohn and William E. Davis, eds., *Lessons Learned: Proceedings of the Second Judicial Reform Roundtable Held in Williamsburg, Virginia, May 19–22, 1996* (Washington, D.C.: National Center for State Courts, USAID, Inter-American Development Bank, November 1996).
42. Hamnergren, *Rule of Law*.



43. USAID, *Achievements in Building and Maintaining the Rule of Law*, Occasional Paper Series, Office of Democracy and Governance, USAID (Washington, D.C.: USAID, November 2002).
44. E-mail correspondence from Linn Hamnergren to author, December 16, 2002.
45. USAID, *Achievements in Building*, 79.
46. Martin Bohmer, "Access to Justice and Judicial Reform in Argentina," in Columbia University Budapest Law Center/ Public Interest Law Initiative, Open Society Justice Initiative, and Fundacja Uniwersyteckich Poradni Prawnych, *Fifth Annual Colloquium on Clinical Legal Education, 15–16 November 2002* (Warsaw, Poland: 2002), 32. In fairness, the MSI report briefly notes apparently modest USAID support for civil society in Argentina (p. 35), though this seems limited to civic education and public information about judicial performance.
47. Carothers, *Aiding Democracy Abroad*, 170.
48. Robert S. Moog, *Whose Interests are Supreme? Organizational Politics in the Civil Courts in India* (Ann Arbor, MI: Association of Asian Studies, 1997), 63.
49. Kauffman, *Misrule of Law*, 2.
50. Kauffman, *Misrule of Law*, 2.
51. E-mail correspondence from Linn Hamnergren to author, December 16, 2002.
52. World Bank Legal Vice Presidency, *Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency* (Washington, D.C.: World Bank, 2002), 65.
53. Although there is some movement by DFID and other donors toward a sector-wide approach in the legal field, this promising development often translates into a focus on specific state institutions.
54. North, *Institutions, Institutional Change*, 3–4.
55. North, *Institutions, Institutional Change*, 5.
56. Former World Bank official William Easterly and Scott Pegg, respectively, in Daphne Eviatar, "Striking It Poor: Oil as a Curse," *New York Times*, June 7, 2003, at [www.nytimes.com/2003/06/07/arts/07BANK.html](http://www.nytimes.com/2003/06/07/arts/07BANK.html).
57. World Bank Legal Vice Presidency, *Legal and Judicial Reform*, 5.
58. Asian Development Bank (ADB), *Cambodia: Enhancing Governance for Sustainable Development* (Manila: ADB, October 2000), 44, at [www.adb.org/Documents/Books/Cambodia\\_Enhancing\\_Governance/chap\\_04.pdf](http://www.adb.org/Documents/Books/Cambodia_Enhancing_Governance/chap_04.pdf).
59. Danish Ministry of Foreign Affairs, Danida, *Evaluation: Danish Support to Promotion of Human Rights and Democratisation, Volume 2: Justice, Constitution and Legislation* (Copenhagen: Evaluation Secretariat, Ministry of Foreign Affairs, 2000), vi.
60. Danish Ministry of Foreign Affairs, Danida, *Evaluation*.
61. DFID, *Safety, Security and Accessible Justice*, 58.
62. See, for example, Stephen Golub, "From the Village to the University: Legal Activism in Bangladesh," in *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees around the World*, ed. Mary McClymont and Stephen Golub (New York: Ford Foundation, 2000), 127–58.
63. The aforementioned Danida evaluation, for example, more generally asserts that "a well-functioning, formal legal system is a pre-requisite for establishing a 'modern' society." Danish Ministry of Foreign Affairs, Danida, *Evaluation*, vi.
64. Michael R. Anderson, *Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs*, IDS Working Paper 178 (Brighton, U.K.: Institute of Development Studies, February 2003), 12, Box 4.1.
65. John Blackton, "Egypt Country Report," pp. 6–8, unpublished background paper prepared in 2000 for USAID and International Foundation for Election Systems (IFES), *Guidance for Promoting Judicial Independence and Impartiality*, Revised Edition (Washington, D.C.: USAID Office of Democracy and Governance, January 2002).
66. Hector Soliman, "Philippines Country Report," p. 3, unpublished background paper prepared for USAID and IFES, *Guidance for Promoting Judicial Independence*.
