

PART THREE: RECOMMENDATIONS

423. This concluding section of the report converts insights from Part Two into recommendations for use by international development organizations and other funding institutions in planning support for legal empowerment efforts. It begins with a set of core suggestions that are central to the goal of the Legal Empowerment Study—how legal empowerment components can best be integrated into development projects. It then offers thoughts on how such components can enhance the efficacy of legal reform projects, and concludes with recommendations that address other potential legal empowerment initiatives.

I. INTEGRATING LEGAL EMPOWERMENT INTO SOCIOECONOMIC DEVELOPMENT PROJECTS

424. ***Legal empowerment work should be integrated into many projects supported by ADB and other international development institutions.***

- Legal empowerment has a proven track record in contributing to good governance and poverty reduction. In particular, it has helped to significantly strengthen socioeconomic development efforts in a variety of areas, including natural resource management and conservation, rural development, agrarian reform, decentralization, and women's health.
- While legal empowerment may not merit support under each and every mainstream development initiative, many projects will benefit from it. Furthermore, the prospect of certain projects succeeding will be much greater as a result of its inclusion.

425. ***Assess potential project performance impact in determining when to include a legal empowerment component:***

- The basic criteria for deciding whether to initiate a legal empowerment component include whether project performance will be enhanced if beneficiaries understand and act on their rights and responsibilities under the project and under relevant regulations and laws.
- Such understanding and action can in turn help to stimulate responsive and responsible conduct by government officials and even by private parties who influence project performance. It also has a dual poverty-alleviating effect, which may reach beyond narrow performance indicators, in the sense that the use of law facilitates people's participation in decisions that shape their lives and may also improve their material circumstances.

426. ***Legal empowerment involves more than education and training:***

- A fundamental finding of the Legal Empowerment Study is that knowledge alone does not equal power or the capacity to take action. Support for legal empowerment work should accordingly involve more than just education and training. It also may need to include mediation, litigation, media coverage, community organizing, and other activities through which citizens and communities can build on their legal knowledge and actively pursue their rights and interests.

427. Legal empowerment is not the exclusive domain of lawyers:

- A professional background in law is not a prerequisite to effective involvement in legal empowerment work. Various persons with backgrounds in other fields can and should play roles in legal empowerment projects. They bring skills and experience that lawyers may not have. Their involvement may also offer certain cost advantages, as non-lawyers tend to be less expensive than lawyers.
- Involving non-lawyers may simply be a matter of necessity. In many societies there is a general shortage of lawyers and in all societies there is a shortage of dedicated lawyers with a developmental orientation.

428. Paralegal development is a worthy investment, wherever appropriate:

- A paralegal is a valuable resource because he or she can cost effectively teach the disadvantaged about the law and help them to act on the knowledge acquired in dealing with the police, administrative agencies, private parties, and even the courts.
- Paralegals who reside in the very communities that they assist offer an ongoing source of empowerment for those communities. Rather than depending on periodic visits by legal service providers, communities can draw on resident paralegals whenever their advice or assistance is required.

429. Pursue legal empowerment work through non-judicial forums:

- As a matter of principle, practicality, and cost effectiveness, donors should seek to pursue legal empowerment work through non-judicial forums as much as possible. Among other benefits, such forums are typically more accessible and comprehensible to the disadvantaged than courts.

430. Litigation has a place in legal empowerment efforts:

- Despite its shortcomings, litigation can constitute a necessary element in a comprehensive legal empowerment effort. Sometimes it is the only mechanism for securing appropriate action from recalcitrant government officials or private parties.
- Litigation frequently serves as a fallback option in advancing good governance and poverty reduction where other legal devices fail. The very threat of litigation may compel compliance with the law.

431. Budget to retain or otherwise engage lawyers:

- The possibility of litigation and other law-oriented advocacy means that the budget for the legal empowerment component of a project should include funds to engage professional legal services, where necessary. While this does not mean that such a component will include court cases, various forms professional advocacy may be an effective part of the mix.
- The same lawyers who might provide such services also should be involved in the training and counseling of project beneficiaries, so that the two groups become familiar with each

other. In particular, lawyers should become acquainted with the legal needs of disadvantaged populations.

432. *Professional legal inputs are particularly effective where affiliated with the work of NGOs:*

- Whatever mix of services lawyers provide, their role is particularly effective where affiliated with legal service NGOs. The affiliation makes it more likely that the lawyers involved will have a developmental orientation, be familiar with grassroots legal needs, and treat project beneficiaries as partners and equals.

