

PART ONE: A DESCRIPTION OF LEGAL EMPOWERMENT

I. INTRODUCTION

1. *While this report concerns many people, many societies, and many issues, it is fundamentally about a Filipino farmer named Barok. A decade ago, Barok participated in a training session conducted by a Philippine nongovernmental organization (NGO), the Developmental Legal Assistance Center, in which he and other indigenous people of remote Aurora Province learned about the law. He was asked at the time whether he knew anything about his rights. After pausing to ponder the question, Barok replied in barely a whisper, “I don’t think I have rights. I have no rights because I am just a poor farmer.”*

2. *Barok’s observation reflects the reality of how much of humanity continues to perceive and experience the law today. While the rule of law plays a central role in international development efforts, it remains an alien concept to the majority of the world’s disadvantaged populations. As highlighted by the Philippine study, one of seven country studies that informed this report, people like Barok live in a “culture of silence” and “learned helplessness” with respect to laws and legal systems that historically have worked to their detriment and against which they feel powerless. The situation raises the question of who better understands the nature of the law as it relates to the disadvantaged. Is it legal professionals and policymakers who appreciate the law’s nuances and its potential to serve the poor and other marginalized groups? Or is it the disadvantaged themselves, whose experience leads them to conclude that they do not have rights?*

3. *In explicating legal empowerment—the use of law to increase disadvantaged populations’ control over their lives—this report aims to bridge the gap between what the law is in theory and how it is actually experienced by the disadvantaged. It describes actions and strategies that have helped to narrow the gap in Asia, enabling some disadvantaged populations to make the law work for them rather than against them. The central goal of the report is to help the Asian Development Bank and other development institutions in their efforts to promote good governance and poverty reduction. The broader hope is that the study will ultimately benefit the Baroks of the world, so that “just a poor farmer” can have rights and improve his or her quality of life by acting on them.*

A. Overview

4. This report examines how *legal empowerment*—or the use of law to increase the control that disadvantaged populations exercise over their lives—contributes to good governance, poverty reduction, and other development goals, and how it can enhance projects funded by the Asian Development Bank (ADB) and other development agencies.

5. The *disadvantaged* include the poor, as well as those who face discrimination or abuse as a result of gender, race, ethnic identity, or other personal attributes. In many Asian countries, the disadvantaged constitute the majority of the population. Poverty and discrimination of this kind undercut the rights and well being of the disadvantaged, as well as the economic, political, or other opportunities to which they are equitably entitled.

6. This report draws primarily on studies conducted in seven ADB developing member countries (DMCs): Bangladesh, Indonesia, Mongolia, Pakistan, the Philippines, Thailand, and Viet Nam. It also draws on other Asian and international research, including supplementary survey research undertaken in the Philippines and Bangladesh. Together with the seven country studies and supplementary research reports, this report constitutes the complete study *on Legal Empowerment: Advancing Good Governance and Poverty Reduction*, or the Legal Empowerment Study (LES). It was commissioned by ADB under its regional technical assistance (RETA 5856: *Legal Literacy for Supporting Governance*).

7. This report is divided into three major sections. This section, Part One, is descriptive. It provides background on legal empowerment and other relevant concepts, the seven country studies that informed the report, and ADB's interest in this field. Part Two is analytical and prescriptive. Intended for the broad development community, it offers insights on how to best advance legal empowerment. Part Three is prescriptive. It suggests steps that ADB and other development institutions may consider taking to advance legal empowerment and to incorporate legal empowerment components in new and existing programs. The appendices report the findings of supplementary LES research conducted in the Philippines and Bangladesh (Appendixes 1 and 2) and propose research and evaluation methodologies for evaluating the practical impact of legal empowerment activities (Appendixes 3 and 4).

B. The Concept of Legal Empowerment

8. ***Legal empowerment is both a process and a goal.*** As a *process*, it involves the use of law to increase disadvantaged populations' control over their lives through a combination of education and action. In this context, control may relate to priorities such as basic security, livelihood, access to essential resources, and participation in public decision-making processes. Legal empowerment can also involve building the knowledge, capacity, and confidence of the disadvantaged, and enhancing their ability to work together to advance common development objectives. As a *goal*, legal empowerment refers to the actual achievement by the disadvantaged of increased control of their lives through the use of law. The distinction is important, because the process of legal empowerment can proceed even if the goal has yet to be achieved. This report uses "legal empowerment" as an adjective to modify "work," "activities," or "strategies" when referring to the term as a *process*. When "legal empowerment" is used as an unmodified noun, it refers to the *goal*.

9. Legal empowerment differs from other forms of empowerment in that it involves the explicit or implicit use of the law through training, counseling, litigation, representation in administrative procedures, advocacy before bureaucratic agencies, or other interventions. It may combine such activities with initiatives that are not inherently law-oriented, such as community organizing or livelihood development. Community organizing sometimes has an empowering effect in and of itself. When combined with law-oriented work, it contributes to legal empowerment.

10. Legal empowerment work can involve both education and action. Most advanced legal empowerment initiatives go beyond simply educating people about their rights under the law. They provide the disadvantaged with opportunities to apply the knowledge or skills imparted to advance their legal interests, including taking action that secures or enforces their rights and improves their well being.

11. ***Legal Empowerment and Legal Literacy.*** Legal empowerment is similar to "legal literacy," the term originally employed by ADB in commissioning this study, and by the seven

country studies. While the two concepts may differ in nuance, they are sufficiently alike in substance that they can for the most part be used interchangeably. This report adopts the term “legal empowerment” for three reasons.

12. First, it captures the focus of the study—the use of law to empower the disadvantaged.

13. Second, in conducting the study it became increasingly apparent that many people were confused by the term “legal literacy” and found it to be a misnomer. While those familiar with the term understand that it involves more than education, the plain meaning of the two words leads many to assume that legal literacy simply equals knowledge of the law.

14. Third, legal empowerment better captures the emerging nexus of law and socioeconomic development efforts that promote empowerment and related goals. Development institutions increasingly cast these goals in similar ways. ADB views poverty partly as “a deprivation of essential assets and opportunities to which every human is entitled” and its [reduction] in terms of people being “empowered to participate in making the decisions that shape their lives.”¹ Much of Amartya Sen’s *Development as Freedom* concerns the processes through which people assume increasing control over their lives.² The United Nations Development Programme’s *Human Development Report 2000* similarly links human development, human rights, and seven essential freedoms.³ The World Bank’s *World Development Report 2000/2001* advocates “facilitating empowerment” as a key means of attacking poverty.⁴

15. **Critical Consciousness.** Further understanding of legal empowerment can be drawn from a review of literature on legal literacy. As noted above, the latter term is sometimes mistakenly understood as meaning simply basic legal knowledge and education. Schuler and Kadirgamar-Rajasingham offer a more empowerment-oriented definition: “the process of acquiring critical awareness about rights and the law, the ability to assert rights, and the capacity to mobilize for change.”⁵ This process helps to impart “critical consciousness”—the ability of women, the poor, and other marginalized groups to understand and think critically about the inequitable power relationships affecting their lives, and to take action to challenge and transform those relationships.

16. **Legal empowerment, the rule of law, and institutional reform.** Legal empowerment is not the same as promoting the rule of law, though the two frequently overlap. Efforts to promote the rule of law have traditionally tended to focus on judiciaries and other formal legal institutions and actors. These efforts aim to strengthen and reform legal institutions and systems so that they operate fairly, efficiently, and free of interference by the state or powerful private interests. In some instances rule of law initiatives involve and indirectly benefit the disadvantaged. In contrast, while legal empowerment has clear rule of law implications, its processes and goals focus directly on the circumstances and needs of the disadvantaged. It concerns how the law can be used to benefit them in a broad array of development fields that may not have a strict legal dimension, including education, public health promotion, agriculture,

¹ ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank* (R179-99), p. 3, para. 12.

² See Amartya Sen, *Development as Freedom*, Alfred A. Knopf, New York, 2000.

³ See United Nations Development Programme, *Human Development Report 2000*, Oxford University Press, New York, 2000.

⁴ The World Bank, *World Development Report 2000/2001*, Oxford University Press, New York, 2000, p. 7.

