

**LAW AND POLICY REFORM
AT THE ASIAN DEVELOPMENT BANK**

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FOREWORD

Institutionalized rule of law is a distinct necessity in order to ensure that economic development is sustainable, and effects those who are in the greatest need. As development scholarship has grown to understand the relationship between law and development, ADB has expanded its role in the area through the Law and Policy Reform (LPR) program. Originally focused strongly on training and retraining of those working in the legal profession, the expansion of LPR work in 2000 marks a dramatic advancement in ADB's support for legal and judicial reform in Asia.

Part 1 of this publication is a brief overview of ADB's LPR work in the last year. In 2000, LPR activity was focused heavily on strengthening the capacities of national legal institutions and operationalizing new laws and regulations to facilitate both economic growth and the empowerment of some of the region's most vulnerable people. This has been most visible in ADB's work in the implementation of a new land law in Cambodia and the publication of laws in Tajikistan. In addition, the program took up the mantle of "regional coordinator," initiating Asia-wide activity on the combating of money laundering and the strengthening of judicial independence.

We are pleased with the progress achieved to date with these projects and their continuing contribution to improving and enhancing the legal systems of ADB's developing member countries. We are committed to pursuing such law and policy reform initiatives that are welcomed by ADB's developing member countries and to working with them on these critically important issues.

Part 2 of this publication focuses on an area of growing interest and relevance to development. ADB's overarching policy on poverty reduction recognizes that poverty is more than just income levels. The policy paper approved by the ADB Board in October 1999, *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank* states 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 poor – and tend to remain so – if they are not empowered to participate in making the decisions that shape their lives." Much of the traditional legal literacy work by civil society groups has focused on enabling vulnerable groups to access essential goods and services through the use of law and institutions, including the formal legal system. The report in Part 2 was prepared under regional technical assistance on Legal Literacy for Supporting Governance that was designed to advance ADB's overarching goal of poverty reduction by identifying how legal literacy or empowerment can contribute to improved governance that can lead to better intermediation of public goods and service by state institutions. The study provides important insights for design, implementation, and improved developmental impact of projects funded by the ADB. It also makes an important contribution to understanding the role of legal empowerment in legal and judicial reform programs. We hope that these insights will be of benefit to the larger development community.

I would like to thank Mr. Hamid L. Sharif, Senior Counsel and Head, Law and Policy Reform Special Practice Group and Mr. Bradley Murg, interning Luce Scholar in the Office of the General Counsel, for overseeing the production of this publication, particularly Part 1. I would also like to thank the team put together by The Asia Foundation for Part 2 of this publication.

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General Counsel

The views presented in this report do not necessarily reflect the views or position of ADB, or its Board of Directors or the Governments they represent. ADB does not guarantee the accuracy of the data included in this report and accepts no responsibility for consequence for their use. The term "country" does not imply any judgment by ADB as to the legal or other status of any territorial entity.

An Overview of ADB's Law and
Policy Reform Activities
in 2000

PART 1: AN OVERVIEW OF ADB'S LAW AND POLICY REFORM ACTIVITIES IN 2000

Introduction

1. A legal environment conducive to development is essential for all of the Asian Development Bank's developing member countries (DMCs). ADB's activities play an important role in promoting the rule of law through a pro-poor legal and institutional framework for economic development activities and is a vital tool in supporting the legal and institutional framework for predictability, transparency, accountability, and participation. Over the years, ADB has provided substantial assistance through loans and technical assistance projects with significant Law and Policy Reform (LPR) components. Stand-alone legal technical assistance (TA) has focused on LPR for private sector development, particularly for finance, banking, and corporate governance; judicial reform; legal training; dissemination of legal information; and environmental protection.

Governance and Poverty Reduction

2. LPR is a key dimension of ADB's governance strategy.¹ In a broader sense, good governance programming supports equitable and inclusive growth and the spread of economic freedoms and rights. The role of LPR in the enhancement of region-wide governance cuts across ADB's overarching goal of poverty reduction and all of the core strategic areas identified in ADB's Long-term Strategic Framework: sustainable economic growth, inclusive social development, and governance for effective policies and institutions.

3. In tandem with these strategic areas are three strategic themes, they are: promoting the role of the private sector, supporting regional cooperation and integration, and addressing environmental sustainability. LPR plays a critical role in ensuring that these themes are mainstreamed in ADB operations. The myriad of tasks for LPR is manifold; yet the integration of these various areas into a systemic approach is challenging. The activities of LPR in 2000 sought to respond to this challenge through strategic interventions to support ADB operations and DMC priorities.

Deepening LPR

4. Legal reform as part of the development process means a great deal more than simply the drafting of "modern" laws that are accessible, comprehensible, and usable. The legal system cannot operate without institutions that make these rules come to life through their dynamic interpretation and enforcement. Accordingly, LPR has expanded far beyond simply the drafting and enactment of legislation. Rather, the overall substantive goal of LPR is to improve the efficiency and effectiveness of the legal and judicial system, resulting in the twin goals of greater responsiveness to a market economy and increasing the social access of the poor to public goods and services. This involves not only improving the functions of existing institutions but their reform is also inclusive of new institutions and laws that are more responsive to citizen's legal needs; and also involves empowering citizens to assert their rights (see Part 2).

¹ ADB's 1995 Governance Paper states that "...law and order is necessary for economic development to take place."

Enhancing the Capacity of the Judiciary and Government Lawyers

5. Legal education and training of the judiciary and government lawyers in DMCs has been prominent in ADB's LPR activities. In 2000 such activities continued under ongoing projects in Vietnam,² Mongolia,³ and the South Pacific.⁴ Implementation of a TA in the Maldives⁵ saw the establishment of the first legal and judicial education and training institute in the Maldives. A number of training sessions for judges were held and work began on finalizing the curriculum for courses in legal and judicial education. The approval of the corporate and financial governance loan package for Nepal includes support for the establishment of a National Judicial Academy that will cater to the needs of not only the judiciary but also government and private lawyers.⁶ ADB will support not only curriculum development and the training of faculty but also construction of the Academy's building under the loan.

Judicial Independence

6. The key point in justice sector reform involves the actual structure of legal institutions and the rules that govern the exercise of the different branches of government. Consequently, the cornerstone of successful reform is the effective independence of the judiciary. That is a prerequisite for an impartial, efficient, and reliable judicial system. Without judicial independence, there can be no rule of law, and without rule of law the conditions are not in place for the efficient operation of an open economy, so as to ensure conditions of legal security and foreseeability. This often presupposes working in the broad institutional context, and ADB has conceived of it in these terms in a number of its most recent projects.

Box 1: Institutional Strengthening for Judicial Independence in the Philippines

In 2000, ADB began work on a TA to strengthen the independence of the Philippine judiciary. The Philippine Supreme Court, led by Chief Justice Hilario Davide, requested this TA and the executive branch of Government, led by the Department of Finance and the National Economic and Development Authority, strongly supports and has endorsed it.

The TA focuses on a number of reforms identified by the Supreme Court in its comprehensive Action Plan for Judicial Reform. It will (a) design and set up financial, budgetary, and administrative frameworks that will allow the judiciary to act autonomously in relation to its fiscal and administrative matters, (b) improve the appointment and nomination process of the judiciary to make it more transparent and performance-based, and formulate performance-based incentives to improve the competence and impartiality of the judiciary, and (c) improve the delivery of sustained, focused, and responsive training to the members of the bench.

This grant will be the largest provided by ADB to the Government of the Republic of the Philippines for legal or judicial reform. It lays the basis for long-term efforts that will help achieve the judiciary's goal of being able to dispense impartial and independent justice, efficiently and effectively, thus obtaining civil society's trust and confidence. The TA will begin implementation later this year.

² TA 2853-VIE: *Retraining of Government Legal Officers* (\$1,200,000), approved on 26 August 1997.

³ TA 2967-MON: *Retraining of Legal Professionals in a Market Economy* (\$1,000,000), approved on 23 December 1997.

⁴ RETA-5895: *Pacific Judicial Training* (\$350,000), approved on 28 December 1999.

⁵ TA 3389-MLD: *Strengthening Legal Education and Judicial Training* (\$995,000), approved on 23 December 1999.

⁶ TA 3580-NEP: *Corporate and Financial Governance Institutional Support* (\$3,300,000), approved on 14 December 2000 and Loan 1811: *Corporate and Financial Governance* (\$7.3 million), approved on 14 December 2000.

Systemic Issues in Legal and Judicial Reform

7. Systemic issues and an approach which appropriately and comprehensively deals with those issues has as its focus the institutional capabilities of the legal system, including the judiciary as well as government administrative and regulatory agencies. It calls for a greater attention and training of the judiciary and government officials staffing legal and regulatory institutions and the incentive systems in which they function. A systemic approach implies focusing on the resources made available to the courts and regulatory agencies; the efficiency and transparency with which these resources are utilized; and the accountability of these agencies to the public. These were the conclusions reached as a part of a 1999 study conducted under the auspices of technical assistance to the Government of Pakistan for legal and judicial reform.⁷ As part of its support for systemic reforms in Pakistan in 2000, ADB approved a TA for building capacity for reform and pilot testing some of the reform proposals.⁸

Box 2: Legal and Judicial Reform in Pakistan

Building on two previous TA's in the country, ADB approved a \$2.7 million grant to develop the capacity of the judiciary to institute substantive long-term reforms. As Pakistan moves towards a market economy, the legal system must be able to respond to the needs of people for justice including administrative justice to ensure citizens benefit from legal entitlements. Transaction costs need to be reduced such that the private sector can power Pakistan's macroeconomic growth. The development of a judiciary that is aware of its larger role in development, technically competent, well resourced and accountable will provide the predictable justice that an economy such as Pakistan's requires.

Concomitantly, the creation of new methods of alternative dispute resolution, improved legal information, strengthening systems of administrative justice, and the use of local language will allow the poor to open the door to legal remedies, which has long been closed to them. Through work with various stakeholders: the federal and provincial bench, civil society groups, and various government agencies, ADB has set the groundwork for a comprehensive reform program which in addition to the above will deal with issues as diverse as: legal education, judicial training, case management, and long-term financial sustainability of key institutions in the sector.

Legal Information

8. One of the overriding objectives of ADB's strategy for DMCs is to facilitate the transition to a market economy. For such transitions to be successful, it is essential to increase the transparency and knowledge of the legal and regulatory framework. Legal information is vital to the success of market-based reforms – particularly, the promulgation of new legislation. In 2000, ADB implemented a TA to Tajikistan⁹ building on the experience and knowledge of the area gained during the implementation of previous legal information work in the People's Republic of China.¹⁰ Since the introduction of economic reforms in both countries, a large number of laws and regulations have been passed. The pace of adopting new legislation continues to intensify with the enactment of many new laws and regulations covering areas such as foreign trade,

⁷ TA 3015-PAK: *Legal and Judicial Reform Project* (\$995,000), approved on 7 May 1998.

⁸ TA 3433-PAK: *Strengthening of Institutional Capacity for Judicial and Legal Reform* (\$2,900,000), approved on 27 April 2000.

⁹ TA 3238-TAJ: *Dissemination of Laws and Strengthening of the Legal Information System* (\$380,000), approved on 9 August 1999.

¹⁰ TA 3000-PRC: *Strengthening of the Legal Information System* (\$630,000), approved on 23 March 1998.

customs duties, taxation, foreign exchange controls, banking, capital market, and foreign direct investment in infrastructure sectors.

9. In Tajikistan, the result of scanty information on new laws has been two-fold: corruption and the absence of foreign direct investment. ADB worked with the Law Reform Commission, which had been previously established with ADB assistance,¹¹ to establish a database of laws and legal acts and to publish a collection of laws in both the Tajik and Russian languages, thereby improving the state of legal predictability and transparency.

Combating Money Laundering

10. The private sector and markets play a central role in the development process by responding to the challenges of mobilizing resources to address Asia's increasingly complex development agenda. One of the largest threats to the operation and the stability of a nation's financial system, as well as the ability of the private sector to act purposefully in the development process, is money laundering. In addition to the effects on the financial sector, it increases the vulnerability of countries to other types of crime such as drug trafficking, fraud, and corruption. This vulnerability leads to poor governance and undermines state institutions and their legitimacy.

11. In order to combat this serious threat to economic development, ADB began work in 2000 on a regional technical assistance to assist the Financial Action Task Force and the Asia/Pacific Group on Money Laundering (APG) in combating money laundering, and will focus on DMCs which have not yet met international standards. The RETA has an expansive purview, working with governments in the South Pacific as well as those in Southeast Asia.

12. It will help to improve transparency within regional financial institutions and establish strong accountability mechanisms. Among the anticipated outputs are: the identification of the necessary institutional and regulatory reforms; the publication of a comprehensive manual on combating money laundering; and the development of a regional action plan to promote regional cooperation to counter money laundering.

Insolvency and Secured Transactions

13. In the wake of the financial crisis, ADB lead regional initiatives in insolvency and secured transactions law reform. Following on from its initiative¹² in carrying out a comprehensive analysis of insolvency laws in the region in 2000, ADB has implemented technical assistance to Thailand to train members of the bar and the judiciary in business reorganization and insolvency law. Effective national insolvency regimes contribute strongly to crisis prevention by providing the predictable legal framework needed to address the financial difficulties of troubled firms before the accumulated financial difficulties of the corporate sector spill over into an economy-wide crisis. Similar training was provided to the Judiciary in the Philippines following the transfer of jurisdiction over insolvency cases from the Securities and Exchange Commission to the courts. To support regional cooperation in cross-border insolvency issues and to enhance capacity to deal with insolvency generally, ADB approved a regional TA for Insolvency Training and Capacity Building.¹³

¹¹ The Law Reform Commission was created through an agreement with the ADB during the inception mission for TA 3238-TAJ: *Dissemination of Laws and Strengthening of the Legal Information System*.

¹² See *LPR at ADB 2000*, Volume I.

¹³ RETA-5795: *Insolvency Law Reforms* (\$550,000), approved on 13 July 1998.

14. Regional work on secured transactions and insolvency culminated in 2000 with the publication of two substantial texts on the matter, *The Need for an Integrated Approach to Secured Transactions and Insolvency Law Reforms*, as well as *Secured Transactions Law Reform in Asia: Unleashing the Potential of Collateral*.¹⁴ These works go a long way in providing a deliberative and thorough analysis of the elements that will form the foundation of a secured transactions regime that can effectively promote the economic benefits of secured transactions law reform.

15. In 2000, ADB initiated dialogue with several DMCs to the reform of their respective secured transactions laws. In Nepal, under an ongoing TA,¹⁵ ADB is supporting an integrated approach to reform of insolvency and secured transactions laws in the context of a larger initiative for improving governance corporate and financial governance (CFG).¹⁶ Under ADB's support for CFG, a secured transaction registry will also be established.

Land Law

16. Specific governance issues have also been addressed through a series of smaller TAs to ADB DMCs. In Cambodia, the LPR program began implementation of land legislation, one of the first significant steps that country has taken in the development of market-oriented rule of law. The benefits of which range from a more secure environment for foreign direct investment to an end to the legal vulnerability of subsistence farmers who make up a large portion of the Cambodian population.

Box 3: Implementation of the Land Law in Cambodia

In 2000, ADB approved technical assistance to the government of Cambodia to assist in the implementation of the country's newly drafted land law; the first piece of legislation covering such a purview since the 1975. In Cambodia, as elsewhere, land ownership is identified with poverty alleviation. Thus, enactment and implementation of a land law that enables the poor to secure good title is an issue of the first magnitude. This is particularly important for the poor who have occupied plots of land for many years. In a recent survey, provincial governors confirmed the importance of the new legislation; rating the usefulness of it in resolving land disputes in their respective provinces on a scale of 1 (not helpful) to 10 (most helpful), the average response was 9.3. Nationwide implementation of this law will do a great deal to reduce the vulnerability of the rural poor and facilitate their access to justice either through the courts or a system of alternative dispute resolution. ADB TA includes a component to assist the poor to assert their rights under the new law through non-governmental organizations specializing in advocacy of the rights of the poor.

Pro-Poor Judicial Reform

17. As referenced in the 2000 annual report, the LPR program began work on regional TA to strengthen pro-poor judicial reform efforts across Asia. Though, the term "pro-poor" is often utilized; however, a concrete definition of pro-poor law and development work, particularly in the context of Asia is not readily available. A number of components of pro-poor work: legal aid, alternative dispute resolution, decentralization, and legal information have already been

¹⁴ See Volumes 1 and 2 of *LPR at ADB 2000*.

¹⁵ TA 3461-NEP: *Company, Insolvency, and Secured Transactions Law Reform* (\$250,000), approved on 27 June 2000.

¹⁶ See footnote 6.

incorporated into existing LPR work. However, there is a need to go farther in developing a pro-poor approach which is sufficiently broad.

18. This study, to be implemented in 2001, will look at questions of access to justice across Asia and identify existing impediments and solutions to the provision of justice to the region's most vulnerable individuals. The results of this RETA, along with similar work in the implementation of the TA to Pakistan, will provide the theoretical and practical base of knowledge to mainstream pro-poor legal and institutional frameworks in development projects.

19. In 2000, work continued on a RETA surveying legal literacy¹⁷ in selected DMCs and the its relevance to development projects. The results of that RETA are published in Part 2 of this report.

¹⁷ RETA-5856: *Legal Literacy for Supporting Governance* (\$500,000), approved in 24 August 1999.

Part 2:

**LEGAL EMPOWERMENT:
ADVANCING GOOD GOVERNANCE
AND POVERTY REDUCTION**

Overview Report

RETA 5856: Legal Literacy for Supporting Governance

EXECUTIVE SUMMARY

I. INTRODUCTION

1. 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.

2. The *disadvantaged* include the poor, as well as those who face discrimination or abuse as a result of their 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 disadvantaged populations' access to rights and entitlements, as well as social, economic, and political opportunities.

3. 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 country and supplementary survey reports, this report constitutes the complete study *on Legal Empowerment: Advancing Good Governance and Poverty Reduction*, or the Legal Empowerment Study (LES). The LES was commissioned by ADB under its regional technical assistance (RETA 5856: *Legal Literacy for Supporting Governance*).

II. THE NATURE AND PURPOSE OF LEGAL EMPOWERMENT

A. The Concept of Legal Empowerment

4. ***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. Such control may relate to such priorities as basic security, livelihood, access to essential resources, and participation in public decision-making processes. It reflects the increased knowledge, capacity, and confidence of the disadvantaged, and the enhancement of 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 over 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. Accordingly, 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.

5. ***Critical consciousness.*** In its most advanced forms, legal empowerment 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 that affect their lives, and to take action to challenge and transform those relationships.

6. **Legal empowerment involves use of the law.** 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. These activities may also be combined with initiatives that are not inherently law-oriented, such as community organizing or livelihood development.

7. **A combination of education and action.** Legal empowerment work can involve both education and action. Most advanced legal empowerment initiatives go beyond simply educating people. 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.

8. **Legal empowerment and legal literacy.** Legal empowerment is similar to “legal literacy,” the term originally used by ADB in commissioning the legal empowerment study. Although the two concepts 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. First, it captures the focus of the study—the use of law to empower the disadvantaged. Second, many people are confused by the term “legal literacy” and find 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. Third, legal empowerment better captures the emerging nexus of law and socioeconomic development efforts that promote empowerment and related goals.

9. **Legal empowerment, the rule of law, and institutional reform.** Legal empowerment is not the same as promoting the rule of law, although 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 cases, 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, 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.

10. 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 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 a range 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.

11. **Legal empowerment and development initiatives.** Legal empowerment equips the disadvantaged to more effectively advance their interests through engagement with the legal system, public agencies, civil society, private parties, and law reform efforts. It may also increase the benefits that the disadvantaged enjoy as participants in development projects. This latter element is particularly important for ADB and other development agencies. The success of development 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; second, that opportunities are created for beneficiaries to advance their rights and interests through informed participation in project-related, decision-making processes.

B. Origins of the Legal Empowerment Study

12. In commissioning RETA 5856: *Legal Literacy for Supporting Governance*, 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. Governance is best advanced where officials are sensitive and responsive to the needs, priorities, and participation of beneficiaries.”

13. 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]¹ 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.

14. One objective of ADB in this study is 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 the development impact of these projects. Another objective is to understand how legal empowerment work can contribute to law reform, to the implementation and enforcement of laws, and to strengthening administrative and other legal mechanisms used for public decision making. To this end, this study identifies the most effective strategies for legal empowerment, and analyzes the factors that contribute to their success.

C. Constraints on Access to Justice and Participation in Governance by the Disadvantaged

15. Legal empowerment work aims to overcome the combination of constraints that prevent the disadvantaged from accessing the legal system and participating in governance, and which thereby limit the success of poverty reduction efforts. The seven country studies identified a series of fundamental constraints that are largely consistent throughout Asia. Examples include:

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.

- lack of economic independence
- minimal understanding of law and the rights that it confers
- limited access to affordable legal services
- lack of knowledge, incentives, and resources among government officials
- limitations in the outreach and capacity of civil society organizations to provide legal services to the disadvantaged
- inconsistency between formal law and traditional values
- poorly drafted or contradictory laws and regulations
- failure to implement sound laws
- traditional use of law as an instrument of control (rule *by* law rather than rule *of* law)
- corruption

16. These constraints together give rise to a sense of “learned helplessness” among the disadvantaged—a feeling of powerless among those whose experience leads them to conclude that traditional power relations will invariably prevent them from asserting their rights or participating in public decision-making processes. Consequently, the disadvantaged tend to view legal reform efforts with skepticism or indifference.

D. Legal Empowerment Activities

17. Legal empowerment is pursued through a variety of activities and strategies. *Activities* constitute a *strategy* when one or more organizations combine them in a coherent manner to advance the empowerment of intended beneficiaries. The most successful strategies combine a number of different activities. Examples of individual activities include:

18. **Print media.** 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:

- In **Bangladesh**, nongovernmental organizations (NGOs) post anti-domestic violence posters on the walls of community meeting places in an effort to combat traditional gender bias and lack of awareness of women's legal rights. 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.

19. **Broadcast media, performing arts, and popular culture.** Radio, television, the performing arts, and popular culture offer excellent opportunities to deliver information to large sectors of the population. They appeal to a broad audience in serving a combined entertainment and educational function. In addition, they reach audiences with varying levels of education, unconstrained by the literacy factors that may narrow the impact of printed materials.

- In **Indonesia**, NGOs employed television and radio broadcasts to educate women about their voting rights and to encourage them to participate in the 1999 national election. In **Thailand**, the Attorney General promotes popular radio spots that inform citizens about the country's new Constitution, while the Student Federation of Thailand produces radio plays concerning political rights and electoral rules. In **Cambodia**, over 400,000 residents of remote rural communities across the country attended live performances of a traveling street theater play on domestic violence, based on a traditional form of improvisational comedy familiar to all Cambodians.

20. **Community-based training.** Intensive, hands-on, and interactive community-based training targets the specific needs of select communities, and allows legal empowerment providers to work closely with beneficiary groups to better understand the problems that they face and to design and implement strategies to address them.

- In **Pakistan**, NGOs use videos and printed materials during community workshops to educate citizens about diverse legal issues. In **Bangladesh**, NGO training sessions stimulate attitudinal change by helping participants think critically about the law, so that they will no longer passively accept unfair laws or the inequitable implementation of laws.

21. **Paralegals.** In developing countries paralegals are generally laypersons with specialized legal training. As cost-effective alternatives to lawyers, they offer various forms of legal education, advice, and assistance to disadvantaged groups. Where paralegals are themselves members of the groups or communities that they serve, they are familiar with local needs and issues, and enjoy the trust of their fellow citizens.

- In the **Philippines**, farmers trained by local NGOs Saligan and Kaisahan have successfully guided thousands of land reform applications through the Department of Agrarian Reform.²

22. **Alternative dispute resolution (ADR).** ADR provides a timely, cost effective, and in some instances, participatory and community sanctioned alternative to the formal court system.

- In **Bangladesh**, the Madaripur Legal Aid Association serves the million-plus residents of Madaripur District by recruiting community leaders to serve on local mediation committees. It provides them with very basic legal training and encourages them to apply a combination of law and common sense dispute resolution principles rather than bow to local elite pressure or to gender biases in mediating disputes. In **Viet Nam**, over 80,000 state-administered "conciliation groups" draw on traditional practices in mediating small-scale civil disputes among neighbors, family members, and other parties. In the **Philippines**, the *barangay* justice system resolves neighborhood conflicts through a compulsory mediation system, while the Department of Agrarian Reform and the Department of Environment and Natural Resources train mediators and establish procedures for resolving land and environmental conflicts before they become embroiled in contentious administrative or judicial review proceedings.

23. **Legal aid.** Free or low-cost legal services generally focus on the legal needs of the poor, including 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, including ADR or engagement with administrative agencies.

- In **Bangladesh**, the Bangladesh Legal Aid and Services Trust provides a variety of legal support services to disadvantaged citizens through a nation-wide network of offices.

24. **Administrative advocacy.** NGOs assist partner populations to pursue their interests and disputes through administrative processes involving tribunals that operate under the authority of executive agencies or local governments.

² See later references to the supplementary research on the impact of legal empowerment on agrarian reform in the Philippines.

- In the **Philippines**, some NGOs 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.

25. ***Educating and training government officials.*** Educating and training government personnel can potentially benefit disadvantaged populations by making officials more knowledgeable about the law and more sensitive and responsive to the needs of the disadvantaged. These activities serve to educate public officials about citizens' rights and the officials' corresponding obligations. At the same time, they empower citizens and communities to more effectively engage with public officials and agencies.

- In **Cambodia**, the local NGOs Cambodian Institute of Human Rights and the Khmer Institute of Democracy have for several years collaborated with the government in conducting training programs in good governance and human rights for national and local-level public officials.

III. LESSONS LEARNED FROM SUCCESSFUL LEGAL EMPOWERMENT STRATEGIES

A. The Basic Finding: Legal Empowerment Helps to Advance Good Governance and to Reduce Poverty

26. Legal empowerment helps to advance good governance and to reduce poverty in both substantial and subtle ways, in some cases simultaneously. Poverty reduction must be understood not simply in terms of increased income or other improvements in material circumstances, but also in the sense in which informed participation by the poor in decisions that affect their lives helps to reduce poverty. While poverty reduction is sometimes equated with simply improving the income or other material circumstances of the poor, it also involves the informed participation of the disadvantaged in decisions that affect them, both because such participation is inherently important to their quality of life and because it can help to improve their material circumstances. When this includes citizen or community participation in *public* decision-making processes, legal empowerment contributes to good governance.

27. Studies by Edwards, Evans, Fox,³ and others point to the importance of capacity building, organization, or political influence in improving the lives of the disadvantaged. Where such factors combine with rights-oriented training of and action by or on behalf of disadvantaged groups, they constitute an effective legal empowerment strategy.⁴

³ Michael Edwards, NGO Performance—What Breeds Success? New Evidence from South Asia, *World Development*, 27(2), 1999, at 371; P. Evans, Development Strategies Across the Public-Private Divide, *World Development*, 24(6), 1996, 1033-1037; J. Fox, How does civil society thicken? The political construction of social capital in rural Mexico? *World Development*, 24(6), at 1089-1103.

⁴ More direct evidence flows from non-LES reviews of what is in effect legal empowerment work. For example, *Many Roads to Justice*, a 2000 Ford Foundation analysis of the operations of many of its law-oriented grantees around the globe, in part illuminates such work without using the term "legal empowerment." Mary McClymont and Stephen Golub, eds. *Many Roads to Justice; The Law-Related Work of Ford Foundation Grantees Around the World* (New York): Ford Foundation, 2000.

B. The Roles and Impact of Legal Empowerment

28. Legal empowerment helps advance good governance, poverty reduction, and other development priorities by overcoming constraints on access to justice and participation in governance. Its roles and impact range in sophistication and scope from imparting basic knowledge of law and rights to providing the disadvantaged with the skills and advocacy tools needed to confidently engage in legal and other public decision-making processes.

29. **Increased awareness of rights.** In its simplest form, legal empowerment provides the disadvantaged with a general awareness of law and the concept of rights. However basic, such awareness in turn provides them with a sense that law and rights have relevance to their lives.

30. **Increased knowledge of specific legal rights and issues.** The disadvantaged may possess a general awareness that they have rights, yet lack specific knowledge of how those rights are prescribed or enforceable in law. Legal empowerment imparts practical legal knowledge by educating citizens about specific laws, regulations, constitutional provisions, or milestone court rulings that have a direct bearing on their status or rights as citizens.

31. **Enhanced practical legal skills.** It is one thing to know one's legal rights; quite another to know how and where to assert them. Legal empowerment provides beneficiaries with basic legal skills, such as how to launch a legal right of appeal where an application for a national identity card is rejected by the administering government agency.

32. **Increased public confidence and higher expectations.** Legal empowerment equips the disadvantaged to confidently act on their legal knowledge and practical skills, helping them to overcome deep-seated feelings of inferiority or the belief that in practice the law can only be used against them. Building legal awareness and knowledge contributes to attitudinal change, which in turn makes people more open to acquiring legal knowledge and skills, more confident in their ability to apply their knowledge and skills, and more likely to voice their expectations in demanding responsible action by public officials and agencies.

33. **Greater access to the legal system and increased participation in public decision-making processes.** Improved access to justice, increased participation in governance, and other legal empowerment goals are frequently constrained by obstacles such as physical intimidation, economic power advantages, or prevailing community norms. When opposition is too powerful for individuals to challenge, legal empowerment work combines with allied efforts such as community organizing to equip disadvantaged groups to apply what they have learned through collective action.

34. **Successful participation in legal implementation and government decision making.** Legal empowerment contributes to the implementation of laws by helping to counter the failure or refusal of public agencies and officials to enforce existing laws and administrative procedures. This generally occurs through enhanced participation by affected populations in legal and governmental processes and decisions.

35. **Greater sensitivity, responsiveness, and accountability on the part of government officials.** Legal empowerment helps to facilitate improvements in the knowledge, attitudes, behavior, and other performance standards of government officials. Proven strategies include training public officials and corollary efforts to equip the disadvantaged to more effectively lobby, cooperate with, or otherwise interact with government agencies.

36. **Participation in law, regulatory, and budget reform.** Legal empowerment helps to mobilize the disadvantaged to inform the development of laws, public policy, or budget reform. This involves enabling citizens and communities to identify problems with existing laws or resource allocations, rather than blindly accepting them. Where the disadvantaged play a role in law, regulatory, or budget reform—either directly or through representation of their interests by NGOs or other interlocutors—and their priorities and perspectives are taken account of, they genuinely participate in decisions that shape their lives. A proven strategy in law reform efforts involves the establishment of coalitions and networks.

- In the **Philippines**, NGO coalition advocacy has led to the enactment of several important pieces of legislation, including the *Local Government Code*, the *Urban Development and Housing Act of 1992*, and the *Comprehensive Integrated Shelter Financing Act of 1994*. In **Thailand**, efforts of the Legal Aid Center sparked the creation of numerous NGOs that seek to protect and promote human rights. Evidence assembled by these NGOs of violence against human rights activists led to the establishment of the Parliamentary Standing Committee on Justice and Human Rights.

37. **Improvements in material circumstances.** Legal empowerment contributes to improvements in the material circumstances of those who benefit from socioeconomic development efforts, particularly in the context of poverty reduction. For example, learning about the law may help women to reduce the incidence of domestic violence in their communities or help farmers to take advantage of agrarian reform laws in ways that will increase their income.

38. **Implicit legal empowerment:** Some development initiatives have only an implicit legal empowerment dimension. In certain circumstances, disadvantaged groups can increase their capacities and control over their lives without use of the law. Through participation in development programs, people may learn about the law simply by becoming acquainted with the role and procedures of certain government offices with which they regularly interact.

- In **Pakistan**, the government's National Rural Support Program (NRSP) has fostered linkages between community organizations and line departments, resulting in the execution and functioning of hundreds of development schemes. While there is no intrinsic legal empowerment focus to the program, community organizations acquire knowledge through dealing with legal forms, rules, and procedures. Capacity and confidence building are key features of this effort.

39. **"Bread and butter" legal aid.** Some legal service efforts simply provide basic advice or representation, without carrying out the integrated strategies that have the greatest impact on governance and poverty reduction. Even this form of legal assistance, which some practitioners refer to as "bread and butter legal aid," may have a limited empowering effect, though in some cases it is merely a stopgap measure.

C. Features of Successful Legal Empowerment Work and the Environment in Which It Is Most Likely to Succeed

40. The Legal Empowerment Study identified several features of successful legal empowerment work and the enabling environment in which it flourishes. These features are largely consistent among the seven countries studied and with experience elsewhere in Asia.

41. **Integrated strategies show best success in advancing legal empowerment.** Legal empowerment is most effective when it connects with other aspects of development. While

some integrated strategies have a strictly legal focus, certain organizations take integration a step further, combining legal work with activities that address development and/or governance, such as community organizing, group formation, livelihood development, or participation in civic affairs.

- In the **Philippines**, the NGO Kaisahan organizes farmers, trains paralegals to aid fellow farmers in agrarian reform processes and tribunals, and trains its partner communities and local government officials on local budgetary and governance matters. In **Bangladesh**, population management efforts by family planning NGOs have been strengthened by integrating them with legal services, and vice versa. By comparison with legal service programs that were introduced in isolation, communities whose members were already familiar with family planning NGOs readily accepted the integrated programs. Ultimately, women who became aware of their rights achieved greater leverage in asserting their autonomy in personal reproductive health decisions.⁵

42. Many successful legal empowerment efforts build on a base of prior group formation, micro-credit schemes, family planning efforts, or other development initiatives. Accordingly, nonformal legal education and other legal services may best be introduced in conjunction with ongoing development initiatives.

- In the **Philippines**, Alternative Law Groups (ALGs), a network of local NGOs that combine legal and development work, regularly engage with partner populations that have previously been organized by other NGOs, local churches, or unions. Much ALG experience indicates that it is problematic to work with a partner community-based organization (CBO) that is poorly organized or fractured by internal divisions.

43. **Knowledge alone is insufficient.** While knowledge of the law is a vitally important part of legal empowerment, knowledge-based empowerment is substantially constrained if it cannot be converted into concrete action. The disadvantaged are most likely to act on their knowledge where it couples with such activities as community organizing, mediation, or litigation. Providing people with basic knowledge alone can prove effective in those limited circumstances where a civil society, political, or governmental infrastructure already exists that enables them to act on their new knowledge and where no major obstacles hinder them in making use of what they have learned.

- In **Pakistan**, the Aurat Foundation has helped secure voting rights, minimum wages, access to credit, provincial assembly seat allotments, and other benefits for women through a combination of legal and development activities. In the **Philippines**, Alternative Law Groups similarly collaborate with CBOs and other NGOs to raise awareness and knowledge of the law, organize communities, develop and work with paralegals, conduct administrative advocacy, litigate, and negotiate settlements.

44. **Organization is power.** Organization plays an important role in legal empowerment. While the popular idiom “knowledge is power” is compelling, the alternative “organization is power” better captures a key feature of many successful legal empowerment efforts. Even if the disadvantaged understand their rights, they may remain powerless unless they work together to assert common interests or to protect members of their group. Disadvantaged populations most

⁵ Karen L. Casper and Sultana Kamal, Evaluation Report: Community Legal Services Conducted by Family Planning NGOs, a report prepared for The Asia Foundation’s Bangladesh office (Dhaka: March 1995).

effectively assert their rights and succeed in compelling government to respond to their needs where they act as a group rather than as individuals.

- In **Bangladesh**, the women's NGO Banchte Shekha takes collective action to challenge actions or omissions of individuals, local elites, and public authorities that threaten the rights of women. Absent collective action and defense of this kind, it is far easier for a husband to beat his wife, for a landlord to cheat tenant farmers, or for the police to make an unlawful arrest.

45. ***Civil society plays an important role in legal empowerment.*** Legal empowerment flourishes where development-oriented civil society is vibrant and independent, and where government is responsive to it. While legal empowerment cultivates dynamic civil society and responsive government, it partly hinges on these being present to begin with. Among the seven countries studied, the examples of legal empowerment work from Bangladesh, Pakistan, the Philippines, and Thailand demonstrate the greatest degree of strategic integration and are arguably the most effective. This reflects the fact that the four countries have had relatively open civil society environments for longer periods of time than the other three countries studied.

46. ***Government can play an equally important role.*** While some government bureaucracies oppose or are indifferent to legal empowerment efforts, there are many instances in which responsive government agencies and personnel have made significant contributions. The ideal situation occurs where government agencies and civil society work together as full-fledged partners, drawing on the resources and authority of the former and the flexibility, grassroots outreach, and goodwill of the latter.

- In **Viet Nam**, the government has played a leadership role in national legal empowerment efforts. The 1998 *Regulation on the Exercise of Democracy in the Communes* provides a legal framework for consultative relations between local-level administration and the people, and affirms the role of citizens to provide input and oversight in selected areas of local planning and decision making. In **Mongolia**, the National Center Against Violence has trained police, judges and prosecutors regarding violence against women.

47. ***Legal empowerment occurs primarily at the community level.*** Not all law or regulatory reform takes place at the national level. The most positive results generally emanate from community-specific work. In many countries, local regulations and ordinances are at least as pertinent to legal empowerment, because the disadvantaged can more directly influence them. Accordingly, local government may be the most effective partner in empowerment initiatives. In many countries, citizens are assuming a more active role in local legal and financial decision making. The results of this informed participation include greater transparency, accountability, and responsiveness on the part of public agencies and officials.