67. UNDP, *The Status of Governance in Indonesia: A Baseline Assessment*, draft report produced on behalf of the Partnership of Governance Reform in Indonesia, October 2000, p. 11.
68. UNDP, *Status of Governance in Indonesia*, 12.
69. Soliman, "Philippines Country Report," 5.
70. Tim Golden, "Mexico and Drugs: Was U.S. Napping?" *New York Times*, July 11, 1997, at A1, A11.
71. DFID Bangladesh (DFIDB), *Country Strategy Review: 1998–2002 Bangladesh* (Dhaka: DFIDB, August 2002), 22.
72. Written interview with author, May 8, 2001.
73. Save the Children, CARE, and other development and relief groups are well known for their efforts in this regard, but in recent years other organizations, such as the Asia Foundation, have taken on such facilitating functions.
74. In connection with an approximately \$330 million loan to Pakistan, the ADB is establishing a \$24 million endowment for an Access to Justice Development Fund. Although two-thirds of the annual interest income will go to conventional



- judicial development activities, from 15 to 20 percent will be spent on a Legal Empowerment (Sub-)Fund (largely for legal services and public awareness activities). Smaller sub-funds will support legal and judicial research and legal education innovations. See ADB, *Report and Recommendation of the President to the Board of Directors on Proposed Loans and Technical Assistance Grant*, RRP: PAK 32023 (Manila: ADB, November 2001), 60–64.
75. One partial exception to this rule can be found within the World Bank's Poverty Reduction and Economic Management Network (PREM), which actively facilitates and disseminates very useful research on legal systems development experience (as well as many other topics).
  76. Available at [www.worldbank.org/poverty/empowerment/whatis/index.htm](http://www.worldbank.org/poverty/empowerment/whatis/index.htm).
  77. Stephen Browne, "Governance and Human Poverty," *Choices* (September 2002), at [www.undp.org/dpa/choices/2001/september/essay.pdf](http://www.undp.org/dpa/choices/2001/september/essay.pdf).
  78. See Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 2000).
  79. See UNDP, *Human Development Report 2000* (New York: Oxford University Press, 2000).
  80. See World Bank, *World Development Report 2000/2001* (New York: Oxford University Press, 2000), 7.
  81. USAID Center for Development Information and Evaluation, *Linking Democracy and Development: An Idea for the Times*, USAID Evaluation Highlights No. 75 (Washington, D.C.: USAID, December 2001), 1.
  82. DFID, *Safety, Security and Accessible Justice*, 15.
  83. See, for example, Michael Edwards, "NGO Performance—What Breeds Success? New Evidence from South Asia," *World Development*, Vol. 27, No. 2 (1999), 371; P. Evans, "Development Strategies across the Public-Private Divide," *World Development*, Vol. 24, No. 6 (1996), 1033–7; J. Fox, "How Does Civil Society Thicken? The Political Construction of Social Capital in Rural Mexico," *World Development*, Vol. 24, No. 6 (1996), 1089–103.
  84. See, for example, David Brown and Darcy Ashman, "Participation, Social Capital, Intersectoral Problem Solving: African and Asian Cases," *World Development*, Vol. 24, No. 9 (1996), 1467–79; Kathryn Smith Pyle, "From Policy Advocate to Policy Maker: NGOs in Recife," *Grassroots Development Journal*, Vol. 21, No. 1 (1997); Maria Maia, "NGOs as Mediators: Their Role in Expertise, Language and Institutional Exemption in Urban Development Planning," Working Paper No. 77 (London: Development Planning, University College, May 1996), 12.
  85. Monica Das Gupta, Helene Grandvoinet, and Mattia Romani, *Fostering Community-Driven Development: What Role for the State?* World Bank Policy Research Working Paper 2969 (Washington, D.C.: World Bank, January 2003).
  86. See, for example, Golub and McQuay, "Legal Empowerment"; Daniel Manning, *The Role of Legal Services Organizations in Attacking Poverty* (Washington, D.C.: World Bank, September 1999); and Mary McClymont and Stephen Golub, eds., *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees around the World*, available at [www.fordfound.org/publications/recent\\_articles/manyroads.cfm](http://www.fordfound.org/publications/recent_articles/manyroads.cfm).
  87. Office of the High Commissioner for Human Rights (OHCHR), "Rights-Based Approaches: Is There Only One Rights-Based Approach?" at [www.unhcr.ch/development/approaches-05.html](http://www.unhcr.ch/development/approaches-05.html).