⁵ Margaret Schuler and Satunkala Kadirgamar-Rajasingham, “Introduction,” in Schuler and Kadirgamar-Rajasingham, eds., *Legal Literacy: A Tool for Women’s Empowerment*, OEF International, New York, 1992, p. 2.

and natural resource management. Legal empowerment thus bridges a gap between the rule of law and socioeconomic development, integrating the rule of law to meet priorities in other development fields.

17. Legal empowerment contributes to institutional reform by mobilizing public interests and expectations that are often neglected by more narrowly focused efforts to strengthen formal institutions. Institutions generally, and legal and bureaucratic institutions in particular, tend to resist change. While legal institutions have come under increasing pressure from domestic reformers and the international community, they continue to operate with a minimal sense of accountability to, or pressure from, the general public, much less from disadvantaged populations. In its most sophisticated forms, legal empowerment adds a participatory dimension to institutional reform. As their knowledge, capacity, and confidence grow, the disadvantaged are able to more capably and confidently engage in public decision-making processes. They gain greater control over their lives by learning how to effectively interact with an array of institutions, creating opportunities to participate in public decision making, rather than waiting for opportunities to be extended to them. Public participation adds further pressure to institutional reform efforts, challenging legal and other institutions to infuse development content in their regulatory role. While there is clear value in the role of legal empowerment in assisting individual citizens to resolve specific problems, its equally great contribution lies in the higher-level institutional and procedural reforms and changes in the political dynamics of decision making to which it contributes by mobilizing collective capacity and demand.

II. ORIGINS OF THE LEGAL EMPOWERMENT STUDY

18. ADB's 1995 paper on *Governance: Sound Development Management* underlines the relationship between good governance and economic development, and calls for the integration of governance considerations into ADB operations. ADB defines governance as "the manner in which power is exercised in the management of a country's economic and social resources for development,"⁶ applying the term to cover the institutional environment in which citizens interact with each other and with government.⁷ On a practical project level, governance includes the manner in which government officials relate to the intended beneficiaries of development initiatives.

19. In commissioning the legal empowerment study, ADB sought to explore "the effectiveness of legal literacy as a tool for institutionalizing good governance through the empowerment of disadvantaged groups such as women, minorities, and low income groups."⁸ As employed in this context, empowerment means increasing the control that disadvantaged exercise over their lives. It can also involve building their knowledge, capacity, and confidence and enhancing their capacity to work together to advance common development goals.

20. Legal empowerment equips the disadvantaged to more effectively deal with the legal system, government agencies, private parties, and law reform efforts that affect their interests.

⁶ ADB. 1995, *Governance: Sound Development Management* (R151-95), p. 1, para. 4.

⁷ The ADB paper further sets forth four basic elements of good governance: accountability (the duty of government officials to be answerable and responsive to citizens); participation (the opportunity for beneficiaries and others to improve the design and implementation of public programs); predictability (the fair and consistent application of government-promulgated legislative and other regulatory rules and procedures), and transparency (the availability of clear information about government rules, regulations, and decisions).

⁸ RETA 5856: *Legal Literacy for Supporting Governance* (R171-99), p. 1, para. 3.

It also helps to increase the benefits that the disadvantaged enjoy as participants in development projects. ADB believes that national and local good governance are important for its overarching objective of reducing poverty; that an accessible and responsive legal system furthers good governance; and that legal empowerment can strengthen legal systems, governance, and development. The success of development projects depends in large part on public agencies' responsible exercise of legal powers that affect the rights and interests of project beneficiaries, and on opportunities for beneficiaries to advance their rights and interests through informed participation in decision-making processes concerning the projects. Governance is best advanced where officials are sensitive and responsive to the needs, priorities, and participation of beneficiaries.

21. ADB's October 1999 policy paper, *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*, notes that poverty transcends traditional definitions based on income level. It asserts that, "in ADB's view, *poverty is a deprivation of essential assets and opportunities to which every human is entitled...Beyond income and basic services, individuals and societies are also poor—and tend to remain so—if they are not empowered to participate in making the decisions that shape their lives.*" [Emphasis in original]⁹ By identifying ways of improving governance, this study also aims to advance ADB's overarching goal of reducing poverty in the Asian and Pacific region.

22. ADB seeks strategies to integrate legal empowerment into the projects it funds (for example, in the fields of forestry, irrigation, health, and other areas of socioeconomic development) in order to improve those projects and the government operations associated with them. Similarly, it seeks to enhance understanding of how legal empowerment work can contribute to law reform more generally, to legal implementation (the enforcement of laws), and to the strengthening of administrative and other legal mechanisms used for public decision making. To this end, this study aims to identify the most effective strategies for legal empowerment, and to understand the factors that contribute to their success.

III. METHODOLOGY

23. The seven-country Legal Empowerment Study and supplementary survey research were conducted over a twelve-month period starting in February 2000. The general methodology for the study was developed by the two international consultants, seven country consultants, and project advisors, in consultation with the Office of the General Counsel of ADB, at a meeting at its headquarters in Manila in February 2000. When the country research was completed, workshops were held in each of the seven DMCs to share the preliminary findings with legal empowerment practitioners, donors, and other interested parties and to invite feedback on the preliminary findings and recommendations. On completion of the country reports and draft Overview Report in November 2000, the study team and advisors re-convened in Manila for further consultations between the project team and ADB staff. These consultations informed the final version of this report.

⁹ ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank* (R179-99), p. 5.

IV. CONSTRAINTS ON ACCESS TO JUSTICE AND PARTICIPATION IN GOVERNANCE BY THE DISADVANTAGED

24. Despite constitutional and other guarantees of equal access to justice, the legal rights and interests of disadvantaged populations are routinely threatened or denied by public institutions and officials, private interest groups, and others who hold political, economic, or other power advantages over them. While the rule of law plays a central role in the development efforts of many nations, it remains an alien concept to the majority of the world's poor. As a result, they tend to view laws and legal systems that have historically failed to serve them with a sense of powerlessness.

25. This situation has implications for development assistance projects generally, and in particular for efforts to strengthen the capacity and integrity of legal and other public institutions. The success of such projects depends largely on two indices: first, that public institutions and officials responsibly exercise legal powers that affect the rights and interests of project beneficiaries; and second, that opportunities are created for beneficiaries to advance their rights and interests through informed participation in project related decision-making processes.

26. Legal empowerment work aims to overcome the many constraints that prevent the disadvantaged from accessing the legal system and from participating in governance, and which in turn limit the success of poverty reduction efforts. In conducting the respective country studies, the seven country consultants began by identifying the major factors that impede citizen access to justice and which legal empowerment activities are designed to address. Several key constraints were consistently reported. These include the effects of poverty on citizen knowledge and access to legal services; problems associated with the legal system; the persistence of traditional cultural values; the political dynamics of patronage and decision making; and other factors that leave the rights and interests of the disadvantaged vulnerable to abuse or neglect.

A. Lack of Economic Independence

27. Lack of economic independence places a broad constraint on citizen access to justice, participation in public decision making, resource allocation, and other legal and governance processes. Those who are largely dependent on their employers, husbands, landlords, or other parties for subsistence face serious constraints in exercising their rights. For example, Vietnamese women play a lead decision-making role in only four percent of family expenditures. In urban areas, their mean salary is 70 percent that of men.¹⁰ Gender disparities in economic decision-making authority and salaries are even more dramatic in many countries. Economically dependent women who challenge or leave abusive husbands risk a further descent into poverty. Among other impediments, they are rarely able to afford reliable legal advice or representation.

28. Poverty can be self-perpetuating, in the sense that it may in turn prevent access to poverty-alleviating government services. For example, in Mongolia poor citizens are unable to secure the legal status that can improve their circumstances:

¹⁰ Viet Nam Country Report, p. 6. Page references for this and all subsequent citations from the LES country reports refer to June 2001 pre-publication versions. Published versions of the country reports will include tables of concordance to cross-reference citations in this Overview Report.