- In **Mongolia**, the NGO Women for Social Progress held a series of community consultations that led to the submission of a set of proposals to a local government unit that would advance the rights and interests of women constituents. The unit subsequently incorporated fourteen of the proposals in its budget. In the **Philippines**, decentralization under the *Local Government Code* established a legal framework conducive to legal empowerment. While

the Code has not led to better governance *per se*, it provides an institutional framework that incorporates the participation of NGOs in local governance, thereby validating their role.⁶

48. **Legal empowerment can potentially have an impact at the national level.** Many decisions that have a substantial effect on people are clearly made at the national level, sometimes in consultation with global partners such as international financial institutions. While this raises challenges to citizen participation, they are not insurmountable.

- In **Thailand**, ordinary citizens have contributed to important national legal and policy reforms, including constitutional and consumer protection reforms. In the **Philippines**, citizens have similarly played a part in legal and regulatory reforms affecting natural resource management, agrarian reform, gender issues, urban housing, and other issues.

49. **Legal implementation is crucial.** While law reform is both a central goal and tool of many empowerment initiatives, the law itself can facilitate or frustrate legal empowerment. Most countries have at least some good laws, yet they are routinely ignored in many places. The greatest challenge lies in getting good laws implemented, regardless of whether they are newly enacted or old and neglected.

50. **Effective legal empowerment is about legitimate self-interest.** Legal empowerment ultimately appeals to the self-interest of the disadvantaged. The more relevant a legal empowerment strategy is to the needs and interests of its intended beneficiaries, the more likely it is to be embraced by them and to succeed.

D. The Role of Legal Empowerment in Advancing Good Governance and Poverty Reduction: Survey Research in the Philippines and Bangladesh

51. To pursue further qualitative evidence of the impact of legal empowerment, the LES commissioned two supplementary survey studies in the Philippines and Bangladesh.⁷ In analyzing the role of legal empowerment in advancing agrarian reform in the Philippines and the impact of the legal empowerment work of three local NGOs on citizen knowledge, governance, and poverty in Bangladesh, both studies found significant evidence that legal empowerment contributes to good governance and to poverty reduction.

52. **Philippine agrarian reform and its resulting benefits are advanced by legal empowerment.** The Philippine supplemental study of the LES focused on the work of the NGO consortium Paralegal Education Skills Advancement and Networking Technology (PESANTEch). PESANTEch helps to strengthen the capacities of CBO-linked farmer-paralegals who work on agrarian reform and other land tenure issues and promote increased public participation in local governance. While PESANTEch attorneys may appear in court where necessary, most legal representation is provided by the 50 or more farmer-paralegals who help prepare applications and represent their fellow CBO members in proceedings of Department of Agrarian Reform (DAR) adjudication boards.

53. The study reviewed three types of data: interviews with local DAR officials who independently assessed which barangays⁸ were most and least successful in implementing

⁶ Terrence George, "Local Governance: People Power in the Provinces?" in G. Sidney Silliman and Lela Garner Noble, eds., *Organizing for Democracy: NGOs, Civil Society and the Philippine State*, 223-53 (Honolulu: University of Hawaii Press), 1998, at p. 249.

⁷ See Part 2, Section IV and Appendixes 1 and 2.

⁸ Small geographic/administrative units.

agrarian reform; survey research in four barangays, consisting of two that have PESANTEch legal empowerment activities (the “intervention” areas) and two demographically similar areas that do not (the “control” areas); and focus group discussions in these four barangays.

54. All three analyses strongly indicate more positive outcomes in the communities where legal empowerment work has been pursued. The DAR officials rated the success of agrarian reform efforts significantly more favorably in the intervention barangays, as opposed to the controls. The survey research findings indicate that in the intervention areas land is much more likely to have been acquired through agrarian reform. The results also reveal higher productivity in the intervention areas, along with higher and more disposable income, greater farm investment, and better housing quality (as indicated by galvanized iron versus grass roofs). Focus group participants from the intervention barangays were more specific in identifying land rights violations committed in the hypothetical case that they were invited to comment on, citing relevant laws and the specific government agencies that could best respond to the situation. In addition, they better articulated the procedural steps to be taken to resolve the problem. In the control groups, participants tended to favor seeking outside help rather than taking independent initiative in resolving problems. They frequently suggested that assistance be sought from a list of government agencies, with little understanding of what specific support these agencies could provide.

55. ***Bangladeshi NGOs undertaking legal empowerment work achieve multi-faceted socioeconomic impact.*** An LES-commissioned study on *The Impact of Legal Empowerment on Selected Aspects of Knowledge, Poverty and Governance in Bangladesh* considered the legal empowerment work of three indigenous NGOs in Bangladesh. It found significant positive impact on poverty, governance, gender equity, and legal knowledge.

56. Beneficiary and control populations were surveyed for: (i) the women’s NGO Banchte Shekha, which provides mediation and other legal services to its member-beneficiaries as part of an integrated development strategy that also includes livelihood, credit, health, education, and gender-oriented work; (ii) Samata, which specializes in land rights advocacy, but whose integrated development strategy also includes legal services, education, livelihood development and facilitating member-beneficiary access to government agricultural services; and (iii) the Madaripur Legal Aid Association (MLAA), a legal service NGO that addresses family, land, and minor commercial disputes, with a particular emphasis on mediation.

57. Despite slightly higher levels of education and affluence in the control populations, all of the “intervention” (NGO beneficiary) samples scored higher in four critical areas: general knowledge of law; engagement and confidence in citizen advocacy; positive perceptions of gender equity and the role of women in governance; and confidence in the value of law and good governance.

58. The more specific impact of the NGOs’ legal empowerment work included poverty-alleviating improvements in the well-being of NGO member/beneficiary populations, as demonstrated by Banchte Shekha’s (and to a lesser extent Samata’s) effectiveness in restraining the widespread but illegal practice of *dowry*.⁹ The NGOs in general, and Samata in particular, also appear to contribute to use by the poor of government-managed lands that otherwise are frequently subject to seizure by local elites. In a finding that holds potential

⁹ 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.

implications for poverty reduction, the NGO sample populations report dramatically less reliance than control groups on such elites for legal assistance, particularly in the case of MLAA beneficiaries, who take advantage of alternative avenues for relief.

59. Since poverty reduction involves not just material circumstances, but also the poor's participation in the decisions that shape their lives, the integrated development strategies of Banchte Shekha and Samata prove significant in an additional regard. Survey results indicate that they effectively foster positive community attitudes concerning women's right to seek legal redress and participation in governance. In addition, citizen participation in joint actions is far higher for the two NGOs' beneficiaries than their control groups. Of perhaps greater significance, nearly all of their intervention sample respondents who report such participation characterize it as completely or partially successful. The two NGOs' sample groups also indicate greater success than the two control groups in influencing the decisions of local government officials.

E. Education and Training, the Media, and Institutional and Individual Roles

60. ***The most useful kinds of information for the disadvantaged.*** Information must be tailored to the particular needs that a legal empowerment effort is intended to address and the goals that it aims to achieve. Sometimes knowledge of international human rights is central, while at other times a domestic legal context is more valuable. In some cases, the best ways of raising legal awareness involve information that is not at all legal in nature. Disadvantaged populations are most interested to learn about issues of greatest relevance to their lives, such as income, shelter, health, and physical security.

61. ***The most effective ways of conveying information.*** Experience in participatory education methodologies affirms the importance of interactive "learner-centered education," as opposed to "teacher-centered" lectures, in advancing legal empowerment and integrating education into action-oriented strategies. Learner-centered education frequently translates into what are known as "popular education methodologies," through which new, complex and even alien concepts are imparted in ways that relate to the day-to-day life experience of beneficiaries.

62. ***Who should design and conduct information dissemination efforts?*** Legal information frequently must be adapted to the needs and aptitudes of audiences who are poorly educated. Experience indicates that social scientists, community organizers, teachers, and persons with other non-legal specialty skills can make substantial contributions to legal dissemination efforts. Simple communication skills are often more important than legal expertise for building basic legal knowledge among the disadvantaged. Lawyers do not necessarily make good law teachers, at least for the disadvantaged. Those who are most successful tend to possess a "developmental orientation" and view disadvantaged groups as equal partners rather than inferior clients.

63. ***Mass media:*** Mass media represents the most widespread method of conveying legal information. The use of broadcast media is particularly significant where audiences are illiterate. While it can be a highly effective tool for increasing legal awareness or knowledge, the fact that it has great potential does not mean that it achieves a positive impact in every case. Print and broadcast outlets can help to cultivate legal awareness and knowledge, yet there is little evidence to indicate that mass media alone effectively builds legal skills, affects behavior, enhances participation and good governance, or reduces poverty. The awareness-raising value of media becomes particularly important where it is linked to advocacy campaigns that include other elements of legal empowerment, such as pressing for legal reform or implementation.

64. ***The Future of the Internet.*** Information and communications technology holds great potential for benefiting the disadvantaged. Across Asia, governments and NGOs are beginning to use the Internet to provide on-line information about selected laws, pending bills, and government actions on legal issues. Whatever the pace of technological development, many societies will continue to operate on the basis of personal interaction rather than objective information. Until Internet access is truly global, the hard work of organizing and mobilizing disadvantaged groups at the community level will continue to be a fundamental feature of legal empowerment.

- In **Indonesia**, the National Law Commission operates a website to highlight its role in setting the national legal reform agenda, while the first-of-its-kind legal website of Hukumonline.com serves as a forum for public dialogue and provides a database of laws, regulations, and court decisions.

65. ***Courts, lawyers, and laypersons.*** Courts can play an important role in legal empowerment, yet other forums may be even more crucial. While lawyers also play a major role, particularly in advising on the technical dimensions of the law, the contribution of non-lawyers is equally valuable. Administrative law, local governance, alternative dispute resolution, group advocacy, NGO non-lawyers, and the disadvantaged themselves have central roles to play in legal empowerment. As a matter of principle, beneficiaries should take the lead wherever possible, with support organizations responding to the priority needs and interests of their constituents.

F. Sustainability

66. Legal services that contribute to empowerment of the disadvantaged should be seen as a public good—a set of activities that benefit society, but whose costs cannot be easily charged to specific parties. The population that directly benefits from these services cannot afford to pay for them. While legal services will never be self-supporting, they nevertheless merit ongoing funding as long as they yield substantial impact. At the same time, legal service providers and donors should explore local philanthropy, modest fee-for-service arrangements, and other prospective strategies for apportioning the costs of legal empowerment work among various stakeholders.

IV. RECOMMENDATIONS

A. Integrating Legal Empowerment into Mainstream Socioeconomic Development Projects

67. ***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, land tenure, decentralization, and women's health. The prospect of certain projects succeeding will be much greater where a legal empowerment component is incorporated.

68. 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.

69. 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 project strategies, not least their legal empowerment components. This will help to avoid poor implementation down the line. While such projects/components should 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.

70. Pursue legal empowerment work through judicial and non-judicial forums:

- As a matter of principle, practicality, and cost effectiveness, donors should seek to pursue legal empowerment work through a combination of judicial and non-judicial forums. The latter tend to be more accessible and comprehensible to the disadvantaged than courts. At the same time, litigation can constitute a necessary element in a comprehensive legal empowerment effort

71. NGO partnerships are particularly effective

- It is worthwhile to partner with NGOs, community-based organizations, and other civil society agents as much as possible for the various elements of legal empowerment work. 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 bureaucracies.

72. Encourage NGO-government cooperation

- Government agencies have the potential to play an important role in legal empowerment. In particular, international development agencies should encourage and support the collaborative efforts of civil society organizations and government agencies.

73. Flexibility is the key to any legal empowerment initiative:

- International development institutions and their governmental partners should avoid defining their goals in rigid terms. The former should be open to the possibility that legal empowerment will yield good governance and poverty reduction benefits that fall outside strictly-defined project parameters.

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

- There is no standard “best practice” for legal empowerment. A given project should accordingly allow for different legal empowerment strategies, because specific community needs will vary. 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.

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

- Support for legal empowerment work should involve more than just education and training. It may also need to include mediation, litigation, media coverage, community organizing, advocacy, and other activities through which citizens and communities can build on their legal knowledge in actively pursuing their rights and interests.

76. *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. The same lawyers who 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. Whatever mix of services lawyers provide, their professional inputs are particularly effective where affiliated with legal service NGOs.

77. *Legal empowerment is not the exclusive domain of lawyers:*

- While lawyers contribute important technical skills, a professional background in law is not a prerequisite to effective involvement in legal empowerment work. Various persons who have no formal legal background should play roles in legal empowerment projects.

78. *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 that knowledge in dealing with the police, administrative agencies, private parties, and even the courts. Paralegals are particularly effective when they are recruited to serve the very communities in which they live.

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

- Media, education, and training are powerful devices for affecting knowledge, awareness, and attitudes, but they have limitations as primary vehicles for generating action that will improve governance and help to reduce poverty. They are most effective as part of a broader legal empowerment strategy.

80. *Community-specific actions are important:*

- Community-specific actions should be supported to build up a civil society infrastructure that will help to advance legal empowerment, and in turn to enable such infrastructure to affect

governance and poverty reduction. These actions include community organizing, group formation, legal aid, administrative advocacy, and paralegal development.

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

- Organized groups are much more effective in securing their rights than are isolated individuals. Accordingly, legal empowerment initiatives should 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 in and orientation toward working with community-level groups such as water and forest user associations. Such groups constitute a base for legal empowerment initiatives.

82. *Legal empowerment initiatives are not easily sustainable:*

- 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. At the same time, local philanthropy, modest fee-for-service structures, and other prospects for making legal empowerment work more sustainable should be explored by legal service providers and donors.

B. Integrating Legal Empowerment into Legal Reform Projects

83. *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 analyze the greatest legal needs of the disadvantaged and how best to 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, or local government.

84. *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 the pace progress on the government side. Activities that support the legal operations of NGOs or facilitate collaborative partnerships between NGOs and government agencies in legal reform efforts should be considered.

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

- NGOs can add value to "conventional" judicial sector-oriented reform projects through contributions to training and other educational activities targeting judges, 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.

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

- Legal implementation (the 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.

C. Other Legal Empowerment Initiatives

87. *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.

88. *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. Legal empowerment work will be complemented by 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.

89. *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 efforts in such fields as governance and the rule of law. While the LES and other exercises have been able to scrutinize such strategies and activities to a limited degree, there is a need for more in-depth study and analysis.

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.

PART TWO: LESSONS LEARNED FROM SUCCESSFUL LEGAL EMPOWERMENT STRATEGIES

I. THE BASIC FINDING

114. ***Legal empowerment helps to advance good governance and to reduce poverty:*** The seven country studies, the supplementary survey research undertaken in the Philippines and Bangladesh, and other sources collectively support the basic finding that legal empowerment helps to advance good governance and to reduce poverty, in some cases simultaneously. This impact occurs in both substantial and subtle ways.

115. As noted previously, ADB and many other development institutions understand poverty reduction not simply in terms of increased income or other improvements in material circumstances, but also in the sense in which informed participation by the poor in decisions that affect their lives helps to reduce poverty. Where such participation extends to administrative and other forms of public decision making and related governmental processes, legal empowerment contributes to good governance. Legal empowerment work can also contribute to the implementation of laws that advance good governance and poverty reduction. For example, a farmer whose income increases because the community-based organization to which he belongs persuades the state to enforce legislation that recognizes his land tenure rights benefits from a combination of improved economic circumstances and more responsive governance.

116. Arguments for the role of legal empowerment can be found in the variety of literature documenting related work. Studies by Edwards, Evans, Fox, and others cited in later in this report underline the importance of capacity-building, organization, and political influence in improving the lives of the disadvantaged. Research suggests that a combination of efforts to raise disadvantaged populations' knowledge of law and to assist them to act on this knowledge to advance their rights and interests constitute an effective legal empowerment strategy. In addition, evidence of a more direct nature flows from non-LES assessments of legal services and related work. For example, *Many Roads to Justice*, a 2000 Ford Foundation review of the work of program grantees around the world highlights the impact of similar work without using the precise term "legal empowerment."⁶³

117. This part of the report begins with an overview of the ways in which legal empowerment work helps to overcome the constraints that impede access to justice and participation in public decision making by disadvantaged populations. The overview is followed by an analysis of the key features of successful legal empowerment strategies and enabling conditions that contribute to the success of legal empowerment efforts. Later subsections summarize the findings of the supplementary LES research undertaken in the Philippines and Bangladesh, and conclude with analyses of education, training, and media, the role of individuals and institutions in legal empowerment efforts, and the sustainability of legal empowerment work.

⁶³ Mary McClymont and Stephen Golub, eds., *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000).

II. THE ROLES AND IMPACT OF LEGAL EMPOWERMENT

118. Legal empowerment helps to advance good governance, poverty reduction, and other development priorities. In the process, it helps overcome crucial constraints on access to justice and participation in governance that undermine poverty reduction efforts. The roles and impact of legal empowerment range in sophistication and scope from imparting basic knowledge of law and rights to raising the capacity of disadvantaged populations to apply the knowledge acquired to confidently engage in legal and other public decision-making processes.

A. Increased Awareness of Rights

119. On a most fundamental level, legal empowerment helps the disadvantaged to appreciate that they have rights and obligations under the law, even if they have only the vaguest sense of what these are. For example, many in the PRC and Cambodia count it as a significant step forward that the term "human rights" can be confidently used, in contrast with a decade or so ago when use of the term raised the risk of political censure. This is not the same as specific legal knowledge, as discussed below, though the two concepts may overlap in practice. The difference is that people sometimes can learn that they have rights, even if they do not fully understand the nature and implications of those rights.

B. Increased Knowledge of Specific Legal Rights and Issues

120. Transferring legal knowledge to the disadvantaged is a very basic contribution of legal empowerment. It can involve educating people about specific laws, regulations, constitutional provisions, and even milestone court rulings that have a direct bearing on their status or rights as citizens. The goal is not always to increase citizens' capacities to the point that they can cite the source or terms of particular laws or rights. In certain cases, it may be enough that a daughter can confidently state that the law entitles her to a portion of her deceased parents' land, or a woman understand that she must register her marriage to ensure that the law will protect her if her marital relationship later breaks down.

C. Enhancement of Practical Legal Skills

121. Legal empowerment helps to impart the basic legal skills that the disadvantaged require to apply their legal knowledge. It is one thing to know one's legal rights; quite another to know how and where to assert them. Although people may have a general awareness or even a specific knowledge of the law, they still may not know how to effectively utilize it. For example, a man may know that he has an administrative right of appeal where his application for a national identity card is rejected, yet have no idea what government office to go to launch his appeal, how to document his claim, or what steps to follow in pursuing it. Similarly, a woman may understand that registering her marriage with the government can benefit her if an abusive husband later orders her and their children to leave the family home, but if neither she nor someone she knows is familiar with the registration process her knowledge has little value.

122. Skills acquisition does not include the substance of laws *per se* (though knowledge of laws may be a precursor to skills development), but rather the ability to engage in relevant processes. Some skills are very basic, such as knowing what government agency to go to and whom to talk to there. But many legal procedures involve more sophisticated tasks such as preparing affidavits and other documents; gathering evidence to support an application, claim,

or court case; dealing with police or other government officials; or negotiating legal disputes with private parties.

123. Given the level of sophistication involved, it is often more efficient for paralegals to develop specialty legal skills than for large numbers of disadvantaged citizens to invest time in acquiring them. It can be more practical and cost effective to invest in the intensive training of paralegals as opposed to entire communities. Improved public access to the legal system can be facilitated through the work of paralegals, as they guide or assist citizens through complex legal procedures.

D. Increased Confidence and Higher Expectations

124. Building general legal awareness contributes to attitudinal change, which in turn makes people more open to acquiring specific knowledge and skills, more confident in their ability to apply the knowledge and skills which they acquire, and more likely to voice their expectations in demanding responsible action by public officials and agencies. The distinction drawn between legal awareness and attitudinal change sometimes breaks down in practice; that is, the realization that one has rights can be one and the same process as assuming a willingness to assert them.

E. Improved Access to the Legal System and Public Decision-making Processes

125. Organization, education, or access to legal services psychologically and politically empower people in ways that translate into confident action. Such behavioral change is a central goal of many legal empowerment efforts. Where physical, political, or economic opposition are too strong for individuals to challenge, legal work combines with allied efforts such as community organizing to encourage and equip disadvantaged groups to act on what they have learned. The very fact that people assemble in a group is a potentially important advance in behavior. When citizens collectively and cohesively assert themselves, it increases their political weight, making it more difficult for those who oppose their views to dismiss, ignore, or threaten them. Group cohesion also creates countervailing forces that can positively sway government officials who are neutral or who would otherwise be likely to give in to those opposing the rights of the disadvantaged.

126. Enhanced citizen participation in development planning and projects brings positive benefits. Citizen monitoring helps to ensure that development efforts stay on track, that projects do not prove counterproductive, that the government personnel involved in them remain accountable and responsive, and that beneficiaries remain committed to initiatives that require their sustained engagement in order to meet the objectives of those initiatives. More broadly, understanding relevant laws and processes helps to secure effective participation in all stages of development project cycles. It also can check the downside of development, such as environmental damage, and contribute to accountability on the part of both government parties and influential private actors.

127. The value of participation in law reform efforts does not lie purely in the actual achievement of changes in laws or regulations, as discussed below. There is equal value in the very process of engagement and the public debate that flows from it. Although law reform efforts are not always successful, the strategic engagement involved in pursuing changes in the law can have an important empowering effect. For example, reform initiatives can bring otherwise disparate groups together in the context of coalitions or other joint efforts through which they articulate their demands and set the stage for future cooperation.

F. Successful Participation in Legal Implementation and Public Decision Making

128. Legal empowerment plays an important role in improving the implementation of laws. This typically results from informed participation by affected populations in legal and governmental processes and decisions. Group mobilization, in particular, helps bring about implementation. Where relations between NGOs, the communities they serve, and government officials are open and collaborative, such mobilization helps to advance state-civil sector cooperation, or bring public pressure to bear on officials to do their jobs responsibly. The outcome need not be a national-level political decision framed in legal terms. Improvements in the performance and accessibility of local government agencies and procedures can have a significant impact on the quality of life of disadvantaged citizens. In the Philippines, for example, legal empowerment programs help disadvantaged communities access and affect local government decision making with respect to resource allocation and other actions of interest to citizens.

129. ***The nexus with good governance.*** An example from Thailand demonstrates the role of NGO paralegals in securing a court decision that enforced the land rights of villagers. The experience contrasts with that of other villages where the absence of paralegal services leaves villagers vulnerable to land-grabbing developers and manipulative public officials:

One of the Legal Aid Center (LACI)'s early successes concerned a land dispute between a property developer and the villagers of Nong Nasai village in northeastern Loei Province. The land developer filed a plaint in the provincial court accusing the Nong Nasai villagers of having obtained fraudulent land rights certificates, which duplicated his own land documents. Under Thailand's accusatorial system, the burden of proof over ownership of the land, or in this case, the validity of the land certificates, rested with the villagers. Unscrupulous developers, working in collusion with certain local officials, found this an easy way to acquire land since villagers rarely have the evidence required to satisfy a court that their land claims are valid. In this instance, however, LACI paralegal workers conducted an investigation and gathered evidence on behalf of the villagers. With this evidence, the court ruled that the villagers retained their land rights as they had taken residence in the area long before the land developer. The developer's charge against the villagers was dismissed. As a result, other real estate firms that had been planning to use the same strategy in near-by villages were discouraged from doing so. Nevertheless, this practice continues today in regions of the country where villagers do not have access to paralegal aid services.

130. The Thailand report also provides several examples of how NGO-managed voter and civic education initiatives helped spawn community action against voter fraud and official misconduct. These efforts counteracted deeply entrenched corruption during and after a recent senatorial election.⁶⁴

131. ***Meta-legal tactics.*** A key element of some successful legal implementation efforts is what are known in the Philippines and some other countries as "meta-legal tactics." These activist initiatives include marches, demonstrations, and other activities that change the dynamic of a dispute or that draw attention to specific legal rights violations to support the interests of the disadvantaged. For example, in the Philippine island of Palawan CBOs trained in the law by the

⁶⁴ Thailand Country Report, pp. 16-17.

Environmental Legal Aid Center (ELAC) create “facts,” or evidence of misconduct, by seizing the trucks or fishing boats of persons violating environmental regulations. They then turn the perpetrators over to the police and follow up on the cases with assistance from ELAC. The Thailand paper underlines the importance of focused, specific goals as a key to the success of meta-legal tactics:

Although no serious studies have been undertaken to analyze why some Thai protests are successful and others are not, there seems to be a correlation between success and the breadth of demands. That is, the more focused and specific a group’s demands are, the more likely they will be able to successfully negotiate with the concerned authorities. On the other hand, in failed efforts the list of demands have addressed too many unrelated issues, or utopian-style demands have been made to which authorities can offer no concrete response.⁶⁵

G. Participation in Law, Regulatory, and Budgetary Reform

132. Legal empowerment mobilizes the disadvantaged to help shape legislation, regulations, and resource allocation. This involves enabling people to identify problems with existing laws, rather than blindly accepting them. In societies such as the PRC, research on the experience of legal service organizations in providing community support may help to inform law reform proposals. This is a critical element in the mandate of the previously mentioned Qianxi County Rural Women’s Legal Services Center, which was established to monitor, test, and inform the continued development of legislation benefiting women.

133. In certain societies, including India and Pakistan, decisions of this kind take place at the state or provincial level as well as the national one. Where decentralization has taken place, important legal, regulatory, and budgetary decisions are made even at a community level. One feature of strengthening local government is that it potentially can facilitate empowerment by expanding communities’ control over the decisions of local government agencies.

134. Though legal empowerment work is typically undertaken at the community level, in some societies it takes the form of policy advocacy, particularly with regard to national law and regulatory reform. The disadvantaged are not necessarily the lead actors in these efforts. Instead, their priorities may be articulated by partner NGOs and pursued in collaboration with middle class and elite forces. Where representatives of disadvantaged populations participate in policy advocacy, and their allies take account of their priorities and perspectives, it can be said that the disadvantaged are genuinely participating in decisions that shape their lives. The impact is greater still where their efforts meet with success. The Legal Empowerment Study has found several manifestations of this phenomenon:

135. ***Pursuing law reform through coalition advocacy.*** A central strategy for pursuing law reform involves the establishment of coalitions and networks. A specific example of such efforts is provided by the Thailand report. It describes “the Thai Confederation of Consumer Organizations, comprising 20 associations that work to promote and protect the rights of consumers. This network “was established to: 1) conduct research on consumer issues; 2) draft new consumer related laws or to provide input into government drafts; and 3) push for the establishment of an independent Consumer Protection Organization in accordance with section 57 of the Constitution. The network’s strategy allows for the gathering of expertise on a wide

⁶⁵ Thailand Country Report, p. 20-21.

range of highly technical issues to critique and debate policies with a single goal—consumer protection.”⁶⁶

136. **Long-term education and advocacy.** Similar national coalitions have proven particularly effective in the Philippines. Drawing on what they learn from grassroots work, and partnering with federations of farmers, women, and other disadvantaged groups, Philippine NGOs have contributed to the formulation and passage of dozens of laws and even more regulations regarding agrarian reform, gender concerns, environmental protection, and a range of other concerns. The Philippine study points out that a series of ongoing training and advocacy activities “continually educated people in the legal language of the [timber license agreements and integrated forest management agreements]. More than a decade of struggle and legislative lobbying led to the passage of the *Indigenous People’s Rights Act* (IPRA, RA 8371) in November 1997. [This work] had contributed in improving leverage of indigenous peoples and their advocates in the promotion of their valid interests.”⁶⁷

137. Similarly, coalition advocacy has led to the “enactment of several important pieces of legislation, including (1) the *Local Government Code* (RA 7160, 1991) which tasked local government units to deliver programs and projects for low-cost housing and other mass dwellings; (2) the *Urban Development and Housing Act of 1992* (RA 7279), which gives substance to the Constitutional provisions on urban land reform and housing and the respect to just and humane eviction and demolition of urban and rural poor dwellers; (3) the *Comprehensive Integrated Shelter Financing Act of 1994* (RA 7835); and (4) the repeal of PD 772 (8368, 1997) [a law that authorized demolition of urban squatters’ communities without due process and notice].”⁶⁸

138. As in the Philippines, Thailand’s experience indicates that it may take years for desired reforms to reach fruition, sometimes in unanticipated ways:

LACI [Legal Aid Center Institute, the first Thai NGO to undertake paralegal development] efforts sparked the creation of numerous NGOs that seek to protect and promote human rights, such as the Friends of Women Foundation, the Foundation for Women, a number of children’s rights agencies, and organizations devoted to the protection of health standards, the environment, and consumer interests. As a result of the evidence assembled of violence against human rights activists and other forms of violence, the Standing Committee on Justice and Human Rights was created as a permanent standing committee of the House of the Representatives in 1987. More recently, the LACI objective of creating a national human rights mechanism was achieved through the formation of Thailand’s National Human Rights Commission, an independent, constitutionally-mandated agency to protect the rights of Thai citizens.⁶⁹

139. Sometimes educational efforts target society at large, aiming for changes in both policy and laws. For example, women’s NGOs in Mongolia have tackled the problem of domestic violence in a multi-pronged manner that involves simultaneously raising public awareness and persuading legislators of the severity of the problem. As a result:

⁶⁶ Thailand Country Report, p. 18.

⁶⁷ Philippine Country Report, p. 57.

⁶⁸ Philippine Country Report, p. 57.

⁶⁹ Thailand Country Report, pp. 23-24.

The term 'domestic violence' has now been introduced in the Mongolian language and the population-at-large has started to recognize domestic violence as a human rights issue. Successful passage by the Parliament of the new Family Law in 1999 with provisions on domestic violence reflects a significant breakthrough in public attitudes toward domestic violence.⁷⁰

140. **Local regulations:** Law and regulatory reform efforts do not take place at the national level alone. With the increasing decentralization of government functions in many Asian countries, such efforts are becoming even more significant at the district and provincial level. The impact reaches beyond the law itself to include the crucial question of local budget allocations. As a result, civil society groups in the Philippines play an increasing role in resource allocation processes that have historically been distorted by patronage and corruption. In this capacity, they press for greater transparency, accountability and responsiveness to community priorities.

141. As noted previously, Mongolian NGOs are similarly affecting provincial decisions. The Mongolia report documents the example of Women for Social Progress, which held a series of community consultations that led to the submission of a set of proposals to a local government unit. The local government unit in turn incorporated fourteen of the proposals in its budget.⁷¹

142. **Public interest litigation.** Public interest litigation offers another law reform channel.⁷² Pakistan's AGHS Legal Aid Cell is a leading practitioner of this approach to empowerment. The Pakistan report highlights its significant accomplishments (just a few of which are presented here), as well as the physical risks its leaders have assumed:

[AHGS] fought the Saima Waheed case,⁷³ which upheld a Muslim woman's right to marriage by choice without her guardian's permission; the Humaira Butt case,⁷⁴ which resulted in a strong judgement whereby she was allowed to go with her husband and the criminal case for adultery lodged against her family was quashed. (The first was the daughter of a religious leader, the second of a Punjab Assembly member); and the case of a foreign woman married to a Pakistani, whereby she was allowed custody and permission to take her child out of the country⁷⁵. It also fought the bonded labor case for HRCP [Human Rights Commission of Pakistan]⁷⁶, which led to cancellation of their debts and was followed by a law on the bonded labor system; and two controversial blasphemy cases against Christians. All these cases were contested in collaboration with other rights groups and were also used for further awareness-raising, advocacy and mobilization through media coverage and other activities. Both the lawyers,

⁷⁰ Mongolia Country Report, p. 24. For example, it is now possible to obtain a divorce without the mandated waiting period in cases where domestic violence has occurred. Judges can also take domestic violence into account in decisions on maintenance.

⁷¹ Mongolia Country Report, p. 17.

⁷² As previously explained, this activity is characterized by aiming to represent and/or benefit 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 other courts' decisions concerning similar situations. Even where, as in civil law countries, such a decision is not binding, it may have a de facto precedential value by virtue of the publicity it receives and the information it conveys to the public and to the judiciary.

⁷³ PLD 1997 Lahore 301.

⁷⁴ PLD 1998 Lahore 494.

⁷⁵ PLD 1995 Lahore 151.

⁷⁶ PLD 1990 SC 513.

Asma Jehangir and Hina Jilani, faced several threats and real risks in the process.⁷⁷

Box 2 highlights an example of a landmark environmental public interest litigation case in Pakistan.⁷⁸

Box 2: A Landmark Public Interest Case in Pakistan

Shehla Zia vs. WAPDA

An excerpt from a case note by Brigadier (Retired) Mohammad Yasin

In July 1991, the Water and Power Development Authority (WAPDA) began to cut trees in a neighborhood of Islamabad to construct an electrical grid station. The 132 KVA grid station and its associated high-tension power lines were to be located only 15 feet from the nearest house. Concerned about the adverse effects of electromagnetic radiation on human health, the residents complained to the local authorities, requesting that the WAPDA abandon its plan to build the grid station. Ignoring the repeated requests of residents, both WAPDA and the Capital Development Authority (CDA) continued with their plans to prepare the site.

After prolonged but unsuccessful efforts to convince WAPDA, CDA, and other public agencies of the dangers of the planned electrical works, the affected residents invoked Article 184 of the Constitution and filed a petition in the Supreme Court. Their petition requested the Court to intervene to protect their fundamental rights. It was argued that under Articles 14 and 9 of the Constitution, dignity of man and his right to life, respectively, are protected and that 'right to life' has a broader meaning that includes the right to a life free from hazards.

After several hearings, the Supreme Court issued an order in favor of the petitioners. It found that the likelihood of any hazard to life by magnetic field effect could be ignored, and directed that in future, WAPDA must issue public notice in newspapers, radio, and television prior to installing or construction any grid station and or transmission line, affording public hearing to the persons filing objections.

The case established two of the most critical foundations of environmental law in Pakistan. First, it established the fundamental right to an unpolluted environment, by virtue of the broad meaning of the word "life" as contained in Article 9 of the Constitution, together with the requirement for dignity of man as set forth in Article 14. Secondly, the case established the application of the "precautionary principle" where there is a hazard to such rights. The case established a precedent for subsequent environmental litigation in Pakistan. Its results have been widely publicized, helping to raised public awareness of the fundamental right to a healthy environment and encouraging persons affected by environmental hazards or other threats to their fundamental rights to take collective action to address the threat.

143. Thailand's Center for the Protection of Children's Rights (CPCR) takes a slightly different approach to public interest litigation, focusing less on landmark, precedent-setting court cases than on "classic" cases, which raise public awareness about specific problems. Through

⁷⁷ Pakistan Country Report, pp. 58-59.

⁷⁸ "Public Interest Litigation—Shala Zia vs. WAPDA." Monograph Series Number 15, 2000, Sustainable Development Policy Institute, Islamabad, Pakistan.

repetitive reporting of similar cases in the media, CPR has on several occasions been able to bring about improvements in policies and laws. For example, the *Criminal Procedures Code* has been revised to make it possible to conduct deposition of children in a less-threatening environment via video tape recording, which also reduces the need for redundant testimonials by the child.⁷⁹

144. Similarly, Mongolia's National Center Against Violence is pursuing what could be termed public interest litigation in the context of its broader efforts to combat gender abuse. For example, it has helped to secure the release of a woman imprisoned for an act of self-defense against domestic violence.⁸⁰ Though it is too early to be certain, the case could set a binding precedent.

145. **Public comment.** The Viet Nam report points to an additional avenue of legal and regulatory reform impact—the publication of draft laws and regulations in newspapers:

Drafts of the legal documents that have significant influences to political, economic, and social life of people...are published on newspapers for public comments. The lesser important draft legal documents all are commented by State agencies and social organizations. In general, draft laws or ordinances are commented on in such way.⁸¹

146. While the study does not identify specific instances in which such public comment has contributed to changes in the laws, the concept of widespread circulation of important draft legislation is a welcome innovation.

H. Greater Sensitivity, Responsiveness, and Accountability on the Part of Government Officials

147. Frequently, the objective of legal empowerment is not simply to improve citizens' knowledge, attitudes, behavior, and other capacities, but also to achieve similar improvements among government officials. Increased capacity and improved performance of public officials affects legal implementation, as well as the material circumstances of disadvantaged populations and the quality of their participation in governance. The more responsive and accountable officials are, the greater the likelihood of these other types of impact being achieved. For example, indigenous peoples whose livelihoods are threatened by illegal logging benefit where they persuade the authorities to stop such criminal actions.

148. Training is a direct way of trying to sensitize officials to their duties, citizen rights, and the importance of being more responsive to the public. Other equally effective approaches can have an even greater empowering effect on the disadvantaged. For example, citizen-focused efforts can have a powerful impact on public officials when such efforts equip disadvantaged citizens or communities to more effectively lobby, cooperate with, or in other ways interact with government personnel.

⁷⁹ Thailand Country Report, p. 18.

⁸⁰ Mongolia Country Report, p. 25.

⁸¹ Viet Nam Country Report, p. 50-51.

I. Improvements in Material Circumstances

149. Legal empowerment contributes to improvements in the material circumstances of those who benefit from socioeconomic development efforts, particularly in the context of poverty reduction. Such impact can take many forms.⁸² Learning about the law may help women reduce the incidence of domestic violence in their communities. It can help farmers take advantage of agrarian reform laws in ways that can increase their income. Similarly, it can help citizens understand that the enforcement of laws and regulations banning certain logging or fishing practices will enhance quality of life and livelihood in their communities and to take appropriate action.

150. Where improvement in material circumstances flows from legal empowerment efforts, it may overlap with legal implementation. For example, the catch and incomes of fishing communities may increase because laws banning encroachment by outsiders or environmentally destructive practices are enforced. In other cases, a strategy may prioritize the achievement of material progress, rather than the implementation of laws *per se*. The goal is to improve the material circumstances of beneficiaries, with legal implementation as a means to that end.