  88. OHCHR, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, para.13, at [www.unhcr.ch/development/povertyfinal.html](http://www.unhcr.ch/development/povertyfinal.html).
  89. Golub and McQuay, "Legal Empowerment," 12.
  90. Manning, *Role of Legal Services Organizations*.
  91. McClymont and Golub, *Many Roads to Justice*, 5.
  92. The "alternative" in their name reflects their development-oriented perspectives and how their operations differ from private legal practice and traditional legal aid in the Philippines.
  93. E-mail correspondence from Geoff Budlender to author, January 7, 2003.
  94. CARE, "CARE Ecuador's Subir Project," unpublished summary produced by CARE International's Ecuador office, October 2000.
  95. CARE, "CARE Ecuador's Subir Project."
  96. Available at [www.unicef.org/newsline/99pr1.htm](http://www.unicef.org/newsline/99pr1.htm).
  97. International Center for Research on Women and the Center for Development and Population Activities, "Report-in-Brief," Promoting Women in Development Program (Washington, D.C.: 1999), 1–2.
  98. World Bank, *Impact of Legal Aid: Ecuador* (Washington, D.C.: World Bank, February 2003), 11–12.
  99. See, for example, Lori L. Heise with Jacqueline Pitanguy and Adrienne Germain, *Violence against Women: The Hidden Health Burden*, World Bank Discussion Paper No. 255 (Washington, D.C.: World Bank, 1994); and Andrew Morrison and María Beatriz Orlando, "Social and Economic Costs of Domestic Violence: Chile and Nicaragua," in *Too Close to Home: Domestic Violence in the Americas*, ed. Andrew Morrison and María Loreto Biehl (Washington, D.C.: Inter-American Development Bank, 1999).

100. See “Appendix 1: The Impact of Legal Empowerment Activities on Agrarian Reform Implementation in the Philippines,” in Golub and McQuay, “Legal Empowerment,” 135–49.
101. Dowry is the payment of money, livestock, or other material goods by the bride’s family to the family of the groom, in order to secure a marriage. After the agreed payments are made and marriage occurs, the dowry demands by the groom’s family frequently escalate and are accompanied by violence or other abuse against the wife.
102. See “Appendix 2: The Impact of Legal Empowerment on Selected Aspects of Knowledge, Poverty, and Governance in Bangladesh: A Study of Three NGOs,” Golub and McQuay, “Legal Empowerment,” 135–49.
103. Rajju Malla Dhakal and Misbah M. Sheikh, *Breaking Barriers—Building Bridges—A Case Study of USAID/Nepal’s SO3 Women’s Empowerment Program* (Washington, D.C.: Asia Foundation, 1997).
104. Gwen Thomas and Ava Shrestha, *Breaking New Ground: A Case Study of Women’s Empowerment in Nepal, Women’s Empowerment Program* (Kathmandu: USAID/Nepal, 1998).
105. Stephen Golub, “Nonlawyers as Legal Resources for Their Communities,” in McClymont and Golub, *Many Roads to Justice*, 309.
106. South Consulting, “Kenya Civil Society Programme: Review of Access to Justice Projects,” Final Draft (Nairobi: South Consulting, 2001), 28–29.
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108. Karen L. Casper and Sultana Kamal, “Evaluation Report: Community Legal Services Conducted by Family Planning NGOs,” a report prepared for The Asia Foundation’s Bangladesh office, Dhaka, 1995.
109. See, for example, Leonard Rolfes Jr. and Gregory Mohrman, *Legal Aid Centers in Rural Russia: Helping People Improve Their Lives*, RDI Reports on Foreign Aid and Development No. 102 (Seattle: Rural Development Institute, February 2000).
110. See, for example, Roy L. Prosterman and Tim Hanstad, *Land Reform in the 21st Century: New Challenges, New Responses*, RDI Reports on Foreign Aid and Development No. 117 (Seattle: Rural Development Institute, March 2003), 24.
111. Prosterman and Hanstad, *Land Reform*, 4–7.
112. See, for example, Columbia University Budapest Law Center/Public Interest Law Initiative, Open Society Justice Initiative, and Fundacja Uniwersyteckich Poradni Prawnych, *Fifth Annual Colloquium*.
113. Interview with the author, July 15, 2003.





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