[M]ost disadvantaged people, such as street children, homeless people, or recent migrants to urban areas, are unable to register with the local administration (*bag* or *khoro* governor) because their poverty prevents them from paying the required registration fees. Without proper registration documents, they cannot obtain health care, except in emergencies. These people are also excluded from social welfare schemes and lack access to education in their communities.¹¹

29. The regional economic crisis of 1997-98 and its aftershocks have placed a further constraint on access to justice and participation in governance in parts of East and Southeast Asia. The crisis has had the practical effect of severely constraining government resources available to promote improved access to justice, as well as many other goals and services. For example, in Thailand, the crisis triggered a rise in unemployment and inflation. The country study argues that this situation, coupled with diminished government resources, has in turn led to a rise in other problems including crime, gender violence, drug abuse, and rates of HIV/AIDS and tuberculosis infection.¹² In times of economic crisis, the disadvantaged commonly experience a resulting disempowerment. Ironically, Thailand's economic decline occurred just as the country completed a pioneering constitutional reform process that was informed by broad public participation. For many Thais, the economic crisis has also effectively removed the protection of the invigorated constitutional and legal system:

Throughout this period, women have been particularly adversely affected, as 57 percent of all unemployed are women. More significantly, in most export-led industries, 90 percent of those laid off were women. This has meant that an increasing number of women, in trying to provide for their families in the face of ongoing increases in the price of basic consumer goods, have entered employment in the informal sector without the protection of the Labor Law.¹³

B. Minimal Knowledge of Law and the Rights That It Confers

30. Inadequate public knowledge of the law and the rights that it confers is a fundamental constraint to access to justice in Asia. Persons with minimal education tend to lack even the most basic awareness of law and the concept of rights. A lack of general legal awareness occurs where people are unaware that laws and rights exist, or have no sense that such remote concepts have any relevance to their lives.

31. Low literacy and education levels are a major factor in this situation. As the Pakistan report emphasizes, "the high percentage of illiteracy in the country (55 percent) and the low quality or level of literacy even among those classified as literate excludes a substantial proportion of the population from even being able to read the laws."¹⁴ Situations of this kind have even greater implications for women, given their lower literacy rates in many countries. Cultural, historical, and other factors contribute to this situation. For example, decades of war and political upheaval in Cambodia left citizens with little sense of their entitlement to protection by the state or from the abuses of public agencies or officials. Through the democratic transition of the early 1990s, many continued to believe that basic survival was all they could or should expect. Similarly, deeply inculcated gender and caste perspectives leave many women and other marginalized groups resigned to being treated as inferior as a matter of fate, with no

¹¹ Mongolia Country Report, p. 8.

¹² Thailand Country Report, p. 3.

¹³ Thailand Country Report, p. 3.

¹⁴ Pakistan Country Report, p. 13.

alternative but to accept their situation. Absent a minimal level of awareness, the disadvantaged are unlikely to even consider trying to access the legal system. Likewise, they may be reluctant or unwilling to imagine roles for themselves in even the most basic forms of governance.

32. After 70 years under the former socialist regime, Mongolians are sensitized to “rule by law” and the perception of law as an instrument of control, with minimal expectations regarding the rule of law. Even when the state’s obligations to citizens are well articulated, as with the constitutional guarantee of citizen access to information, expectations remain low. Greater awareness of rights and increased empowerment will be necessary before citizens demand that their rights be observed, in this case through clearer exposition of the procedures through which information can be requested.

33. The literal language of the law may also block effective access to the legal system where laws are drafted or court cases are conducted in English or other foreign language that is not understood by the majority of the population. For example, the practice of drafting laws in English in Pakistan and the Philippines leaves them incomprehensible to native language-speakers. In some societies, judicial and other formal legal proceedings are similarly conducted in English or in a national language that minority groups do not understand. As the Philippine study notes, “even when the [disadvantaged] have the privilege of being represented by a lawyer, they are entirely dependent on attorneys who speak in legal terms, but who in many instances are unable to sufficiently explain the real situation.”¹⁵

34. These problems are exacerbated by inadequate dissemination of legal information. The situation in Pakistan is typical of that in many of the countries studied. The Pakistan report notes that “there have been no official efforts to simplify the language of the laws for public information, or to disseminate information about laws. Even where some groups have acquired a basic knowledge of certain laws, there is no existing system through which they can gain regular access to information about amendments in the laws, rules, and procedures or recent judicial decisions concerning them.”¹⁶ Moreover, while “notifications about amendments in laws and other legal instruments are published in official gazettes and judicial decisions in several law digest, they are neither affordable, nor easily accessible or comprehensible, to the layperson.” Many developed countries, despite higher literacy levels, have extensive public information dissemination programs. In contrast, the Government of Pakistan has no programs to disseminate information about laws and regulations in a non-technical way that would help ordinary citizens understand their rights and obligations under the law, or the steps to take in resolving a legal problem.

35. Finally, even if people possess a general awareness that they have rights, they may lack specific knowledge of how those rights are prescribed or enforceable in law. For example, a woman may have a notional sense that law can be used as a tool to produce concrete benefits or to advance her participation in public life, yet have no idea that her country’s laws grant her inheritance rights and prescribe the legal and administrative processes through which she can assert them. Without higher knowledge of this kind, women may be effectively powerless to access the legal system. Nor can they easily seek the advice of a lawyer to educate themselves. Well before the resource and attitudinal constraints discussed below begin to encroach on a woman’s options, her lack of legal knowledge may prevent her from even thinking of asserting her legal rights.

¹⁵ Philippine Country Report, p. 8.

¹⁶ Pakistan Country Report, p. 13.

C. Limited Access to Affordable Legal Services

36. Access to justice is further constrained by the shortage of free or subsidized legal services. This is partly due to the prevailing culture of legal education and the legal profession in Asia. As the Philippine Supreme Court has recognized, the present costs of litigation practically prohibit the poor from filing cases and fully defending themselves in the courts of justice.¹⁷ Even where the disadvantaged might overcome a variety of other constraints, they are typically unable to take advantage of the services of lawyers or government agents who can help them seek redress. They may understand that they have a cause of action or that they are entitled to a government service, but lack the necessary means to act on that knowledge through reliable professional advice or representation.

37. Although some countries have national legal aid systems that are administered by their governments or bar associations, many of these are under-funded or constrained by operational difficulties.¹⁸ The Mongolia study illustrates a few of the problems affecting such systems:

Currently the legal system operates in a way that makes advocates reluctant to serve the poor, who constitute a majority of the population. In communities, advocates who provide service to suspected and accused criminals in detention are frequently associated with police, as they are physically located at police stations and have close professional links. The courts use funds allocated for the legal defense of low-income persons at their own discretion. Anecdotal evidence suggests that in practice, it is rare for advocates to receive fees for these services. This does not encourage a public service attitude in the legal profession.¹⁹

D. Declining Standards of Legal Education and Professional Integrity

38. In many societies attitudes and practices of the legal profession place a further constraint on access to justice. Most lawyers have minimal contact with disadvantaged populations. In some societies, this reflects the basic financial imperative of serving clients who can afford professional legal services. In others, professional bias underlines the emphasis placed on lawyers' "traditional role as 'technicians'—who do nothing but apply and preserve existing formulations of legal norms."²⁰

39. The situation also reflects the nature of legal education in Asia. With few exceptions, formal education curricula and teaching methodologies tend to build technical capacity at best, without imparting a critical view of the law or an appreciation of how it is frequently applied to the detriment of the poor rather than fulfilling its potential to advance their interests. In the Philippines, "the prevailing mode [of legal instruction] is *dura lex sed lex* (the law is harsh, but it is the law)."²¹ This orientation is equally strong in other countries, though in some cases more implicit. In Thailand, for example:

¹⁷ Philippine Country Report, p. 30.

¹⁸ The Bangladesh Legal Aid and Services Trust (BLAST), a donor-funded NGO linked to the country's bar association, represents at least a partial exception to the rule of problematic national legal aid systems. Though its coverage is by no means comprehensive, it does have branch offices in numerous cities across the country.

¹⁹ Mongolia Country Report, p. 7.

²⁰ Philippine Country Report, p. 58.

²¹ Philippine Country Report, p. 59.