J. Other Kinds of Impact

151. ***Implicit legal empowerment:*** Under some circumstances disadvantaged groups can increase their capacities and control over their lives without use of the law. The writings of Edwards and certain other commentators cited previously address empowerment that does not involve legal knowledge or legal advocacy. This report focuses primarily on the many strategies that explicitly employ the law. At the opposite end of the spectrum, a range of “non-legal” activities may be combined in strategies that do not have a strict legal dimension. These strategies may feature literacy, livelihood development, access to credit, community organizing, and a variety of other endeavors that do not even implicitly address legal issues.

152. Between these two poles lies an array of strategies that may emphasize the law only slightly or not at all, but that nevertheless represent legal empowerment to varying degrees. In the course of participating in development programs, people may learn about the law simply by becoming acquainted with the roles of government offices, the processes for securing services or permits from them, and the paperwork involved. For example, the Pakistani government’s National Rural Support Program (NRSP) “has fostered linkages between community organizations and line departments, resulting in the execution and functioning of hundreds of development schemes. There is no intrinsic legal empowerment focus or component in the program. Nevertheless, community organizations acquire some learning through the actual experience of dealing with the related forms, rules, and procedures.”⁸³

153. This is not a legal empowerment initiative, since it does not explicitly feature the law. Yet in strengthening the execution of a development scheme by providing people with the actual experience of dealing with the related forms, rules, and procedures, the work acquaints the poor with legal documents and matters that they can use to assume greater control over their lives. Terminology aside, capacity and confidence building are key features of this effort, whether it is termed “legal empowerment” or simply “empowerment.”

⁸² See, for example, the Philippine and Bangladesh survey studies, summarized in subsection IV and reported in Appendixes 1 and 2.

⁸³ Pakistan Country Report, p. 27.

154. **"Bread and butter" legal aid:** Many legal service efforts simply provide basic advice or representation, without carrying out the integrated strategies that most effectively impact governance and poverty. Such efforts only attempt to deal with the immediate issue at hand, without empowering the client or even expanding her more general legal knowledge. They do not aim to advance the "critical awareness" that Schuler and Kadirgamar-Rajasingham identify as an important element of empowerment. Bangladesh Legal Aid and Services Trust Advisor Shahdeen Malik describes such work, as carried out by BLAST, as "bread and butter legal aid."

155. In a limited sense, even this form of legal aid has an empowering effect. Where legal aid helps an impoverished woman secure maintenance from her husband, she enjoys more control over her life for the simple reason that she is not utterly destitute. This is a significant consideration to one living in precarious financial circumstances. Yet to describe the woman as empowered would be to stretch the meaning of the word. She remains dependent on a lawyer, her husband, and the courts, and has acquired no fortifying knowledge, skills, attitudinal change, or supportive links to other women. She lacks awareness of inadequacies in the law or her capacity to help change it.

156. Legal services work need not be empowering to be worthwhile. In this sense, even the minimalist approach taken by "bread and butter legal aid" is far better than nothing. Yet if it is not empowering, such work may just be a stopgap, rather than part of a lasting solution to poverty.

157. **Unplanned Impact:** Like any investment in capacity-building, legal empowerment can lead to impact that exceeds the goals of even the most well designed project. People may put new knowledge, skills, and confidence to use in ways that were not originally anticipated. The Thailand study describes how paralegals have made use of their training in ways that contribute to unanticipated types of impact:

Interviews with three paralegal volunteers [trained by the Women's Studies Center of Chiangmai University] confirmed that they have become competent not only in legal matters but are also are confident to speak in public, run for seats in local government, and contest elections as chairs of various committees. Significantly, they continue to network among trainees. One of the graduates of the program was elected as a senator; another is the President of the Executive Board of a Sub-district Administrative Organization. Her SAO was selected as a model by the Ministry of Interior for good governance performance and responsive local planning, as her plan funds social issues as well as infrastructure projects. Another paralegal interviewed has established herself as a legal counsellor. She performs family reconciliation services, mediates conflicts over inheritance and property disputes, and assists in disputes between the police and villagers. She helps villagers save time and money by helping them to determine whether or not they should hire a lawyer. Sources indicate that other paralegal volunteers who graduated from the WSC program are all active in a variety of social and political movements.⁸⁴

158. **Applying grassroots lessons to leadership positions.** In the 1990s a number of Filipino NGO lawyers who had been engaged in legal empowerment work subsequently assumed key leadership positions in the Department of Agrarian Reform and the Department of Environment and Natural Resources. In their new public positions, they applied what they

⁸⁴ Thailand Country Report, p. 12.

learned from the disadvantaged in promulgating and implementing policy reforms. In their former NGO capacity, these lawyers did not contemplate their eventual move to government. Their ability to initiate reforms once in office, and to in turn help the disadvantaged gain greater control over their lives, results from the expertise, credibility, and connections that they acquired while directly engaging in legal empowerment work.

III. FACTORS THAT CONTRIBUTE TO THE SUCCESS OF LEGAL EMPOWERMENT WORK

A. Key Features of Successful Legal Empowerment Strategies

159. The seven country studies identified several features of successful legal empowerment strategies that were largely consistent from country to country, and with experience elsewhere in Asia. While the success of a legal empowerment strategy is by no means conditional on all such features being present or taken account of, the most effective strategies tend to reflect a combination of proven features.

Feature One: Integrated strategies show the greatest success in advancing legal empowerment

159. Integrated strategies combine a variety of activities, or more than one organization, in efforts that advance legal empowerment either intentionally or as incidental benefit. They generally are more effective than strategies that feature only one kind of activity. The Philippine study makes this point clearly: “[Legal empowerment] is most effective when it connects with other aspects of development.”⁸⁵

160. *Integrated legal service work:* Some integrated legal empowerment strategies are purely law-oriented; that is, they do not involve activities such as community organizing or micro-credit. For example, paralegals typically perform a combination of functions (including nonformal community education, administrative advocacy, alternative dispute resolution, and conventional litigation), all of which feature legal work. A dynamic relationship exists between these various legal service initiatives. Through mediation or other interventions, paralegals help to settle disputes and assist with administrative processes that address clients' needs without burdening the formal legal system or subjecting citizens to its uncertainties. In fact, much legal empowerment work aims to enable citizens to deal with legal problems before they reach court, eliminating the need for trials that can be expensive and time consuming.

161. The Bangladesh Legal Aid and Services Trust (BLAST) follows the “legal” approach, combining legal counseling, case litigation, mediation, and policy advocacy and public interest litigation. For BLAST and many other organizations, the value of litigation lies as much in its potential use as in its actual employment. Thus, Bangladesh’s Ain O Salish Kendra (ASK), and India’s Center for Social Justice (CSJ) employ the threat of litigation to increase the bargaining

⁸⁵ Philippine Country Report, p. 61.

power of women who are abused or expelled from their homes by their husbands.⁸⁶ This helps the women secure better treatment or financial maintenance.

162. ***Integration of legal empowerment with broader development and governance work:*** Legal empowerment plays an important role in broader development or governance-oriented reform efforts. Legal education and support activities complement or build on mainstream development work in public health, family planning, micro-credit, environmental management, poverty reduction, agrarian reform, and other fields. Two common features of these integrated development efforts are community organizing and the formation of groups that share common needs within a larger community. Both involve the mobilization of citizens or groups around critical issues that have a direct or implicit legal dimension.

163. Many legal empowerment strategies aim to assist citizens and communities to apply their legal knowledge to advance their rights and interests through advocacy and other collective action. For example, as part of its mandate to improve the quality of community health services, an NGO specializing in public health may address the illegal practice of local Ministry of Health agents in charging citizens for medical supplies that the state is legally bound to provide for free. While the NGO may not characterize its role as legal in nature, its efforts to educate citizens about their right to basic health services and to press the Ministry of Health to fulfill its legal obligations constitute a legal empowerment function.

164. The Philippine NGO Kaisahan organizes farmers, trains paralegals to assist fellow farmers in agrarian reform processes and tribunals, draws on paralegal assistance in litigating cases where necessary, and trains partner communities and local government officials on local budgetary and governance matters. It also builds on the knowledge and credibility acquired through these grassroots efforts to play a role in pertinent law and regulatory reforms. If Kaisahan simply provided its partner populations with information on the law, they might not make effective use of it. Conversely, if it engaged only in litigation, it would fail to address the many other legal needs of its partners. Kaisahan training and occasional back-up support enable its partner populations to resolve their legal problems in a largely self-sufficient manner. Among several examples of integrated strategies from Bangladesh, Banchte Shekha combines mediation, legal counseling, literacy training, micro-enterprise development, group formation, and other work in a comprehensive empowerment strategy that substantially changes the balance of gender power in the communities in which it operates.

165. In the Philippines, some communities act on their new legal knowledge by taking direct action against illegal, environmentally harmful fishing and logging practices that threaten their livelihoods or quality of life. They pursue administrative advocacy, working through the police, local government, or executive agencies to demand that their rights be recognized through the legal functions that these various public agencies perform. In certain Indian communities, paralegals play an important role in pressuring, persuading, and educating police regarding laws relating to domestic violence and other security issues. For example, the effectiveness of paralegals employed by the Gujarat-based Center for Social Justice is enhanced by the fact that the Center can appeal to political and legal authorities in the state capital when local police fail to perform their duties. In Pakistan, similar functions are performed by the Police-Citizen Liaison Committee.

⁸⁶ Though these illustrations show how various types of legal work are tied together, it would be misleading to present the operations of BLAST, ASK and CSJ as purely law-specific. To varying degrees their work sometimes combines with that of development-oriented NGOs. CSJ is in fact a part of a larger NGO that has a broader mandate.

166. Integration efforts of this kind have yielded even greater impact in the Philippines and other countries where, through community training and other grassroots initiatives, NGOs have learned of legal problems on which they base successful drives for law and regulatory reform on issues ranging from agrarian reform to anti-rape legislation. These NGOs have also drawn on paralegal and community insights and experience to inform judicial training curricula and magistrates' manuals on issues such as domestic violence and family law.

167. The Philippines' Environmental Legal Assistance Center (ELAC) exemplifies such integration in the context of natural resources protection. ELAC's Community-Based Resource Management program enhances its legal advocacy work. In particular, the "program aims to raise community members' awareness of ecology and environmental laws and rights, and to work with partner communities in securing land tenure, designing and implementing natural resource management plans through community organizing and participatory rural appraisal, developing micro-enterprises as alternative livelihood (such as community-based sustainable tourism), and creating paralegal and environmental monitoring teams."⁸⁷

168. As the ELAC example demonstrates, legal empowerment contributes to socioeconomic as well as strictly legal goals. For example, where the law is used to educate and mobilize communities, it helps to reduce violence against women, advancing socioeconomic goals that are undermined by the high incidence of violence in developing countries.⁸⁸ In addition to raising awareness of rights and entitlements, legal empowerment activities help to make citizens aware of their corresponding obligations toward fellow citizens and the state.

169. Integration can cut across organizational boundaries. A number of groups may work together in carrying out legal empowerment strategies. The integration may be horizontal, in the sense that local NGOs and CBOs collaborate on a community level. It also may be vertical, as for example where national organizations or those that operate at the state or provincial level collaborate with local ones. Where supportive governmental personnel or units play a role in legal empowerment efforts, they may coordinate with citizens and NGOs in ways that blur the state-civil society divide and contribute to the success of an initiative.

170. The Thailand report includes an example of how integration contributed to a governance-oriented empowerment strategy. It explains that successful NGO civic education efforts were not confined to civic education, narrowly defined, but instead followed an integrated approach. These efforts thus differed from one-dimensional government initiatives that only focused on information dissemination:

Strategies like networking, repeated activities, and strong coaching from an academic institution...were critical variables contributing to...impact. What is important to note is that all of these examples occurred within one year of the initial training program. The program's impact is thus in sharp contrast with massive, multi-year legal dissemination programs offered by a variety of government agencies in which there was little or no evidence of any actual short or long-term impact on citizens individually or on their communities.⁸⁹

⁸⁷ Philippine Country Report, p. 21.

⁸⁸ Lori L. Heise with Jacqueline Pitanguy and Adrienne Germain, *Violence Against Women: The Hidden Health Burden*; World Bank Discussion Paper No. 255; Washington: The World Bank, 1994.

⁸⁹ Thailand Country Report, p. 37.

171. **Linking legal and gender empowerment.** A 1995 study found that population management efforts by family planning NGOs in Bangladesh were strengthened by integrating them with legal services, and vice versa.⁹⁰ NGO staff received legal training that they in turn imparted to their partner populations. They also coordinated community mediation sessions and other law-oriented services. By comparison with legal service programs that were introduced in isolation, communities whose members were already familiar with family planning NGOs readily accepted the integrated programs. For those exposed to community legal services for the first time, the sensitivities raised by the concept of women's legal rights were comparable to those raised a decade earlier by family planning and the notion of a woman's right to exercise reproductive rights. In stimulating community acceptance of women's legal rights and the need for greater gender equity in traditional *shalish* dispute resolution proceedings, family planning NGOs drew on the goodwill established through many years of contact with the communities. Ultimately, women who became aware of their rights achieved greater leverage in asserting their autonomy in personal reproductive health decisions. The Bangladesh report provides a good summary of the impact of integrating legal and family planning services:

For the first time women replaced their fear of abandonment or divorce as they gained new knowledge about their rights thereby acquiring the power to bargain over domestic relations. The parallel activities have actually wrought tremendous socio-cultural changes by establishing highly effective systems of dispute resolution. As a result of integrated service delivery, women now have considerable leverage in making decisions over the size of the family and other aspects of reproductive health.⁹¹

172. These findings are consistent with those of two studies in Nepal, which indicate that "literacy is a key element in fostering women's empowerment and is especially powerful when women are given the opportunity for post-basic literacy study combined with other critical interventions"⁹² (See Box 4).

Box 4: Empowering Women to Advocate for Social Change in Nepal

The USAID-funded Women's Empowerment Program (WEP) in Nepal has combined literacy classes, arithmetic education, micro-enterprise development and training, microcredit access, nonformal legal education, and advocacy-oriented group strengthening for 100,000 women. A 1997 study of the first stage of WEP examined the impact on public and family decision making of development activities that enabled the beneficiaries to both: (i) obtain basic literacy skills and understanding of their rights and; (ii) generate extra income through microenterprise. It compared women who had benefited from that integrated work with those who have not. The study found that the beneficiaries initiated eight times as many actions for "social change" (such as community development and health projects, and campaigns against domestic violence, alcohol and gambling by men), participated 30 percent more in family and independent income allocation decisions, and better understood the importance of keeping their daughters in school.⁹³

⁹⁰ Karen L. Casper and Sultana Kamal, Evaluation Report: Community Legal Services Conducted by Family Planning NGOs, a report prepared for The Asia Foundation's Bangladesh office (Dhaka: March 1995).

⁹¹ Bangladesh Country Report, pp. 66-67.

⁹² Gwen Thomas and Ava Shrestha, Breaking New Ground: A Case Study of Women's Empowerment in Nepal, Women's Empowerment Program, USAID/Nepal (Kathmandu: December 1998), at 6.

⁹³ Rajju Malla Dhakal and Misbah M. Sheikh, Breaking Barriers – Building Bridges – A Case Study of USAID/Nepal's SO3 Women's Empowerment Program, The Asia Foundation (Washington, D.C.: 1997).

173. The two studies indicate that basic literacy and arithmetic skills increase women's mobility and income-generating capacities because they can read road and bus signs to travel to local and regional markets, and are less likely to be cheated in transactions while there.⁹⁴ They further suggest that more advanced literacy and related activities foster women's confidence in articulating their views and participation in community activities, in comparison with those who only have basic literacy.

174. Mongolia's National Center Against Violence (NCAV) is one of many Asian NGOs pursuing a similar path in linking legal empowerment with other gender-oriented activities:

The NCAV made a strategic shift to address domestic violence as a societal problem, recognizing the need to cooperate closely with government at all levels as well as with all other stakeholders. At the current stage, the NCAV has started training of Ulaanbaatar-based family doctors, community divisions of the police force, *khoroos*⁹⁵ governors, and grassroots-level civil society representatives. By teaching them how to recognize victims of domestic violence and provide proper assistance to them, the NCAV intends to create a service network for victims of domestic violence.⁹⁶

175. ***The need for flexibility.*** While Nepal's aforementioned WEP represents an effective step forward in integrating activities on a large scale, some observers of the program have questioned aspects of its design and implementation. Concerns related to its short-term orientation, related reliance on quantitative indicators, and inevitable vulnerability to the vagaries of swift changes in personnel and priorities. This is not a criticism of WEP *per se*, which reflects more general tendencies that surface when large donors try to standardize community-level work; rather, the point is made to highlight the need for flexibility in pursuing integrated strategies that combine law and development. The use of law, and its integration with other activities, reflects an overall strategy that responds to community needs rather than a pre-determined mix of interventions.⁹⁷

176. ***Building legal empowerment on a base of other development work.*** There is no magic formula for divining how and when to combine legal empowerment activities with other development work. At the same time, parallel implementation should not be confused with parallel initiation of legal and development activities; that is, legal empowerment often builds on a base of prior group formation, micro-credit schemes, family planning efforts, or other development programs.

⁹⁴ Shirley Burchfield, "An Analysis of the Impact of Literacy on Women's Empowerment in Nepal," Harvard Institute for International Development (Cambridge, MA: 1997) and Sharon Benoliel, et al, "Focus on Girls: USAID Programs and Policies in Education – Nepal Case Study – DRAFT," Center for Development Information and Evaluation, USAID (Washington, D.C.: 1998).

⁹⁵ A *khoroos* is the smallest administrative unit in urban areas of Mongolia.

⁹⁶ Mongolia Country Report, p. 24.

⁹⁷ The approach of Kenya's Legal Advice Center is a case in point: "Staffed by attorneys, community organizers, and social scientists, [the Center] views law as one of many potential vehicles for community mobilization. It first ascertains the problems to which a given community attaches priority, which may be landlord-tenant disputes, garbage disposal, children's well-being, the sexual health of adolescents, or a host of other concerns. The center pursues paralegal training, the threat or reality of litigation, and related approaches. Where community organizing, mediation by local administrative chiefs, and political mobilization seem more appropriate, the center takes those routes. And of course, it blends legal and extralegal strategies where possible." Stephen Golub, "Non-lawyers as Legal Resources for Their Communities," in Mary McClymont and Stephen Golub, eds., *Many Roads to Justice: The Law-Related Work of Ford Grantees Around the World*, The Ford Foundation (New York: 2000), at 310-311.

177. Accordingly, non-formal legal education and other legal services may be introduced in conjunction with *ongoing* development activity. The Philippines' Alternative Law Groups (ALGs), a network of NGOs that combine legal and development work, exemplify this strategy. They engage with partner populations that have previously been organized by another NGO, a local church, or a union. Much ALG experience in fact indicates that it is problematic to work with a CBO that is poorly organized or split by internal divisions.

178. Operating in even more restrictive environments, NGOs such India's Hengasar Hakkinia Sangha (HHS) work with groups of women previously organized by other NGOs. The groups initially focus on important but much less controversial topics such as income generation or family planning. With help from HHS, they eventually begin to discuss women's rights.

179. Yet there are exceptions to the rule that legal empowerment best follows other development work. As the Philippine study points out, there may be instances in which a legal empowerment initiative "can be an ideal 'entry point' into the community; for example, when a legal controversy is already brewing."⁹⁸ The Philippine environmental legal services NGO Tanggol Kalikasan has differed from many fellow ALGs in undertaking community organizing itself, rather than building on other NGOs' efforts.⁹⁹

180. There are lessons to be drawn from such exceptions and they are tied to flexibility, societal context, and perseverance. While under many circumstances it may be best to build legal empowerment on previous, safer development initiatives, human rights education can lead the way or take place simultaneously where local conditions permit.

181. ***Alternative dispute resolution as part of an integrated strategy.*** The experience of the Bangladeshi NGO Banchte Shekha illustrates that alternative dispute resolution (ADR) functions best in the context of an integrated legal empowerment strategy. Banchte Shekha undertakes the challenging task of changing the underlying community dynamic that relegates women to inferior status. This effort in turn influences the male-female mediations that Banchte Shekha organizes to address family and other disputes. The organization pursues a comprehensive strategy for empowering women, combining livelihood, literacy, community development, and other inputs with its legal component. As a result, women enter Banchte Shekha mediation sessions on much firmer footing than they do those carried out by many other Bangladeshi NGOs.

182. The larger lesson is that in situations of power imbalance ADR can perpetuate rather than negate inequities. In countless instances in Bangladesh, an informal shalish mechanism offers an efficient and cost-effective alternative to the formal court system, but exposes female parties to the same gender biases and community pressures that they would encounter in a conventional court case. While the dispute may be resolved in a much shorter time, the resolution may be no more satisfactory to a female party than if she had taken the case to court, or simply resigned to the situation and done nothing. Where Bangladeshi NGOs complement

⁹⁸ Philippine Country Report, p. 61.

⁹⁹ Senegal offers another exception to the rule, in the form of potentially controversial human rights education leading rather than following other services, and resulting in a national ban on the practice of female genital cutting (FGC). The sequencing and integration of combined local and international NGO efforts against FGC there involved "teaching women first about their human rights, followed by other modules related to problem solving, health, and hygiene...Although the project had originally targeted 30 villages...project organizers, facilitators and participants succeeded in expanding its reach. In November 1999 approximately 80,000 people from 105 villages participated in a ceremony during which they issued a public declaration ending the practice of FGC." "Report-in-Brief," Promoting Women In Development program, International Center for Research on Women and The Center for Development and Population Activities, Washington, 1999, pp. 1-2.

their mediation procedures with other legal aid to women, the imbalance is to some degree ameliorated. By integrating a number of development activities into its operations, Banchte Shekha transforms mediation into something closer to a conciliatory dialogue between equals.

183. **Integrated strategies of single versus multiple organizations.** Must an NGO have full-time lawyers on its staff if its other services generate a need for their help? The Pakistan study expresses a preference for internal legal expertise, at least as it pertains to the many NGOs that do not have a reliable external pool of competent and dedicated lawyers on whom to draw:

There are number of organizations in Pakistan, most of them small outfits, which provide support services, particularly for women, in terms of counseling, shelter, referral or help in pursuing cases. Some of these focus on cases of violence against women. However, there are far fewer which have lawyers in their organizations and can themselves offer legal aid services. Even in the case of those who do have lawyers, many are small voluntary organizations or groups and can thus handle just a limited number of cases. There are several problems that these organizations face. Firstly, if they are non-legal NGOs and not themselves conversant with laws and procedures, they become totally dependent on the lawyers providing help, and the lawyers may not necessarily have the competence and attitude necessary for the purpose, especially where women are concerned. In some cases, lawyers giving voluntary services do not have sufficient time to devote to the case. Thus, the only NGOs able to offer more concrete legal services are those which have lawyers working with them on a regular basis, full-time or part-time.¹⁰⁰

184. On the other hand, there are many examples of organizations that integrate their services with other NGOs, rather than shouldering the entire burden of integrated programs on their own. For example, the Philippines' Women's Crisis Center partners with the Women's Legal Bureau and Saligan to provide legal assistance for battered women. Legal services in the Philippines regularly involve partnerships of this kind. Development NGOs conduct socioeconomic work and community organizing in collaboration with grassroots populations, and draw on Alternative Law Groups when legal needs arise. While there may be trade-offs involved in integrating all services under one organizational roof, the point is not how integration is achieved, but that it takes place in some form.

185. **Vertical integration.** The Pakistan report sees some value in the division of labor between local organizations that work directly with communities and "[regional or national] support organizations with a wider geographical coverage, working primarily through community organizations...The strategy of [these support organizations in] working through community organizations, rather than directly with communities, is to ensure structured continuity of work, as well as to be able reach out to more communities through strengthening local resources (i.e., the community organizations)."¹⁰¹

186. Integration accordingly may be vertical as well as horizontal; that is, local organizations may work not just with each other (horizontal), but with those based in national or state/provincial capitals (vertical). The effectiveness of India's Center for Social Justice owes in part to the fact that its headquarters can take matters up on the state level in Gujarat, where it

¹⁰⁰ Pakistan Country Report, p. 24.

¹⁰¹ Pakistan Country Report, p. 27.

operates, if its local offices need assistance. Similarly, Philippine ALGs can follow up in Manila if local officials prove recalcitrant or the ALGs' grassroots partners encounter other difficulties.¹⁰²

187. Conversely, the ALGs partner with other NGOs and with networks of farmers, women, indigenous peoples, and other groups in pursuing national policy advocacy that flows from identification of community needs. This aspect of vertical integration is growing in many countries around the world, as NGOs increasingly draw on local experience to pursue law and regulatory reform.¹⁰³

188. ***Building networks and coalitions.*** The Pakistan study presses for both vertical and horizontal cooperation because the combined approaches can expand local organizations' intellectual horizons, afford them some protection against hostile elements, and raise the effectiveness and efficiency of their operations:

[Local] NGOs and governmental agencies undertaking legal [service] work, as well as members of community groups, should be provided with sufficient opportunities for exposure to a wide variety of organizations and their work, and should also be encouraged to participate in their activities...This interaction and collaboration between different sections of civil society is particularly emphasized in view of the lack of understanding and prevalent biases against human rights and advocacy NGOs, the growing intolerance between different sections of society and the increased militant rhetoric of retrogressive forces in the country.¹⁰⁴

...The establishment of coalitions and networks also provide groups with the additional advantages of being able to collectively avail of resources and information, and also provide a forum for increased dialogue and more effective collective advocacy.¹⁰⁵

189. ***Integrated strategies as a consistent theme in development.*** The previous findings concerning the value of integration are by no means confined to legal empowerment. The substantial body of literature from social capital and related field cited previously documents the importance of close cooperation across organizational lines, including bridging the civil society-government gap. The literature also points to yet another kind of integration, programmatic in nature, which aims to both improve livelihoods and increase the capacities of the local groups composed of or working with the disadvantaged.

190. One example is Edwards' study of selected Indian and Bangladeshi NGOs that aim to improve the lives of the poor and strengthen their capacity to affect forces influencing their lives. His conclusions point to the importance of vertical and horizontal linkages and to the value of combining livelihood development and capacity-building.¹⁰⁶ Other studies similarly suggest that integrating increased economic security with efficacy in social organization and political

¹⁰² See, for example, George at 245.

¹⁰³ For example, South Africa's Black Sash, Namibia's Legal Assistance Center, and Brazil's THEMIS all train and support community paralegals, carry out their own staff paralegal work, and build on what they learn to successfully pursue state-wide and national policy advocacy.

¹⁰⁴ Pakistan Country Report, p. 75.

¹⁰⁵ Pakistan Country Report, p. 82.

¹⁰⁶ Michael Edwards, NGO Performance—What Breeds Success? New Evidence from South Asia, *World Development*, 27(2), 1999, at 371.

influence yields successful initiatives when participatory linkages exist among grassroots organizations, NGOs, governments, and banks.¹⁰⁷

Feature Two: Knowledge alone is insufficient

191. **Knowledge is necessary but not sufficient.** Knowledge of the law is a vitally important part of legal empowerment, but knowledge-based empowerment is substantially constrained if it cannot be converted into concrete action. Learning that the law is on one's side can build confidence. So too can understanding that unfair laws can be challenged and changed. Yet the country studies by and large suggest that knowledge alone does not help a woman stop the violent behavior of her husband. Nor does it enable a tenant farmer to get fair treatment from his landlord, or halt police abuse of ordinary citizens.

192. This is by no means intended to discount the value of legal knowledge. The Bangladesh study considers dissemination of information to be the single most important element of legal empowerment, but cautions that "it is not enough, on its own, to empower people to rise above exploitation and poverty and take control of their lives. While knowledge is an important first step toward empowerment, there is a need to assist disadvantaged groups to actually use the law to their benefit."¹⁰⁸ The study goes on to suggest that the value of enhanced knowledge and awareness are lost if "there is no change in trends of dowry demands, early marriage, and other social maladies."¹⁰⁹

193. As the Pakistan study similarly points out:

[Mass media and other educational] efforts have been more effective when they have been combined with other activities that helped translate the learning into concrete action. The additional or complementary activities give the participants hands-on exposure and experience, facilitating an enhanced understanding of both the concepts and the actual constraints or problems associated with the issues. They also keep alive the interest of the groups and beneficiaries, and help maintain the momentum of the work. Moreover, tangible progress or results achieved in the process generate even more enthusiasm and involvement on the part of the participants.¹¹⁰

194. **Awareness is just a first step.** The seven country studies reach a similar conclusion regarding the related issue of whether simply making people aware that they have rights (as opposed to cultivating specific knowledge of those rights) enables them to act on that awareness. The point is significant because some educational efforts stop at the water's edge of providing materials or training that do little more than advance the basic notion of rights. Such efforts do not address the greater challenge of cultivating real knowledge and attitudinal change, or the facilitation of action through which citizens and communities make use of the knowledge that they acquire.

¹⁰⁷ See e.g., P. Evans, Development Strategies Across the Public-Private Divide, *World Development*, 24(6), 1996, 1033-1037; J. Fox, How does civil society thicken? The political construction of social capital in rural Mexico? *World Development*, 24(6), at 1089-1103.

¹⁰⁸ Bangladesh Country Report, p. 66.

¹⁰⁹ Bangladesh Country Report, p. 70.

¹¹⁰ Pakistan Country Report, p. 76.

195. The Pakistan report thus asserts that “isolated awareness-raising exercises, which are not linked to any related or follow-up activity designed to enhance knowledge, assertion of rights, or mobilization, are unlikely to impact attitudes or show significant results.”¹¹¹ The Mongolia study makes the similar point that “distribution of printed material alone does not equip people with skills to claim their rights. In an environment where people do not possess the necessary knowledge and also lack experience in claiming their rights, more intensive education and extensive service provision is needed.”¹¹²

196. Awareness, like knowledge, is important. While it may be all that a law-oriented initiative can accomplish in certain politically or economically constrained circumstances, it should not be confused with empowerment. This flows from two lines of analysis. The first relates to societal contexts. For example, in some countries ordinary citizens who try to act simply on the basis of what they learn would face insurmountable hurdles in seeking justice from the government’s judicial, executive, or legislative branches. These include corruption, elitism, patronage, bureaucratic complexity and delay, indifference, and even hostility toward ordinary citizens seeking redress. Competent, honest, or sympathetic help from the private bar is hard to come by, and for most unaffordable. For women, the situation is even more difficult.

197. The second, more positive line of analysis draws on successful legal empowerment experience to conclude that information alone is only part of the equation. In particular, the country studies found that the disadvantaged are most likely to act on their knowledge where it couples with such activities as community organizing, mediation, or litigation. In other words, knowledge is most effective where it is part of an integrated strategy that includes other elements.

198. For example, Pakistan’s Aurat Foundation has helped secure voting rights, minimum wages, access to credit, provincial assembly seat allotments, and other benefits for women through a combination of legal and development activities. The Philippines’ Alternative Law Groups similarly collaborate with CBOs and other NGOs to raise awareness and knowledge of the law, organize communities, develop and work with paralegals, conduct administrative advocacy, litigate, negotiate, and otherwise partner with the groups they aid. Integrated strategies achieve considerable impact on legal implementation and on regulatory and legal reform.

199. ***The value of knowledge and awareness:*** The preceding conclusions are not intended to discount the potential value of “stand-alone” efforts in enhancing knowledge and awareness under certain circumstances. These include:

200. Where a complementary infrastructure already exists. Providing people with basic knowledge alone can prove effective where a civil society, political, or governmental infrastructure already exists that enables them to act on their new knowledge, and where no major obstacles hinder them in making use of what they have learned. As a case in point, voter education helps to bring people to the polls and encourages them to vote according to their true preferences, in the face of great pressure. Yet these one-time actions are typically backed, monitored, and protected by intensive NGO and/or government efforts. Media efforts similarly help galvanize good governance campaigns in relatively stable societies (such as in Thailand) and pro-democracy movements in transitional ones (such as the Philippines in 1985-86 and Indonesia in 1998). In such circumstances, the population either does not encounter substantial

¹¹¹ Pakistan Country Report, p. 21.

¹¹² Mongolia Country Report, p. 29.

impediments to participating (as in Thailand) or is mobilized by the prospect of sweeping national impact (as in the Philippines and Indonesia).

201. In less dramatic circumstances, structures and services may be in place that encourage and enable people to act on what they have learned. This is frequently the case for affluent individuals or societies. Citizens of Japan, the United States, and Western Europe who are involved in traffic accidents can expect police to provide them with a routine report if requested for insurance purposes. In contrast, in many developing countries the police may abuse or extract bribes from citizens under similar circumstances. In much of Asia, more affluent persons can secure action from government bureaucracies relatively easily in such mundane matters as obtaining driver's licenses or birth certificates by employing their status, connections, or small bribes. The disadvantaged lack such assets. Absent such structures and services, disadvantaged populations have little opportunity to use what they learn about their rights and to effectively address the legal challenges and pressures of day-to-day life. Pioneering administrative law reform efforts in the PRC and other countries underline the value of clearer and more transparent administrative law and decision-making procedures as a medium for improved citizen access to essential resources and participation in local governance.

202. This is not to underestimate the difficulty of the work involved in information dissemination, whether in the context of voter education, mass mobilization, or unrelated fields such as health education. Such efforts build on a *de facto* infrastructure of support for people to act on their knowledge. That infrastructure may be embedded in the nature of a society, a class, or an issue. Since more affluent societies and individuals in effect have this infrastructure in place for many issues, there is a tendency to assume that the same infrastructure is available to assist the poor in addressing the problems that confront them on a day-to-day basis. This is not the case.

203. Where use of the knowledge does not hinge on state action. In some circumstances information helps people in ways that do not depend on government responsiveness. For example, it can inform them of their responsibilities to the state or about their rights vis-à-vis other citizens. It can guide them toward the appropriate government offices to address disputes or other legal needs. The Viet Nam study thus sees these two types of problems as addressed by the establishment of community libraries ("local bookshelves") across much of the country and by the resulting public use of them.¹¹³

204. Where knowledge and awareness are themselves the goals. Another respect in which simply raising people's knowledge and awareness can be important is where awareness raising is the actual goal of the development effort, as opposed to poverty reduction, good governance, or other types of impact that involve changes in behavior and material circumstances. Youth education regarding human rights may sow the seeds for long-term changes in attitudes, but does not necessarily translate into short-term or medium-term changes in how adults treat each other or children. War or repression may leave some disadvantaged populations so powerless that the most that can be done is to similarly undertake educational initiatives that may prove useful at some point, in the event that social stability and openness are restored. At the very least, knowledge of rights can itself benefit people's dignity and outlook. Thus, in Mongolia violence against women can now be openly discussed, whereas the topic was previously avoided. The Mongolia study concludes that "although there is no statistical data on reduction of domestic violence, there is some evidence of impact of the [National Center Against Violence]'s activities. This can be seen in a wider awareness of public in general compared to [the] recent

¹¹³ Viet Nam Country Report, pp. 30-32.

period when the problem was not spoken about due to [the sensitivity] of the issue...”¹¹⁴ These are dramatic changes from a decade ago.

205. ***Distinctions and caveats.*** Having highlighted the potential usefulness of legal knowledge, it is important to recall the constraints on its employment. First, it is necessary to distinguish the circumstances where information dissemination can build on a governmental, political, or civil society infrastructure that enables people to make effective use of what they have learned (such as in voter education) and the many circumstances where that infrastructure is not in place. Second, it is important to separate the value of simply raising knowledge from larger goals such as alleviating poverty or making human rights protection a reality. It should not be assumed that the former equals or automatically leads to the latter.

206. This leads to a final caveat. As emphasized later in this report, there is a tremendous amount that organizations involved in legal empowerment, human rights, democratic development, and related fields do not know about the causes and effects of the activities that they fund or undertake. This is particularly true of efforts to raise knowledge of rights. The conclusions reached about the circumstances under which these efforts can or cannot lead to effective action should be seen as very preliminary in nature. Appendixes 3 and 4 discuss how the development community can better understand and evaluate the impact of legal empowerment efforts.

Feature Three: **Civil society plays an important role in legal empowerment**

207. As illustrated by the examples already cited, NGOs and community-based organizations tend to demonstrate greater determination, flexibility, and initiative than government agencies in legal empowerment work. This is typically due in part to the quality of the many NGO leaders and staff members. The success of civil society organizations also reflects the fact that, despite the best intentions of many government personnel, the legal empowerment efforts of state institutions may be burdened by significant internal or external constraints. For example, some government efforts are hindered by inefficient use of resources, bureaucracy, corruption, patronage, gender bias, a focus on quantitative rather than qualitative impact, general aversion to change, and other factors that work against, rather than for, the disadvantaged.

208. This is not to imply that civil society is an unmitigated good. For every group that seeks to advance women's rights, there may be another that is bent on repressing them. For every dedicated and well-managed organization there are others whose motives are suspect or whose capacity is weak. Some NGOs favor a participatory operating style that lets members and partner populations set their agendas, whereas others are subject to domineering leadership that limits their productivity. Accordingly, much hinges on the orientation and competence of different civil society groups, with the better managed and more capable ones best positioned to contribute to governance reforms and poverty reduction.