433. *NGO partnerships are particularly effective:*

- It is worthwhile to partner with NGOs, community-based organizations, and other civil society agents for legal empowerment work. In so doing, NGOs should not be viewed simply as contractors. They should be accorded maximum flexibility to accommodate community needs and priorities, and to build partnerships with government units or sympathetic allies within otherwise indifferent bureaucracies. This is consistent with ADB's and other international development institutions' commitment to NGO engagement or the establishment of NGO liaison units. In some cases, it may even be regarded as proof of this commitment.

434. *Encourage NGO-government cooperation*

- While NGOs, CBOs, and other civil society agents have proven particularly effective in conducting legal empowerment work, government agencies have the potential to play an equally important role. To enhance government capacity in preparation for independent state initiatives, international development agencies should encourage and support the collaborative efforts of civil society organizations and government agencies.

435. *Seek legal empowerment initiatives even in problematic contexts:*

- Where possible, international development agencies should facilitate NGO engagement in legal empowerment work even in those countries where NGOs are not well established or supported by the government.
- Where challenging working environments hinder donor efforts, it nevertheless may be useful to seek improvements in relatively basic or uncontroversial aspects of citizens' access to information about government projects and relevant laws. Improvements in citizens' access to administrative review procedures should also be sought. To the degree that NGOs are capable of and permitted to engage in such work, international organizations should cooperate with them.

436. *Flexibility is the key to any legal empowerment initiative:*

- Since the legal needs of project beneficiaries may be ascertained only gradually and in unanticipated ways, international development institutions and their governmental partners should avoid defining their goals in rigid terms. Thus, while there may be value in setting specific targets for project performance, development institutions must be open to the

possibility that legal empowerment will yield good governance and poverty reduction benefits that fall outside those parameters.

- Where development institutions are not prepared for unanticipated results, there is a risk that they will succeed in meeting project targets while falling short of more important goals. Successful initiatives will vary across borders, issues, and even communities.

437. *No single approach is preferable to others:*

- As the preceding point implies, it should not be assumed that there is any standard “best practice” for legal empowerment. Accordingly, a given project should allow for different legal empowerment strategies. There are two reasons for this. First, because specific community needs will vary; and second because the integration of legal empowerment work into the projects of ADB and other development institutions is a new endeavor that should allow for experimentation and learning.

438. *Understand the strengths and limitations of media, education, and training:*

- While media, education, and training are powerful devices for affecting knowledge, awareness, and attitudes, they have limitations as primary vehicles for generating action that will improve governance and affect poverty. They are most effective as part of a broader legal empowerment strategy.
- The exception to this is where an infrastructure of political, governmental, or civil society services exists that will readily enable people to make use of what they learn. Thus, in some societies media can stimulate voting or constitutional reform if such an infrastructure is in place. Knowledge alone will not suffice where socioeconomic development challenges exist and where the infrastructure of support services is not yet in place.
- Be open to the possibility of employing commercial media as a means of transmitting messages that enhance legal knowledge and even good governance in sustainable and entertaining ways.

439. *Community-specific actions are important:*

- Community-specific actions need to be supported to build up a civil society infrastructure and further legal empowerment, and to in turn enable such infrastructure to affect governance and poverty reduction. These actions include community organizing, group formation, legal aid, administrative advocacy, and paralegal development.

440. *Groups play an important role in legal empowerment:*

- Since organized groups are much more effective in securing their rights than are isolated individuals, any legal empowerment initiative must consider whether such groups are in place and, if not, whether to help establish them. Wherever appropriate, development organizations can and should build on their experience and orientation toward working with community-level groups such as water and forest user associations. Such groups constitute a base for legal empowerment initiatives.

441. *Legal empowerment begins with project assessment and design:*

- Legal empowerment begins with policy dialogue, project assessment, and project design. NGOs and disadvantaged populations should be part of the mix of participants who define the course for projects, not least their legal empowerment components. This will help avoid poor implementation down the line.
- The program staff of development organizations should consult with legal service NGOs (or other local experts) to identify legal empowerment issues and constraints in a given country or working context, especially in the sectors and regions where ADB and other development organizations are active. They should then incorporate the recommendations and other inputs of those consulted in their agency's relevant strategic planning documents for the country. Informed strategies of this kind can serve as the basis for general policy discussions with government officials, and for proposing legal empowerment projects or components of projects.
- While such projects/components have to be developed with community input and support, it may be easier to do this if the general topic of legal empowerment has been raised with government officials early on.

442. *Legal empowerment initiatives are not easily sustainable, but nevertheless merit ongoing support:*

- Do not expect easy sustainability in a legal empowerment initiative. Legal services are public goods that merit ongoing support, as opposed to market commodities that are commercially viable. While the budgets for some legal empowerment components may diminish over a period of years, the need for training, counseling, and related services will continue. At the same time, legal service providers and donors should explore local philanthropy, modest fee-for-service structures, and other prospects for apportioning the cost of legal services among a variety of stakeholders.