The formal legal education system...also creates barriers to justice. In the view of some, its goal is the creation of law technicians. While great efforts are made to teach the interpretation and meaning of laws, this is done within a void of reasoning, philosophy, and the social dimension of public interest—the why of law...This merely serves as reinforcement of the subordination of specific disadvantaged groups by laws and law enforcers, and of the common perception that the formal legal system should be avoided in favor of outside manipulation of the system. Moreover, it does little to instill among law graduates a commitment to society nor to the due process needs of the individual citizen. As a result, the concept of *pro bono* assistance is extremely limited.²²

40. In addition, many professional legal associations operate in a guild-like manner. Bar associations may on principal resist the introduction of alternative legal services that reduce or limit the dependence of laypersons on lawyers. The dynamic is a complex one. While educating ordinary citizens about their rights may result in increased business for lawyers (to the extent that the poor can afford professional services), it is also possible that such knowledge may in fact prevent legal problems from arising to begin with. From the perspective of lawyers, the latter situation undermines their professional business interests. The establishment of paralegal services within communities may likewise reduce demand for the professional expertise and services of lawyers. This is also the case administrative and alternative dispute resolution procedures in which informed citizens can participate without formal legal representation.

E. Lack of Knowledge, Incentives, and Resources Among Government Officials

41. The burden of inadequate resources and legal knowledge is not borne solely by ordinary citizens. The same situation applies to many government personnel whose legal decision-making powers have an impact on citizens' rights. Inadequate training and resource constraints prevent many government officials from fulfilling their central role in administrative procedures.

42. Inadequate knowledge of the law on the part of government personnel would seem to result primarily from a lack of resources for training and retaining personnel. As the Viet Nam report points out, such lack of knowledge is also rooted in the limited creativity and initiative of civil servants:

Given that bureaucracy and the vestiges of the central planning economy still exist in Viet Nam, and because civil servants have very little pressure to compete, it is obvious that they are limited in their initiative and creativity...Furthermore, almost all staff at all levels are discouraged from developing or implementing new ideas or actions and do not assume responsibility for work performed.²³

43. The capacity of the Philippines' Department of Environment and Natural Resources to perform its legal mandate is frustrated in part by financial considerations:

Many of the more promising legal professionals who could have occupied legal posts [with the Department's] national or regional offices are more attracted to the offers of well-paying private law offices. The others who started with the DENR eventually leave due to measly pay. The same is true of the department's

²² Thailand Country Report, p. 8.

²³ Viet Nam Country Report, p. 12.

technical staff. In addition, the DENR's budget is not always sufficient to purchase more modern equipment that would enable it to effectively monitor the industry's compliance with its pollution standards.²⁴

F. Limitations in the Outreach and Capacity of Civil Society Organizations

44. The vacuum in legal services, professional standards, and public sector capacity is partly addressed by civil society organizations through provision of legal support services. In fact, as the legal empowerment study reveals, such organizations are responsible for much of the most effective legal empowerment work presently undertaken in Asia. While many Asian nations have vibrant civil societies, the reach of their NGO members and the organization of the NGOs' partner populations nevertheless may be limited.

45. Limitations of this kind take many forms. Even in countries in which NGOs have long been involved in legal service work, such as in India, Pakistan, and the Philippines, resource constraints confine them to select communities and issues. Moreover, although many countries such as Bangladesh have a large number of national-level NGOs, such organizations tend to address local legal needs only to a limited extent, typically through a focus on educational programs rather than hands-on support services.

46. Where independent civil society is a relatively new phenomenon, the problem is not simply the limited outreach of NGOs, but also limitations in their institutional and programmatic capacity. These require time, leadership, and sustained resource streams to reach their full potential. For example, the Mongolia report notes that civil society organizations are only slowly developing in rural areas and that "disadvantaged groups lack [the] organizational capacity to claim their rights."²⁵

G. Flawed Systems of Laws and Regulations

47. Though the above-noted combination of historical, cultural, political, and economic factors emerges as central in all country reports, other constraints also impede access and participation. Those of a more technical nature include unclear, inconsistent, and outdated laws. An already serious problem is exacerbated in many countries by increasing international and domestic pressure to introduce new commercial and other regulatory laws. In the rush to develop and pass new legislation, insufficient attention is paid to consistency and complementarity between new and existing laws. The Viet Nam paper provides a sense of some of the practical problems that such situations raise:

Although the system of legal regulations in Viet Nam is extensive, it still has deficiencies. The existing legal regulations system is unclear and unspecified and often experiences overlap. There are an enormous number of regulations, which are diffused over many different State agencies. The stability of the regulation system is weak. Furthermore, the State has long neglected much needed review and systematization of its legal documents. The result is that it is often difficult to distinguish which legal documents are still valid and which are invalid.²⁶

²⁴ Philippine Country Report, p. 9.

²⁵ Mongolia Country Report, p. 10.

²⁶ Viet Nam Country Report, p. 3.

48. In Thailand, as in many countries, inconsistencies in the legal system have historical roots. For example, the fusion of civil and common traditions has shaped a system that at times reflects the weaknesses of the two systems rather than their strengths:

This mix [of civil and common law elements] has created a number of problems. For example, judges tend to observe the passive, impartial role prevalent in the common law-based accusatorial system rather than the more participatory judge of the inquisitorial system that is central to the effectiveness of the civil code model. While the continental system also promotes a quasi-judicial role for prosecutors, Thai prosecutors are effectively excluded from investigation and the collection of evidence. They must simply take what is provided to them by the police, although they can request, but not order, the police to conduct further investigation.²⁷

49. Administrative law, which plays an important role in regulating private and governmental relations, is similarly affected by conflicts and inconsistency in the exercise of legal decision-making powers. For example, the Philippine study describes ways in which diverse executive agencies have overlapping responsibilities with respect to certain environmental issues.²⁸

50. Finally, conflicts between contemporary national and indigenous legal norms may have a negative effect on cultural minorities. As the Philippine study points out, “under the [national] legal system a registered title is the best evidence of one’s ownership. On the contrary, “land,” for many indigenous peoples, is closely linked to their life. As a result, indigenous peoples see themselves as mere stewards, not owners, of the land and thus are not aware or have difficulty understanding why land registration is required.”²⁹

H. Inconsistency Between Formal Law and Traditional Values

51. Deeply ingrained attitudes further impede access to justice and participation in public decision making, to the detriment of the poor, women, ethnic minorities, and other disadvantaged groups. For example, prevailing community norms may discourage a woman from challenging the abusive behavior of her husband or traditional attitudes that relegate women to a marginal role. As the Pakistan study points out, the law frequently turns a blind eye to rights violations that stem from traditional values or practices:

[P]articularly where women’s rights issues are concerned, the law does not even matter to the vast majority, since customary and traditional laws and practices override statutory or Islamic laws...and these are condoned or justified by the concerned institutions. Thus, for example, there have hardly ever, if at all, been efforts to take action against those who contract child marriages or polygamous marriages in violation of the law. The police continue to treat domestic violence as a [private] marital dispute, while the courts continue to mitigate the sentences of those who kill in the name of honor.³⁰

52. The Indonesia study similarly observes that the “patriarchal and hierarchical configuration in local communities [frustrates the enforcement of] any legislative attempt to

²⁷ Thailand Country Report, p. 6.

²⁸ Philippine Country Report, pp. 5-6.

²⁹ Philippine Country Report, p. 8.

³⁰ Pakistan Country Report, pp. 13.

afford lower status groups new rights...For example, while the state law confers on a wife the right to be consulted and to veto a husband's wish to take a second wife, grim resentment and opposition to this provision in many local communities [is] uncompromising.³¹

53. The Viet Nam report notes, more generally, that “throughout [the country’s modern] history, a very common occurrence has been the inequality between different citizens of the community in terms of ability to access and use the legal system. More particularly, there are many disadvantaged groups in Viet Nam who have trouble accessing the legal system, including women, the poor, and ethnic minorities.”³² This situation reflects traditional cultural norms which relegate women and other marginalized groups to a lower status.

54. The Viet Nam report also points to a basic reason why the government and its legal system are unresponsive to women: most employees are men. “This is a great disadvantage for women when they try to access the system since...inspectors, prosecutors, and criminal, civil or labor judges...are men [who] have no sympathy and understanding of the problems faced by women in the legal system, in comparison to female...staff.”³³ The same situation applies in many other countries.

55. These biases have a number of negative consequences, including gender violence. As the Philippine study notes, this complex problem springs from diverse factors that include women’s low status and socialization, as well as a lack of sensitivity on the part of law enforcement officials and judges.³⁴

I. Lack of Legal Implementation

56. In describing how the previously described “patriarchal and hierarchical configuration in local communities” negates laws that benefit the disadvantaged, the Indonesia country report makes a fundamental point that reflects the situation in many countries: “The right is thus honored in word but rarely in deed.”³⁵ Where legal implementation (the actual enforcement of laws) is weak, it undermines the legitimacy of the state. While lack of legal implementation results from a multitude of constraints, including corruption, gender bias, and lack of resources, it merits special emphasis because it is frequently overlooked in law reform programs and other development efforts.