209. The Thailand study provides examples of cases that are consistent with the experience of most of the seven countries studied. For example, it notes that most government legal empowerment work “can claim impressive quantitative results in terms of the number of individuals trained,” but that “anecdotal evidence suggests that such programs failed to promote the fundamental attitudinal changes or skills development that should be [their]

¹¹⁴ Mongolia Country Report, p. 23.

underlying goals...”¹¹⁵ In contrast, the report asserts that effective legal empowerment strategies “should be premised on the degree to which a method empowers citizens and communities to use the law effectively, promotes good governance, and overcomes poverty...Most projects [of the latter kind] are conducted by university affiliated entities, professional associations and nongovernmental organizations, rather than government agencies.”¹¹⁶

210. The civil society dimension of legal empowerment is further discussed in subsection III-B (Condition One).

Feature Four: Government can play an equally important role in legal empowerment

211. The fact that government bureaucracies frequently oppose or are indifferent to legal empowerment does not mean that the more positively inclined agencies and personnel cannot contribute. In societies with a legacy of centrally run governments and economies, the endorsement of high-level authorities may be necessary for local civil society efforts to achieve credibility and legitimacy. The ideal situation occurs where government agencies and civil society work together as full-fledged partners, drawing on the resources and authority of the former and the initiative, flexibility, and grassroots outreach of the latter. This ideal is not always possible. Civil society organizations often persuade or pressure government personnel to be responsive, or find individual allies within particular government agencies.¹¹⁷

212. ***Issues to be addressed in advancing the role of government.*** Despite the good intentions of some public officials and staff, government agencies in many countries often lack ongoing, strategic programs to even disseminate information, much less undertake other legal empowerment work. The experience in Pakistan is typical of many countries:

There have been a number of programs on government-controlled television on women’s rights issues, including their legal rights, over the past 10-12 years; and radio has also held some programs on women’s rights, including legal rights and the issue of violence against women. Electronic media has also been used in the last two elections by the official Election Commission on the importance and method of voting, including special messages for women. However, despite occasional efforts, the programs do not appear to have been a part of an overall policy decision to this effect. Thus, while some of them have been useful programs, often involving women activists and concerned NGOs, their existence has largely depended on the individuals in charge. They have, therefore, been sporadic, rather than a part of a considered long-term strategy.¹¹⁸

213. While the international development community often voices concern about NGO consistency and sustainability, government efforts are often sporadic and not sustained. Changes in leadership and politics may hamper or halt official legal empowerment efforts.

¹¹⁵ Thailand Country Report, p. 23.

¹¹⁶ Thailand Country Report, p. 23.

¹¹⁷ Examples of this phenomenon could be found in the Philippines in the 1990s, when NGOs cooperated with key officials in the Department of Environment (DENR) and Natural Resources and the Department of Agrarian Reform. Some of the officials originated in the Philippine NGO community, including the Alternative Law Groups described elsewhere in this report. These individuals were instrumental in counteracting inertia, opposition, and even (at least in DENR) corrupt syndicates of departmental staff.

¹¹⁸ Pakistan Country Report, p. 21.

214. Sometimes the problems with official promotion of legal empowerment run far deeper. As the Pakistan report points out, “human rights work meets resistance from [local, provincial and national] governments.”¹¹⁹ The report further states, “It is apparent that community organizations which become active in terms of organizing their communities, becoming more knowledgeable, accessing services, or asserting rights, often tend to be viewed with suspicion by governmental agencies or are considered threats by the existing power structures.”¹²⁰

215. The Bangladesh study finds more general flaws in the orientation of government bureaus:

The inadequacies of the government agencies therefore, reflect not only resource constraints, but also inherent organizational and procedural flaws that result from poor management, weak monitoring, and lack of transparency and accountability. Although public services are supposed to relate to what customers want, government agencies do not appear to acknowledge, let alone have any commitment to, the principle of ultimate responsibility to those customers. In the circumstances, ordinary citizens have no expectation of any understanding, assistance or cooperation from government officials.

The vast majority of the people are severely constrained in their interactions with the bureaucracy, a situation compounded by their illiteracy and the lack of their rights and privileges as citizens. Those who are poor and marginalized are unable to gain access to public services. Women, who are poor and uneducated, are at a greater disadvantage in accessing the male-dominated bureaucracy... People are aware of their vulnerability to the whims and caprices of government agents and are afraid to complain as there is little scope of redressing bureaucratic injustice... Against this backdrop, people are increasingly turning to alternative services, most notably the private sector and NGOs.¹²¹

216. A similar analysis emerges from the Pakistan study, which notes that “at the level of governmental line departments and other agencies, there is a general reluctance to involve or even listen to members of the public. Thus, there is minimal information-sharing and doors are largely closed to complaints, requests, or demands.”¹²²

217. **Government-NGO training collaboration.** Despite the many challenges, there is ample scope for effective government-NGO collaboration. Such collaboration can include NGO participation in training government personnel. In Mongolia, for example, the National Center Against Violence has trained police, judges and prosecutors regarding violence against women. The Women’s Legal Bureau has worked with the Philippine Judicial Academy to prepare family law curricula for judges, prosecutors, and other officials. The Barangay Training Manual Project in the Philippines, which involves a consortium of NGOs that provides training and support services to the part-time officials who staff the lowest levels of government, is another case in point. In Cambodia, the Khmer Institute of Democracy and the Cambodian Institute of Human Rights collaborate with the government of Cambodia in conducting training programs in good governance and human rights for public officials at the national and local level.

¹¹⁹ Pakistan Country Report, p. 3.

¹²⁰ Pakistan Country Report, p. 82.

¹²¹ Bangladesh Country Report, p. 69.

¹²² Pakistan Country Report, p. 15.

218. The Pakistani NGO Rozan's Police Training Project, undertaken in close cooperation with the national Police Training Academy in Sihala, further exemplifies such cooperation. The two organizations initiated the training with different but complementary goals. The police leadership was concerned about violence and poor interpersonal skills and attitudes on the part of their subordinates. Rozan, in turn, was concerned about poor police responsiveness to women victims of domestic violence, child sex abuse, and related offences, as well as police abuse of women. Initial police response to the training has been positive, though it is too soon to tell whether it will make a difference in the long term. The Pakistan study's summary of the evolution of the project offers intriguing insights about the dynamics involved and the lessons learned:

[R]ozan's experience of its pilot workshops had shown that when the training was conducted as a special program by an external body, the participants tended to be suspicious about the motives behind the workshop and group; and, thus, there was more initial resistance to what was being conducted. They were also more casual about it, since it was not a part of their regular training courses. It was, therefore, agreed that the training would be a part of the regular police training courses held at the Academy. Secondly, because Rozan wanted to build up police ownership of the process, which would also contribute to its being taken more seriously by them, several responsibilities relating to the workshops (such as provision of food and transport) were given to the Academy and feedback from the workshops was constantly shared with them. And, finally, Rozan also felt that they needed to spend a longer period on the initial stages of discussing concepts and attitudes, before entering into the more sensitive area of violence against women. In this way, an atmosphere of reflection and mutual understanding would already have been built up to ease the way into more problematic areas of discussion. Thus, a well thought out and innovative way of conducting the training was developed.¹²³

219. NGO engagement of this kind has at least three advantages over government training taking place on its own. First, NGO lawyers may be the greatest experts on how the law as written and as implemented affects the disadvantaged. Second, since they are dedicated to these issues, they may be able to present information in a lively manner designed as much to influence attitudes and behavior as to increase knowledge. Finally, the interaction itself can open doors to greater government-NGO cooperation down the line.

220. The question arises as to how this relates to legal empowerment, if it is the government officials themselves rather than the disadvantaged who receive the training. To the degree that NGO involvement makes the officials more responsive, it benefits the NGOs' partner populations. Disadvantaged citizens become better able to assume control over their lives when they deal with sympathetic rather than indifferent government personnel. Greater government responsiveness can in turn contribute to poverty reduction. Moreover, it should not be assumed that government is the "enemy." Many government agencies are sincerely committed to improve the situation of the disadvantaged. NGOs should acknowledge this commitment, and respond to it in good faith.

221. **Government-NGO cooperation in other educational venues.** Formal training need not be the sole means for expanding the knowledge and perspectives of government officials. NGO-initiated conferences and meetings have exposed judges to new ways of thinking about

¹²³ Pakistan Country Report, p. 61.

issues ranging from human rights to the environment. In Bangladesh, interaction initiated by the Bangladesh Environmental Lawyers Association, the Madaripur Legal Aid Association, and Ain O Shalish Kendra helped broaden the perspectives of senior judges, paving the way for successful test case litigation on issues of standing and compensation for communities relocated by government flood mitigation projects.

222. **Government-NGO cooperation in action.** Training and other meetings are neither the sole nor even the main ways that NGOs and their partners can benefit legal empowerment by interacting with government. NGOs engage with government programs on many levels. The Bangladesh study accordingly concludes:

[N]GOs have also on various occasions engaged successfully with the government in their interventions. This indicates that the government is increasingly taking a more positive view of NGOs and beginning to regard them as partners in some of their ventures at poverty reduction, micro-credit, health and environmental issues, law enforcement and protection of citizen's rights. This is indeed a departure from the normative bureaucratic dislike that NGOs generally attracted.¹²⁴

223. The report goes on to argue that “better coordination between NGOs and the government is essential for sustainable impact.”¹²⁵

224. In Pakistan, NGOs take partner groups to visit police stations and other government offices. Persons intimidated by those facilities learn where to go and which officials to deal with to resolve problems and receive services.

225. In many countries NGO engagement with government extends beyond such initiatives. In the Philippines and elsewhere, it involves identifying allies in government units—individuals willing to work with the NGOs, sometimes in *de facto* opposition to colleagues in their agencies. It can even feature the previously described “meta-legal” tactics, such as CBO seizures of illegal logging trucks and fishing boats. In some cases these steps are taken with government cooperation, while in others local officials are only informed after the fact.

226. **Valuing civil society insights.** The Pakistan study's summary of the NGO Rozan's cooperation with the police concludes with a hopeful but sobering reminder. While the project is a valuable example of an NGO being invited to work with a key state institution responsible for women's security, “opportunities like this are only possible when people in the right position are willing to make decisions of this nature.”¹²⁶ This experience suggests that investing in NGO legal empowerment work may in some instances be the most efficient means of engaging government. It allows those government personnel who are favorably inclined toward empowering the disadvantaged to find civil society partners—or for civil society to find them. It also allows civil society activists to determine, far better than donor personnel can, which government officials and agencies are truly dedicated to advancing empowerment.

227. **Coordination, not privatization.** Despite the preceding observations, this study does not by any means advocate “privatizing” government services by handing them over to NGOs. Coordination generally is a better approach wherever government seems capable of working

¹²⁴ Bangladesh Country Report, pp. 69.

¹²⁵ Bangladesh Country Report, p. 72.

¹²⁶ Pakistan Country Report, p. 62.

with civil society productively. Moreover, the very bureaucracy that hampers government responsiveness can also constrain the work of NGOs. An evaluation of very large, multi-purpose Bangladeshi NGOs suggests that they have placed empowerment to the side as they prioritize meeting credit disbursement and recovery targets.¹²⁷ “The rise of big NGOs has [raised] questions about the extent these agencies can remain innovative, flexible and impartial in providing services to their clients. The intrusion of bureaucracy on NGO functioning and decision making creates severe problems and weakens their ability to advocate real and lasting change for the poor and the disadvantaged in the society.”¹²⁸

Feature Five: Organization is power

228. Organization plays an important role in legal empowerment. In contrast to the popular but counterproductive idiom “knowledge is power,” the alternative “organization is power” better captures a key feature of many successful legal empowerment efforts. Even if the disadvantaged understand their rights, they may remain powerless unless they work together to assert common interests or to protect members of their group. A common feature of successful integrated legal empowerment strategies is the element of community organizing or group formation. Disadvantaged populations are far better able to assert their rights when they do so collectively rather than individually.

229. ***The value of organization.*** While knowledge alone does not equal power, to a certain degree organization does. A consistent finding of the LES country studies is that disadvantaged populations most effectively assert their rights and succeed in compelling government to respond to their needs where they act as a group rather than as individuals. A woman has a far greater chance of stopping her husband’s violent behavior or securing police intervention if other women in her community support her. A government land registry agency is more likely to recognize farmers’ land tenure rights if the farmers stand together rather than act individually. The Pakistan study concludes that “most organizations have found working with groups, rather than the unorganized population, more effective because it ensures more organizational responsibility, ownership, and structured follow-up on the effort.”¹²⁹

230. As the Philippine study maintains, “it is certainly easier to promote [legal empowerment] and other legal services in a community that is already motivated and effectively organized.”¹³⁰ The Philippine ALGs either conduct such community organizing themselves, as with the environmental NGO Tanggol Kalikasan, or more frequently build on the work of other NGOs. In some instances, the local church takes the lead in organizing the community.

231. A classic study by Hollsteiner¹³¹ sets forth four propositions as to why community organizing is crucial to advance the interests of impoverished Filipinos. As summarized in the Philippine study, these propositions are:

- 1) unorganized poor people do not participate actively in decisions which affect their lives because they are objectively and subjectively powerless; 2) when weak individuals work together to confront authorities as a group, their collective

¹²⁷ Evaluation of Netherlands-Funded NGOs in Bangladesh, 1972-1996, Ministry of Foreign Affairs, Policy and Operations Evaluation Department, The Hague, 1998, p.312.

¹²⁸ Bangladesh Country Report, p. 70.

¹²⁹ Pakistan Country Report, pp. 8, 81.

¹³⁰ Philippine Country Report, p. 61.

¹³¹ *Mobilizing the Rural Poor through Community Organization*, Philippine Studies, 1979.

numbers can rectify the previous imbalance between weak and strong and facilitate interaction on an equal basis; 3) the mere experience of participation in collective action creates in customarily dependent people a sense of power; and 4) organizing people for power through community organization seeks to establish popular organizations by which the poor can participate in decision making.¹³²

232. The significance of groups transcends the political power that flows from solidarity. The Philippines' Lihok Filipina, which addresses women's health, empowerment, and anti-violence issues, has concluded that "community organizing and using community-based approaches to legal literacy is important and necessary for communities to feel that they are part of the process, that they are a "stakeholder," and that they therefore have 'ownership' over programs."¹³³ This finding has clear implications for good governance. As suggested by Okamura, an organized group or community is better able to pressure or persuade officials to respond to its collective interests.¹³⁴

233. **Group formation in more restrictive environments.** Though the context is different, similar insights emerge from Bangladesh. "Group formation" is a more appropriate term than community organizing in much of Bangladesh. The more restrictive social climate of the countryside weighs in favor of bringing people together at a measured pace, as opposed to the more aggressive mobilization that characterizes community organizing in parts of the Philippines. Despite this more cautious approach, several of the same advantages that result from acting cohesively in the Philippines are equally relevant in Bangladesh:

Interventions by BRAC (Bangladesh Rural Advancement Committee)... demonstrate women are in a better position to withstand and challenge exploitation if they stand united in their efforts. Isolation increases susceptibility of women to oppression and it is with this view in mind BRAC organizes women into groups which, meet regularly as forums to share problems and devise ways of rendering support to each other. Women suffering in isolation feel they are alone and often feel ashamed to admit the abuses they face routinely. They often feel it is their duty to submit to ill treatment as in many ways they may be at fault. The opportunity to share their problems with others in a similar situation fosters an environment of camaraderie and active bonding. It also leads to enhanced consciousness about the rights and wrongs in a real life situation. Backed by collective power women are able to brave the challenges of everyday life and contend with domestic violence and maltreatment that have traditionally impeded their rights and privileges.¹³⁵

234. **Intensive processes.** Having emphasized the importance of community organizing and group formation, it is also important to underline the intensive and extended nature of this work. Though there is no "typical" approach, the work of the Pakistani NGO Idara with the urban poor of Karachi is representative of the challenge. The Pakistan study notes that for this NGO "the process of community [organizing]...involves nine stages over a three-year period. These

¹³² Philippine Country Report, p. 64.

¹³³ Philippine Country Report, p. 55.

¹³⁴ Okamura, Jonathan, *Towards a Strategy for Popular Participation in Development*, Participatory Approaches to Development: Experiences in the Philippines, 1986.

¹³⁵ Bangladesh Country Report, p. 63.

include...the method and time-periods for the formation of core-groups, sector committees, and peoples' organizations; as well as the basic content for training, education and operations."¹³⁶

235. **Collective strength through collective learning.** A final benefit of group-oriented work is highlighted by the Philippine study, which emphasizes "strength in learning together: People develop their creativity and power through working with others to identify and solve problems. Collectively, they recognize their knowledge, skills, interests, and ability to act."¹³⁷ The process of learning together becomes one with the product of enhanced solidarity.

236. **Dealing with local power structures.** How to deal with powerful conservative, exploitative, and even repressive forces at the local level hinges on the dynamics at play in a given community, and even on the orientation of the development organization in question. Still, some useful perspectives have emerged from the study.

237. **Less controversial entry points.** In some circumstances it can be counterproductive to assist the disadvantaged by focusing first on their rights. Among other things, it can irritate community leaders who oppose such perceived 'trouble-making.' Thus, "a noteworthy aspect of Hengasar Hakkina Sangha's training of the *sanghas* [collectives] in India is that legal issues are not the entry points. This would be too controversial and too likely to prompt opposition among male members of the community. Rather, HHS builds on the fact that *sanghas* are already organized (which itself can be a sensitive process) around family planning, livelihood, or credit needs. Once the women come together around those issues, they can start to discuss more controversial matters."¹³⁸ This is similar to the strategy applied by the Bangladeshi family planning organizations in introducing community legal service programs. Having dealt with the sensitivities that first surrounded the introduction of family planning efforts, the family planning NGOs could more readily address similar sensitivities concerning the legal rights and status of women.

238. **Cooperating with local leaders.** Other NGOs do start with a rights-oriented focus, but seek to ease the concerns of local leaders or even bring them into the project fold. The Philippines' Women's Legal Bureau has found that its work to combat violence against women benefits from training not just females, but also male community leaders who provide support and act as allies.¹³⁹

239. **Avoiding the pressures of vested interests.** While cooperation with local governments and elites can be necessary and/or beneficial, the question may arise as to who is co-opting whom. The Pakistan study illuminates this issue:

Active community organizations often tend to be viewed with suspicion by governmental agencies or existing power structures. Thus, many NGOs working with smaller organizations have tried to make active efforts to develop a good working relationship with governmental agencies, and adopted a more cautious approach in dealing with local power structures. While this is necessary and time

¹³⁶ Pakistan Country Report, p. 36.

¹³⁷ Philippine Country Report, p. 66.

¹³⁸ Many Roads, p. 310.

¹³⁹ Similarly, Dow et al describe a village legal aid program in Botswana that solicited the village chief's endorsement at the outset, consistent with local custom. This validation by the male authority structure was necessary for the project to then undertake legal counseling and services that may ultimately advance gender equity in the community. Unity Dow, Sheryl Stumbras and Sue Tatten, Looking at Women's Empowerment Initiatives from a Grassroots Level, in *Human Rights Education For The Twenty-First Century*, 455-68 (1997).

must always be given for improvement of the situation, civil society should not, in the process, abdicate its role of advocacy on rights issues or of holding government accountable.¹⁴⁰

240. As the Bangladesh report cautions, “ignoring the tension between the basic tenets of participatory approaches and social organization may result in the unwarranted intervention by vested interest groups into organizations intended to enhance equity and democratic participation.”¹⁴¹ Duyne’s 1999 study of participatory management in irrigation systems in Bangladesh further highlights the danger of government agencies and large NGOs finding themselves tied to local partners who represent the hierarchical, inequitable distribution of power in their communities and in society at large.¹⁴²

241. Pakistan’s Sungi Development Foundation, an NGO working with the poor in the Northwest Frontier Province, offers additional lessons on decreasing elite and/or male control of community groups:

Sungi’s approach to community mobilization revolves around the specific objective of creating transparent, democratic, and efficiently managed village organizations. Sungi’s strategy combines a number of approaches. The thrust of its integrated program is on providing basic support to communities and mobilizing them to strive for their civic, human, and livelihood rights. This includes training for enhancement of skills; information for increasing their knowledge-base; advocacy through group and cluster formations on community needs and interests; and provision of material inputs. Initially, Sungi worked by forming single village organizations. Over time, it has modified its approach to prevent the highjacking of the organization by select groups in the community, and to adapt democratic principles into the working of village level organizations. The new approach entails forming several sub-village level committees, rather than one organization. Sungi feels this method is more effective, because it involves a wider section of the village population in decision-making processes. To date, Sungi has facilitated the formation and strengthening of 267 village committees, of which 49 percent are women’s groups..¹⁴³

242. The Bangladesh report suggests that prevention of manipulation at the local level begins at the policy level. It asserts that policy-making processes must recognize “the tendency of influential people to gain control over resources...[and] that development initiatives serve different categories of stakeholders. Therefore, the process of policy making, including the preparation of guidelines on planning and management of projects, needs to involve both government agencies as well as NGOs and people potentially affected by development projects.”¹⁴⁴

243. ***Vertical integration to counteract outright opposition.*** In some instances, the challenge does not lie in the risk of elites assuming control of development projects, but rather in their outright opposition to such efforts. Traditional power structures may be hostile to rights-

¹⁴⁰ Pakistan Country Report, pp. 7, 82.

¹⁴¹ Bangladesh Country Report, p. 43

¹⁴² Duyne, Jennifer, “Introducing Participatory Management in Flood Control, Drainage and Irrigation Systems, Middelndorp et al., (eds.) Sustainable Inland Fisheries Management in Bangladesh, ICLARM, Danida and Ford Foundation, Philippines, 1999, pp.77-82, p.80, cited in Bangladesh Country Report, p. 43.

¹⁴³ Pakistan Country Report, pp. 43-44.

¹⁴⁴ Bangladesh Country Report, p. 50.

oriented work and averse to compromise or cooperation. Community organizing and legal empowerment can themselves counteract these repressive or regressive forces. Conversely, those forces may block empowerment. Under such circumstances, the Pakistan study suggests minimizing community groups' "vulnerability by creating linkages with other groups, organizations, and institutions at all levels, and by working toward the creation of networks and coalitions that can support them in their endeavors."¹⁴⁵

244. The Thailand report reaches the same conclusion in describing an instance of legal activism involving the unlawful eviction of citizens from their lands by politically powerful elites:

It should be noted that the existence of university-affiliated and NGO paralegal organizations [based outside of the community] is important in the Thai context. Lawyers who have assisted in the case have been intimidated several times by local thugs. Local lawyers are usually unwilling to jeopardize either their practice or their lives by accepting a case involving the interests of influential local leaders. Without such [external] programs, villagers would simply not have access to legal aid.¹⁴⁶

245. **Avoiding the creation of corrupt leadership.** Interference in a project for selfish gain is not confined to the elite of a locality. As the Pakistan study points out, "some organizations have faced a situation where community activists who receive training or assume leadership positions in communities or groups have tried to hijack the project or themselves create new power structures which behave in a manner similar to earlier ones."¹⁴⁷ The risk of corrupt practices is an important governance issue to be addressed by NGOs.

246. The Pakistan study goes on to insist that such developments are inevitable where there has been minimal prior experience of democracy, and that they should not undercut the many worthwhile efforts to launch and bolster community organizations. It also suggests that "hijacking" can be prevented by "building a shared leadership component into training, setting up participatory monitoring mechanisms, ensuring constant interaction between the community and the organization, or setting up sub-committees to ensure involvement of others."¹⁴⁸

247. **Flexible responses.** Many successful NGOs deal with real or potential hostility by calibrating their strategies to the specific problems at hand. In this way they exhibit a necessary flexibility in their operations. The Pakistan study highlights how a local NGO may take a more cautious line at the village level and when assisting individual women, which requires finessing deeply held traditional beliefs and practices. In contrast, it is bolder when dealing with government authorities, to the point of holding demonstrations.¹⁴⁹

248. **Perseverance.** Bangladesh's Banchte Shekha has survived and even thrived in the conservative district of Jessore, despite the legal and physical threats encountered from the start of its work nearly two decades ago. Organizing women in Jessore in any way that helped them to think of their status in terms other than subservience constituted empowerment with implicit legal elements. Those implicit elements became more explicit over time, as Banchte Shekha increasingly initiated mediation sessions and retained lawyers to help place women on an equal footing with men in disputes and instances of mistreatment. Many religious leaders

¹⁴⁵ Pakistan Country Report, p. 7, p. 82.

¹⁴⁶ Thailand Country Report, p. 24.

¹⁴⁷ Pakistan Country Report, p. 75

¹⁴⁸ Pakistan Country Report, p. 75.

¹⁴⁹ Pakistan Country Report, pp. 54-57.

and men generally have objected, and continue object, to Banchte Shekha. Its perseverance is a testament to its membership and dynamic leadership. Its experience also suggests that a cohesive group is entitled to assess its situation and take its own risks. Funding institutions should respect such assessments, and should not shy away from supporting organizations of this kind—though some careful consideration of the political implications may be warranted in some situations.

249. ***Paralegal Development.*** In view of the central importance of community-specific work in legal empowerment, paralegals assume particular significance in some societies. As noted previously, paralegals are laypersons with specialized legal training. They provide various kinds of legal services to disadvantaged groups, and frequently are members of those groups. Paralegals fill the substantial gap created by the shortage of lawyers dedicated to legal assistance and the vast numbers of disadvantaged who may not have the time, inclination, or aptitude to make use of specialized training. There inevitably will be shortages of the former.

250. An intensive process. One lesson drawn from the LES relates to the intensity and duration of the work required to turn laypersons into sophisticated paralegals. As the Thailand study explains, “it took the Women’s Studies Center at Chiang Mai University over two years to train 25 to 30 competent women paralegal workers to assist their own communities on legal and social issues.”¹⁵⁰ “Paralegal training” may, therefore, be the wrong term for what many NGOs do. It can take months or years to produce truly adept paralegals. In fact, “paralegal development” may be a better term and a clearer concept.

251. The experience of the Philippine ALG Structural Alternative Legal Assistance to the Grassroots (SALAG) is a case in point. Working with a farmers’ CBO, Kasama, in the late 1980s and 1990s, SALAG helped selected members of the CBO develop expertise to the point that they could process fellow members’ land reform applications through appropriate processes and in the face of opposition from landlords. SALAG’s work in developing the paralegals’ capacities relied much more heavily on ongoing contact with the paralegals than on the training activities themselves. As with most knowledge and skills (including those of the legal profession), the most crucial element in the development of Kasama’s paralegals has been learning through experience. The training seminars clearly laid the groundwork for the “on the job” training that subsequently took place. While the sessions provided initial opportunities for SALAG attorneys and Kasama’s prospective paralegals to establish the personal contact and trust that are so important in Philippine society, the crucial element was the consultations that took place once or twice a month for several years.

252. The notion of paralegal development relates to two other aspects of these efforts. First, attrition is inevitable. What is called an initial paralegal training session in a given community may, in effect, be a screening activity, in which informal discussion plays as much of a role as the formal seminar in determining which participants have the interest and aptitude to pursue the matter. Second, global experience indicates that the initial screening and preparation may take weeks or months, rather than days. Even then, a community of several hundred households may only produce one or two fully competent, committed paralegals, and perhaps a few others who can be of some help in meeting its legal needs. The constraints include both aptitude and availability.

253. Easy access to information. Closely linked to the concept of paralegal development is the need for regular access to sources of legal information. Community members accordingly

¹⁵⁰ Thailand Country Report, p. 45.

can turn to a member who is a paralegal. That member can in turn consult an attorney or an NGO worker who has herself assumed quasi-paralegal functions over time. While the lawyer or NGO representative need not serve at the beck and call of the community or its paralegal, she must maintain sufficiently regular contact to answer questions as they arise.

254. The necessity of focused expertise. As the Thailand paper concludes with regard to the work of Thai NGOs, the development of skills and knowledge of very specific legal issues is important:

One of the reasons for the success of the Legal Aid Center Institute (LACI) was its initial concentration on property law. Members became the experts on the underlying causes of land disputes, what the law actually allowed, and most of the tricks used by those who initiated the legal disputes. Within the world of private law firms the principle is widely recognized that some partners, or even an entire firm, specialize(s) in patents, criminal law, divorce, or any number of other legal niches. In the same manner, paralegals cannot be masters of all areas of the law. Therefore, just as LACI paralegals focused on land law, the Women's Studies Center has focused on family law and other issues of direct importance to women.¹⁵¹

255. Similarly, a defining feature of the paralegal work of the Philippine CBO Kasama is that it concentrates on two interrelated issues: conversion of the members' plots of land from share tenancy to leasehold status; and assisting members in getting their legal share of crop proceeds. The two issues have provided the Kasama paralegals with a focus for their efforts. This has enabled them to become familiar with the relevant legal matters, the steps to be followed in resolving disputes, and the personalities involved in processing conversion at the Department of Agrarian Reform. Similarly, the ALG Saligan's in-depth education of union leaders involves a relatively narrow range of disputes, issues and skills, such as negotiations pertaining to worker grievances and management disciplinary actions.

256. As with community-wide education, paralegal development that concentrates on specific needs, and thus on the laws and regulations most pertinent to those needs, is more likely to be useful than that which devotes considerable time to more abstract matters such as international human rights law. The two are not mutually exclusive, but the former should in most cases take priority.

257. Skills development. Many successful paralegal development efforts aim to cultivate appropriate skills rather than just knowledge of the law. This can involve learning how to negotiate, prepare affidavits, maintain written records and documentation, and carry out other paralegal functions. It can also involve developing the confidence and savvy to understand and take advantage of how the legal and administrative systems work in practice and not just what the law states in theory. In addition, it can involve gaining acceptance from individuals in the relevant provincial bureaucracies whose cooperation can mean the difference between documents being expeditiously processed or set aside and ignored.

258. A critical perspective. Simply knowing the law and possessing basic legal skills is not sufficient for a good paralegal. She must see past the current community situation and the law as it presently stands, and understand the potential of each. The Pakistan report thus argues for specific legal knowledge and skills and for a broad, critical perspective on the law:

¹⁵¹ Thailand Country Report, p. 25.

[T]here is...an obvious need for more paralegal training efforts in the country; however, this should be tied to specific groups or based on specific geographical areas, so that their performance can be monitored and the required support extended. The training should create a critical awareness of laws and rights; and lead to the development of community activists who can work toward mobilizing for change.¹⁵²

259. The link to strong organization. The fact that a cohesive group or community is more likely to be effective holds powerful ramifications for paralegal development. Strong organization ensures that a paralegal will receive support in laboring on behalf of her fellow members, and makes it more likely that she will resist the temptation to adopt a condescending attitude based on superior knowledge of the law. In the absence of cohesive organization, the CBO members or the paralegals themselves may lose heart in the face of outside resistance to their efforts, delays in the bureaucracies with which they deal, community politics, traditional patronage pressures, and other obstacles.

260. The need for strong organization holds certain implications. First, it means that paralegal development may be beyond the reach of many of those isolated or impoverished communities that have little or no community organization. While more basic nonformal legal education may therefore be reasonably effective in such areas, time-consuming paralegal training sessions may be wasted efforts.

261. The link to economic empowerment. Even given strong organization, good training, and NGO back-up, the relationship between economic and legal empowerment remains relevant. Paralegals may only be able to operate effectively if their fellow CBO members have a certain degree of financial independence from adversarial forces. For example, the Philippine CBO Kasama's agrarian reform applications increased substantially after a foreign funding agency made available a loan pool that served as an alternative to landlord credit. In the absence of that credit facility, most members remained dependent on their landowners for funds for seeds, fertilizer, and other agricultural inputs. Similarly, it is more difficult for battered women to seek the advice and assistance of paralegals if they and their children remain economically dependent on abusive husbands.

Feature Six: Legal empowerment occurs primarily at the community level

262. While national policies play an important role and can reflect progress toward empowerment, not all law or regulatory reform takes place on the national level. In fact, the most positive results generally emanate from community-specific work. Local regulations and ordinances in several Asian countries are at least as pertinent to legal empowerment, because the disadvantaged can more directly influence them. Accordingly, local government (including local units of executive agencies) may be the most effective partner in empowerment initiatives. Societies with a tradition of strong central control, in which local initiatives have historically been opposed or prevented, may require political or NGO leadership at the national level for community efforts to commence and eventually flourish. Once community efforts gain a foothold, empowerment takes place at the individual and community level.

263. In Mongolia, the Philippines, and other countries, citizens are assuming a more active role in local legal and financial decision making. The results of this informed participation include

¹⁵² Pakistan Country Report, p. 7.

greater transparency, accountability, and responsiveness on the part of public agencies and officials. For example, in 1999 the Mongolian NGO Women for Social Progress held a series of community consultations that led to the submission of a set of proposals to a local government unit that would advance the rights and interests of women constituents. The unit subsequently incorporated fourteen of the proposals in its budget.

264. ***The central importance of local empowerment.*** As noted previously, most legal empowerment work and impact necessarily take place at the community level. This is where legal implementation and poverty reduction take place, and where the quality of governance most directly affects the disadvantaged. Even in Viet Nam, with its strong central government, “village rules are established and agreed upon by people of the localities to regulate behaviors for all members of the community. The Vietnamese have a saying, ‘The King’s regulations are less strong than the village’s rules,’ which indicates the importance of the village rules in each community.”¹⁵³

265. High-level law reform and policy advocacy are important elements in the good governance and poverty reduction equations. They can flow from elite decisions, but even these advances best bubble up from below. This involves participation by previously excluded populations, and learning from their experience.

266. ***Address local priorities and be mindful of local capacity.*** A key feature of empowering local legal action mirrors what has already been said about non-formal legal education: it must be specifically attuned to community needs. Just as education and information sharing are most effective where tailored to what the audience can understand, so too must action be consistent with what the group can realistically undertake:

Goals must be relevant, realistic, and achievable. People will participate more readily if they see the immediate bearing of a project on their lives. An initial small success often encouraged people to tackle larger, more complex, longer-term projects. When people succeed in an activity, their satisfaction gives them confidence and motivates them to get more involved. It is often best to begin with a small and immediate problem. If people can solve that, they will be empowered to face other problems, and can gradually expand their vision of the future.¹⁵⁴

Feature Seven: Legal empowerment can potentially have an impact at the national level

267. Many decisions that have a substantial effect on people are clearly made at the national level, sometimes in consultation with global partners such as international financial institutions. While this situation presents a challenge to legal empowerment and poverty reduction, they are not insurmountable. For example, ordinary citizens in Thailand have contributed to important national legal and policy reforms, including constitutional and consumer protection reforms. In the Philippines, citizens have similarly played a part in legal and regulatory reforms in the areas of natural resource management, agrarian reform, gender, and urban housing. Beyond the crucial role played by the middle class and elites in these decisions, participation by the disadvantaged has provided important information, political backing, and credibility.

¹⁵³ Viet Nam Country Report, p. 1.

¹⁵⁴ Philippine Country Report, p. 61.

Feature Eight: Effective legal empowerment is about legitimate self-interest

268. While idealism, cooperation, selflessness, and sacrifice all play a role in spurring individuals and communities to take action, legal empowerment ultimately appeals to the self-interest of the disadvantaged. For example, farmers, women, or indigenous persons who take action to advance their respective land, inheritance, or communal rights and interests do so because they stand to benefit from their initiative. The more relevant a legal empowerment strategy is to the needs and interests of its intended beneficiaries, the more likely it is to be embraced by them and to succeed.

B. Conditions Under Which Legal Empowerment Work Is Most Effective

269. The country studies and related research identified certain conditions under which legal empowerment work is most effective. Some of these conditions, such as the role of a vibrant civil society environment, are the foundations of features described in the preceding section.

Condition One: Legal empowerment flourishes in a vibrant civil society environment

270. Legal empowerment flourishes where development-oriented civil society is vibrant and independent, and where government is responsive to it. There is no small irony in the fact that legal empowerment cultivates dynamic civil society and responsive government, yet partly hinges on these being present to begin with.

271. A related variable is the length of time that development-oriented civil society groups have been allowed to freely address citizen rights and responsibilities. Among the seven countries studied, the examples of legal empowerment work from Bangladesh, Pakistan, the Philippines, and Thailand reflect the greatest degree of strategic integration and are arguably the most effective. This reflects the fact that the four countries have had relatively open environments for longer periods of time than the other three countries studied.

272. Mongolia offers an even greater contrast. The variable there is not simply the limited length of time that NGOs have operated relatively freely, as in Indonesia, but the fact that independent civil society did not exist at all until a decade ago. There has been an inevitable process of building constitutional, legal, and institutional frameworks, and of learning through experience how civil society can supplement and complement these skeletal democratic structures.

273. Viet Nam raises interesting questions regarding the above variables. The state and its constituent institutions explicitly take the lead role in legal empowerment efforts, with mass organizations playing supportive but subsidiary functions in the effort. As the country report explains, "The State of Viet Nam is the institution to take the main responsibility in implementing activities related to legal dissemination and education in order to improve people's knowledge...To reach this target, it has [capable officials] who are specialized in disseminating and education on the law. As regulated by law, every state agency is responsible for [public] dissemination of legal regulations related to its prospective activities."¹⁵⁵

274. Viet Nam clearly and intentionally takes a different path in key respects. First, the state is the lead actor in legal dissemination. Second, though many legal empowerment strategies teach

¹⁵⁵ Viet Nam Country Report, p. 13.

people about their obligations as well as their rights, there may be a relatively greater emphasis on the former in Viet Nam.

275. The respective roles of Vietnamese NGOs and media outlets also are manifestly different. It is recognized that government agencies cannot handle the job of legal dissemination alone, so “law dissemination and education activities are.....tasks [assumed] by social/mass organizations such as the Fatherland Front, Women’s Union, Youth Union, Trade Union, and the Farmers’ Association and by mass media institutions.”¹⁵⁶ These organizations are closely linked to the state. While this situation has the potential advantage of bridging the state-society divide, thus facilitating cooperation, it also undercuts the possibility of independent organizations persuading or pressuring government officials who might otherwise not be as responsive to the needs of the disadvantaged. As discussed previously, constraints on the engagement of government officials in legal empowerment in Viet Nam and elsewhere are powerful, despite state commitment to this goal.