II. INTEGRATING LEGAL EMPOWERMENT INTO LEGAL REFORM PROJECTS

443. *The greatest legal needs of the disadvantaged may require projects that focus more on non-judicial institutions and processes:*

- Assessment and design of legal reform projects should take account of the fact that many of the greatest legal needs of the disadvantaged lie primarily outside the realm of the courts and other formal legal institutions. Legal empowerment strategies to address these needs will in turn complement conventional institutional reform efforts.
- Project design should accordingly analyze the greatest legal needs of the disadvantaged and how to best address them, rather than depending on assumptions about the primacy of the judiciary or other justice sector institutions. This may ultimately point to a greater focus on administrative law, executive agencies, and local government.

444. *Be prepared to support the legal operations of NGOs and collaborative partnerships between NGOs and government agencies:*

- The LES highlights the centrality of NGOs and other civil society actors in delivering legal services, improving the efficiency of legal systems, and using the law to advance good governance and poverty reduction. The rule of law can be advanced by projects that support organizations engaged in this work, regardless of progress on the government side. Activities that support the legal operations of NGOs, or facilitate collaborative partnerships between NGOs and government agencies or other public institutions should therefore be considered.

445. *NGOs have a role in conventional legal and judicial reform projects:*

- "Conventional" judiciary-oriented legal reform projects should include training and other educational activities carried out by NGOs for jurists, prosecutors, and other government officials. Such efforts enable NGOs to provide trainees with useful information and perspectives, grounded in the experience and needs of disadvantaged populations.
- They should also include opportunities for NGOs and other civil society actors to inform law reform efforts through advocacy and other modes of engagement.
- Similarly, development organizations should support NGO legal services and related legal empowerment activities in all conventional legal reform projects. This will serve to advance both implementation and monitoring of these initiatives. It will benefit project implementation by helping to ensure that law and institutional reforms adopted in connection with the projects are carried out. In addition, it will benefit project monitoring in that the problems that disadvantaged populations and their NGO allies face can be reported to the relevant staff of development organizations, government agencies, and NGOs with a view to correcting them.

446. *Implementation of law is a priority action:*

- Legal implementation (the actual enforcement of new and current laws) is at least as important as law reform in alleviating poverty and improving governance. Efforts to stimulate more consistent, predictable, and transparent implementation and enforcement of laws should receive priority attention in all projects designed to improve the operations of legal systems or otherwise advance the rule of law. Legal empowerment can contribute to this effort, since it is vitally linked to advancing implementation.

III. OTHER LEGAL EMPOWERMENT INITIATIVES

447. *Support projects that feature legal empowerment as their focus, rather than as just an adjunct to work in other fields:*

- Legal empowerment projects can potentially surpass other projects in furthering the goal of poverty reduction. The very nature of legal empowerment work also lends itself to other development priorities, such as demonstrating the value of public participation and helping to advance it.

448. Consider activities geared toward reforming selected aspects of legal education:

- The future of any nation's legal system is forged partly in its law schools. For both legal empowerment and legal reform to thrive, legal education must produce greater numbers of lawyers with a development orientation and associated skills. Such an approach will infuse at least some members of the next generation of legal professionals with an appreciation of popular education methodologies, the ability to work with NGOs and disadvantaged populations, and an orientation that enables them to more readily relate to the circumstances and needs of the poor.
- This in turn points to projects that focus wholly or partially on improving legal education, through clinical legal education (which gives students hands-on experience in assisting the disadvantaged) and through the reform of legal education curricula and teaching methods. Such efforts should avoid the errors of certain funding institutions in the 1960s, which held erroneous assumptions about transforming legal education and institutions through pedagogic and related changes. The more modest goal recommended here is to expand educational and clinical opportunities for those students inclined toward public service, rather than unrealistically aiming to affect an entire generation of future lawyers.

449. The importance of ongoing research:

- There has been a shortage of rigorous evaluation and research that can help determine the most effective legal empowerment strategies and activities, as well as inform related endeavors in such fields as governance and the rule of law. The LES and other exercises have been able to scrutinize such strategies and activities to only to a limited degree. There is a need for more in-depth study and analysis. At the same time, evaluation and research should not be confused with mechanical benchmarks and indicators that have proven counterproductive in assessing the law-oriented work of other organizations.
- It is imperative that quantitative and qualitative tools such as survey research (employed in a very modest manner by the LES) and community-specific studies be utilized in a flexible manner that is open to unanticipated results. The data flowing from these inquiries will enhance future legal empowerment and law reform efforts, as well as the more general field of development, by yielding valuable lessons for use in project design and implementation. This recommendation is further explored in Appendixes 3 and 4 of this report.