57. The popular saying “Mongolian law lasts for three days” reflects the law’s insufficient implementation. While stakeholders are keen to see laws fully implemented the instant they are passed, new legislation is often quickly forgotten, even by law enforcement organizations. For example, in many cases single mothers and their children cannot receive maintenance even if a court has ordered that payments be made.³⁶ In the Philippines, “despite the 1986 people’s revolution and the restoration of fundamental human rights enshrined in the 1987 Constitution, many Filipinos continue to encounter the same obstacles and insecurities [that they have] experienced throughout history.”³⁷

³¹ Indonesia Country Report, p. 4.

³² Viet Nam Country Report, p. 3.

³³ Viet Nam Country Report, p. 7.

³⁴ Philippine Country Report, p. 11.

³⁵ Indonesia Country Report, p. 4.

³⁶ Mongolia Country Report, p. 8.

³⁷ Philippine Country Report, p.1.

58. Nor can it be assumed that legal implementation is simply a matter of time. For example, there is no assurance that the human rights protections established in the 1987 Philippine Constitution will be gradually translated into reality. The situation is similar in Thailand. The Thailand study explains that “The promoters of the 1932 change of government [in Thailand] from an absolute to a constitutional monarchy sought to ensure all individuals, including the higher classes, were equal before the law...The Thai also sought to de-link law and justice from power and politics.”³⁸ However, nearly 70 years later “the average citizen’s perceptions of the legal system have not changed, since she remains vulnerable to harsh justice,” while “influential individuals...appear to be able to act with impunity.”³⁹ Although Thailand and other countries have benefited from social, economic and political change over the past several decades, their legal systems continue to promise much more than they deliver.

J. Patronage, Extreme Personalism, and Indifference

59. Citizen access to justice and participation in governance is further constrained by a variety of non-pecuniary factors. Government employees may be indifferent to the needs of citizens and even, as the Viet Nam study points out, “imperious.”⁴⁰ Similarly, even “after ten years of experience with democratic governance in Mongolia, civil servants at all levels still tend to rule in an authoritarian manner...It is difficult for an ordinary citizen to obtain information unless he or she has personal links to the particular department or agency.”⁴¹

60. Extreme personalism plays powerful roles in several countries. This phenomenon is best described by University of the Philippines law professor Alfredo Tadiar. In an article explaining the intricacies of his nation’s criminal justice system, Professor Tadiar maintains that “the most dominant single characteristic of Philippine society is the pervasive influence of close personal relations upon almost any conceivable human interaction.”⁴² Such relations can be a functional and positive aspect of that society and many others. They also mean that judges and other government personnel may make decisions based on kinship, friendship, common regional and academic backgrounds, or the sharing of mutual acquaintances rather than sound legal principles or analysis. Cultural phenomena such as *utang na loob*—debts of gratitude that influence otherwise unrelated matters--also play a role.

61. Patronage blends with such personalism where judges and other officials owe their positions to politicians or influential private parties. The Philippine study further illustrates how this combination further affects elected individuals:

An individual...who has been elected to a political office largely because of the support of a friend or group may find himself having to pay “political debts” upon assumption of office. Political debts may be paid in varied forms: from heeding a request to facilitate the hiring of that friend’s relative in an office, to a concrete proposal to ensure the issuance of a permit for a particular project or activity initiated by that friend. Through these strings of personal relationships, civil service rules and proper permitting procedures [are] circumvented and are therefore not properly enforced.⁴³

³⁸ Thailand Country Report, p. 5.

³⁹ Thailand Country Report, p. 5.

⁴⁰ Viet Nam Country Report, p. 4.

⁴¹ Mongolia Country Report, p. 6.

⁴² Alfredo F. Tadiar, “The Administration of Criminal Justice in the Philippines: Some Aspects for a Comparative Study with That of the United States,” *Philippine Law Journal* 47, No. 4 (September 1972): 548.

⁴³ Philippine Country Report, p. 10.

62. The Thailand study points out that many people have little confidence in the ability of a politically biased formal legal system to effectively resolve the problems that they face. Like many Asians, they choose to avoid the system or to rely on a patron:

Access to justice through the formal legal system is viewed by the average Thai as cumbersome, expensive, unfair, and to be avoided wherever possible. For the disadvantaged, justice is viewed as a matter of power and politics, and therefore beyond their reach. Without access to power and politics, there is no access to justice. In traditional Thai society, an individual sought justice and protection at the local level directly through his or her patron or master. To shield oneself from charges or to successfully seek redress for an offence committed beyond the local community, the ordinary citizen remained dependent on the influence and skill of his or her patron.⁴⁴

63. The study goes on to describe how these perceptions have resulted in a tendency to evade or manipulate the law. This tendency is embodied in the “Sri Thanonchai tradition,” which celebrates the value of clever deception rather than conformity with rules and procedures in dealing with authority (see Box 1).⁴⁵

Box 1: Sri Thanonchai, the Artful Trickster

Sri Thanonchai, the artful trickster, was a folk hero from the Ayudhaya period (1350-1767). Rising from humble origins, he scaled the heights of society through his guile and twisting of words to win an argument or a wager, or to save himself from heavy-handed authority. The tales of his exploits are as familiar to the Thai child as Mother Goose and Aesop’s Fables are to Western children. The central theme of the Sri Thanonchai fables is that, in the face of power, there is no justice and no fairness; there is only quick wit and amoral deceit—and it is all a matter of interpretation, bluster, and chicanery. To have a patron with the skills of Sri Thanonchai spells victory, while anything less will land one in jail or lead to an early death. This concept far exceeds the Western caricature of the dishonest, manipulative lawyer, because it is applicable, with honest praise, to anyone involved in a case. No lawyer need be involved; indeed no court case need be filed. As a result of this tradition, nurtured by decades of authoritarian government, there is a general sense among the average Thai that justice is essentially a matter of power and politics, whether national or personal. Therefore, the concept of access to justice, in the Western sense, should be considered a recent phenomenon in Thailand.

64. In Thailand and many other societies, evading rules and regulations is seen as natural, sensible, and by no means unethical. Similarly, giving a small gift for services rendered by a government official or other decision maker is regarded as an obligatory custom in some countries.

K. Law as a Historical Instrument of Control

65. Biases are not simply a product of deeply ingrained cultural influences. More deliberate historical forces can also shape societal attitudes. In the past, governments frequently viewed the law as a mechanism for consolidating control rather than protecting citizen rights. This

⁴⁴ Thailand Country Report, p. 5.

⁴⁵ Thailand Country Report, p.5.

tendency has had an enduring impact on both justice sector personnel and ordinary citizens. Physical intimidation by state or private agents may discourage disadvantaged groups from asserting their rights. The political or economic power advantages held by various elites can have an equally constraining effect.

66. Indonesia is a case in point. As the country study asserts, “officials [have interpreted] law as functioning more in the direction of ensuring the legality of government power to engineer society, in accordance with the centrally-controlled national development agenda, than in protecting citizens’ rights and freedoms.”⁴⁶ Similarly, as applied in Mongolia, “socialist legality saw law as a means to an end, namely the building of a communist society. There was no inherent virtue in the law, apart from its role in building socialism.”⁴⁷ As a result, “lawyers, most of whom were trained under the socialist regime, still believe in a punishing function rather than serving the public. This is [also] clearly seen in police practices. Prosecutors and courts similarly operate in a threatening fashion.”⁴⁸

67. In Thailand, “the prevailing political culture [that continued into the 1980’s] did not promote an atmosphere in which citizens could seek the protection of their rights and liberties. Under authoritarian rule, the law was used as a mechanism to suppress dissent and to control the population; it was not generally viewed by state or society as a mechanism to protect individuals against abuses by the state or to promote adherence to socially accepted norms.”⁴⁹

L. Corruption

68. Corruption, whether actual or perceived, is an impediment to the public’s access to resources and decision making in each of the seven countries studied. It is closely associated with public officials who exercise administrative decision-making powers which affect citizen interests, such as the timely processing of applications, disputes, and other pending legal matters.