276. Nevertheless, Viet Nam may conceivably prove an exception to the finding that legal empowerment is most likely to succeed where a vibrant, independent civil society combines with a responsive government. Some observers believe that a unique form of state-society relations is evolving in Viet Nam, which will steadily assume as viable a role in advancing rights and promoting citizen participation in public decision making as the leading examples of conventional empowerment from the Philippines, Thailand, Pakistan, or Bangladesh. The government of Viet Nam has expressed a commitment to encourage citizen participation in local governance and development planning and to increasing the transparency and accountability of public institutions and decision-making processes. For example, the *Regulation on the Exercise of Democracy in the Communes*, introduced by the government in 1998, provides a legal framework for consultative relations between local-level administration and the people, and affirms the role of citizens to provide input and oversight in selected areas of local planning and decision making. The regulation enhances transparency and accountability with respect to the plans, budgets, expenditures, and activities of People’s Councils and People’s Committees at the commune level. To this end, it sets out four levels of citizen participation: information sharing, consultation, participation in decision making, and supervision.

277. Relevant research from other development fields reinforces the case for vibrant civil society. While these other studies do not address legal empowerment *per se*, they do strongly suggest the conditions for similar development initiatives to prove successful. For example, Brown’s and Ashman’s study of cases from Asia and Africa concludes that development efforts are particularly successful when government and NGOs collaborate in pursuing shared goals. This cooperation addresses the barriers of differential access to power and resources, and provides the capacity to enhance impact.¹⁵⁷ As an example involving legal empowerment, the work of the Environmental Legal Aid Center in the Philippines is more effective where local governments closely cooperate with it. ELAC has at times served as the *de facto* legal advisor to a provincial governor.

278. Research by Pyle in Brazil has identified four pre-conditions for success in participatory development initiatives: 1) strong community movements to initiate and maintain direction; 2) NGOs that can provide technical skills and serve as intermediaries; 3) local government with the mandate and desire to implement participatory processes; and 4) economic conditions that

¹⁵⁶ Viet Nam Country Report, p. 13.

¹⁵⁷ David Brown and Darcy Ashman, Participation, Social Capital, Intersectoral Problem Solving: African and Asian Cases, *World Development* 24(9) 1996, at 1467-79.

provide adequate resources.¹⁵⁸ In a related but narrower vein, Maia highlights the ways in which NGOs have evolved from grassroots organizations to important “agents capable of promoting the new participatory development projects/programs of the good government agenda.”¹⁵⁹ Civil society organizations are crucial contributors to that agenda.

279. These research findings do not confine legal empowerment work to those circumstances in which government is responsive and civil society is powerful. They do suggest, however, that building basic civil society elements, networks, and capacities might be necessary as advance simultaneous stages of legal empowerment. For example, the Philippine study notes that “it is...easier to promote legal literacy and other legal services in a community that is already motivated and effectively organized.”¹⁶⁰

Condition Two: Education enhances the quality of legal empowerment work

280. Legal empowerment work is more likely to succeed where the intended beneficiaries and those who play a role in its implementation are reasonably well educated. Filipino paralegals who handle agrarian, labor, and other issues with little or no help from lawyers do so partly because they are literate and in some cases have a high school education. On a more basic level, a villager can much more easily act on her knowledge of consumer rights if she has basic mathematical skills. This is not to suggest that illiterate populations cannot achieve legal empowerment. India’s Hengasar Hakkina Sangha (HHS) is one of many NGOs that help largely illiterate partner populations gain greater control over their lives, with a particular focus on the issues of domestic violence and relations with landlords. The inability to read well makes it impossible for HHS paralegals to prepare affidavits and other papers for use in judicial or administrative proceedings.

Condition Three: Economic independence has a positive, but not determining, impact

281. Where the beneficiaries of a legal empowerment activity enjoy a basic level of economic independence, they are more likely to build on the knowledge and skills imparted. At the same time, while family finances are important, economic independence is not a sufficient condition for full legal empowerment. For example, the traditional societal values that relegate women to a subservient position in many Asian societies may limit a women’s social mobility, regardless of her economic status or her contribution to family finances. In Bangladesh, the beneficiary members of the women’s NGO Banchte Shekha are more able to assert their rights partly because the organization’s livelihood initiatives provide them greater economic independence than most Bangladeshi women. At the same time, women in Cambodia and the Philippines frequently make substantial contributions to household income and financial management, yet they are as vulnerable to domestic violence as more economically dependent Bangladeshi women. While husbands and male relatives place a certain value on the economic contributions that women make to the household, their appreciation is not sufficient to overcome values that place women in a marginal role.

¹⁵⁸ Kathryn Smith Pyle’s *From Policy Advocate to Policy Maker: NGOs in Recife*, *Grassroots Dev. J.*, J. of the Intra-American Found., 21(1) (1997).

¹⁵⁹ Maria Maia, *NGOs as Mediators: Their role in expertise, language and institutional exemption in urban development planning*, Working Paper No. 77, Development Planning, University College London, May 1996, at 12.

¹⁶⁰ Philippine Country Report, p. 61.

Condition Four: An enabling local environment for legal empowerment work

282. Conditions vary significantly within a country, from region to region, and from one community to the next. Local attitudes and practices can be key determinants of whether a legal empowerment strategy advances vigorously, inches forward in the face of resistance, or cannot even get started. Initiatives in certain areas of a given country, such as India, can show great progress and potential, while in other parts of the country powerful forces are determined to resist any advancement in the rights or circumstances of women and other disadvantaged groups.

283. Expectations may need to be much more modest where conditions are not completely conducive to legal empowerment. In situations of this kind, impact may emerge slowly. As in Mongolia, it may initially be confined to knowledge, attitudes, and awareness. To the degree that it advances more ambitious goals such as good governance and poverty reduction, progress may be slower and more tentative still.

Condition Five: Effective laws help to advance legal empowerment

284. The law itself can facilitate or frustrate legal empowerment. In a study of local governance in the Philippines, George suggests that decentralization brought about by the country's *Local Government Code* was not sufficient to advance empowerment, but rather put in place a legal framework much more conducive to it. While the Code has not led to better governance *per se*, it provides an institutional framework that incorporates the participation of NGOs in local governance, thereby validating their role.¹⁶¹ Similarly, legal empowerment is advanced by regulations that permit Filipino paralegals to process applications and represent fellow farmers and workers before administrative tribunals of the Department of Agrarian Reform and the Department of Labor and Employment.

285. In a related context of particular interest to ADB and other development institutions, it is found that where the law blocks constructive citizen participation in project design it creates problems for international development organizations and governments down the line. Thailand provides a case in point:

Perhaps the most visible reaction [against government actions that ignore impact on affected populations] is from citizens angered by the adverse impact of numerous mega-infrastructure and energy projects that were implemented before constitutional reforms requiring public hearings and environmental impact studies. At Pak Mool residents protest that a dam has decimated the stock of fish on which villagers had depended. In Prachuab Khirikhan the villagers protest against the envisioned destruction of the natural habitat by construction of a new power plant. Such protests are particularly relevant to international banking facilities that fund centrally conceived but locally unacceptable mega-projects.¹⁶²

286. This is not to suggest that changing laws is sufficient for empowerment to flourish. Law reform is both a central goal and tool of many empowerment initiatives, but the equal

¹⁶¹ Terrence George, "Local Governance: People Power in the Provinces?" in G. Sidney Silliman and Lela Garner Noble, eds., *Organizing for Democracy: NGOs, Civil Society and the Philippine State*, 223-53 (Honolulu: University of Hawaii Press), 1998, at 249.

¹⁶² Thailand Country Report, p. 2.

importance of legal implementation to the success of legal empowerment work is too often overlooked. Most countries have at least some good laws, yet those good laws are routinely ignored in many places. The greatest challenge is to get good laws implemented, regardless of whether they are newly enacted or old and neglected. While law reform may represent the culmination of intensive efforts, it typically is just the first stage in the struggle of disadvantaged groups to use the law to gain greater control over their lives.

Condition Six: An infrastructure of supportive services

287. The discussion thus far has addressed the conditions that make legal empowerment most effective. For the educational component of legal empowerment to help convert knowledge into action, appropriate services and structures should be in place. As the Bangladesh report emphasizes:

Linkages to specialized services need to be established...in order to facilitate communities to [use] what they have learned [about the law]...The advantages of the linkages with NGOs providing legal services are obvious in that members of the community can deal with the technicalities of the law more efficiently than if they are on their own.¹⁶³

288. The Philippine study adds that “power may be derived from the presence of structures that support and facilitate [the implementation and enforcement of laws].”¹⁶⁴

289. The services referred to in the Bangladesh report may include legal aid provided by lawyers or paralegals to assist the disadvantaged to act on legal knowledge. They may also include community organizing to help beneficiary populations work together. The structures referred to in the Philippine report may include political support or economic strength that helps the disadvantaged to assert themselves without fear of reprisal. A legal empowerment initiative may itself create these very services and structures. In cases where the strategy does not aim to create such structures, it stands a much better chance of succeeding if they already exist.

**IV. THE ROLE OF LEGAL EMPOWERMENT IN ADVANCING GOOD GOVERNANCE
AND POVERTY REDUCTION: SURVEY RESEARCH IN THE PHILIPPINES
AND BANGLADESH**

290. The seven LES country studies found evidence of the positive impact of legal empowerment on good governance and poverty reduction. While the monitoring and evaluation methodologies used by legal empowerment providers are becoming more sophisticated, much of the impact of legal empowerment work continues to be measured and documented in the form of anecdotal examples and simple qualitative indicators such as the number of people trained, the number of cases mediated, or other outreach measures. In response to this situation, the LES commissioned two supplementary research studies in the Philippines and Bangladesh. The purpose of the two studies was to seek more specific qualitative evidence of the impact of legal empowerment. The detailed findings of these two studies are included as Appendices One and Two of this report. In examining the role of legal empowerment in advancing agrarian reform in the Philippines and the impact of the legal empowerment work of

¹⁶³ Bangladesh Country Report, p. 72.

¹⁶⁴ Philippine Country Report, p. 2.

three Bangladeshi NGOs on citizen knowledge, governance, and poverty, both studies found significant evidence that legal empowerment contributes to good governance and poverty reduction.

A. Philippine Agrarian Reform

291. Research conducted in the Philippines built on the documented track record of agrarian reform.¹⁶⁵ In particular, it cites a recent study commissioned by the World Bank, *Redistribution, Investment and Human Capital Accumulation: The Case of Agrarian Reform in the Philippines*,¹⁶⁶ which suggests that the implementation of a series of reform programs over a period of 30 years has had a positive impact in reducing poverty. The World Bank study notes that agrarian reform in the Philippines has improved the lives of farmer-beneficiaries and their families. It also states that the beneficiaries tend to invest more in their children's education than do non-beneficiaries.

292. The World Bank study further supports the notion that the redistribution of productive assets at the household level can enhance opportunity and overall growth. It indicates that land reform resulted in higher investment in physical capital, an increase in the transmission of human capital between generations, and greater household welfare and productivity.

293. Based on the established value of agrarian reform, the LES research sought to determine legal empowerment's role in selected agrarian reform communities. It focused on the work of Paralegal Education Skills Advancement and Networking Technology (PESANTEch), a consortium comprising the NGOs Saligan, Kaisahan, and Balay Mindanaw.

294. PESANTEch pursues an integrated legal empowerment strategy in all of its operations. The consortium works on a local level with other NGOs and CBOs concerned with land tenure and rural development. Drawing on its grassroots experience, it also works with coalitions involved in policy advocacy. PESANTEch engages with the Department of Agrarian Reform (DAR), and in particular with its more dedicated personnel (since outlook, patronage, or corruption lead some DAR officials to favor landlord interests). It trains, advises, and in other ways builds the capacities of CBO-linked farmer-paralegals who are involved in agrarian reform, other land tenure issues, and participation in local governance. While PESANTEch attorneys may appear in court where necessary, agrarian reform disputes referred to DAR adjudication boards are in most cases handled by the approximately 50 farmer-paralegals who help prepare applications and represent fellow CBO members before the boards.

295. The LES agrarian reform research collected and reviewed three types of data:

- (i) Interviews with local DAR officials who assessed which barangays (small geographic/administrative units) were the most and least successful in implementing the current Comprehensive Agrarian Reform Program. They were not asked about the barangays *per se*, nor were the questions phrased in terms that would distinguish barangays where legal empowerment work has or has not taken place.

¹⁶⁵The Impact of Legal Empowerment Activities on Agrarian Reform Implementation in the Philippines (See Appendix 1).

¹⁶⁶Deininger, K., F. Lara, Jr., M. Maertens, and A. Quisumbing, "Agrarian Reform in the Philippines: Past Impact and Future Challenges" (Washington, D.C., The World Bank, mimeo, 2000) as cited in *Philippine Growth with Equity: The Remaining Agenda* (The World Bank: Washington, D.C., 2000).

- (ii) A survey of approximately 100 respondents in each of four barangays: two that have PESANTEch legal empowerment activities (the “intervention” areas) and two that do not (the “control” areas). All four barangays are agricultural, are situated close to main roads, and have access to electricity.
- (iii) Focus group discussions in the four barangays, where researchers observed participants as they discussed and made recommendations regarding hypothetical cases involving the violation of farmers’ rights under agrarian reform.

296. The results from all three categories strongly indicate more positive outcomes in the communities where legal empowerment work has been pursued. The DAR officials rated the success of agrarian reform significantly more favorably in the intervention barangays, as opposed to the controls. They phrased their assessments not in terms of legal empowerment activities specifically, but rather in terms of farmer attributes that plausibly flowed from those activities. Those attributes included awareness and specific knowledge of their rights.

297. The survey indicates that while overall levels of ownership are roughly equal in the areas served and not served by legal empowerment activities, in the former the land is much more likely to have been acquired through agrarian reform (35 percent versus 3 percent). In the latter, land is typically bought or inherited. The results also reveal higher productivity in the intervention areas, along with higher and more disposable income and greater farm investment.¹⁶⁷

298. Since the quality of survey data on income in a general-purpose questionnaire of this kind is not always of a high standard, a proxy indicator of household welfare—housing quality—was employed. Rural Filipinos prefer sturdier galvanized iron roofs for their houses, as opposed to traditional thatched grass roofs. The more expensive and higher quality roof is often the first investment a rural household makes when it accumulates some surplus savings. By a margin of 88.7 percent to 77.6 percent, the two barangays with legal empowerment activities had a larger number of iron roofs.

299. As noted above, the third data gathering technique involved focus group discussions in the four barangays in which the survey was undertaken. Roughly 20 persons in each barangay were included in the discussion. Participants in the focus groups were invited to consider and comment on a hypothetical agrarian dispute. In particular, they were asked to analyze and recommend responses to the case, with no suggestions from facilitators.

300. While both the intervention and control barangay groups expressed a need to organize to counteract land rights violations, as well as an understanding of local power relations that hamper poor residents, they differed in their knowledge of the nature of violations of rights and the remedial steps that might be taken, and in their level of confidence in the proposed solutions. Participants from the “legal empowerment” barangays were very specific about rights violations committed in the case, citing applicable laws. Those from the control barangays, on the other hand, tended to attribute the violations to misunderstandings between parties. They were more concerned about community relations being affected if justice was pursued.

301. Participants from the intervention communities better articulated a series of steps to resolve the problem. In the control groups, participants tended to rely on outside help rather than independent initiatives to find a solution. Many suggested that assistance be requested from a list of government agencies with little idea of what specific support the agencies could

¹⁶⁷ Savings levels were approximately the same in the intervention and non-intervention areas.

provide. Participants from the areas with legal empowerment, in contrast, demonstrated a greater knowledge of applicable laws, as well as of the specific government agencies that could best respond to the situation.

302. In summary, the objective assessment by DAR officials, the quantitative survey data, and the qualitative focus group documentation all indicate positive legal empowerment impact on good governance and poverty reduction. Residents of areas where legal empowerment work has taken place tend to be better off in material terms. Their superior knowledge of the law and the agencies involved in administrative decision making, coupled with the evidence of better agrarian reform implementation in their communities, suggest that legal empowerment has contributed to more responsive, transparent, and accountable governance by equipping citizens to more effectively engage with public agencies and officials and to participate in local decision-making processes.

B. Bangladesh NGO Services

303. The LES-commissioned study on *The Impact of Legal Empowerment on Selected Aspects of Knowledge, Poverty and Governance in Bangladesh*¹⁶⁸ considered the legal empowerment work of three indigenous NGOs in Bangladesh:

- (i) The women's NGO, Banchte Shekha, which provides legal education, counseling, and mediation services to its member-beneficiaries as part of an integrated development strategy that combines these legal services with health education, primary education, income generation, micro-credit, and voter education and other consciousness-raising activities;
- (ii) Samata, a community development organization that specializes in land rights advocacy, but whose integrated development strategy also includes literacy education, livelihood development, disaster preparedness, facilitation of access to government agricultural services, and legal services; and
- (iii) The Madaripur Legal Aid Association (MLAA), a specialized legal service NGO that provides mediation, counseling, and litigation services for a primarily rural based beneficiary population in connection with family, land, and minor commercial disputes.

304. The study found significant positive impact on poverty and governance. In addition, the research determined that the NGOs' efforts also advanced important related goals, such as gender equity and legal knowledge.

305. The institutional and program strategies of the three organizations overlap in some respects, while differing in others. For example, much of Banchte Shekha's work affects community dynamics and community development in ways that do not directly involve government. In many cases, these activities help to even the power imbalances that can taint male-female negotiations. Samata also combines legal activities with its other community development work as part of an integrated strategy. In contrast with Banchte Shekha, however, it generally employs a more advocacy focused approach, in terms of seeking to affect specific local government decisions. In addition, mediation is not a core part of Samata's work. While it places a premium on gender equity, land issues constitute the main thrust of its efforts. MLAA

¹⁶⁸ See Appendix 2.

focuses on mediation to an even greater degree than Banchte Shekha. It pursues an integrated legal service strategy through which its various law-oriented activities complement each other; however, since its work is essentially confined to the legal field, it does not constitute an integrated development strategy. Furthermore, MLAA does not have members to serve, but rather clients. On the other hand, it offers its services to a larger population than the other two groups—over one million people.

306. Equal numbers of men and women were selected for each of the survey research “intervention” (beneficiary) and control sub-groups described here. The intervention sample for the survey research was made up of 150 randomly selected individuals from each of the operating areas of the three NGOs (for a total 450). The control population, comprising persons with no direct program exposure, was made up of 150 individuals, 50 from each of three areas adjacent to those in which the respective NGOs operate. The groups were selected in such way as to be representative of the total populations of the three areas where the selected legal empowerment activities are conducted, as well as of the overall population of Bangladesh.

307. All of the intervention samples scored higher in four critical areas: general knowledge of law; engagement in citizen advocacy; positive perceptions of gender equity and the role of women in governance; and confidence in the value of law and good governance. These and other findings assume further significance given the fact that the control groups are slightly better educated and more affluent than the NGO beneficiary samples. All other factors being equal, the educational and income advantages would have resulted in higher scores for the controls than for the intervention groups.

308. A brief sketch of selected survey responses illustrates some of the results. The combined NGO member/beneficiary populations demonstrate a better grasp of each of 10 questions relating to legal knowledge. This pattern assumes greater significance in light of NGO-specific findings. For example, only two percent of the Banchte Shekha population mistakenly consider it legal for a traditional religious body to issue a religious edict (or *fatwah*) finding a woman guilty of adultery and ordering that she be stoned and beaten in public, as opposed to 18 percent of its control group. Similarly, 83.3 percent of the Samata population knows that a widow is entitled to inherit part of her husband’s land, versus 58 percent for its control group.

309. MLAA provides a widely utilized service to which villagers can turn for legal assistance. Sixty-seven percent of MLAA respondents identified an NGO worker as the source to which a young woman should go for “good legal advice or assistance” if she is “not sure about her legal rights regarding marriage, dowry, abuse, divorce, inheritance” or other legal issues. Since MLAA is the main provider of services of this kind in its area, and has trained other local NGOs regarding legal issues, it is reasonable to conclude that it merits credit for the high rate of NGO-oriented responses.

310. While the survey did not have resources to probe possible income increases, it did reveal evidence of other poverty-alleviating improvements in the well-being of NGO member/beneficiary populations. The impact of legal empowerment on the status and material circumstances of women is demonstrated by its effectiveness in restraining the widespread but illegal practice of *dowry*. As might be expected, this is most evident for Banchte Shekha. More than twice as great a percentage of its members (84.7 percent) as that of the control group (40 percent) state that young women from their village, and implicitly the young women’s families, would not be obliged to pay anything for *dowry*. Though not as dramatic, the Samata responses also suggest impact on this problem.

311. Another material reflection of poverty reduction concerns the use of government-managed *khas* lands that citizens are legally entitled to use, but which are frequently subject to aggressive seizure by local elites and land grabbers. The NGO populations as a whole (by a margin of 17.8 percent versus 6 percent for the control groups) and Samata in particular (28 percent versus 10 percent) report that the poor enjoy use of these lands.

312. Poverty reduction also hinges on the poor's participation in the decisions that shape their lives. In this regard, there is evidence that the integrated development approach followed by Banchte Shekha and Samata has a positive impact. For example, it appears to help encourage positive community attitudes concerning a woman's right to seek legal redress. In addition, citizen participation in joint actions is found in nearly twice as high a percentage for Banchte Shekha (31.3 percent versus 16 percent for its control group) and more than three times as high a rate (35.3 percent versus 10 percent) for Samata. Of perhaps greater significance, nearly all of the Banchte Shekha and Samata populations that report such participation also report complete or partial success.

313. The survey strongly suggests a decreasing reliance on traditional elites and patrons, which potentially is poverty-alleviating and/or empowering. Only 31 percent of the NGO population suggests that a young woman should turn to such groups for help, in contrast with 65.3 percent for the combined control groups. Similarly, only 25.1 percent of NGO respondents would turn to those elites in the first instance if they personally faced "legal or social injustice," in contrast with 57.3 percent of the control population. The gap is even greater for NGO and control women (21.3 percent versus 60 percent) and for women associated with MLAA (only 10.7 percent, in contrast with 36 percent of MLAA-affiliated men). Consistently, the NGO populations have far less confidence in these local leaders than do the control groups, with only 19.1 percent of the former considering the village chief "a good and fair person," versus 43.3 percent for the latter. Though reliance on elites and patrons is not automatically counterproductive, it can have a negative impact in the sense that the legal advice and assistance of elites may not serve the best interests of the poor or may exacerbate dependence in other regards.

314. The survey also probed attitudes toward women's participation in governance. The integrated development approaches of Banchte Shekha and Samata appear to contribute to a greater appreciation of the value of women's involvement in public affairs. By margins of 83.3 percent to 60 percent and 56.7 percent to 24 percent, respectively, NGO respondents are more favorably inclined to such participation than are their control groups.

315. Moderate but noteworthy differentials were also recorded between the NGO and control populations' actual participation in governance. Almost 42 percent of Banchte Shekha respondents report that government officials "always" or "sometimes" discuss respondents' concerns with them, versus 30 percent for the control. Similarly, 44.7 percent of those respondents report being able to individually influence UP members' decisions, as opposed to 34 percent in the control. The gap for Samata is smaller.

316. In summary, the Bangladesh survey indicates greater legal knowledge and gender equity on the part of the intervention populations, which are valuable in and of themselves and potentially can contribute to greater participation and other goals. It similarly suggests positive impact on aspects of gender equity, poverty, and governance. These include reductions in the prevalence of *dowry*, receptivity to women's role in public office, improvements in the material circumstances of the NGO members/beneficiaries, and greater responsiveness to community interests on the part of local public officials.

IV. EDUCATION, TRAINING, AND MEDIA

A. The Most Useful Kinds of Information for the Disadvantaged

317. The LES country studies were largely consistent in their finding that information must be tailored to the needs of the disadvantaged population that a legal empowerment effort is intended to address and to the goal that the effort aims to achieve. Though the point may seem obvious enough, the implications undermine some assumptions about what people need and want to learn. Sometimes knowledge of international human rights is central, while at other times domestic issues are of more practical significance. Ironically, the best ways of raising legal awareness sometimes involve information that is not at all legal in nature.

318. **International and constitutional norms.** If the aim is to raise awareness and the target beneficiaries are people who do not even realize that they have rights, the information should in most cases be as basic, general, and universal as possible. Constitutional and international human rights standards can serve this purpose. The message must fit the audience. Such populations may be illiterate or poorly educated. As a result, they can easily be overwhelmed by detail. Basic information is far more useful than arcane analysis of specific documents. The information provided is most useful to the disadvantaged when it is easily understood and where it closely relates to their day-to-day life experience and priority development interests.

319. Constitutional and/or human rights standards also prove important where existing laws are unfair and discriminatory. As previously discussed, the status of Pakistani women:

is totally unequal to that of men, despite constitutional guarantees of equality under the law, equal protection of the law, non-discrimination and affirmative action. There are several laws that discriminate against women, as well as those which have a disparate impact on them e.g. family, citizenship and labor laws. And some laws have not only proved to be damaging to their right of equality, but have also placed them in situations of extreme risk.¹⁶⁹

320. Under such circumstances, the more equitable standards provided by the country's constitution and international human rights instruments can help fuel the "critical legal awareness" described by Schuler and Kadirgamar-Rajasingham. They can make women aware that it is the law that is flawed, that the government and the men of the society are obligated to abide by those higher standards, and that discriminatory laws should be changed.

321. **"Non-legal" means of advancing legal awareness.** International law and constitutional law are by no means the only tools available for raising awareness of equality. Moreover, not all of those tools involve the law. Devices that paint a powerful picture or tell a persuasive story can begin to mobilize and motivate audiences even where there is no reference to the law. Cartoon illustrations are one such tool:

Given the deeply ingrained feelings of inferiority that [Indian] culture inculcates in both *dalits* (untouchables) and women, [Indian] NGOs seek to broaden their perspectives. [Hengasara Hakkinia Sangha (HHS)] does this, in part, by emphasizing gender considerations such as the value of women's reproductive and household work. The Center for Social Justice (CSJ) tries to get at attitudinal

¹⁶⁹ Pakistan Country Report, p. 17.

change partly through use of wordless cartoon illustrations for its illiterate audiences. One sequence, for example, shows that people lived as equals before castes arose. This undermines the belief that caste divisions are natural or that they always have been a fact of life.¹⁷⁰

322. On one level, these NGOs convey messages that have nothing to do with the law. On another, these messages blend with the law-oriented information that the NGOs provide.

323. This Indian NGO experience holds a larger lesson. As important as rights awareness can be, it is not the only road to attitudinal change. Although much of what HHS and CSJ do directly involves the law, they do not confine themselves to it in pursuing their respective legal empowerment strategies.

324. **“Felt need” and emphasizing domestic laws.** As legal empowerment work moves beyond rights awareness and attitudinal change to address legal knowledge and skills, the kind of information that is most useful decidedly shifts. The Pakistan study concludes that a “conscious and concrete focus” on specific issues, laws, and rights is effective.¹⁷¹ The issues inevitably vary, depending on the specific circumstances of the beneficiary population. In development parlance, it is important to respond to “felt need” in educating people about their rights.

325. Disadvantaged populations are most interested to learn about issues of greatest relevance to their lives. Those issues typically relate to income, shelter, health, and physical security. For farmers, this can mean land tenure laws. For the urban poor, housing, health, and sanitation tend to be the key issues. Street vendors and small shop owners may want to know about the rules that protect them from harassment by the police. Fishing and upland communities may in turn want to learn about their rights and responsibilities with respect to illegal, environmentally destructive. Persons subject to police, military, and other threats of violence will benefit from knowing what kinds of conduct are illegal. Farm and factory laborers seek information regarding legal mandates for minimum wage and workplace conditions. People generally are keen to understand their entitlements to government services and benefits. In addition, women frequently seek information regarding inheritance rights and protection from violence or gender discrimination.

326. This is not to underestimate the challenge of identifying and clarifying these “felt needs.” The Philippine report urges an active role for the facilitator, helping “people discover the personal meaning and relevance of ideas [and] link personal experience to the objective situation (objectify reality). Only then do people become more aware of their own reality, and take a more critical view of its causes. From that point, they take concrete action to transform the situation.”¹⁷²

327. These priorities hold important implications for the content of non-formal legal education. People may want know more about national laws, administrative regulations, and local ordinances than about constitutional and international human rights provisions. While the latter protections are unquestionably important, the well being of the disadvantaged is more likely to hinge on the specific laws and regulations that they can bring to bear to advance their interests.

¹⁷⁰ Stephen Golub, “Non-lawyers as Legal Resources for Their Communities, in Many Roads to Justice, p. 309.

¹⁷¹ Pakistan Country Report, p. 78.

¹⁷² Philippine Country Report, p. 65.

328. Thus, while Philippine ALGs sometimes begin their work with partner populations by acquainting them with their constitutional and international human rights, their ongoing collaboration mainly addresses core issues that have domestic legal ramifications. Kaisahan's work with farmers thus involves specific Department of Agrarian Reform regulations and processes. Part of the work of the Women's Legal Bureau's involves familiarizing urban poor women with ways to get police to register complaints about domestic violence.

329. The kind of information that is most useful further hinges on the helpful distinction that the Pakistan study draws between education and training:

Educational programs...are more effective if they provide sufficient concrete information about how the situation can be changed or connect themselves to some concrete action. There is a continuing confusion amongst some organizations, institutions and donor agencies in understanding the difference between education (which provides knowledge and widens perspectives) and training (which provides the tools for analysis or the means to use the knowledge effectively).¹⁷³

330. The level of specificity thus hinges on this difference between education and training. If the former (which is directed toward raising awareness and knowledge) is the goal, the partner group may only need and want more general information on relevant laws and rights. If training (which aims to develop skills and facilitate action) is involved, more precise information may be necessary. The Pakistan report accordingly asserts that "all projects which focus on accessing governmental facilities, services, or developmental programs, should incorporate a specific component for training on departmental rules, regulations, and procedures, based on the needs of the community."¹⁷⁴ The report further suggests that additional elements be added to the training mix, particularly where the goal is to build skills and spark action. It notes that learning is enhanced where "it [is] combined with exposure visits, specific training, and actual field exercises; and where simplified informational and instructional materials [are] available for trainees/students to refer to."¹⁷⁵

331. **Critical legal awareness.** A number of country reports complement the difference between education and training by highlighting the distinction between knowing and critiquing the law. The Philippine report underlines the importance of advancing critical awareness, and the impact it can have:

Laws provide what is known as "false consciousness"—that is, when people come to believe that the law is inevitable and indispensable. Though the law is an objective reality that should be dealt with satisfactorily, it is not absolute and cast in stone. It is not a finished product. If the law is unjust or if the legal system is oppressive, the people should be made aware that it can be changed.¹⁷⁶

332. The Philippine study further highlights an emphasis on socioeconomic context in raising critical awareness:

¹⁷³ Pakistan Country Report, pp. 21-22.

¹⁷⁴ Pakistan Country Report, p. 79.

¹⁷⁵ Pakistan Country Report, p. 78.

¹⁷⁶ Philippine Country Report, p. 56.

As many lawyers and legal practitioners have learned outside what law school preaches, there is a significant difference between what the “black letter law” provides and what the “operational code” is in reality. The law is not what is written in the law books, rather, it is a social phenomenon influenced by many factors. These factors include the relevant participants, perspectives, bases of power, etc. To be able to study law as a social institution could lead to searching for solutions to problems to which legal norms apply.¹⁷⁷

333. The Bangladesh study makes a similar point. It emphasizes the importance of helping trainees to think broadly about their socioeconomic processes that define their societies, thereby transcending simple understanding of the law:

Any development action needs to be supported by an awareness and understanding of the dynamics of prevalent socioeconomic processes in order to succeed. Training and education create an enabling environment for systematic awareness and consciousness raising. Since poverty in Bangladesh often results from structural inequalities, it is necessary to analyze and address the problem in context. In this regard [the national NGO] Proshika conducts training, both in formal and informal settings, for Proshika workers, groups organized by Proshika, members from other organizations, and government personnel.¹⁷⁸

334. **Recognizing resource constraints.** Some very practical matters further illuminate the distinctions discussed above. Ideally, every legal empowerment effort would increase each disadvantaged person’s capacities, critical awareness, and control over her life to the maximum degree possible. In practical terms, there are inevitable constraints on the human and financial resources that NGOs and governments can devote to this work—though allocations certainly can and should be higher than current levels. There are equally significant limits on the capacities of partner populations to absorb information. Through no fault of their own, illiterate people cannot learn the intricacies of every legal rule and regulation of relevance to their lives. The degree to which they can be educated about those matters and trained to make use of them may be limited.

335. As a matter of resources and capacities among all parties involved with legal empowerment, decisions must be made regarding who receives what information and training. The question arises whether training organizations have the resources, and entire communities the aptitude and the need, to make it cost-effective for everyone in a given community to receive in-depth training. In some circumstances, it may be more appropriate to employ these techniques to select and develop paralegals from the community.

B. The Most Effective Ways of Conveying Information

336. As with content, the most effective ways of conveying information hinge partly on the goals that drive a legal empowerment initiative. Raising legal awareness can call for activities and strategies different from those required for sharpening legal skills. The issue overlaps with the question of how media advances legal empowerment, to which discussion returns below, and the previously discussed role of paralegals. At the same time, some experiences and rules of thumb do cut across the different approaches followed in providing information.

¹⁷⁷ Philippine Country Report, p. 58.

¹⁷⁸ Bangladesh Country Report, p. 22.

337. **Popular education methodologies.** LES advisor Richard Claude, a specialist in human rights education, emphasizes the importance of interactive “learner-centered education,” as opposed to “teacher-centered” lectures, in advancing legal empowerment and integrating education into action-oriented strategies:

In those countries where NGOs undertake legal empowerment education, there may be a tendency to begin with...[the modest objective of] enhancing knowledge. Pursuit of this objective allows teachers to rely on time-tested and culturally ingrained habits of lecturing, with largely one-way communication. In this traditional approach, the teacher is viewed as the expert briefing students who, in turn, are expected to take notes and commit information to memory. Such teacher-centered learning is commonplace and can [be useful] to a limited degree...As one moves [toward more ambitious] teaching objectives, teacher centered learning becomes ever less effective in achieving empowerment objectives important to civil society, such as attitude and behavior change. Indeed, achieving the objective of empowerment is virtually impossible based on low-participation methods emphasizing active teachers and passive students. Rather, learner-centered education is essential to empower participants to gain mastery over their own lives by knowing their rights and duties and elements of the law bearing on their situation, and using this information in integrated programs of fostering decision making and constructive action.¹⁷⁹

338. Box 5 presents Professor Claude’s more detailed elaboration of the concept of empowerment education, with a particular focus on the perspectives of “participants” and “facilitators.”¹⁸⁰

339. Learner-centered education frequently translates into what are known as “popular education methodologies,” through which new, complex and even alien concepts are introduced. The methodologies include plays, skits, poetry, films, games, quizzes, debates, discussions and role-playing. In the context of legal empowerment, these approaches are geared toward “popularizing” the law. For instance, NGO staffers or CBO members trained may act out a scene in which a woman is cheated out of an inheritance to which she is legally entitled. This can alter audiences’ notions about acts that they take for granted, as well as educate them about the rights involved. Short tests and games can check whether communities grasp newly taught rights. At the same time, they continue the teaching process.

¹⁷⁹ Richard Claude, email to Stephen Golub and Kim McQuay, October 30, 2000.

¹⁸⁰ Richard Pierre Claude, *Popular Education for Human Rights, 24 Participatory Exercises for Facilitators and Teachers* (Cambridge, MA and Amsterdam, Human Rights Education Associates, 2000), pp. 6-7. (Also available "on line," <<http://www.hrea.org>>).

Box 5: Empowerment Education
An excerpt from *Popular Education for Human Rights*
by Professor Richard Pierre Claude

Empowerment is a process through which people and/or communities increase their control or mastery of their own lives and the decisions that affect their lives. Empowering education differs from most formal education traditionally designed to promote knowledge and skills. Non-formal human rights education for empowerment does not treat students simply as receptacles to be filled with useful ideas and information, as if knowledge is an object to be received rather than a continuous process of inquiry and critical reflection.

From the Participants' Point of View. Education for empowerment must go beyond the acquisition of knowledge and operate from the premise that humans not only have the ability to know reality, but they have the capacity for critical reflection and action. Therefore, education aimed at developing this capacity must enable students to analyze the underlying structures of an issue, action, or experience, to unveil and apprehend its causal relationships, and to discover the hidden motives or interests which it conceals. To understand how any given policy benefits some and harms others is an important step toward action. People need such perspectives to deal with many issues such as children exploited through prostitution [or] farmers hurt by the diversion of water supplies.

From the Facilitators' Point of View. Empowering education supplies the means by which people deal critically and creatively with reality and discover how to participate in the transformation of their world. To take this goal seriously....facilitators must use problem-posing techniques whereby facilitators and participants are involved in a partnership of mutual cooperation and in which the role of teacher as "know it all" is abandoned. The challenge for the facilitator is to accept an idea that is new to many. That is the idea that the teacher/student dichotomy is dissolved in a learning group in which all participate. Indeed, the teacher should not even be referred to as such, but should adopt the role of a facilitator who helps participants to do several things. For example, the group members go through a process of consciousness-raising about their needs as human beings and the circumstances in which they live. They develop critical skills to assess their human rights and those of others. They improve their abilities to analyze the obstacles and structures of repression that stand in the way of enjoying rights and freedoms. They develop the ability to analyze the causes of human rights violations and to connect their learning with action. They become empowered to undertake remedial actions. They become ready to learn more and acquire new skills using law and human rights as instruments of change, development, and justice. They become empowered to share their learning with others and "to pass on the word," echoing human rights education for empowerment to ever wider circles of participants.

340. These methodologies are far more effective than conventional lectures. The Thailand paper concludes that "mass-based, lecture-oriented programs which attempt to teach law to the average citizen are a waste of resources."¹⁸¹ As the Philippine study similarly asserts, active learning is more pedagogically effective than passive approaches:

"[P]eople should participate at every stage, from choosing topics and planning activities, to engaging in dialogue, to self-evaluation...Something which is heard, read, or discussed will not seem as real as something which people actually do.

¹⁸¹ Thailand Country Report, p. 49.

Learning which leads to immediate activity will not only produce concrete results but will entrench the new knowledge in people's minds."¹⁸²

341. This engagement becomes part of the lesson. In its own modest way, it cultivates activism, initiative, and intra-group cooperation.

342. The thinking underlying effective popular education is neatly summed up by Kenya's Legal Resources Foundation, which operates on the pedagogic principle, "I hear, I forget; I see, I remember; I do, I know."¹⁸³ This concept is equally important for the many Asians who are effectively barred from access to legal knowledge by language, illiteracy, lack of initiative on the part of governments, or the absence of other support mechanisms.

The Popular Theatre initiated by BRAC has proved to be an effective medium for communication with the illiterate rural masses...It gives people a sense of familiarity and belonging. Apart from being a source of amusement and entertainment for the community, the dramas staged by the theatre demonstrate social realities that impact on people's daily existence. They are able to relate to the issues more intimately as the dramas depict their routine experiences. The messages imparted at the dramas are well received and educate the people by adding a whole new dimension to their perceptions about social injustices and probable solutions.¹⁸⁴

343. ***The quality of training is more important than the number of people trained.***

There is a tendency to emphasize quantity and quickness of training over quality and efficacy. Like the other country studies, the Pakistan report suggests that effective efforts to spread legal information require substantial depth and duration: "The educational, human rights, or gender sensitization components of projects can also sometimes be too brief or superficial. These should be comprehensive enough to ensure understanding of concepts and issues, and [operate] for a sufficient period of time."¹⁸⁵ The report further advises that many donors, government institutions, and NGOs mistakenly assume that knowing the law equals knowing how to act on one's knowledge. "Thus, efforts often become directed toward quick-fix solutions, without ensuring any intrinsic understanding of the issue."¹⁸⁶

344. Sometimes it is the lawyers themselves who most underestimate the challenges at play. As noted in an evaluation of human rights education programs conducted by Kenyan NGOs, "it is ironic that it is often professionals who have received extensive education and training on a full-time basis over many years who have unrealistically high expectations of what can be achieved in a brief period of training."¹⁸⁷

345. The Thailand study similarly warns that training that only seeks to superficially convey information to government personnel will fall short of the objective of altering their attitudes and conduct. It questions the judgment of donor institutions that support such programs:

¹⁸² Philippine Country Report, p. 65.

¹⁸³ Golub, *Many Roads to Justice*, 300.

¹⁸⁴ Bangladesh Country Report, p. 29.

¹⁸⁵ Pakistan Country Report, p. 6.

¹⁸⁶ Pakistan Country Report, p. 22.

¹⁸⁷ Rob Watson, *Understanding Our Rights: Review of the Public Education Work of Human Rights NGOs in Kenya*, a report prepared for the Ford Foundation's Kenya office (London: November 1996), p.17.

“[P]articipatory” training programs which rely on lectures rather than facilitators, which compress the training period to meet the convenience of bureaucratic regulations and traditions rather than training objectives, and which fail to limit the trainer-facilitator ratio in order to ensure participant engagement, should not be called participatory and they should not be evaluated as such. Nevertheless, because “participatory” is the catch-phrase of the times in Thailand, such programs will be called participatory by their organizers and they will be evaluated as such by the bureaucracy and ill-informed funding agencies.¹⁸⁸

346. **Recognize the trade-offs involved in emphasizing effective training.** At the same time, the Thailand report also recognizes that trade-offs are involved where a higher priority is placed on the quality of training than on the number of trainees. It is more expensive, time-intensive, and labor-intensive. Furthermore, it relies on the availability of a large pool of skilled trainers who have a good grasp of both participatory teaching methods and the technical information they need to convey.¹⁸⁹

347. Thus, there is no escaping the fact that effective training costs more than ineffective training. This argues in favor of either investing greater funds in legal empowerment activities or avoiding the temptation to spread resources too thin. It also weighs in favor of developing better research and evaluation methodologies, which can inform efforts to strike the right balance between quantity and quality in training. Appendixes 3 and 4 offer suggestions in this regard.

348. **Recognize the limitations of the lecture format.** The preceding analysis has implications for the lecture, the standard law school technique for information dissemination. While lectures can play a role in introducing certain legal concepts and principles, they are not easily understood by audiences with limited formal education, particularly when they become too detailed or continue for too long.

349. A consensus can be drawn from the country study findings on the utility of lectures. As the Thailand report concludes regarding one training program: *“Unfortunately, the training is based on a mass lecture format, which has proven by experience to be an ineffective adult education methodology for grass-roots audiences.”* ([Emphasis in original].)¹⁹⁰ Mongolian viewers of an educational television program reportedly found its “edutainment” approach to be a refreshing departure from what the country report describes as the dominant “talking head” technique.¹⁹¹

350. The Viet Nam paper makes a similar point in summarizing viewers’ impressions of a television program that aims to teach them about the law:

The most common comment of the interviewees is *the program on dissemination and education of laws on TV (VTV2) should be more diversified; the way to explain the situation (monologue) seemed very boring, unattractive to the watchers. Therefore, the program should be designed with small performances to solve the conflicts and problems that take place daily in people’s life.*¹⁹² [Emphasis in original.]

¹⁸⁸ Thailand Country Report, p. 44.

¹⁸⁹ Thailand Country Report, p. 44.

¹⁹⁰ Thailand Country Report, p. 10.

¹⁹¹ Mongolia Country Report, p. 16.

¹⁹² Viet Nam Country Report, p. 48.

351. **Specificity of audience, locale, and medium.** The above lessons mesh with some insights drawn from the experience of the Pakistan Institute of Labor Education and Research (PILER). It has found that specificity of audience is as important as specificity of information, and that seeking to train transport workers and home-based women garment workers in the same session is akin to mixing apples and oranges. PILER also feels that it needs to root its work geographically, in specific locales, rather than having trainees come to its offices. This will enable it to work with partner groups more intensively and to learn far more about their needs along the way.¹⁹³ Training should be rooted literally and not just figuratively in grassroots experience.

352. The Viet Nam study offers a final suggestion regarding the need for legal information to be transmitted in ways that people can readily grasp and subsequently cite. While radio and television are the greatest source of legal information for Vietnamese, they cannot easily extract the precise language of the law from these programs because “the visible information can help people understand the matter but people can not refer to it when dealing with a problem or a dispute...[P]eople cannot quote exactly what the law says just by watching television or listening to radio....[I]n order to make an argument in a case, they have to know exactly what it says.”¹⁹⁴

353. Accordingly, while mass media may effectively cultivate awareness of legal matters, in many situations people are best served by specially designed written materials to which they can subsequently refer in follow-up discussions or disputes. As with other suggestions offered here, much hinges on the need or issue in question. The nature of the culture may figure prominently in the design of a mass media strategy. In certain situations, Mongolians reportedly may value such written materials more than Filipinos, who have more of an oral culture.

C. Who Should Design and Conduct Information Dissemination Activities?

354. Legal information frequently must be adapted to the needs and aptitudes of audiences who are poorly educated. It comes as no surprise that persons with diverse skills, not all of them legal, should play a role in the process.

355. **The role of laypersons.** Experience indicates that social scientists, community organizers, teachers, and persons with other expertise have much to contribute to legal dissemination efforts. The successful experience of Thailand’s Women and Constitution Network (WCN), which has played a pioneering role in engaging citizen input in constitutional reform efforts and in raising awareness of the role of the constitution in reshaping governance, is instructive:

After several tests, WCN’s civic education curriculum has been recognized as one of the most practical tools for civic education in the country. The Election Commission, some departments in the Ministries of Education and the Interior, and several key civic organizations have used the WCN’s core curriculum to train their staff, workers, poll volunteers, and villager activists...

There are several noteworthy points about the WCN project. First, the curriculum was developed by a group of women, and a few men, who came from diverse backgrounds ranging from economics, law, chemistry, geology, political science,

¹⁹³ Pakistan Country Report, p. 32.

¹⁹⁴ Viet Nam Country Report, p. 48.

social development, psychology, to former politicians. It was the first legal dissemination in the nation's history which was not developed primarily by lawyers or law experts.¹⁹⁵

356. **Lawyers are not always the best law teachers.** Lawyers do not necessarily make good law teachers, at least for the disadvantaged. Many of those who have sat through law school lectures and should clearly understand the limitations of the medium are overly dependent on this traditional approach. The experience of the Pakistani NGO Shirkat Gah captures a broader range of problems in relying excessively on lawyers to conduct training:

In the beginning, Shirkat Gah organized a training program conducted by a lawyers' organization, but faced several problems. Apart from the technical language and terminology used, they [Shirkat Gah personnel] felt that the lawyers were not clear in their concepts, did not share the same vision or approach, and were unable to communicate effectively or reach out to the participants. Thereafter, they decided to conduct the program with activists from among themselves. Examining other programs and getting input from people with a shared vision, they devised a program which not only provided knowledge about the laws, but was geared towards looking at laws critically from a perspective of rights, social justice and development; and which empowered people in the long-term to move into social and legal activism.¹⁹⁶

357. India's Center for Social Justice had a similar experience working with lawyers. At first it relied on them to conduct training, but subsequently opted to draw primarily on its own personnel from other backgrounds to disseminate information.

358. **Basic communication skills.** Sometimes simple communication skills are more important than legal expertise for building basic legal knowledge among the disadvantaged. The Viet Nam report highlights the importance of such skills in a state-administered "voluntary propagator" program, through which state personnel (typically non-lawyers) visit and disseminate legal information to communities:

[The] superiority of the voluntary propagators lies in their enthusiasm, good reputation and profound knowledge... Besides they are capable to propagate and talk to the public, which is also an important criterion to select voluntary propagators. These factors allow the propagator to use simple but appropriate oral talks and vivid evidences to disseminate legislative information...¹⁹⁷

359. **The need for a developmental orientation.** Lawyers who are highly effective typically possess what some NGOs call a "developmental orientation. They see disadvantaged groups as equal partners rather than inferior clients, consciously tailoring their messages to the partners' capacities and priorities. The lawyers for Philippine Alternative Law Groups are especially effective in this regard. Their orientation substantially springs from college and law school experiences, including grassroots work through NGO and law school clinics. The seeds of effective legal teaching were sown long before the NGO lawyers obtained their law degrees.

¹⁹⁵ Thailand Country Report, p. 34.

¹⁹⁶ Pakistan Country Report, p. 52.

¹⁹⁷ Viet Nam Country Report, p. 39.

360. **Non-lawyers' expertise.** Lawyers can be necessary as teachers under some circumstances, whether because of the credibility that attaches to their status or because of the technical nature of the training. In some cases, however, non-lawyers acquire the requisite expertise. For example, many NGO and CBO paralegals acquire sufficient legal skills and knowledge on the job and through training to enable them to convey vital information to various audiences. This is typically the case in the Philippines and several other countries. Even in Mongolia, where lawyers have historically dominated all legal training, the Mongolian Women Lawyers' Association is initiating a program through which non-lawyers are training lawyers regarding the law.¹⁹⁸ As the Mongolia study further reports, NGO "training for lawyers to sensitize them about international human rights norms...was provided by non-lawyers...but the feedback from trainees was positive."¹⁹⁹

D. Mass Media

361. Mass media represents the most widespread method of conveying legal information. While it can be a highly effective tool for increasing legal awareness or knowledge, the fact that it has great potential does not mean that it achieves a positive impact in every case. In fact, mass media is sometimes neither a substitute for, nor even a complement to, other legal empowerment initiatives.

362. **Impact on legal awareness and knowledge.** The use of broadcast media is particularly significant where audiences are illiterate. Radio assumes added importance where audiences have little access to television. The Pakistan study presents a balanced perspective on the role of the media: "Legal literacy efforts through mass media, educational, or sensitization processes are most effective when combined with other activities that help to translate the learning into concrete action. However, until greater societal awareness of human rights and legal issues is established, the role of mass media in creating enhanced public awareness, on gender issues in particular, remains critical."²⁰⁰

363. The Mongolia report offers a variation on this view. It highlights the role of journalists, both as allies and as more neutral conduits for information. It does not assume that media attention necessarily generates action, but identifies the crucial role that the media plays in publicizing important issues:

Journalists are one of the CEDAW [Convention on Elimination of All Forms of Discrimination Against Women] Center's important target groups as they are seen as powerful allies in changing citizen's attitudes and behavior. Therefore, NGOs try to educate members of the media, attract and establish relations with them, and subsequently use as them volunteers. Sensitization of journalists on the specific issues was specially designed and conducted by the National CEDAW Watch Network Center and the National Center Against Violence, which has also made a shift to local media. The first sign of impact is an increased gender awareness of media. If a few years ago media was gender-blind (refusing to recognize existing gender inequality), now analysis of media publications suggests changes in attitudes of journalists at least in the national-level newspapers (situation in the local press is unknown to the researchers). Change is seen in two ways: increased number of articles on women's human rights,

¹⁹⁸ Mongolia Country Report, p. 22.

¹⁹⁹ Mongolia Country Report, p. 23.

²⁰⁰ Pakistan Country Report, p. 6.

including domestic violence and political participation; and in content which reveals social and cultural stereotyping and calls for change in traditional attitudes.²⁰¹

364. Although the passage does not suggest any desired change in citizen behavior, an implicit point is that the information sharing and awareness raising roles of media can effectively pave the way for other legal empowerment efforts and resulting impact down the line.

365. It should not automatically be assumed that providing information and raising awareness necessarily results in changes in attitudes or other forms of impact. As the Pakistan report points out, “[Attitudinal change] has usually been ignored even when information programs have been run. Thus, several well-intentioned efforts to impart information on women’s rights have been criticized by women’s rights groups as projecting a stereotyped or negative image of women.”²⁰²

366. Furthermore, as with all legal empowerment work, sporadic media efforts are unlikely to yield even the most basic impact on knowledge or awareness. As the Pakistan study notes, comprehensive efforts that involve substantial use of electronic media can be costly or can involve trade-offs that may undercut effectiveness:

[T]he cost of buying time, particularly on television, is usually too high for NGOs. Therefore, unless the project is well-funded, it cannot be undertaken. In some cases, depending very much on the individual in the decision-making position, television and radio have taken on ideas and concepts suggested by NGOs, in which case there are no costs involved. But this also means that ownership and control shifts to the media authorities, which can sometimes be problematic...[E]fforts to bring about an attitudinal change in society would require a concerted media policy, since a few isolated programs would get lost or neutralized if their message was negated through other programs.²⁰³

367. As discussed below, the awareness-raising value of media becomes particularly important where it is linked to advocacy campaigns that include other elements of legal empowerment, such as pressing for legal reform or implementation. As in Thailand, campaigns of this kind may target such goals as advancing constitutional reform or halting specific human rights abuses.

368. Media also can include efforts to make the public aware of problems whose nature or scale has not previously been acknowledged, even if there is no short-term solution to them. This point is illustrated by the example of NGOs stimulating press coverage of widespread violence against women in Bangladesh. Making the public more aware of the problem can be a first step in the long process of altering citizen attitudes and behavior and getting the government to systematically address the problem. Media attention to the issue has increased in recent years, due in part to NGO efforts. Unfortunately, other contributing factors may include the popular appeal of graphic tales of violence or increases in the incidence of gender violence.

369. ***The importance of the vernacular press.*** Until recently, human rights advocacy campaigns in Pakistan tended to focus more on English language newspapers than the

²⁰¹ Mongolia Country Report, p. 23.

²⁰² Pakistan Country Report, p. 21.

²⁰³ Pakistan Country Report, p. 21.

indigenous vernacular press, which primarily publishes in Urdu. The reason for this is that English-language newspapers are more responsive and more likely to reach government decision makers. There has been a re-thinking of this approach in the NGO community. In the case of a multi-faceted advocacy campaign, the vernacular press is now seen as an important element for affecting public perception. It creates “a more conducive public environment for other components to be better received [and, in serving as a basis for advocacy, helps] to counter negative forces, which frequently receive wider or more sensational coverage through the indigenous press.”²⁰⁴

370. **Limits on access.** In some instances, mass media is truly the best option for reaching the poor and the poorly educated. In others, there are no good options, making media the “least bad” alternative. As the Viet Nam report suggests, an unfortunate threshold consideration is that those who most need such information are in the worst position to access it:

Most poor farmers live in remote, isolated areas where arable land is exhausted. Due to difficult topographical conditions in these areas, access to legal information resources as well as access to competent State agencies to protect their legal rights is very difficult to obtain.

Because of difficult economic conditions, poor farmers have almost no possibility of accessing legal information resources in newspapers, on the radio or TV, or in the National legislative database, which leads to the fact that *awareness of the law among poor farmers is very limited.* [Emphasis in original.]²⁰⁵

371. The assumption that mass media can easily deliver useful information to all people should be avoided.

372. **The need for a supportive services infrastructure.** In assessing the impact of media, the earlier question arises as to whether an infrastructure of services and support is in place for audiences to make use of what they learn. Newspapers, television, radio, and other media outlets can help to mobilize individuals and organizations to action where political conditions permit or where civil society or government agencies are supportive. Thus, the Bangladesh study notes that the screening of television spots prepared by the Center for Development Services, a national-level NGO, “reportedly had enormous impact not only in enabling women to vote but [also in helping to create] a congenial and secure environment for potential voters.”²⁰⁶ Political, governmental, and civil society influences in Bangladesh either facilitated voting or at least did not block it.

373. Like voter education, advocacy campaigns on issues of national concern can be effectively self-sufficient in terms of advancing empowerment. Evidence suggests that mass media has played an important role in Thai constitutional reform and good governance initiatives. At the same time, a *de facto* infrastructure of civil and political society helped people mobilize around these issues, providing resources, legal help, and organizational support to pursue the effort.

374. The media did not operate in a vacuum in Thailand. Nor does it do so in any country where middle class and, especially, affluent citizens already have the potential influence,

²⁰⁴ Pakistan Country Report, p. 20.

²⁰⁵ Viet Nam Country Report, p. 8.

²⁰⁶ Bangladesh Country Report, p. 31.

organizational capacity, and connections to make effective use of knowledge. In contrast, media effectively functions in isolation where the disadvantaged lack such infrastructure in grappling with land tenure, natural resource management, gender discrimination, and other issues on a community level.

375. **Limited interaction advances only limited goals.** Another constraint on mass media is that its interaction is limited and its impact may not run as deep as that achieved through community-specific workshops and other vehicles that feature personal contact and participatory learning.²⁰⁷ Even without a supportive infrastructure, print and broadcasts outlets can help to cultivate legal awareness and knowledge. Yet there is little evidence to indicate that mass media alone effectively builds legal skills, affects behavior, enhances participation and good governance, or reduces poverty. People need far more “hands on” training to learn skills such as how to gather data, interview witnesses, prepare affidavits, or deal with government agencies. They need to be able to ask very specific questions, practice new skills, and learn on the job. Media offer little assistance in this regard.

376. To make effective use of media information, the disadvantaged often need complementary direct services and partnerships. They may, for example, need to be organized and have legal back-up if they are to successfully persuade government or private parties to be responsive. If the infrastructure is not already in place, governments—or more typically civil society—need to provide those services. Effective human rights advocacy on a community level is rarely, if ever, a process of spontaneous combustion, fueled only by information.

377. **Broadcast communication involving two-way exchanges.** Where broadcast media allows for two-way communication, it generally opens doors to more effective information dissemination. It facilitates what was previously described as “edutainment.” Notwithstanding this positive opening, opinions vary regarding the value of the call-in, question-and-answer radio shows that are popular in some countries. Members of the legal staff of the Philippines’ Free Legal Assistance Group reflect this divergence of perspectives. As the Philippine study reports, one lawyer is concerned that they propagate an “*isang tanong, isang sagot*” (one question, one answer) perspective, while another worries that “if there is a question of law, resort is still with lawyers.”²⁰⁸ Both are concerned that this detracts from critical awareness of the law. A third, however, finds such shows to be of practical use.²⁰⁹ In circumstances of this kind, such “bread and butter” legal counseling may be better than nothing.

378. The Thailand study reaches a more positive conclusion regarding the effectiveness of radio as a medium for legal dissemination, especially where learning takes place concurrently with entertainment. It reports that “such edutainment techniques have been found in surveys to be one of the most effective methods of transferring user-friendly knowledge.”²¹⁰

379. The problem identified with television productions is not inherent in the medium, but simply in the fact that it usually features one-way communication, from the studio to the audience. Thailand has produced important exceptions to this rule, one of which has the added value of informing viewers about free legal services:

One of the most popular and the longest running [televised] legal talk shows is

²⁰⁷ Per subsection E below, the potential, partial exception is the Internet.

²⁰⁸ Philippine Country Report, p. 15.

²⁰⁹ Philippine Country Report, p. 15.

²¹⁰ Thailand Country Report, p. 11.

the Law Society's monthly "Law for the People," broadcast live from 10:00 to 1:00 p.m. every first Friday of the month. The producer usually selects a controversial issue; a new law relevant to people's daily lives, such as labor, land, or environmental laws; or laws which require people's participation, such as the election law or the Constitution. After a brief overview of the issue, law experts respond live to questions raised by viewers who are able to interact with the show through ten telephone lines. One positive outcome of the program is that viewers learn how to access the Society's legal services...Over the past 7 to 8 years, the...show has become [very] popular among viewers....Two prominent regular guests...were elected by Bangkok voters in the March 2000 Senate Election.²¹¹

380. Thailand offers a further variation on this theme in the form of public affairs television shows that touch on legal issues. The shows feature panelists who debate current events and answer questions posed by members of the studio audience. Such attention to current events may couple with broader media coverage to achieve positive impact on governance:

For example, in the mid-1990s, both print media and the talk shows focused attention on the Phuket land reform scandal, widely known as Sor-Por-Kor 4-01. At issue was how the land law had been interpreted in favor of a rich, politically connected family rather than to the advantage of poor, landless farmers. The public clung to the Sor-Por-Kor 4-01 issue for months; the issue ultimately precipitated the downfall of the first Chuan Leekpai Administration in 1995.²¹²

381. Thai media employs additional creative devices for advancing legal and public affairs knowledge. One involves stimulating viewer interest and interaction by having viewers call in to cast opinion votes on issues while a television discussion is in progress.

382. **Limits on the impact of broadcast media.** Despite its many strengths, there are at least two significant limitations to the creative value of broadcast media in Thailand. One is that the interactive element is limited to those audiences that have telephones, though it can still stimulate interest and understanding among those who do not. The country report describes a second, broader problem:

The major problem with these highly-rated programs is they focus on the interests of the urban middle class. There are few programs that specifically respond to the needs and interests of typical disadvantaged groups such as women, the poor, minorities, or children. For example, there is only one program, "Women 2000," broadcast by ITV, that provides a focused 15 minutes of air time for women's legal issues.²¹³

383. **Commercializing legal dissemination.** Thailand has taken successful steps to overcome these drawbacks. These take the form of commercial television programs that present legal issues through drama or comedy. "Only [this] approach, appears to have the power to draw in a mass audience reaching down to the most remote villager."²¹⁴ A milestone

²¹¹ Thailand Country Report, p. 29-30.

²¹² Thailand Country Report, p. 30.

²¹³ Thailand Country Report, p. 31.

²¹⁴ Thailand Country Report, p. 31.

example, "Beating the Gong," was produced by the NGO Society for the Constitution for the People while the country's new Constitution was being drafted and debated:

Each episode revolved around an issue of relevance to average citizens living in a fictitious village. The characters were played by a troupe of well-known comedians who used high satire to examine the impact of a legal issue on the villagers. Before commercial breaks the commentator, a highly respected evening news anchor, would offer an explanation of the events in a more serious tone. The program would conclude with the guest appearance of a recognized legal expert, government official, or politician who would speak with the cast about the issues presented in the skit. This program received the highest rating of any program during its season, and as a result of its success, the program spawned a number of copy-cat programs.²¹⁵

384. The Thai experience affirms that commercial approaches to legal dissemination can be educational and financially viable,²¹⁶ as well as reach far wider audiences than more conventional NGO and government efforts.²¹⁷ It should be noted, however, that this approach has flowered in an environment of considerable commercial competition and political openness.

385. Philippine commercial television also offers examples of public service, including dissemination of legal information. According to the Philippine report, the ABS-CBN Foundation, which is affiliated with a major television network, has undertaken a diversity of initiatives concerning children's rights and environmental issues. These include producing "a program on child rights and child abuse called "Bantay Bata 163" (Child Watch). Victims and witnesses of child abuse cases are encouraged to report such incidents to the Foundation for assistance."²¹⁸ Furthermore, according to its web page, "the Foundation has also used its mass media network in soliciting grassroots support to lobby for the passage of an anti-pollution bill that was long pending in Congress. The media campaign produced more than five million signatures that were presented to congressmen, thereby contributing to the hastening of the enactment of the *Philippine Clean Air Act of 1999*."²¹⁹

386. **Variations on the theme of interaction.** The Viet Nam study similarly suggests that, in the absence of two-way communication, adopting a "question and answer" format is preferable to a straightforward recitation of information:

The Q & A, which is the most common form of legal information on mass media...provides readers with the exact language of certain legal provisions, together with recommendations on the proper course to follow in a specific situation. Sometimes, Q & A also provides readers with an explanation of the intent of the legislators with respect to difficult-to-understand provisions.²²⁰

387. **Public input and articulation of complaints.** Of added significance for good governance, media also offers opportunities for readers and listeners to register complaints and

²¹⁵ Thailand Country Report, p. 31.

²¹⁶ The Asia Foundation's noteworthy financial and intellectual contribution to "Beat the Gong" is discussed later in this report, in the context of sustainability.

²¹⁷ A more modest example of this is in the United States, where police television shows have unintentionally taught the public that accused persons have the right to remain silent and the right to a lawyer.

²¹⁸ Philippine Country Report, p. 15.

²¹⁹ Philippine Country Report, p. 15.

²²⁰ Viet Nam Country Report, p. 22.

concerns through letters to newspapers and radio stations. The Viet Nam study highlights one application of this phenomenon:

Many letters draw attention to improper activities (even those that break the law) by state agencies and civil-servants...Usually, this information is published in newspapers and followed by all citizens, media and the government. Therefore, the agency in question finds itself compelled to respond to public opinion. Sometimes, the senior state agency responsible for the agency impugned in the letter (or even the Central Government if the case is serious) requires the latter to address the issue publicly.²²¹

388. Two important caveats should be added to this point. The first is that more research is necessary to determine whether public opinion prompts the government to do more than acknowledge citizen concerns; that is, whether it actually generates action. The second is that it would be useful to know whether the Vietnamese media's extensive legal dissemination efforts tend to generate such letters from the public, or whether the outpouring of popular opinion is sparked in other ways.

389. Media can have a significant impact on knowledge, awareness, and attitudes if it delivers messages in well-planned ways. It also can play key roles in advocacy and mobilization campaigns by educating and making people aware of relevant issues. Beyond this practical value, it is unlikely to generate impact on legal skills, participation, behavior, good governance, or poverty reduction unless appropriate civil society and political infrastructures are in place, or unless media is integrated into a broader legal empowerment strategy.

E. The Future of the Internet

390. Most NGOs that address legal issues now have computers and Internet access. This in turn expands their access to information and to like-minded organizations around the world. The technology holds great potential for benefiting disadvantaged populations, perhaps even in ways that cannot be foreseen. One potential type of impact is that people will learn more about their laws, rights, and responsibilities—if and when that information is packaged in easily comprehensible electronic format, and if and when they obtain computers or other devices that link them to the Internet.

391. **Constraints on Internet access.** Much depends on the second “if and when.” Most impoverished populations are illiterate, or lack access to electricity, telephone lines, or computers. Except in extraordinary circumstances, such as pilot initiatives to provide rural populations with Internet access, these factors bar Internet access and all that potentially comes with it. This raises the prospect of a world of technological “haves” and “have nots.” Even when these obstacles are cleared in a particular village, the challenge remains of who will control the technology. As discussed below, monopolization of crucial resources by local elites is a common phenomenon in many societies. A device that spreads knowledge about women's rights, for example, can just as easily be used to disseminate propaganda against gender equity. The boundaries of government control over Internet access is an issue that remains to be played out in some countries in coming years.

392. **Transcending the constraints.** There is every prospect that such obstacles will be overcome in many societies. Electrification will spread. New computers or simpler Internet

²²¹ Viet Nam Country Report, p. 25.

access hardware will become less expensive. Used computers and computer parts could be transferred by affluent societies to developing countries. Wireless technology obviates the need for telephone lines. Governments may find efforts to enforce Internet access restrictions either unworkable or counterproductive. Technology will take unpredictable and, it is hoped, beneficial directions. New initiatives to make the Internet more accessible to the disadvantaged will not simply be a matter of chance, but also of new ideas that intentionally merge technology and empowerment.

393. Many promising initiatives are currently under way in this area. Mongolia's Open Web Center affords NGOs the opportunity to post documents and information, including materials that can be employed to teach the disadvantaged about the law. In Indonesia, Hukumonline.com has established an internet-based database of laws and implementing regulations, together with leading decisions of the Supreme Court, which will be available free of charge to students, academics, and civil society organizations. In addition, the Hukumonline.com website provides information on current developments in Indonesian legal reform efforts, and dialogue forums in which users can discuss and debate issues. ADB's Project DIAL (Development of the Internet for Asian Law) is compiling and providing legal resources such as legislation on various topics from across the region, to inform law reform efforts, and is helping lawyers to make more effective use of information and communication technology.

394. **Electronic interaction will not be enough.** As valuable as these actual and potential developments are, the point remains that "knowledge does not equal power." The reality is that large-scale changes may take decades to materialize in some parts of the world. If all goes well, Internet access may include interactive popular education methodologies that will favorably affect knowledge, attitudes, and awareness, and link disadvantaged communities and groups with common interests. Whatever the pace of technological development, many societies will continue to operate on the basis of personal interaction rather than objective information. Until Internet access is truly global, the hard work of organizing and mobilizing disadvantaged groups at the community level will continue to be a fundamental feature of legal empowerment, as highlighted in the next sections.

V. INDIVIDUAL AND INSTITUTIONAL ROLES

A. Courts, Lawyers, and Laypersons

395. **Looking beyond courts and lawyers.** While courts can play an important role in legal empowerment, other forums may be even more crucial. Similarly, lawyers play a major role, but the contribution of non-lawyers can be even greater. Administrative law, local governance, alternative dispute resolution, group advocacy, NGO staff with experience in non-legal fields, and the disadvantaged themselves have central roles to play in legal empowerment. As a matter of principle, beneficiaries should take the lead wherever possible, with support organizations responding to the priority needs and interests of their constituents.

396. **Practical advantages of emphasizing non-lawyers' roles.** Most legal needs affecting the disadvantaged can and should be addressed outside the courts, by the disadvantaged themselves, and by non-lawyers. This is partly because administrative law, executive agencies, and local governments are more relevant to those needs and in any event can address them more expeditiously than the judiciary can. In addition, the inevitable shortage of dedicated lawyers means that effective community-level advocacy may hinge on specially trained laypersons.

397. The Philippine experience illustrates these points. Though some Alternative Law Groups were founded in the late 1980s and early 1990s with the intention of pursuing US-style public interest litigation, many found that executive agencies, local governments, and later the Congress provided more fertile ground than the conservative courts for policy achievements. Significantly, the ALGs came to recognize that many of the legal needs of their partner communities fall under the aegis of executive branch administrative law or local government powers. The Department of Agrarian Reform addresses key issues regarding land tenure. The Department of Labor and Employment (DOLE) handles work disputes. The police are often the key interlocutors in cases of domestic violence. The Department of Environment and Natural Resources has a substantial say in matters concerning the environmental interests of indigenous peoples, by virtue of their residing in upland areas. Local governments in turn exercise decision-making authority ranging from coastal fishing rights to resource allocation. Moreover, by avoiding the judiciary the ALGs' partner groups are able to handle many more disputes and processes themselves. For example, DAR and DOLE allow paralegals to appear before their tribunals, whereas lawyers are necessary for court proceedings. While the judiciary functions in English, these other institutions allow and even prefer the Filipino language in which the majority are fluent.

398. It would be a great leap to assume that laypersons necessarily can develop lawyers' knowledge and skills in societies where educational levels are low. At the same time, the aforementioned farmer paralegals in the Philippines demonstrate an impressive grasp of complex rules and regulations. Furthermore, non-professionals need not be as knowledgeable as lawyers in order to be effective in many settings.

399. Another fundamental consideration with respect to alternatives to court is what disadvantaged populations can do to help themselves. The best tools at their disposal may be raising awareness, challenging beliefs, or pointing to the health, environmental, or other consequences of certain practices.²²²

400. ***The American experience.*** Even in the United States, one of the most litigious and lawyer-influenced nations, legal laypersons can develop the same expertise as lawyers in forums where they are allowed to practice, and can render service of similar quality. A 1998 review of four types of tribunals in the state of Wisconsin, buttressed by related research, found that non-lawyers represent clients as well as lawyers in hearings involving unemployment compensation, income taxes, disability benefits, and labor grievances.²²³ In the case of labor arbitration, the author of the report concluded that "it is not the simple lawyer/non-lawyer distinction that accounts for the difference [between success and failure]. Rather, it appears to be more a function of specialization. Specialist non-lawyers and specialist lawyers appear to be better advocates than non-specialist lawyers."²²⁴

401. It also is noteworthy that in the United States, where public interest litigation has played such a prominent role, it is now viewed as just one important element of an integrated advocacy strategy, and not necessarily the central component. As the president of the Mexican American

²²² Thus, in countries such as Eritrea, a legal prohibition has not ended female genital mutilation, but women's activism has highlighted health effects and reduced incidence of the practice. In her analysis of this situation, Smart accordingly suggests that legal aid programs should encourage extralegal solutions. See Carol Smart, *Law's Power, the Sexed Body and Feminist Discourse*, *J. L. & Soc's*, 17(2), at 194-210.

²²³ Herbert M. Kritzer, *Legal Advocacy: Lawyers and Non-lawyers at Work*, Ann Arbor, University of Michigan Press, 1998, 269, pp.

²²⁴ Kritzer, p. 185.

Legal Defense and Educational Fund has observed: “We see litigation as the tool of last resort. It is costly. It is long. And it is chancy. And particularly since 1980, the courts have not been our friends. But it’s the realization that you have the ability to litigate that gives you the credibility to use the other strategies effectively. And so to us, it’s a continuum—each tool, each strategy coming together for an end.”²²⁵

B. Alternative Dispute Resolution as an Empowering Option

402. Bangladesh presents another case of civil society pursuing alternatives to the courts, and of litigation playing a complementary role with respect to empowerment. Many Bangladeshi NGOs rely heavily on community mediation. They adapt *shalish*, a traditional form of mediation, to address family disputes, land issues, and other local problems. The Bangladesh study summarizes the rationale and nature of this approach:

[I]t benefits states to widen the parameters of the machinery of justice by seeking to develop methods of dispute resolution that would ensure quality and accessibility. Confronted with various problems in accessing formal courts alternative mechanisms have evolved. The new methods of dispute settlement have many advantages, chief among them being informality, speed, absence of backlog, economy, privacy, harmony, and easy accessibility.

Currently the most effective alternative method of dispute resolution seems to be NGO assisted community mediation, which offers a radical departure from judicial processes and the traditional *shalish*. This process encourages communication between parties, facilitates the identification of areas of dispute and controversy and assists the parties to achieve a resolution that is reached and defined by the parties themselves. As such mediation is not coercive, but rather is a voluntary means by which parties can reach an accord. By encouraging parties to discuss the problems and to reach a compromise, mediation avoids the intractability and the one-sidedness that are inherent in legal actions.²²⁶

403. Drawing on U.S. research²²⁷ that has relevance in an otherwise very different Bangladeshi context, the study goes on suggest that because mediation actively engages disputants in shaping the agreement and binds “them personally to make [it] work, they become psychologically bound to respect the terms of their resolution.”²²⁸

404. In the approach followed by Bangladesh’s leading NGO facilitator of mediation, the Madaripur Legal Aid Association, respected local figures play key roles in NGO-modified *shalish*. Some *shalish* “committee” members, such as teachers, are involved by virtue of their education and the respect that they enjoy in the community. Reliance on local leaders raises a key issue of whether the process is controlled by vested interests or shaped by dominant perspectives. This would not seem to be the case with MLAA. To check the risk of encroachment by local elites, it increasingly engages women and other representatives of traditionally marginalized groups in mediators’ roles.

²²⁵ Antonia Hernandez, as quoted in Many Roads, p. 111.

²²⁶ Bangladesh Country Report, p. 67.

²²⁷ Cooke, Lawrence H., ‘Mediation: a Boon or a Bust?’ in Harter, Philip J. (ed.), *Alternative Dispute Resolution: A Handbook for Judges*, American Bar Association (Standing Committee on Dispute Resolution), Public Services Division, Governmental Affairs Group, Washington D.C., 1991, pp. 121-127, p. 123.

²²⁸ Bangladesh Country Report, p. 67.