69. As an illustration of this point, the Philippine Government readily acknowledges that graft and corruption are “widely considered as endemic in the Philippine bureaucracy”.⁵⁰ A respected Filipino political commentator echoes World Bank concerns that the “cancer of corruption” is a factor that “undermines development programs, imposes a crippling tax on the poor and on business, and undermines [the] poverty reduction efforts of government.”⁵¹ The Philippine country study concludes that corruption “is considered as so corrosive as to pervade all levels of governance.”⁵² The Mongolia report similarly observes that “corruption at lower levels of the [legal] system is perceived to be widespread. Access to justice is also influenced by the unwritten law of personal connections, which leaves ‘independent’ judges open to influence by friends, relatives, and colleagues.”⁵³

⁴⁶ Indonesia Country Report, p. 4

⁴⁷ Tom Ginsburg, “The Transformation of Legal Institutions in Mongolia, 1990-1993,” *Issues and Studies, A Journal of Chinese Studies and International Affairs*, v.30, No.6, June 1994, p.79, cited in Ministry of Justice, Mongolia: Legal Needs Assessment Report, Ulaanbaatar: World Bank, 2000, p.13.

⁴⁸ Mongolia Country Report, p. 7.

⁴⁹ Thailand Country Report, p. 1.

⁵⁰ Medium-Term Philippine Development Plan (MTPDP 1999-2004), in the Philippine Country Report, p. 9.

⁵¹ Amando Doronila, “New World Bank Development Concept Needs Commitment to Clean Government”, *Philippine Daily Inquirer*, 28 February 2000, in the Philippine Country Report, p. 9.

⁵² Philippine Country Report, p. 9.

⁵³ Mongolia Country Report, p. 9.

70. In most cases the problem is fueled by basic greed and the low salaries of public employees, which compel them to seek supplementary income. In other instances, corruption may spring from more specific factors such as exploitation of ambiguities and loopholes in the law itself. As the Thailand study points out, such exploitation typically burdens low-income populations far more than the affluent:

A related problem involves the exploitation of civil law principles by corrupt official who, in pretending that no action is legal unless backed by law, infers that no action is legal unless it is regulated by the law. This tradition provides police with ample opportunities for abuse of power and rent seeking. A classic example is the rise of the motorcycle taxi service, which grew in part as a response to Bangkok's traffic jams and in part to the need for any form of employment. Since there were no laws governing such a service, enterprising policeman determined it to be illegal and demanded bribes to allow individuals to continue the service. This practice is in stark contrast to the philosophy that unless prohibited by law, all actions are permissible. The motorcycle taxi drivers bristle whenever they read yet another story in the papers that the police are unable to go after one well-connected individual or another because there is no law to prosecute the offender.⁵⁴

M. Learned Helplessness

71. The preceding factors contribute to what the Philippine study terms a sense of "learned helplessness" among the disadvantaged. This refers to a resigned attitude and lack of expectations among those who feel that traditional power relations will invariably leave them powerless to assert their rights or to participate in local public decision making or other governance processes.⁵⁵ Experience leaves them little hope of exercising their legal rights, and with a tendency to view legal reform efforts with skepticism or indifference. The ineffectiveness of laws and widespread corruption in public institutions and processes may further contribute to public cynicism and to the absence of public demands for reform.

72. The value of progress in raising legal awareness, imparting specific knowledge, and advancing skills development can be lost where those who receive law-oriented training retain deep-seated feelings of inferiority or believe that in practice the law can only be used against them. They may feel that laws are purely for the rich, and have little significance to those who are poor or otherwise disadvantaged. These attitudinal obstacles differ from lack of legal awareness in that individuals understand that they have rights, but feel that there is no point in trying to assert them.

V. LEGAL EMPOWERMENT ACTIVITIES

73. The country studies highlight the variety of legal empowerment activities and approaches used to educate the disadvantaged about the law, help them take legal action, or assist them in other efforts that build on their legal knowledge. They include efforts to deliver general information to large sectors of the population through mass media, as well as more specifically targeted activities that meet the particular needs of specific populations.

⁵⁴ Thailand Country Report, p. 6.

⁵⁵ Philippine Country Report, p. 56.

74. *Activities* constitute a *strategy* when one or more organizations combine them in a coherent manner that aims to advance the empowerment of intended beneficiaries. A single activity can in some instances constitute a strategy for a given organization; for example, when an NGO simply distributes human rights pamphlets to a community in the expectation that increased knowledge will help empower citizens. As argued later in this report, however, the most successful strategies typically combine a number of different activities so that the whole is greater than the sum of its parts. Combining a media campaign, paralegal work, alternative dispute resolution and community organizing is one example of the many possible *integrated strategies* for building legal empowerment.

75. The following examples illustrate some of the most popular legal empowerment activities.

A. Print Media

76. Pamphlets, posters, comic books, newspapers, and other publications serve as practical media for sharing basic legal information with audiences of various sizes and literacy levels. Some materials of this kind provide specific advice, while others seek to promote broader attitudinal change. Throughout Asia, public agencies, NGOs, and other civil society organizations utilize printed materials to deliver legal information to target groups. For example, in an effort to combat traditional gender bias and lack of awareness of women's legal rights, Bangladeshi NGOs post anti-domestic violence posters on the walls of community meeting places, including locations where the NGOs conduct mediation sessions. In Nepal, literate villagers share information provided in "wall newspapers" posted in local teahouses with those who cannot read. In the Philippines, NGOs produce comic books designed to educate farmers about land reform laws and other topics through a medium that simultaneously teaches and entertains. The People's Republic of China (PRC)'s *Legal Daily* newspaper provides several hundred thousand readers with legal information, while its *Villages and Towns Forum* magazine educates readers about the laws governing the country's popularly-elected Village Committees.

B. Television and Radio

77. In most Asian countries, broadcast media offer excellent potential to deliver information to large sectors of the population. For example, several Indonesian NGOs employed television and radio broadcasts to educate women regarding their voting rights and to encourage them to participate in the Indonesia's 1999 national election. Radio and television productions range from short public information spots to more in-depth documentaries, panel discussions, and dramas. For example, PRC's most popular television program, *Focus*, employs anecdotes and examples to highlight consumer rights and illegal conduct by public officials.

78. Although television is becoming increasingly important, radio remains the single most powerful medium for reaching large audiences in Asia. For the most part, even rural and illiterate populations have access to radio in their homes or in public meeting places. Drawing on this outreach, the Attorney General of Thailand promotes popular radio messages that inform citizens about the country's new Constitution, while the Student Federation of Thailand produces radio plays concerning political rights and electoral rules.

79. A principal advantage of television and radio is that they appeal to a broad audience in serving a combined entertainment and educational function. Those who might easily tire of formal training programs are much more receptive to information imparted through a medium that entertains as well as educates. In addition, the electronic media reaches audiences with

varying levels of education, unconstrained by the literacy factors that may narrow the impact of printed materials.

C. Performing Arts and Popular Entertainment

80. The performing arts and popular entertainment serve as equally popular media for educating citizens about the law. For example, in Cambodia the Project Against Domestic Violence and the Women's Media Center recently produced a traveling street theater play on domestic violence. The production featured *ayai*, a traditional form of improvisational comedy that is familiar to all Cambodians. Performed in remote rural provinces that were not served by radio or television and in which legal service NGOs had only begun to establish a presence, the play was attended by almost 400,000 people during its 40-day tour. Popular theater, karaoke, audio-video recordings, and other popular entertainment media have been used to similar effect in voter education and other law-related information campaigns in Bangladesh, Cambodia, Indonesia, Thailand, and other countries.

D. The Internet

81. As a tool for improving the legal knowledge of ordinary citizens, the Internet is still very much in its infancy. Across Asia, NGOs are beginning to use it to provide on-line information about selected laws, pending bills, and government actions on legal issues affecting their partner communities. Some websites, such as Indonesia's "Hukumonline.com" also serve a forum for public dialogue on law reform issues.