405. It should be emphasized that the MLAA approach, while prominent, is but one of the mediation strategies followed by Bangladeshi NGOs. For example, in pursuing women's empowerment in Dhaka, Ain O Salish Kendra relies much more on its own staff to mediate and negotiate on behalf of clients. Banchte Shekha, as already described, applies mediation in the context of an overall strategy for development and empowerment of women in a predominantly rural district of the country. Both organizations, like MLAA, back up mediation with litigation where necessary.

406. The Bangladesh study highlights additional merits of NGO-facilitated mediation. For example:

The most tangible gain from mediation services is the lesser cost in disposing of disputes. This benefits the individual disputants immensely. Disputes submitted to mediation are resolved more swiftly than those submitted to the judicial system. This, in some ways, enhances the judicial system itself by actually reducing caseloads of courts already burdened with lawsuits...The community on the whole also benefits from mediation services. An individual who believes that he or she can obtain meaningful relief through a relatively neutral, inexpensive, expeditious and, above all, accessible forum, is more likely to resort to community support rather than self help. Moreover, the method of dispute resolution through community interventions instills a sense of responsibility amongst individuals in the neighborhood to control their own conflicts and thereby their destinies.²²⁹

The combined features of time and cost-efficiency, procedural informality, practical clarity, and community sanction makes mediation a popular alternative to conventional litigation. In some instances, including the Philippines, the prospective parties to a court case are required to demonstrate that they have been unable to resolve a dispute through alternative means before the case is accepted by the court.

407. ***Litigation and alternatives are mutually supportive, not mutually exclusive.*** None of the above points eliminate the need for or necessity of litigation as a primary tool in some circumstances and as a back-up in others. The work of the Bangladesh Legal Aid and Services Trust, the AGHS Legal Aid Cell in Pakistan, and a number of other NGOs illustrate this point.

408. Nevertheless, several Pakistani organizations "have increasingly begun to opt for methods of negotiation and conciliation as means of resolving disputes."²³⁰ This reflects a combination of the above factors and the problems that plague the judiciary. This should not come at the price of women forfeiting their rights. The Pakistan study accordingly calls for a balanced strategy that combines negotiation and litigation, together with judicial education that will make judges more aware of and sympathetic to the rights of women.

409. The preceding considerations do not negate the leadership role that some lawyers play with respect to law reform or other contexts in which their expertise and advice is crucial. For a number of practical reasons—not least the fact that the alternatives are easier, cheaper, and more comprehensible for partner groups—many NGOs prefer to avoid the courts and to instead build the capacity and role of partner populations wherever possible.

²²⁹ Bangladesh Country Report, p. 68.

²³⁰ Pakistan Country Report, p. 7.

410. ***Need for development lawyers.*** The necessity of combining the work of lawyers and non-lawyers, of going to court in some instance while avoiding it others, suggests the need for more lawyers with a developmental orientation. To be effective, lawyers must still know the law, present their case, and craft persuasive briefs where necessary. They also must know how to teach the poor about the law, expand their perspectives on it, relate to them as equals, and advise them on options that involve alternatives to formal legal proceedings.

411. There are various names for this kind of legal practice. Some call it “developmental legal aid” because it employs the law to advance grassroots development. Others use the term “alternative law” because many of the activities and perspectives are alternatives to conventional legal practice. “Structural legal aid” is employed to reflect the desire to get at the underlying societal structures that exacerbate or perpetuate poverty. Whatever the terminology, an additional set of skills and perspectives is required of attorneys who work to empower disadvantaged populations.

VI. SUSTAINABILITY: PERSPECTIVES AND STRATEGIES

412. Why support a legal empowerment initiative if there is no assurance that it can survive once its funding ends? Should sustainability be a prerequisite for funding?

413. ***The myth of sustainable organizations.*** One way to answer this question is by citing a paper on public interest law NGOs in the United States: “It is unreasonable to expect most public interest law groups to become self-supporting. Despite the availability of membership fees for some groups and attorney’s fees in some cases, it is implausible to expect these groups to be weaned of donor support.”²³¹ Donors and other funding sources may hold NGOs to too high a standard if they demand sustainability from groups whose Western equivalents depend on outside funds. Even in the United States and Europe, many nongovernmental groups are not truly self-supporting.

414. ***Sustainable impact, not sustainable organizations.*** With this consideration in mind, sustainability should be viewed in a different light. It is preferable for a good organization to operate for as long as the needs to which it responds remain, and unfortunate if it ceases to exist. Yet the most fundamental consideration may be whether the impact of legal empowerment efforts is sustainable, not whether the groups carrying them out are. Organizational sustainability is important, but the real goal is sustainability of impact. Policy changes that flow from the work of such groups may remain in effect. The material conditions of communities and individuals may permanently change for the better. Governance may improve for some communities, or poverty may be reduced. NGO leaders may go on to serve in government, bringing a ripple effect of positive legal reform and implementation. None of this impact necessarily hinges on whether a given NGO survives. Viewed from the perspective of impact, sustainability becomes not a matter of whether an organization or project has a permanent funding source, but whether outside support helps it to conduct lasting, quality work.

415. ***Legal services as a public good.*** The preceding observations point to a central conclusion: legal services that contribute to empowerment of the disadvantaged should be seen as a public good—a set of activities that benefit society, but whose costs cannot be fully

²³¹ Helen Hershkoff and David Hollander, “Rights into Action: Public Interest Litigation in the United States,” *Many Roads*, 118.

charged to specific parties. The population that directly benefits from these services cannot afford to pay for them. Even in a society as affluent as the United States, such services cannot be sustained without outside funding, since they are not commercial enterprises generating self-sustaining profits. While they will never be self-supporting, they merit ongoing funding as long as they yield substantial impact. A distinguishing feature is that, in the United States, the United Kingdom, and other industrialized countries, a powerful voluntary sector supports efforts of this kind through financial and in-kind support. With the voluntary sector only gradually beginning to support such activities in Asia, legal empowerment efforts will continue to face sustainability challenges.

416. **A long-term perspective on project sustainability.** Project sustainability does not necessarily present the same challenge as organizational sustainability. The Pakistan study highlights the fact that follow-up may be necessary for an extended period, albeit at a reduced level, before many communities can completely do without outside inputs:

Several organizations have made efforts toward ensuring the sustainability of the projects they have undertaken. It is apparent that fairly intensive input over a sufficient period of time is necessary to ensure that the project becomes rooted and the community assumes ownership of the project. It is also important to establish strong local structures/forums to develop resources at the group/community level and ensure continuity; as well as continued strengthening of these structures for some time to come. In the case of projects involving legal and technical knowledge, sufficient expertise and experience must be developed before sustainability of the project can be assumed, and some support mechanisms must be built in for the period following.²³²

417. **Some partial strategies.** There are modest steps that some organizations can take to at least diversify support and not be wholly dependent on foreign funding. Some can seek government support. Others may recruit to their management boards persons who can raise funds from wealthy individuals or companies. In-kind donation of services can stretch scarce resources. Fundraising solicitations by mail are feasible in certain societies. This approach reportedly has met with some success for charitable causes in the Philippines.

418. **Problematic “solutions.”** These are at best partial solutions, and in many countries they are not even that. In some societies, it is culturally inappropriate to raise funds from friends or colleagues. Recruitment of affluent individuals to an NGO board may fail if they prove less than sympathetic to the organization’s empowering mission. Relying on the government or prosperous private parties can create ties that bind the operations of NGOs in ways that hinder legal empowerment.

419. Again, the United States provides an example of a society that, for all of its wealth, placed the future of domestic legal services in a precarious situation when the national government severely reduced support for such work in the 1980s. The prosperous 1990s saw reductions in *pro bono* (voluntary) contributions of time by U.S. corporate lawyers to public service, ironically because they were so busy with booming private practices.

420. Even relatively minor efforts such as increasing voluntary contributions of time and work can prove problematic. Such has been the experience in Pakistan:

²³² Pakistan Country Report, p. 74.

While there is evidence of substantial uncompensated voluntary input into the work of several organizations, it must be pointed out that if the component of voluntary work, particularly in the case of expert services or wider outreach projects, is too large, the activities undertaken on this basis are unlikely to be as regular or structured. Nor can organizations whose staff is already over-stretched be realistically expected to put in any more voluntary efforts. While communities can and have often been motivated to provide voluntary and cost-free services in projects, there needs to be more reflection on whether the poorest and most marginalized of communities should be made to contribute toward what should be their basic right.²³³

421. The report goes on to suggest that “if, for any reason, voluntary contribution is built into projects by donors, an equivalent amount should be put aside in a fund or trust for victims of human rights violations in those communities.”²³⁴

422. If there is a core solution to the problem of sustainability, it may lie more in the hands of funding organizations, and with DMC governments that could set new precedents by allocating resources to the nongovernmental sector, rather than with the recipients of legal services. In the meantime, legal service providers and donors should explore local philanthropy, modest fee-for-service structures, and other prospective strategies to apportion the cost of community legal services amongst a variety of stakeholders.

²³³ Pakistan Country Report, pp. 73-74.

²³⁴ Pakistan Country Report, p. 74.

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.

APPENDIX 1: THE IMPACT OF LEGAL EMPOWERMENT ACTIVITIES ON AGRARIAN REFORM IMPLEMENTATION IN THE PHILIPPINES

I. Introduction

1. This paper presents the results of a study on the impact of legal empowerment activities on the implementation of agrarian reform in two provinces in southern Philippines. The study was undertaken as a supplement to the seven-country Legal Empowerment Study conducted under Asian Development Bank Regional Technical Assistance 5856.

2. Legal empowerment, or the use of law to increase disadvantaged populations' control over their lives, differs from the more general notion of empowerment in that it involves the explicit or implicit use of the law (for example, through training, counseling, or litigation) or relates to public decision-making processes that have a specific legal dimension (for example, equipping citizens or communities with the skills and confidence to appear before an administrative tribunal or to inform local policy development.) It frequently combines such activities with initiatives that are not inherently law-oriented, such as community organizing or livelihood development. While they typically include education, most advanced legal empowerment initiatives aim to do more than simply teach people about law. They provide the disadvantaged with opportunities to apply their knowledge through actions intended to advance their legal rights, improve their quality of life, or increase their participation in public decision making.

3. The basic analytical strategy for this study was to compare areas in which nongovernmental organizations (NGOs) were conducting legal empowerment strategies with comparable places where no such work was conducted. This paper reviews the law on land reform and the related legal empowerment work of NGOs, then analyzes three kinds of data collected in the study. These are: (i) judgmental data based on the independent observations and impressions of agrarian reform officials; (ii) quantitative data from a survey conducted in four communities (two with legal empowerment activities and two without); and (iii) the results of focus group discussions in those four communities.

II. Background on Agrarian Reform in the Philippines

4. Agrarian reform has long been an issue in Philippine politics, and is generally considered central to poverty reduction. In 1972 President Ferdinand Marcos issued martial law *Presidential Decree (PD) 27*, which introduced land reform strictly for lands devoted to rice and corn production. In 1988, during the administration of President Corazon Aquino, Congress passed *Republic Act 6657*, known as the Comprehensive Agrarian Reform Program (CARP). This expanded the scope of land reform to all agricultural lands, and included the landless as potential beneficiaries.

5. The Department of Agrarian Reform (DAR) has primary responsibility for the implementation of the land reform laws. A complex procedural apparatus has been developed for their administration. In addition, the Department of Environment and Natural Resources (DENR) has responsibilities under various initiatives to award ownership rights to the ancestral lands of indigenous peoples. It is important to note that agrarian reform was not one of the services devolved to local governments under the 1991 *Local Government Code*. Accordingly, references to local agrarian reform officials are to employees of the DAR, not to employees of local governments.

6. A recent study commissioned by the World Bank noted that the agrarian reform program in the Philippines has improved the lives of farmer-beneficiaries and their families. It also noted that agrarian reform beneficiaries tend to invest more in their children's education, making their children better educated than those of non-beneficiaries. The study, *Redistribution, Investment and Human Capital Accumulation: The Case of Agrarian Reform in the Philippines*,¹ assessed the impact on farmers' lives of agrarian reform during the past 30 years, including that of the Comprehensive Agrarian Reform Program (CARP) passed in 1988.

7. The World Bank study supports the theoretical abstract that, at the household level, redistribution of productive assets can enhance opportunity and overall growth. Results indicate that land reform resulted in higher investment in physical capital, a greater increase in the inter-generational transmission of human capital, and greater household welfare and productivity. The study also notes that households that benefited from the 1972 land reform increased their rice yields by between 565 to 537 kilograms per annum over those of non-beneficiaries, and that "increase in profit is positive and significant at [a level of] 10 percent." Accordingly, these findings suggest that in the Philippines, land reform policies need to be assessed in terms of their broader implications for overall equity and the process of rural development.

8. In November 1999, Paralegal Education Skills Advancement and Networking Technology (PESANTEch), a consortium comprising the NGOs Saligan, Kaisahan, and Balay Mindanaw, produced a paper entitled *Stalled: The Legal Struggles of Farmers for Agrarian Reform*. The paper was presented at the First Public Interest Law Conference held at the University of the Philippines College of Law. It pointed out that the Comprehensive Agrarian Reform Program is an important strategy for the elimination of poverty in the Philippines. The paper also showed how the legal system has failed in its duty to administer agrarian justice and presented issues and problems that affect the implementation of the program.

9. Some of the issues raised by the study include: (a) misuse of the legal system by landowners and some policymakers; (b) lack of knowledge and understanding of agrarian laws by farmer-beneficiaries and the regular courts; (c) an unfriendly policy environment and practices in agrarian law, as indicated by conservative court rulings on agrarian justice and further exemptions granted by Congress; and (d) lack of political will on the part of those responsible for the implementation of land reform programs. It further concluded that the Department of Agrarian Reform, as the lead implementing agency, has inherent bureaucratic weaknesses.

III. NGO Legal Empowerment Activities

10. When the Comprehensive Agrarian Reform Program was passed in 1988, skeptical NGOs felt they had two options: either dismiss the law outright, which would please and benefit the land-owning elite; or embrace it with no illusions concerning its prospective success. When some NGOs chose the latter option, they faced many challenges. An enabling environment for agrarian reform required a number of elements. These include: (i) an organized constituency to demand that the law be faithfully implemented; (ii) a critical and no-nonsense approach on the part of the Department of Agrarian Reform to effectively pursue the implementation of land reform; (iii) implementation of a comprehensive, capacity-building program among CARP's

¹ Deininger, K., F. Lara, Jr., M. Maertens, and A. Quisumbing, "Agrarian Reform in the Philippines: Past Impact and Future Challenges" (Washington, D.C., The World Bank, mimeo, 2000) as cited in *Philippines Growth with Equity: The Remaining Agenda* (The World Bank: Washington, D.C., 2000).

beneficiaries; and (iv) a national-level campaign and advocacy to secure public support for agrarian reform.

11. PESANTEch was established in 1993 by Kaisahan and Saligan, two NGOs based in Metro Manila. They were later joined by the Balay Mindanaw Foundation, Inc. PESANTEch was established to provide farmer-beneficiaries with the basic legal skills and knowledge necessary to utilize the law and the legal system to advance their land rights.

12. In five years, PESANTEch has trained more than 1,000 farmer-paralegals and advocates covering 22 project areas and 27 partner NGOs. It has 10 lawyers on retainer, as well as 600 active farmer-paralegals in the 22 project areas in which it works.

13. In the present policy environment, this effort cannot be sustained purely on the basis of the role of farmer-paralegals, as originally conceived. A broader strategy is required. As conceived by PESANTEch, this strategy includes: (i) working closely with locally-based, like-minded NGOs and peoples' organizations involved in community organizing for resource tenure improvement; (ii) engaging with the Department of Agrarian Reform and working with state reformists within the bureaucracy; (iii) networking with different coalitions in agrarian reform and rural development; and 4) building the capacity of farmer-paralegals who work with peoples' organizations that are involved in improving land rights and which have recently begun to play a role in promoting public participation in governance.

14. At the community level, PESANTEch trains farmer-paralegals, assisting in the transfer of and/or long-term lease of at least 100,000 hectares of CARP-administered lands. It conducts an average of 24 legal clinics per annum, involving approximately 960 farmers and paralegals. To date, it has conducted approximately 120 clinics and engaged approximately 5,000 farmer beneficiaries. At least two provincial-level project areas have established associations of farmer-paralegals to sustain their efforts, as well as to serve as support groups for people's organizations that pursue cases in the courts and before the provincial adjudicator. At least 50 farmer-paralegals have appeared as counsels for farmers in hearings of DAR provincial adjudication boards and in DARAB.

IV. Project Description

15. This paper reports the results of a comparative study of areas where there has been intensive paralegal systems development versus those where there has been none.

16. The value of securing legal title to land is vitally important to farmers, as those who hold title are likely to be more productive than those who have no legal documents to confirm their ownership of the land. The purpose of the study was: (i) to examine the advantages of having paralegal systems; and (ii) to assess whether paralegal systems development has a direct impact in increasing productivity.

17. The areas selected for the study were Agusan del Sur and Bukidnon, both of which are in the southern island of Mindanao. The two provinces have experienced a high level of redistribution of both public and private lands. Both provinces have favorable agro-climatic environments, which support a number of crops, including rice and corn.

18. Three types of data were reviewed in the study:

- (a) Independent assessment by local officials of the Department of Agrarian Reform of which barangays in their municipalities were the most and least successful in the implementation of the Comprehensive Agrarian Reform Program;
- (b) A survey of approximately 100 respondents in each of four barangays: two that had legal empowerment activities and two that did not. All four barangays are agricultural, are close to main roads, and have access to electricity.
- (c) Results from focus group discussions in these four barangays, in which participants were invited to discuss and make recommendations on an illustrative case involving the violation of farmers' rights under agrarian reform.

V. Assessments by DAR Officials

19. The study was designed to compare agrarian reform accomplishments in areas with and without legal empowerment interventions. In preparing to implement the study, an inconsistency was discovered between official government data collection procedures and the organizing strategy of agrarian reform advocates. While PESANTEch takes as its organizational unit the "community"—typically defined as a barangay (village)—DAR does not collect and maintain official data at the barangay (village) level. Instead, agrarian reform accomplishments are reported by the municipality, the next higher politico-administrative unit.

20. As an alternative course, the opinions of local officials of the Department of Agrarian Reform were solicited to serve as proxy indicators. In all municipalities in the two provinces where PEASANTEch conducts activities, Municipal Agrarian Reform Officers were asked to name which barangays were most and least successful in implementing agrarian reform. (The topic of legal empowerment was not mentioned to these officials, to avoid contaminating the results.) The results are presented in Table 1, which should be read as follows:

- Of the 16 barangays in the municipality of Baungon, five have legal empowerment programs. The DAR officer named a legal empowerment barangay as the most successful, while the least successful was a barangay without any legal empowerment activity.
- Another example is the municipality of Manalo Fortich, in which legal empowerment activities are conducted in two of the 22 barangays. Neither the most nor the least successful barangays cited by DAR officials were ones in which legal empowerment activities have been conducted.
- The only municipality where a barangay with legal empowerment activity was cited as least successful was Trento, where 6 of the 16 barangays had legal empowerment activities.

21. The results of this qualitative survey are clear: legal empowerment activities are associated with the assessment of Department of Agrarian Reform officials that implementation of agrarian reform is successful in a particular community. When asked to cite the reasons for their judgement, the DAR officials noted the connection unprompted by any mention of legal empowerment activities or the benefits that flow from them. The reasons cited for success included an awareness of rights on the part of farmers. Reasons cited for lack of success included a lack of education or lack of knowledge on the part of farmers.

Table 1: DAR Assessment of Barangays with Most and Least Agrarian Reform Success

BUKIDNON

<i>Municipality</i>	<i>Number of Barangays</i>	<i>Number of Barangays with LE Programs</i>	<i>DAR Assessment</i>	
			<i>Most Success</i>	<i>Least Success</i>
BAUNGON	16	5	LE	
MARAMAG	20	5	LE	
MALAY-BALAY	46	3		
MANOLO FORTICH	22	2	LE	
SUMILAO	10	4	LE	
IMPASUGONG	13	3	LE	
VALENCIA	31	3	LE	
QUEZON	31	4	LE	

AGUSAN DEL SUR

<i>Municipality</i>	<i>Number of Barangays</i>	<i>Number of Barangays with LE Programs</i>	<i>DAR Assessment</i>	
			<i>Most Success</i>	<i>Least Success</i>
STA JOSEFA	11	10	LE	
BUNAWAN	10	2	LE	
TRENTO	16	6	LE	LE

VI. Survey Results

22. As noted, quantitative surveys of approximately 100 respondents each were conducted in two barangays with legal empowerment activities and two barangays without. The quantitative analysis demonstrates the impact of such activities.

23. Table 2 indicates that respondents in barangays with legal empowerment activities stand in a different relationship to the land. There are fewer tenants, and more squatters, showing a higher level of informal acquisition of land.

24. In addition, Table 2 indicates that overall levels of ownership are roughly equal in the two areas, while Table 3 shows that in areas with legal empowerment activity, land is much more likely to have been acquired through agrarian reform (35 percent versus 3 percent). In areas without legal empowerment activities, land is typically purchased or inherited. The effect shown in Table 3 is not confined to those areas that have been directly involved in NGO-sponsored legal empowerment activities, but rather is shared with the entire communities under study.

Table 2: Relationship to Land

WHAT KIND OF CULTIVATOR ARE YOU?		With Legal Empowerment	Without Legal Empowerment
Not a Farmer		6%	-
Tenant		6%	20%
Farm Worker		4%	11%
Squatter		17%	3%
Renter		2%	4%
Owner		60%	50%
Part Owner		5%	13%
<i>Total</i>	%	100%	101%*
	Count	212	188

*Total does not add to 100 due to rounding error

Table 3: Land Acquired Through Land Reform

HOW LAND ACQUIRED		With Legal Empowerment	Without Legal Empowerment
Agrarian Reform		35%	3%
Bought		18%	33%
Inherit/Given		27%	44%
Efforts of DAR/DENR or NGO/Farmers Group		20%	20%
	Total	100%	100%
	Count	114	86

25. Table 4 is confined to respondents from barangays with legal empowerment activities, grouping them according to how involved they are in those activities. Ordinary residents are most numerous, followed by those who have had legal empowerment training. The third group comprises those who are trained to serve as paralegals. The results indicate that the method of acquiring the land is broadly similar for all three groups, and that ordinary residents are as likely to have obtained their land through agrarian reform as those with more exposure to legal empowerment activities. Table 4 also illustrates the theory behind community-based paralegals, who can act for other members of the community.

Table 4: Land Acquired Through Exposure to Legal Empowerment, in Areas With Legal Empowerment

HOW LAND ACQUIRED		Ordinary Residents	Legal empowerment Training	Paralegals
Agrarian Reform		32%	43%	33%
Bought		20%	-	25%
Inherit/Given		29%	21%	33%
Efforts of DAR/DENR or NGO/Farmers Group		19%	36%	8%
	Total	<i>100%</i>	<i>100%</i>	<i>99%</i>
	Count	90	14	12

26. In general, the survey results showed higher productivity in areas with legal empowerment, along with higher income, more disposable income, and farm investment. The level of savings was approximately the same in either case. Survey data on income in a general-purpose questionnaire (as opposed to specialized family income and expenditure survey) may not be of a very high quality. Thus, a proxy indicator of household welfare—housing quality—is presented in Table 5. Rural residents prefer galvanized iron roofs for their houses. This is often the first investment a rural household makes when it acquires some surplus savings. This data indicates “harder” evidence of higher welfare in barangays with legal empowerment activities, even though they are agriculturally and geographically similar to barangays without legal empowerment activities.

Table 5: Quality of Housing

ROOF		With Legal Empowerment	No Legal Empowerment
Galvanized Iron	%	88.7%	76.6%
Grass	%	11.3%	23.4%
<i>Total</i>	%	<i>100.0%</i>	<i>100.0%</i>
	Count	212	188

VII. Focus Group Discussions

27. The final data gathering technique involved focus group discussions in the four barangays where surveys were undertaken. These discussions were held several months after the original survey fieldwork. Roughly 20 persons in each barangay were included in the discussion groups. An illustrative agrarian dispute case was presented and participants were asked to analyze and recommend responses to the case, with no help from facilitators. Researchers documented the responses of the participants, as well as their behavior, in order to evaluate the level of understanding of the issues posed in the case, the skills of participants at arriving at proposed solutions, and general level of knowledge. The responses in the two barangays with legal empowerment activities were then compared with those in the two barangays without legal empowerment.

28. In both sets of barangays, participants were attentive to the case problem, and receptive to the exercise in which they were invited to engage. Participants in both the program and control barangays were able to associate the problems, issues, and concerns in the case presentations with their own experiences. Both groups expressed a need to organize to counteract land rights violations. The groups both expressed an understanding of the local power relations that place poor residents at a disadvantage. The groups differed, however, in their knowledge of the nature of the rights violation presented in the illustrative case, the remedial steps that might be taken, and level of confidence in the proposed solutions.

29. Participants from barangays that had legal empowerment activities were very specific in identifying the violations committed in the case, citing relevant laws. Those from the control barangays, on the other hand, were more likely to attribute the violations to misunderstandings between parties. They were also more likely to express concern about the impact that pursuing a legal rights remedy might have on community relations

30. As evidence of their problem-solving skills, participants from communities with legal empowerment activities were able to articulate the necessary steps to be followed to resolve the issue. In the areas without legal empowerment, participants tended to rely on outside assistance rather than seek independent solutions to the problem. They frequently suggested that assistance be requested from government agencies identified on a list provided to them, with little grasp of what specific help those agencies could provide. In contrast, participants from areas with legal empowerment showed a high degree of knowledge of applicable laws, as well as the specific government agencies that could best respond to the situation.

VII. Summary

31. This research study applied the principle of “triangulation,” through which the same question is approached through a combination of different methods. The same conclusion was reached in assessing the qualitative opinions of agrarian reform officials, quantitative results from a sample survey, and observations of focus group discussions: legal empowerment has a positive impact on agrarian reform activity, and contributes to the welfare of residents in areas with legal empowerment programs. The findings support the proposition that legal empowerment helps to reduce poverty, increase citizen welfare, and enhance citizen participation in governance.

APPENDIX 2: THE IMPACT OF LEGAL EMPOWERMENT ON SELECTED ASPECTS OF KNOWLEDGE, POVERTY, AND GOVERNANCE IN BANGLADESH: A STUDY OF THREE NGOS

I. Introduction

1. This paper presents the results of survey research conducted in Bangladesh during the period November 2000 through January 2001, as a supplement to the seven-country Legal Empowerment Study undertaken under Asian Development Bank Regional Technical Assistance 5856. The research examined the impact of *legal empowerment*, which is the use of law to increase disadvantaged populations' control over their lives, on selected aspects of sample groups' legal knowledge, economic well being, gender equity, and participation in local governance.

2. Legal empowerment differs from the more general notion of empowerment in that it involves the explicit or implicit use of the law (for example, through training, counseling, or litigation) or relates to public decision-making processes that have a specific legal dimension (for example, equipping citizens or communities with the skills and confidence to appear before an administrative tribunal or to inform local policy development). It frequently combines such activities with initiatives that are not inherently law-oriented, such as community organizing or livelihood development. While they typically include education, most advanced legal empowerment initiatives aim to do more than simply teach people about law. They provide the disadvantaged with opportunities to apply their knowledge through actions that are intended to advance their legal rights, improve their quality of life, or increase their participation in public decision making.

3. The survey involved a controlled comparison of three different approaches to legal empowerment to determine differences in impact on beneficiary populations, as well as demographically similar control samples. The three nongovernmental organizations (NGOs) selected for the survey were: (i) the Madaripur Legal Aid Association (MLAA), which specializes in educating citizens about the law and providing a variety of legal services, notably mediation; (ii) Samata, which concentrates on mobilizing communities to apply the law through mass-based advocacy initiatives; and (iii) Banchte Shekha, which provides mediation and other legal services as part of an integrated development strategy for women.

II. Methodology

4. The study was designed as a controlled comparison among four groups: three intervention (NGO beneficiary) populations that have been exposed to the legal empowerment strategies of the subject NGOs, together with a control population comprising persons who reside in or near the areas in which the three NGOs operate, but who themselves are not beneficiaries of the NGOs' services. In addition, some comparisons were drawn between intervention and control populations associated with a specific NGO.

5. The "intervention" sample was made up of equal numbers of male and female respondents from the operating area of the three NGOs surveyed: Banchte Shekha, Madaripur Legal Aid Association, and Samata. From a list of direct legal empowerment program beneficiaries provided by each NGO, 150 individuals were randomly selected for a total intervention population of 450.

6. The control population is made up of 150 individuals (50 per intervention area) selected randomly from villages in two unions in the thana neighboring each of the NGO intervention areas. Equal numbers of men and women were selected from each village using the *kish* method. This well-established sampling methodology utilizes a preset criteria for systematically selecting interview/research subjects in a research site, so as to ensure that the full diversity of the population is represented in the sample. The control population was selected in such a way as to be representative of the total populations of the three geographical areas where the subject legal empowerment activities are conducted, but with no direct exposure to such programs. The three intervention samples, by virtue of constituting beneficiaries of and/or targeted participants in NGO services, represent the lower economic strata of the communities.

7. Any differences between the intervention samples will suggest differential impact of the various legal empowerment program strategies followed by the three NGOs. Differences between any of the intervention samples compared to the control population will in turn reveal the effect that legal empowerment activities are having on the poor, in comparison to characteristics found among the general populations of the three regions.

8. The control population necessarily has a slight socioeconomic advantage compared to the intervention populations, given the inclusion of all strata of the population, including the poor. For example, the control population has slightly higher levels of education (six percent have achieved higher secondary education or a higher degree, compared to only 2.5 percent among the intervention population; only 55.3 percent of the control group are illiterate, compared to 60.2 percent in the intervention population). Furthermore, the control sample has more landed individuals (73.3 percent) compared to only 43.8 percent in the intervention population, while their land holdings are two to three times larger and more productive. In addition, median monthly individual income levels of the control group are up to two times greater than those of the intervention sample.

III. Profiles of the Three NGOs

a. Banchte Shekha:

9. Banchte Shekha is a women's development organization based in Jessore district. Established in 1982, it pursues an integrated development approach in which legal education, counseling, and dispute resolution services constitute an integral part of a broader community development strategy that includes health education, non-formal education, income generation, voter education, and credit. Banchte Shekha works in 10 predominantly rural areas of Jessore and Khulna districts. In 1999, it served a direct beneficiary population of 25,000 women, while another 200,000 women indirectly benefited from voter education and other activities. Banchte Shekha has achieved a favorable reputation in the Bangladesh development community for mobilizing women, strengthening their status within the family and community, and raising their confidence and capacity. As part of its operating strategy, it collaborates with other NGOs and with local government officials, the police, and other public authorities; however, much of its work deals with communities independently of state agencies.

10. Banchte Shekha's principal mode of engaging direct beneficiaries is through the formation of community-level women's groups. The groups, which average approximately 25 to 30 members, provide an opportunity for women to leave the traditional confines of the household and meet and interact in a secure environment. Group members elect a leader and a treasurer, the latter managing the modest savings that the women deposit to a joint account. Members can take loans from the group savings for emergency, personal, or business reasons.

The group serves as the forum for most of Banchte Shekha's education programs, including informal legal education.

11. The legal program includes a combination of education, counselling, alternative dispute resolution (ADR, which it provides through a modified version of the traditional *shalish* dispute resolution forum), and—where there is no other recourse but to go to court—formal litigation. Unlike conventional *shalish* as practiced in most Bangladeshi communities, in which men dominate the committee of local elders who preside over the dispute, women play a central role in Banchte Shekha *shalish* committees. At least seven members of each 11-person village mediation committee are women. In addition, women constitute the majority of beneficiaries of the mediation program. In the typical scenario, a woman whom Banchte Shekha first assists in settling a legal problem concerning domestic violence, maintenance, or violation of inheritance rights subsequently joins the organization as a beneficiary of other support services that help her to establish an independent existence. The legal services program is facilitated by volunteer women paralegals (many of whom are former beneficiaries of Banchte Shekha legal services), who advise women beneficiaries and convene the *shalish*.

b. Madaripur Legal Aid Association (MLAA)

12. MLAA is an NGO that specializes in community legal service delivery. It is well known throughout Bangladesh as a pioneer and innovator in mediation, legal aid, and paralegal development. MLAA is particularly well known for the development of a model ADR program that is designed to make *shalish* procedures more transparent and the decisions reached by *shalish* committees fairer. Target beneficiary groups include both affluent and disadvantaged men and women.

13. Since its establishment in 1978, MLAA has helped citizens of Madaripur district and neighboring Shariatpur and Gopalganj districts to settle disputes in an equitable manner through a modified *shalish* system. Its activities include: organizing local mediation committees consisting of the Chairman and members of the Union Parishad (UP, the lowest local government unit), teachers of regular and *madrassa* (religious) schools, and local elites; conducting training programs and workshops that aim to influence the knowledge and attitudes of influential community members who voluntarily serve on the committees; and organizing mediation sessions in which committee members actively participate in resolving local disputes. These interventions have so far ensured that vulnerable individuals in rural areas have an increased chance of receiving a fair hearing. Most of the cases handled by MLAA are settled in a efficient and cost effective manner. In order to replicate facilitated mediation services throughout the country, MLAA also provides other NGOs and CSO with training and advice in its proven methodology, known as the MLAA model. In its technical resource capacity, MLAA interacts with approximately 200 implementing NGOs.

c. Samata

14. Established in Pabna District in 1976, Samata is a community development organization whose integrated development work with the rural poor includes, *inter alia*, non-formal primary education and human development training, employment creation, disaster preparedness, and legal services. Samata enhances the capacity of community leaders through leadership training and civic and human rights education. It also provides modest legal aid and mediation services in some working areas, and helps members to acquire government agricultural extension services and subsidized fertilizer and insecticides. Samata's programs have a strong gender focus, with female-headed households receiving special preference in land distribution

programs and joint ownership of land by both husbands and wives. Most of Samata's beneficiary groups were formed by women. Members receive literacy training, legal rights education, and training in homestead gardening, nursery, fisheries and livestock raising, as well as collateral-free loans. Samata's beneficiary population includes male and female wage earners, the unemployed, day laborers, marginal farmers, and fishermen. It presently works in 63 Unions in Pabna, Sirajgonj, and Rajbari districts.

15. Land rights advocacy is a primary focus of Samata's legal assistance program. It has achieved great success in this field. Its law program includes assistance in the recovery and sustainable management of *khas* land, which is legally managed by local government authorities and available to citizens for productive or community use. Such land is frequently subject to aggressive seizure by local elites and land grabbers. Samata has created strong pressure for the proper implementation of land laws through the formation of 2,613 organized groups. To date, it has recovered and distributed almost 3,400 acres of land. More than 8,300 landless people have benefited from the land distribution program. In addition, Samata has leased 80 acres of khas water bodies among five organized fishing groups. It has formed a network of 51 local NGOs (the Land Network for Development or LAND) and trained smaller NGOs in different parts of the country. LAND has identified 93,640 acres of khas land and 20,682 acres of khas water bodies in its work area. Samata works with a number of public agencies, including the Ministry of Land, land registration and record offices, thana Khas Land Distribution Committees, the district commissioner, police, judges, and lawyers.

IV. Findings

a. General

16. Regardless of the particular legal empowerment strategy employed by the three NGOs surveyed, all are helping to improve the quality of life of the poor. To varying degrees, each organization is off-setting gender inequities by equipping women with critical knowledge, access to services, and avenues to advance their interests and to obtain justice when their legal rights are violated. In addition, the NGOs are helping: (i) to improve community recognition of the role and status of women and the importance of citizen-government engagement; (ii) to increase the confidence of the poor generally, and women in particular, regarding their capacity to effect change; and (iii) to mobilize local communities to articulate their interests and to successfully apply the law and advocacy techniques, to lessen the exploitation and marginalization of the poor.

17. The survey results demonstrate that, compared to the control population, all intervention populations have benefited from knowledge and application of the law, and that their socioeconomic vulnerability has been reduced. All of the intervention samples scored higher in four critical areas: general knowledge of law; engagement and confidence in citizen advocacy; positive perceptions of gender equity and the role of women in governance; and confidence in the value of law and good governance. The most sizable gains in these areas were achieved where legal empowerment activities were conducted as part of an integrated development approach that combines legal and socioeconomic development activities; where high levels of women's leadership were sustained through the program period; and where women's direct participation was facilitated by and through community advocacy efforts. Furthermore, of all the highest-ranking populations (that is, those in which the NGOs showed high results compared to the controls), women experienced the greatest benefits of such an approach across the board.

18. Where the strategy focused on mobilizing community advocacy initiatives and engaged public officials, those surveyed expressed greater confidence in governance and public services. They also are more likely to view advocacy for land rights as a positive action. The survey results further suggest that success in securing legally-mandated control of common lands by, or for the benefit of, the poor is facilitated by regular citizen-government engagement.

19. Where focused legal education and training is supplemented by mediation and other specialized legal services, confidence in knowledge of the law and the perceived benefits that flow from that knowledge is highest. Identification of NGOs as a source of help in securing access to justice is also highest amongst participants of programs that follow this very focused approach.

20. While concern for law and order is among the top concerns for survey respondents (employment and secure livelihood ranks highest), many of the formal legal institutions are inaccessible to the poor or fail to protect the interests of the disadvantaged. For the poor, and for women in particular, knowledge of rights, informal legal services, and community advocacy play a key role in helping to advance their interests. This helps to ensure access to justice despite the current inadequacies of formal dispute resolution and administrative decision-making mechanisms, as well as helping to enhance the quality of local governance.

b. Specific Findings

21. Beyond the general findings noted above, the research results indicate that the legal empowerment efforts of the three NGOs surveyed have an impact on knowledge, poverty and the empowerment of the poor, and on the quality of governance. These specific findings are discussed in the following sections.

c. Impact on Knowledge

22. A key finding of the survey research is that NGO-assisted populations tend to understand the law better than their control counterparts. The NGO populations as a whole demonstrated a better grasp than the control groups in each of a series of ten questions (some described below) that tested knowledge of family, inheritance, and land law.