82. In addition, there are various governmental, private, and international efforts to share legal information with lawyers and the broader public. For example, the Philippine Supreme Court has a website that provides on-line information regarding Philippine jurisprudence and decisions of the Court.⁵⁶ ADB itself provides an electronic forum for sharing information and queries regarding legal developments. While many websites are not specifically geared toward legal empowerment, they may be utilized by the disadvantaged or by allied groups. Despite the encouraging progress and creative applications to date, the full potential of the Internet can only be exploited when affordable access is extended to large numbers of people.

E. Distance Education

83. Some governments and NGOs employ "distance education" to reach isolated populations. Their efforts may include the use of radio or television to deliver nonformal legal education classes, supplemented by such devices as printed materials, visiting lectures, and local learning groups. For many years, the Open University of Sri Lanka has conducted legal studies programs by distance education, employing audio and video cassettes, written materials, and satellite teaching centers throughout the country.

F. Youth Education

84. Governments, NGOs, and even law schools have taken steps to introduce young people to basic legal concepts through formal education systems or extracurricular activities. Youth education may also help to foster long-term change in public attitudes regarding human rights, respect for fellow citizens, and gender roles. For example, a government-university partnership in Sri Lanka is developing a human rights education curriculum for secondary schools. In

⁵⁶ www.supremecourt.gov.ph

Bangladesh, the Madaripur Legal Aid Association (MLAA) conducts human rights training programs for schoolteachers, who in turn share the knowledge acquired with their students.

85. Some youth education programs focus on human rights norms prescribed in international conventions or national constitutions, or include discussion of these and other topics as part of civic education courses on democracy and good governance. Others concentrate on legal issues of specific interest to young people. For example, clinical legal education programs established by several law schools in Asia and elsewhere include opportunities for law students to visit secondary schools to discuss legal topics concerning adolescents, such as relations with police. These and other "street law" techniques focus on issues of day-to-day relevance to ordinary citizens rather than abstract legal concepts.

G. Community Law Libraries

86. Community law libraries play a valuable resource role in providing legal information and materials to the public. In contrast to the simplified explanations of laws that NGOs and some governments provide through printed materials and the media, these resource centers feature actual texts of laws and other relevant publications and documents. Viet Nam is a leader in this medium, having set up "legal bookshelves" in numerous public facilities across the country. The best of these collections comprise more than 100 documents each, which citizens regularly consult to obtain information on the substance of laws.

H. Community-based Training

87. Community-based training is a popular approach for legal empowerment. In contrast with the use of media, such training is more intensive, hands-on, and, in its most sophisticated forms, interactive. Community-based training targets the specific needs of select communities, and allows legal empowerment providers to work closely with beneficiary group. This in turn enables providers to better understand the problems faced by beneficiaries and to design and implement strategies to assist them. While such work is typically undertaken by NGOs, in Viet Nam a large network of state employees act as "voluntary propagators" in addition to their regular duties. In Thailand, the Office of the Attorney General's 72 provincial offices conduct thousands of training sessions per year, both to disseminate basic knowledge of the law and to acquaint Thais with the legal counseling and representation services to which they are entitled under the law.

88. A number of law schools, particularly those in Thailand and the Philippines, also offer students opportunities to engage in community-based training. Through clinical legal education programs of this kind, students learn about the legal needs of disadvantaged citizens and provide hands-on educational and other support services to meet them. Such programs are not always organized by law schools themselves. For example, at the University of the Philippines a student group known as the Paralegal Volunteer Organization has linked with NGOs to enable its members to perform community training.

89. While some training initiatives promote general legal awareness, they are especially relevant to development projects that focus on the legal problems of specific beneficiary groups and on the actual or potential role of local government officials in solving such problems. For example, many NGOs provide training for farmers whose land rights, livelihoods, and even physical security are threatened by the encroachment of outside interests. In many cases, the work targets specific populations within a community, such as women.

90. The ways in which these community-based efforts operate are as varied as their subject matter. In Cambodia, women's NGOs conduct participatory training programs on the legal and other protections available to women victims of domestic violence. These programs are attended by a cross-section of the community, including husbands and wives, police, local government officials, and local NGO leaders. In Pakistan, NGOs use videos and printed materials as teaching tools to educate citizens about diverse legal issues. In the Philippines, a community development-oriented NGO or local church may invite a legal service NGO to provide interactive training to community members.

91. As described in the Bangladesh study, training sessions sometimes seek to “sensitize people to the abuses of the law and to instill in them an understanding of specific legal concerns.”⁵⁷ In other words, the training goes beyond simply imparting knowledge and actually strives to stimulate attitudinal change. The aim is to help people think critically about the law, so that they will no longer passively accept unfair laws or the inequitable implementation of sound ones.

I. Training of Trainers

92. Training of trainers is a popular and potentially cost-effective approach that frequently overlaps with community-based legal empowerment efforts. It involves the provision of comprehensive training in particular areas of the law for select individuals, in the expectation that they will in turn share their experience with others. A relatively modest investment in a training of trainers initiative can position those trained to achieve a multiplier effect by improving the knowledge and capacity of the many persons whom they in turn train or interact with.

93. For example, in Mongolia an NGO network has used this technique to equip women activists and NGO leaders to monitor compliance with the *Convention on the Elimination of All Forms of Discrimination Against Women*, and to teach women about the basic terms of the Convention. Throughout Asia and elsewhere, training of trainers has been frequently used to teach citizens about electoral procedures and their legal rights as voters.

J. Paralegals

94. While the various legal empowerment approaches described above help to increase legal knowledge, such knowledge alone may not be sufficient to equip citizens to enforce their rights by acting on their knowledge.⁵⁸ For example, even if a woman fully grasps the nature of her legal problem, she may be unable to apply her knowledge to resolve it. Paralegals play an important role in situations of this kind. In developing countries paralegals are generally laypersons with specialized legal training that is typically provided by NGOs. They offer various forms of legal education, advice, and assistance to disadvantaged groups. Some individuals perform paralegal functions without holding the actual title of paralegal. For example, an NGO community development worker may provide legal counseling and support services as part of her broader responsibilities.

95. Paralegals serve as cost-effective alternatives to lawyers. They are particularly effective when drawn from the very communities that they serve, as they are familiar with local needs

⁵⁷ Bangladesh Country Report, p. 15.

⁵⁸ A report by a leading South African NGO, Black Sash, articulates problems faced by many disadvantaged persons: “Many of our clients are illiterate and intimidated by officialdom. They have little or no access to telephones. In spite of this, they have usually tried many avenues to resolve their problems before coming to a [Black] Sash Advice Office.” Black Sash Trust, Report for the Period 1 January to 30 June 1998, p. 2.

and issues and enjoy the trust of their fellow citizens. In some cases, paralegals play a purely intermediary role, representing citizen interests in formal or informal legal proceedings. In other cases, they train citizens to directly engage in administrative and other legal processes.

96. There are two main types of paralegal: volunteers, who usually belong to community associations of various kinds; and professionals, who serve as paid NGO staff members. Volunteer paralegals may be community leaders or individuals who display particular aptitude for and interest in law-oriented work. They generally receive more thorough training than that provided in community-focused workshops, though those workshops sometimes constitute venues for identifying potential paralegals. Their functions vary widely. For example, women trained by and working with the Women's Legal Bureau in Manila have helped to reduce domestic violence in their neighborhoods. Such efforts include pressing police to fulfill their duties, mobilizing male allies to persuade abusive husbands to stop beating their wives, and compelling husbands to sign agreements to which they will be held strictly accountable if they fail to observe their commitment to desist from violence.

97. Farmers trained by the Philippine NGOs Saligan and Kaisahan have successfully guided thousands of land reform applications through the Department of Agrarian Reform. Their work has an explicit governance focus. In fact, The Ford Foundation supports the two NGOs under its local governance program, because the land reform and other legal problems that they address are the governance issues of greatest concern to the farmers whom they serve. By working through an executive agency, the Department of Agrarian Reform, Saligan and Kaisahan address issues that are sometimes considered to lie outside the legal system or traditional governance concerns.

98. The volunteer paralegal activities necessarily hinge on the capacities of the volunteers themselves. The Filipinos just described are literate, and in some cases even have a high school education. In contrast, many of the women trained by the Karnataka Women's Legal Education Program in India are illiterate. They serve as valuable sources of leadership and information for their neighbors, but cannot guide applications through government bureaucracies.

99. Professional paralegals perform the same basic services as their volunteer counterparts, but tend to work in a more systematic manner. That is, they help clients navigate bureaucratic and judicial systems, and sometimes deal with those systems on their clients' behalf. For example, the paralegal staff of the PRC's Qianxi County Rural Women's Legal Services Center provide advice, mediate disputes, occasionally refer cases to the Center's small cadre of lawyers, and operate information booths at weekly rural markets. Their support role, together with other non-formal legal education services, aims to raise legal awareness within the area served and to encourage citizens to approach the Center with their problems.

K. Alternative Dispute Resolution

100. As the previous examples suggest, a primary function of legal empowerment is to educate disadvantaged citizens about the law and to help them gain access to government services and legal processes. Beyond this function, legal empowerment activities also complement or substitute for the formal legal system, as is the case with alternative dispute resolution (ADR). Bangladesh offers several NGO-facilitated ADR models through which community residents engage in modified versions of a traditional village dispute resolution procedure known as *shalish*. Community ADR serves as an efficient and cost-effective alternative to an overburdened formal court system.

101. For example, the Madaripur Legal Aid Association (MLAA) serves the million-plus residents of Madaripur District by recruiting community leaders to serve on mediation committees. It provides them with very basic legal training and encourages them to apply a combination of law and common sense principles of dispute resolution rather than bow to local elite pressure or to gender biases in mediating disputes. It also employs paid staff as mediation workers. Mediation workers respond to citizen requests for assistance by organizing shalish sessions or by referring them to other MLAA staff for help. MLAA and other Bangladeshi NGOs involved in ADR commonly address issues such as domestic violence and illegal dowry⁵⁹ demands by husbands. Farmers embroiled in land or inheritance disputes and others living on the margin of rural society also turn to NGO-convened mediation to resolve their problems. While the shalish remains a male-dominated procedure, Bangladeshi NGOs are gradually beginning to address traditional power imbalances by engaging more women as mediation committee members and encouraging them to play more prominent roles in the procedures.

102. Not all ADR is provided independently of government. As of 1998, Viet Nam had launched 80,000 “conciliation groups” throughout the country. Established by the state, but drawing on traditional practices, they mediate small civil disputes among neighbors, family members, and other individuals. The conciliation groups are composed of community members, and usually headed by the hamlet leader, local party secretary, or head of the local branch of a mass organization. In 1996, 134,604 of 153,854 cases referred to the groups were reportedly settled successfully.⁶⁰

103. The Philippines’ *barangay* (a local government unit) justice system resolves such neighborhood conflicts through a compulsory mediation system. Similarly, the Philippine Department of Agrarian Reform and Department of Environment and Natural Resources have employed programs that train mediators and establish procedures for resolving land and environmental conflicts before they become embroiled in contentious administrative or judicial review proceedings. In Sri Lanka, the Ministry of Justice administers a popular Mediation Boards Program that has served most of the country for more than a decade.

L. Legal Aid

104. For purposes of this report, legal aid means free or low-cost provision of legal consultation or representation services. Legal aid generally focuses on the needs of the poor. It may address both civil and criminal matters. While legal aid can include representation in formal court proceedings, it frequently involves advice and assistance that avoids the need for cases to be tried or that pertains to administrative matters that are determined by quasi-judicial tribunals. In some cases, it involves ADR. Although the term is typically associated with help for individuals, it can overlap with the broader goals of public interest litigation discussed below.

105. Beyond advice to individual clients, legal aid can play a more far-reaching educational role. The Viet Nam report describes how the case of a dismissed factory worker helped acquaint fellow employees with their rights:

[A] worker in a manufacturing factory in Ha Tay province had been dismissed. He came to Ha Tay Province Legal Aid Center for help. The center contacted the

⁵⁹ Dowry is the payment of money, livestock, or material goods such as motorcycles by the bride’s family to the family of the groom, in order to secure a marriage. Dowry demands frequently continue following marriage, and are often accompanied by threats of or actual violence against the wife.

⁶⁰ Viet Nam Country Report, p. 29.

trade union and subsequently the factory authorities for an amicable solution, but without success. The Center then helped the worker to file the case and assigned a lawyer to represent him. The case was followed with great interest by many workers of the province. Step by step, the workers learned through their colleague's experience about their rights and obligations as well as the corresponding obligations of the factory leaders in a labor case. In the end, the worker won the case and this was a [highly positive] event. As a result, any worker at the factory could explain what the case was about in great detail. The situation in the factory has since improved because the leaders now have to be very careful in observing their obligations toward the workers.⁶¹

M. Public Interest Litigation

106. Public interest litigation (PIL) aims to serve or represent large categories of persons, to the benefit of society as a whole. In ruling on a public interest case, a court may set a precedent that guides the way in which subsequent courts will determine cases involving similar situations in the future. Even where such a decision is not binding, as in civil law countries, it may have a *de facto* value as a precedent by virtue of the publicity it receives and the information it conveys to the public and the judiciary .

107. PIL is an increasingly utilized method of addressing issues that threaten the rights or quality of life of vulnerable groups, such as the health risks that result from the discharge of toxic industrial waste. Among Asian countries, PIL is most widely practiced in India, where it is known as "social action litigation." A series of public interest cases on behalf of communities affected by the failure of Indian government agencies to enforce environmental laws have resulted in several milestone decisions by the Supreme Court. These decisions recognize citizens' fundamental right to a healthy environment. The Bangladesh Environmental Lawyers Association and the Bangladesh Legal Aid and Services Trust have also initiated public interest cases on a variety of issues. As their experience proves, the threat of litigation is sometimes sufficient to compel a recalcitrant government agency or private party to agree to amicably settle a dispute. For the threat to have credibility, NGOs must be prepared to go to court at least occasionally.

N. Administrative Advocacy

108. In several of the countries studied under the LES, NGOs help partner populations pursue their interests and disputes through administrative processes involving tribunals that operate under the authority of executive agencies or local governments. This is an historical need that Thailand and other countries have only recently begun to address:

[W]hile many citizens may have wished to access the legal system to seek justice specifically against government decisions, Thailand has never had an administrative court or effective administrative law procedures. As a result, Thai citizens have had little recourse against actions by the state. The [new] constitutional mandate for both an Administrative Court and an Ombudsman should reverse this tradition.⁶²

⁶¹ Viet Nam Country Report, pp. 38.

⁶² Thailand Country Report, p. 8.

109. Administrative law involves more than simply pitting citizens against the state. In many instances, legal needs are met by administrative processes that involve state approval of citizen licenses, permits, or specified actions, or through quasi-judicial procedures in which administrative bodies rule on competing claims by private parties.

110. The experience of Philippine NGOs offers numerous examples of such administrative functions. Some assist fishing communities to secure coastal fishing rights that fall under the legal purview of local governments. Others help partner populations to prepare applications to the Department of Environment and Natural Resources to harvest forest products, or to settle disputes before tribunals of the Departments of Labor and Agrarian Reform.

111. Moreover, in many societies, crucial decisions regarding the administration of justice fall under the *de facto* control of the police. Violence against women is a leading example of this. While police tolerance of such violence perpetuates it, the threat of police intervention can help to counter it. As such, a number of Asian NGOs work directly with the police, train CBOs on how to best interact with them, and intervene when police fail to take action against the perpetrators of domestic violence.

O. Educating and Training Government Officials

112. Educating and training government personnel can potentially benefit disadvantaged populations by making public officials more knowledgeable about the law and more sensitive and responsive to the needs of the disadvantaged. Some of the most successful programs are carried out by NGOs and universities, working in close cooperation with governments. The officials served by such programs include judges, prosecutors, and administrative officials, as well as executive agency personnel who make crucial resource allocations and other decisions affecting the rights of the disadvantaged. For example, the Cambodian Institute of Human Rights and the Khmer Institute of Democracy have for several years collaborated with the government in conducting training programs in human rights and good governance for national and local-level public officials.

113. These and other efforts include formal training through seminars, as well as other mechanisms through which NGOs and citizens informally cooperate with or bring pressure to bear on public officials. Sometimes a public official can learn more about the law through discussions with a motivated and well informed group of citizens than she can through a structured training program. In any event, these various activities serve to educate public officials about citizens' rights and the corresponding obligations of officials. At the same time, these activities empower citizens and communities to more effectively engage with public officials and agencies.