23. This pattern assumes greater significance when disaggregated by NGO. For the two organizations that place particular emphasis on educating their members/beneficiaries and that follow a more integrated approach to legal empowerment—Samata and Banchte Shekha—there are more instances of noteworthy differences between their members/beneficiary populations and control groups than for MLAA. For example, only two percent of the Banchte Shekha population mistakenly believe that it is legal for a traditional religious body to find a woman guilty of adultery and to order her stoned and beaten in public (*fatwah*), as opposed to 18 percent of the control group. Similarly, more than 83 percent of the Samata population knows that a widow is entitled to inherit part of her husband's land, versus 58 percent for the control.

24. Banchte Shekha's member/beneficiaries registered at least 10 percent more correct answers than the control population for five of the knowledge-oriented questions. The gap was as high as 44 percent (68 percent versus 24 percent) where the respondents indicated that they know the correct judicial venue (family court) to which a woman should go if pressured,

threatened, or physically abused by her husband and his family in demanding increased *dowry*.¹ Samata's sample population reflects significant differences, ranging from 13.3 percent to 41.3 percent in four questions. MLAA beneficiaries reveal greater legal knowledge than the control population in two instances, by margins of 15.3 percent and 10 percent. As might be expected, female Banchte Shekha members exhibit far better knowledge than the female samples associated with the other NGO or control groups regarding three questions pertaining to women's legal status.

25. The survey responses accordingly suggest that Banchte Shekha and Samata member/beneficiary populations tend to learn more about the law, relative to their control groups, than those of MLAA. Banchte Shekha is especially successful in educating women about their rights. This may reflect a number of factors, including the integrated approach through which legal education and support services form part of a broader development strategy, and the emphasis placed on gender and women's empowerment. MLAA, in contrast, focuses more on providing mediation and litigation services. A second explanation may be that the MLAA population is significantly less educated than its control group, with a gap larger than Samata's and reversed in the case of Banchte Shekha (whose members demonstrate greater levels of literacy than its control population). For example, 67 percent of MLAA's beneficiaries are illiterate or can only sign their names, compared with 46 percent for the corresponding control respondents.

26. MLAA is conversely distinguished by providing a widely utilized service to which villagers can turn for legal assistance. Sixty-seven percent of MLAA respondents identified an NGO worker as the source to which a young woman can go for "good legal advice or assistance" if she is "not sure about her legal rights regarding marriage, *dowry*, abuse, divorce, inheritance" or other legal issues. This is by far the highest rate for any of the several choices of assistance from which respondents were invited to choose. This contrasts with the 22.7 percent for Banchte Shekha (which is still significant) and 1.3 percent for Samata. In addition, the MLAA control group is the only one that identified an NGO as a source of legal assistance, with a 14 percent response. This may indicate that even persons otherwise unattached to MLAA are aware of its services. To the crucial extent that legal knowledge is not just a function of knowing the law, but of knowing where to go to seek redress, such awareness is noteworthy.

27. It should not automatically be assumed that all MLAA respondents, whether beneficiaries or control group members, necessarily had this particular NGO in mind as their source of "good legal advice or assistance." But MLAA clearly is the leading provider of such services in its district. Furthermore, certain development-oriented NGOs in the area have learned about the law through MLAA training, which in turn makes MLAA at least indirectly responsible for community members being able to seek help from those other NGOs.

28. The survey research further suggests that, absent other factors or circumstances, knowledge does not necessarily translate into action. Five of the six NGO and control groups indicated a good grasp of the fact that *dowry* is illegal (over 90 percent, with the significant exception of 76 percent for the Samata control population). Yet roughly half of both the total NGO intervention and control populations indicated that *dowry* is nevertheless paid in connection with the marriage of female members of the target communities.

¹ 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 may also be accompanied by threats of or actual violence against the wife.

d. Impact on Poverty and Empowerment

29. Though most development institutions have come to regard poverty in terms broader than material circumstances alone, such circumstances still merit consideration in reviewing the impact of legal empowerment work. A comprehensive review of the effect of such work on income would require a “before-and-after” longitudinal study and/or a more extensive survey methodology involving proxy indicators of economic status. While both these approaches were beyond the modest budget of this survey research, significant differences in material circumstances can still be discerned.

30. One such difference concerns access to *khas* lands. The NGO populations as a whole (by a margin of 17.8 versus 6 percent for the control groups), and Samata in particular (28 percent versus 10 percent), report that the poor have use of these lands as specified by law. The comparison must be drawn carefully, however, since the NGO sample also reports greater use by elite populations than the controls do. Statistically, this can be explained by the fact that much higher percentages of the control populations do not report any *khas* lands at all in their communities, so their percentages of both poor and wealthy use of such lands are much lower. The results also demonstrate the value of effective advocacy.

31. Similarly, there is tentative evidence of NGO engagement meeting with some success in making such lands available to the poor. While a rather low 19.3 percent of the NGO-assisted populations consider pro-poor mobilization for *khas* lands successful, this substantially exceeds the mere 5.3 percent of the control population who characterized such efforts as successful. The more dramatic difference is specific to Samata, for which this issue is a primary focus of activity. Thirty-six percent of Samata respondents perceive success, in contrast with 0 percent for its control. These advocacy efforts may translate into substantial benefits for the poor, while at the same time underlining the challenge of the struggle for land tenure.

32. The impact of legal empowerment on the status and material circumstances of women is demonstrated by its effectiveness in restraining the widespread, illegal practice of *dowry*. As might be assumed, this is most evident for Banchte Shekha. More than twice as great a percentage of its members (84.7 percent) as its control group (40 percent) state that the families of young women of their villages are not obliged to provide *dowry* when a daughter marries. Furthermore, only 9.4 percent of its members report that the family would have to pay 10,000 taka (approximately \$200) or more, as opposed to 48 percent for the control group.

33. Though not nearly as dramatic, the Samata responses also suggest impact on the *dowry* problem. Thirty percent of its members report that no *dowry* would be necessary, in contrast with 20 percent of the control. Of perhaps greater statistical significance, 53.3 percent of Samata members report paying 10,000 taka, versus 74 percent in the control group. The control groups for Banchte Shekha and Samata, however, include wealthier households that would be expected to make higher *dowry* payments.

34. The figures for Banchte Shekha and Samata starkly differ from those for MLAA, where 36.7 percent of the beneficiaries and 86 percent of the control report no *dowry* payment. The differences among the three may in part reflect the fact that Banchte Shekha explicitly and exclusively focuses on empowering women and Samata partly does so, whereas MLAA does so only implicitly through its dispute resolution and litigation services.

35. Empowerment, like poverty, is not simply a function of material circumstances; it also depends on participation by the poor in decisions that shape their lives. There is evidence that

the integrated legal/developmental strategies of Banchte Shekha and Samata have a positive impact. For example, they seem to have a favorable impact on community attitudes regarding a woman's right to seek legal redress. Compared with the control groups, significantly higher percentages of members of both organizations report that a young woman is "taking action to solve a legal problem" when she seeks advice or assistance in applying the law (87.3 percent for Banchte Shekha, as opposed to 68 percent for its control; 77.3 percent for Samata as opposed to 64 percent for its control). Similarly, only 4.7 percent and 10.7 percent of the Banchte Shekha and Samata populations, respectively, consider that such action is likely to create more problems, as opposed to 16 percent and 32 percent for their respective control groups. Beyond the positive attitudes concerning women's participation and equity that they suggest, these results may also suggest a confidence in the ability of the law to resolve legal problems among those served by the NGOs. This contrasts with the apparent sense among members of the control population that legal action is likely to create more problems.

36. Citizen involvement in joint actions (such as group saving, community development, establishing schools) is another manifestation of an important type of participation—particularly for poor or otherwise disadvantaged persons who typically are powerless when acting alone. Nearly twice as high a percentage of Banchte Shekha respondents (31.3 percent versus 16 percent for its control group) and more than three times as high a rate of Samata respondents (35.3 rate versus 10 percent) reported group actions. The fact that both Banchte Shekha and Samata members have a greater history of mobilizing large numbers of individuals to advocate for social and governance reforms may be viewed as evidence of their participation in decisions affecting their lives.

37. Moreover, nearly all of the Banchte Shekha and Samata populations who engage in participatory actions also report complete or partial success. Substantial portions of their respective memberships are not only participating in efforts to advance their interests, but are meeting with success in ways that improve their material circumstances and/or control over their lives. Whether such enhanced participation and empowerment involve legal empowerment is unclear. At the very least, it can be said that the impact flows in part from an integrated development strategy that includes important rights-oriented elements.

38. Similarly, the survey strongly suggests a decreasing reliance on traditional elites and patrons, which may also be regarded as poverty-alleviating and/or empowering. Just 31 percent of the NGO population suggested that a young woman should turn to elites or patrons for help, in contrast with 65.3 percent for the combined control groups. Similarly, only 25.1 percent of the NGO population would turn to elites in the first instance if personally facing "legal or social injustice," in contrast with 57.3 percent of the control population. The gap is even greater for NGO and control women (21.3 percent versus 60 percent) and for women associated with MLAA (only 10.7 percent, in contrast with 36 percent of MLAA-affiliated men). Consistently, the NGO populations express far less confidence in local leaders than do the control groups, with only 19.1 percent of the former considering the village chief "a good and fair person," versus 43.3 percent for the latter.

39. This is not to say that such dependence on elites is necessarily counterproductive or poverty-perpetuating. Yet the more participatory and equitable interaction that beneficiaries enjoy through their engagement with NGOs may play a role in helping to reduce poverty. At a minimum, turning to NGOs is more likely to advance the specific interests of the poor. In contrast, relying on a patron for legal advice or assistance can exacerbate dependence or reinforce the *status quo*.

40. In providing alternative outlets for dispute resolution and redress, MLAA and Banchte Shekha seem to be contributing to this decreasing reliance on elites among their member/beneficiary populations. As already noted, their beneficiaries/members consider NGOs to be important sources of legal advice and assistance for young women in need of help (62.7 percent for MLAA, as opposed to 14 percent for its control group; 22.7 percent for Banchte Shekha, as opposed to 0 percent for its control). By a 32 percent to 13.3 percent margin, women affiliated with Banchte Shekha express a far stronger preference for NGO assistance for females than men do.

41. Similarly, if personally facing “legal or social injustice,” 24.4 percent of the NGO population as a whole would first seek NGO assistance, versus 0.7 percent of the control population. As expected, given its particular focus on dispute, MLAA stands out in this regard. Fifty-one percent of its beneficiary population selected NGO assistance as a first choice, versus only two percent for its control group. Though not as great, the difference for Banchte Shekha is also significant: 16 percent versus 0 percent.

42. It is important to note that MLAA is not an absolute alternative to local elites, in the sense that to some extent it involves them in its operations as mediators. While some disputes are handled by MLAA’s staff or lawyers without resort to mediation, in the many instances where mediation is necessary MLAA engages those who might generally be regarded as the less conservative members of local elites. Thus, MLAA respondents who select NGO workers as the persons whom they would approach in the first instance may well end up before panels composed of the wealthier and better educated members of the community. At the same time, MLAA seems to be gradually modifying the nature of these panels, both by introducing women (who rarely participate in traditional village mediation) and by pressing for greater reliance on law, rather than traditional biases, in resolving disputes.

43. Banchte Shekha also makes use of local elites in its mediations. But the dynamic is different from that of MLAA, in that it more explicitly presses for an equal role for women. Of even greater importance, it grounds its mediations on a developmental base of income generation, education, consciousness-raising, and overall empowerment, which in turn substantially affect the underlying dynamic of the mediations that it organizes.

44. Although Banchte Shekha and MLAA replace elites in certain respects and rely on them in others, their respective approaches to dispute resolution differ. MLAA’s mediation work reaches a far broader population than Banchte Shekha’s, while the latter more fully transforms the dynamic of dispute resolution in fundamental ways. As a result, the women served by Banchte Shekha enter the mediation on more equal footing with men, and with considerably less subservience to participating elites. Of additional importance, most of the respondents who have participated in mediation (whether NGO or control populations) report complete or partial success.

45. Evidence of at least a sense of empowerment can be inferred from respondents’ self-assessments regarding knowledge of the law. Thirty-eight percent of the NGO populations consider their knowledge good or excellent, as opposed to 20 percent of the control groups, with the NGO-affiliated women registering significantly higher percentages than the men (47.1 percent versus 29.3 percent). This also can be seen as evidence of superior knowledge achieved through the focused and sustained attention devoted to women’s legal awareness. Women’s higher self-assessment is also an indication of growing levels of empowerment and confidence relative to men. Given women’s generally subordinate role in society, this is a very

important trend. Similarly, a much higher percentage of the NGO populations (21.3 percent) attribute their knowledge to NGOs, versus 2.7 percent for the control groups.

46. Further evidence flows from the significantly higher rates of Banchte Shekha and Samata populations who report that they have benefited from knowledge of the law. Fifty-one percent of the Banchte Shekha respondents indicate that they have benefited, as opposed to 14 percent for the control population. The rates for Samata are 33.3 percent and 16 percent, respectively.

47. While women's higher self-assessment ratings regarding knowledge of the law may reflect greater self-confidence and a sense of empowerment, a higher percentage of NGO-affiliated men report benefiting from such knowledge (58.2 percent, as opposed to 32.4 percent). Nonetheless, NGO-affiliated women do benefit at a higher reported rate than control group women, by 32.4 percent to 20 percent.

48. It is highly plausible that economic empowerment helps pave the way for legal empowerment. For example, an impoverished woman may be financially unable to challenge an abusive husband or an exploitative landlord, even if she understands her legal rights and has access to supportive legal services. Accordingly, it is noteworthy that a significantly higher percentage of the NGO populations report having "cash savings for emergencies for the future" (40.7 percent for the three groups combined, compared with 24 percent for the control populations). The gap is even more significant for women associated with the NGOs: 48.9 percent, versus 25.3 percent for the control group females. In response to a related question, more than double the percentage of NGO-affiliated women versus women members of the control group (44.4 percent to 21.3 percent) viewed savings as a key strategy for improving their personal well-being and that of their household. In contrast, the difference for men (25.8 percent versus 28 percent) is negligible.

49. The greatest NGO-specific difference regarding emergency savings occurs in the case of Samata, where 52 percent have such savings, as opposed to 22 percent for the control population. Thus, the organization that has the strongest activist orientation demonstrates the greatest gap between beneficiary and control savings prevalence.

50. The significance of savings is further illuminated by respondents' identification of the main obstacles to improving their lives and fulfilling their hopes. Both the NGO and control groups report "inadequate funds" as by far the largest problem (74 percent and 79.3 percent respectively). "Insufficient land" and "insufficient employment opportunities" also figured prominently in responses.

51. The preceding responses do not necessarily convey all of greatest obstacles facing the sample populations. For example, people may be too embarrassed to report "family conflict" to an interviewer. "Inadequate funds" may result from injustices that respondents do not categorize as such. Furthermore, while a problem such as violence against women is an assault on women's rights, dignity, and physical security, it also should be seen as an action that undercuts their economic independence and prospects in a variety of ways.

52. A broader conclusion to be drawn from the identification of obstacles is that many types of legal empowerment work need to address economic empowerment if they are to respond to the priorities of the disadvantaged. As important as it is to simply educate people about their rights, it is even more important to respect their identification of their greatest needs, and to structure rights-oriented work so that it responds to their need for financial resources,

employment, and land. Thus, while it is appropriate to emphasize a rights-oriented approach to development, it may be even more useful to pursue a development-oriented strategy for strengthening rights. This can translate into legal empowerment strategies that prioritize social and economic rights without abandoning civil and political rights.

e. Impact on Governance

53. The survey indicates that NGO populations seem to be consistently more satisfied with public services and the performance of public officials than the control groups. There is a clear pattern of positive responses across the three NGOs and through the diversity of questions posed. A higher percentage of the NGO populations than the control groups rated public services and officials as “excellent” or “good.” This includes primary education (70.6 percent for the NGO groups versus 46.7 percent for the controls), health clinic/hospital (38.5 percent versus 12.7 percent), and law and order (43.3 percent versus 24 percent). Even where the differences are less significant (as with the Thana Development Committee, which is convened by the District Commission to better coordinate government and NGO activities at the thana level, and with Members of Parliament), the NGO populations still express greater satisfaction than the controls regarding almost all of the fifteen categories surveyed. In response to a similar additional question, 23.4 percent of the NGO populations rated the performance of the Union Parishad in the last year as “excellent” or “good,” in contrast with 12 percent of the control groups.

54. This greater level of satisfaction should not be taken as absolute approval of government services. With respect to several categories, the single greatest response for both the NGO and control groups is “not at all good” or “don’t know.” In other instances, the combination of “moderately good” and “not at all good”—or even just “not at all good”—surpasses “good” and “excellent” combined. Still, the consistent pattern of greater satisfaction among NGO beneficiaries is clear.

55. The reason for this pattern is far less clear. It would be tempting to associate the higher ratings with the facilitation of public service delivery by NGOs. This could include educating partner populations about available services, or helping them to obtain access to those services. Yet the pattern includes MLAA, which appears to be much less actively involved in such activities (with the exception of what some respondents consider “law and order”) than are the other two NGOs. In addition, the higher ratings extend to public services such as electricity and road maintenance, in which none of the three NGOs are involved.

56. Contrary to some popular assumptions, these survey results do seem to suggest that activist NGOs do not necessarily fuel dissatisfaction with government. In fact, for certain categories the members of Samata—arguably the most activist of the three organizations surveyed—are linked to the greatest degree of relative satisfaction compared to the control group.

57. The survey probed attitudes toward women’s participation in governance through two questions: one requesting respondents to rate the performance of recently elected members of the Union Parishad; the other more generally asking whether “women’s involvement as elected officials makes government/public services better or worse.”² The integrated development

² In the last local government election, women were, for the first time, directly elected to three reserved seats, totaling nearly 13,000 newly-elected women officials. These reserved seats represent three times the constituencies of the general seats, which few women currently fill.

approach of Banchte Shekha and Samata appear to bring benefits in both regards, particularly the latter. By respective margins of 83.3 percent to 60 percent, and 56.7 percent to 24 percent, the respective memberships are more favorably inclined to such participation than are their control groups. In contrast, the beneficiary population of MLAA, which focuses less directly and intensively on attitudinal change, lags behind its control population by 53.3 percent to 72 percent.

58. Another pair of questions explores participation in governance, with moderate but noteworthy differentials between the NGO and control populations. Forty-two percent of Banchte Shekha respondents report that government officials “always” or “sometimes” discuss respondents’ concerns with them, versus 30 percent for the control. Similarly, 44.7 percent of those respondents report being able to individually influence Union Parishad members’ decisions, as opposed to 34 percent in the control. The gap is smaller for Samata, while for MLAA it is reversed.

59. These results correlate with the degree to which respondents believe their UP members indulge in corruption. Only 18.7 percent of the Banchte Shekha respondents hold this view, versus 32 percent for the control. Once again, the gap is smaller for Samata, and reversed for MLAA. A possible conclusion to draw from this correlation is that the role played by NGOs in facilitating community engagement with public officials contributes to improvements in their actual or perceived accountability.

60. Considered in isolation, these results do not make a definite case for NGO-attributable impact on governance, as the differentials are not large enough. Taken together with other responses considered here, however, they form a positive pattern of impact involving organizations that pursue an integrated development strategy that includes legal empowerment activities to promote participation, responsiveness, and perhaps even accountability in government.

61. This conclusion assumes particular significance in light of the respondents’ replies to a question asking, “What are the top three sources you can rely on to best represent your interests and make your life better?” Consistently across the three NGOs, and by a margin of 34.9 percent versus 4.7 percent for the combined control groups, NGO respondents selected NGO workers or activities, including mediation). The largest NGO-specific margin attached to MLAA (45.3 percent versus 6 percent). This suggests that MLAA’s mediation and related legal services are highly appreciated by beneficiaries.

62. Reliance on NGOs inversely relates to decreasing dependence on local elected officials, such as UP members. Consistently across the three NGOs, and by a margin of 25.3 percent versus 43.3 percent for the control groups, NGO respondents selected those local officials.

63. An interesting facet of these results is that, with the exception of greater male reliance on NGOs in the case of Samata, the NGO respondents indicate that women are more inclined than men to seek NGO assistance. That is, while the men associated with the other two NGOs still prefer NGOs to local officials, the emphasis placed on NGO support services is much greater for women. This pattern may reflect the fact that most public officials are men, and that they may have substantial gender biases, in which case women may be less likely to regard them as sources of assistance where other options exist. The Samata exception may be attributable to the fact that Banchte Shekha specifically serves women and MLAA legal services place particular emphasis on women’s legal rights issues, whereas Samata values gender equity but does not make it the main thrust of its operations.

64. One facet of governance concerns which formal mechanisms a citizen turns to in seeking redress. MLAA stands out in this regard, with a far lower percentage of its beneficiaries (3.3 percent) reporting a preference for court litigation, in contrast with its control population (16 percent) and members of the other two NGOs (both 23.3 percent).

V. Conclusions

65. The Bangladesh survey indicates greater knowledge of the law on the part of the intervention populations, which can potentially contribute to greater public participation and other empowerment goals. It similarly suggests positive impact on aspects of gender equity, poverty, and governance. These include reductions in the prevalence of *dowry*, receptivity to women in public office, improvements in the material circumstances of member/beneficiaries, and greater responsiveness on the part of local public officials.

66. Though the nature and impact of the three NGOs' legal empowerment work vary among them and from issue to issue, it seems clear that they have an impact on some of the problems affecting their respective communities. This in turn suggests that donors, governments, and other concerned institutions should explore legal empowerment as a tool for advancing justice and socioeconomic development.

TABLE I: KNOWLEDGE OF LAW

TOPIC	RANK*			
	1	2	3	4
Girls Age at Marriage	Banchte Shekha	Control	Samata	MLAA
Boys Age at Marriage	Banchte Shekha	Samata	Control	MLAA
Dowry	Banchte Shekha	MLAA	Samata	Control
Dower	Samata	Banchte Shekha	Control	MLAA
Consent of Girl Required	Banchte Shekha	MLAA	Samata	MLAA
Court Action for Dowry Related Violence	Banchte Shekha	MLAA	Control	Samata
Talak (Verbal Divorce)	Banchte Shekha	MLAA	Samata/ Control	
Inheritance Rights of Women	Banchte Shekha	MLAA/ Samata		Control

SUM OF RANKS:
 Banchte Shekha = 9
 Samata = 21
 MLAA = 22
 Control = 26

TABLE II: PERCEPTIONS

TOPIC	RANK*			
	1	2	3	4
Women Who Use the Law are Problem Makers	Banchte Shekha	MLAA	Samata	Control
Female Participation Improves the Quality of Governance	Banchte Shekha	Samata	MLAA	Control
Male and Female's Have Equal Say	Samata	Banchte Shekha	Control	MLAA
Acceptable to Beat Wife?	Banchte Shekha	MLAA/Control		Samata
Aware That Fatwah (Religious Edicts) Are Illegal	Banchte Shekha	MLAA	Samata	Control
Knowledge of Land Rights Advocacy Organizations	Samata	MLAA	Banchte Shekha	Control
Land rights Advocacy Legal	Samata	Banchte Shekha/MLAA		Control

SUM OF RANKS:

Banchte
Shekha = 11
Samata = 15
MLAA = 17
Control = 25

TABLE III: EMPOWERMENT AND USE OF LAW THROUGH ADVOCACY

TOPIC	RANK*			
	1	2	3	4
Participation in Community Development.	Banchte Shekha	Samata	MLAA	Control
Involvement in Collective Action	Samata	Banchte Shekha	Control	MLAA
Benefit from Knowledge of Law	MLAA	Banchte Shekha	Samata	Control
Benefit from Community Development.	Samata	MLAA	Control	Banchte Shekha
Perception of Corruption in Union Parishad	Samata	Control	MLAA	Banchte Shekha
Success in Land Rights Actions	Samata	MLAA	Banchte Shekha	Control

SUM OF RANKS:

Samata = 5
Banchte
Shekha = 8
MLAA = 9
Control = 15

TABLE IV: POVERTY REDUCTION

TOPIC	RANK			
	1	2	3	4
Vulnerability	Samata	Banchte Shekha	MLAA	Control
Life improvements Over 5 Years	Banchte Shekha	Control	Samata	MLAA
Emergency Cash	Banchte Shekha	Samata	Control	MLAA

SUM OF RANKS:

Banchte
Shekha = 4
Samata = 6
Control = 9
MLAA = 11

*Note: Rank 1 – highest scores; Rank 2 - second highest scores; Rank 3 - third highest scores; Rank 4 - lowest scores. This refers to ranked knowledge, perceptions, empowerment and use of law through advocacy, and poverty reduction. Sum of ranks refers to the total score accumulated from the respective rankings for each variable. Low sum of ranks refers to greater knowledge of law; more positive perceptions regarding gender equity, violence against women, and advocacy initiatives; greater empowerment through participation in community development and governance and effective use of the law through advocacy; and improvements in quality of life including reductions in vulnerability and poverty.

APPENDIX 3: A PRACTICAL EVALUATION PROCESS¹

I. Introduction

1. This appendix sets forth a Practical Evaluation Process (PEP) for assessing the kinds of legal empowerment impact previously described in this report. It responds to the interest on the part of development organizations in quantitative indicators that can measure the results of legal empowerment. As an alternative to the indicator-driven approach that has proven to have a mix of strengths and weaknesses in the closely related field of democracy assistance, a different perspective and associated mechanisms are proposed for application by development organizations.

2. Although this is referred to as a Practical Evaluation Process, it pertains to monitoring project performance as well. The distinction is that monitoring is supposed to inform an organization as to whether it is achieving its desired results. In theory, monitoring does not explain why it may be achieving or falling short of its targets. To get at the "why's," development agencies can conduct evaluations. In the case of legal empowerment, however, the two processes converge to such a degree that both are addressed under the rubric of PEP.

3. As a starting point, what is the rationale for thinking in terms other than indicators? Some persons within and outside institutions that employ indicators for assessing democratic assistance have found the approach counterproductive. The reasons for this include the rigidity of the indicators approach; its reliance on numbers that may be ill-suited to programs; the failure to establish causal links between apparent progress and the impact of donor investments; and a variety of other factors.² For example, as Carothers concludes, "The indicator system not only fails as a method for assessing the effects of democracy aid programs, it introduces distortions into the aid itself."³ He goes on to assert that "the indicator system is extremely unpopular among USAID [United States Agency for International Development] officials, at least those working on democracy building."⁴

4. Indicators should not be totally dismissed as irrelevant to legal empowerment. Rather, they should be placed in a context where they may lend themselves to certain programs and to measuring certain kinds of progress where appropriate. Since use of indicators is not always appropriate, PEP reflects the view that they should not dominate evaluation of legal empowerment or related work.

5. Guided by the above considerations, this discussion of PEP addresses legal empowerment evaluation mechanisms, the incorporation of evaluation planning into program design, and evaluation reporting.

¹ Appendix 3 substantially draws on research and related work conducted by LES co-team leader and Overview Report co-author Stephen Golub under an Open Society Institute Project Fellowship. An expanded and modified version of the appendix will separately be published as a product of that fellowship.

² For a partial accounting of these drawbacks, see Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve*, (Washington: Carnegie Endowment for International Peace), 1999, p. 281-302.

³ Carothers, p. 294.

⁴ Carothers, p. 296.

II. Evaluation Mechanisms

6. This section describes a range of relatively basic mechanisms that the Asian Development Bank (ADB) and other international organizations may consider using in evaluating legal empowerment programs. The mechanisms pertain to the types of impact previously detailed in the legal empowerment report. While the menu is far from exhaustive, it does seek to capture some of the practical ways in which development institutions gather information. It further aims to demonstrate how some of these approaches can be employed informally in connection with legal empowerment evaluation.

7. The degree to which an institution uses any of these mechanisms must hinge on the resources available under a given program. Clearly, small-scale programs should not generate large-scale evaluations. Which mechanisms to use and which questions to ask also depend on the nature of the program.

8. Evaluation mechanisms serve to assess at least two levels of impact. The first is *program-specific* or *direct* impact on organizations and individuals directly funded, trained, or otherwise assisted by a given project. *Indirect impact*, in contrast, results from a ripple effect through which other groups and persons are in turn affected by those directly impacted. It also can apply to effects on broader populations, segments of a society, or the society as a whole—that is, as long as a contributory role can be established for the organization in question.

9. Certain evaluation mechanisms also can serve two other purposes. First, they can provide *general insights* about a society or issue, information that can help shape or guide a development agency's work even if it does not ultimately aid an evaluation. Second, certain tools can help an agency and its development partners assess the *technical competence* with which an activity has been carried out (for example, participants' impressions of the speakers, materials, and venue of a conference). This can be the case even if they do not reveal the impact of the activity (such as what participants learned at the conference, and what use they eventually made of that knowledge).

10. Evaluation mechanisms, and the information they provide, can be divided into two categories: *quantitative* and *qualitative*. Very basically, the quantitative mechanisms gather information that can be best expressed numerically, such as the number of people trained or the percentage of a population that understands certain rights.

11. Qualitative mechanisms, in contrast, gather data that is best expressed and recorded in a non-numerical manner, such as individuals' detailed opinions, experiences, or observations regarding programs, or their reports on how they subsequently made use of the knowledge or skills acquired. They also may better assess a project's unanticipated impact.

12. As both evaluation mechanisms must vary widely among programs, it is counterproductive to dictate a strict formula for employing them. The following partial menu of mechanism is but a starting point for developing an evaluation. Which to select hinges on the nature of the program.

Sample Surveys of Program Participants/Beneficiaries

13. The most straightforward way of assessing program-specific impact on knowledge is a series of oral or written surveys. International organizations can determine whether a legal empowerment initiative has increased participants' knowledge by surveying a sample of them at

the outset of the initiative, and at least two additional times—at the close of the program and at one or more later dates.

14. If appropriate, the survey at the close of the program should include questions that focus on the technical competence of its implementation, as well as questions that measure impact. Assessing competence can be useful for determining whether the approach to similar activities needs to be refined in the future. It should be clear that the answers of respondents regarding technical competence say little about the impact of the approach. The respondents may, for example, report that the speakers were excellent and that they learned a great deal; but these responses do not reveal what they actually learned.

15. In addition to knowledge, impact-oriented surveys at the outset and close of a program can ascertain changes in attitudes. They can also determine improvements in skill levels, where asking questions (for example, about how to prepare an affidavit or obtain information from a government bureau) demonstrates whether program participants retain at least a theoretical knowledge of how to exercise legal skills.

16. The follow-up survey, undertaken at least six months later, provides a much better gauge of whether the participants have retained knowledge, skills, or attitudinal changes initially generated by the program. As such, it yields a much more significant reflection of impact than does the survey undertaken at the program's close.

17. Surveys can generate both quantitative and qualitative data. The former is best gathered through yes/no or multiple choice questions. It can be especially useful if both pre-program and follow-up surveys are possible.

18. By employing open-ended questions, this mechanism also can generate important qualitative information. The follow-up survey can solicit information about behavioral changes, organizational improvements and government actions to which the program might have contributed. Though some responses to questions of this kind can be quantified, the real usefulness (as described below) is that they could provide the basis for subsequent qualitative inquiries that verify and expand understanding of the impact.

19. Of course, many programs may not lend themselves to surveys at each of the stages described above. A program may aim for more general diffusion of knowledge than can be measured by a set list of questions at its outset. The fact that surveys can help document diverse types of impact accordingly suggests that follow-up surveys be conducted even if their questions differ from those originally asked of participants (because the program's perceived impact has changed), or if no initial surveys were conducted at all. The data need not be comparative for it to be illuminating.

20. How the information is initially and subsequently collected depends substantially on such factors as the resources and communications facilities available, the nature of the participants, and the project into which a legal empowerment initiative might be integrated. Under some circumstances, for example, house-to-house interviews might be necessary. Under others, questionnaires could be distributed and collected at meetings organized by an NGO or government agency.

Sample Surveys of Broader Populations

21. Under circumstances where an institution anticipates indirect impact (that is, impact reaching beyond program participants), it should consider surveying populations likely to be affected. They need not be as broad as the general population. Rather, they could be residents of communities where a development organization undertakes activities. Ideally, such polling should be conducted before the program begins, and again as a follow-up at least six months later.

22. In conducting surveys of this kind, the organization should ask respondents not just *what* they know (or believe, or do), but *how* they came to know it. Respondents may not be able to identify whose training they attended, whose pamphlet they received, or whose radio show they heard. Their answers nevertheless may provide bases for concluding whether a given effort contributed to their enhanced knowledge.

23. In addition to revealing impact on citizens' attributes or circumstances, polling a broader population can suggest or verify other types of impact. For example, it can indicate whether a given NGO's or government department's capacities have improved.

Control Group Surveys

24. Whenever possible and appropriate, an organization could poll a control group that is not participating in or affected by its training or other activities. Where surveys or other evaluation tools suggest that the organization has contributed to impact, a control group's unchanged attributes will tend to verify the program's success. Preferably, the control group that is surveyed initially should be the same as that surveyed at the follow-up stage. Again, practical considerations may impinge on this. If so, a new control group still would offer a basis for comparison.

Baseline Surveys

25. Where funding and circumstances permit, baseline surveys conducted by an organization when it first launches a program can determine the level of relevant knowledge and other attributes of the general population or significant segments of it. While such surveys may primarily be conducted to generate general insights that can shape a program, they can also complement or substitute for initial surveys of control groups.

Qualitative Interviews and Discussions with Participants

26. Qualitative interviews and discussions with participants seek information that cannot be translated into survey numbers. The two can go hand in hand, with an oral survey turning into an open-ended discussion. Of even greater importance, interesting survey responses can trigger a subsequent interview.

27. Such interviews can take many forms, but the two most prominent might be called "semi-structured" and "open-ended." As understood here, the former starts with a common set of questions asked of all participants interviewed, before branching out to cover whatever interesting topics arise in the course of discussion. The latter focuses on whatever issues seem most pertinent with respect to a given participant.

28. As with the surveys, the most useful interviews could well take place months or even years after a program has ended. It is at this stage that the respondents might be best able to analyze what use they or others made of the program.

Qualitative Verification Through Third-Party Interviews

29. The most important element of evaluation is independent verification of impact. Wherever practical, an organization should consult knowledgeable third parties to seek such verification. Although it is useful for the organization itself to perceive positive impact regarding such factors as behavior, government responsiveness, or material circumstances, it is highly desirable to confirm that information in whole or in part. Independent sources of confirmation can include journalists, academics, government officials, NGO leaders, and representatives of international development organizations.

30. Under some circumstances this relatively in-depth evaluation of relatively modest activities would be too expensive, time-consuming, or politically sensitive. It also would be unnecessary where the only goal of the activities is to affect participants' knowledge or attitudes, and these can be determined through quantitative surveys. At the same time, independent verification would lend great credibility to the organization and its partners alike.

Verification Through Textual Analysis

31. Where a legal empowerment initiative makes a significant contribution to government policies, it can and should confirm this through textual analysis: comparing policy proposals with the resulting regulations, legislation, or other documents. Even in cases where an initiative affects just one aspect of a government policy, textual analysis comparing its suggestions with the revised policy can demonstrate impact.

Case Studies

32. While legal empowerment assistance relates to the core dynamics of how a community operates, it often lacks in-depth insight into the dynamics of change that it helps bring about. Case studies—that is, focused research on actual or potential instances of impact—represent an effort to achieve and learn from such understanding.

33. As the term is employed here, a case study consists of an in-depth look at impact as diverse as how NGOs successfully pushed adoption of a piece of legislation or how a community group helped to reduce the incidence of violence against women. It can also document partial successes or failures, yielding useful lessons. In the former instance, such scrutiny can consist of a social scientist tracking a legislative bill's progress as it occurs, or retrospectively learning as much as she can about the strategies, politics, and other influences that affected its form and course. In the latter example, it could involve a quasi-anthropological observation of one or more communities over time, to learn what strategies and forces helped (or failed) to overcome deeply ingrained attitudes and practices.

34. As is evident, a case study can draw on social science research tools, including some of the other evaluation mechanisms described above. More than any other mechanism, it offers opportunities to learn about strategies for effecting change at both national and grassroots levels.

35. An obvious difficulty with this approach is that it can be most useful when a bill or community is tracked from the start of a legal empowerment intervention, but that intervention may not produce success or even useful lessons. In some cases this can be overcome by researching a number of bills or communities. In other instances, it may prove worthwhile to review progress retrospectively. Regardless of the approach taken, the time and expense involved with such studies preclude their being appropriate for certain activities. In planning a study of this kind, cost considerations should be borne in mind. For example, in many countries a local academic specialist and graduate students can be contracted for several months for less than the cost of engaging a Western consultant for a month. The former typically have greater insight into their societies.

III. Incorporating Evaluation Planning into Program Design

36. Is it worth the effort to plan an evaluation strategy at the outset of a legal empowerment initiative? Not always. The duration of assistance and the unanticipated activities and impact that flow from them may minimize the value of planning ahead in this manner.

37. Nevertheless, there also are many instances where the duration of assistance and the nature of the work can be sufficiently determined that it makes sense to construct an evaluation plan well in advance. All elements of the plan should be *illustrative* in nature, however, rather than constituting absolute commitments regarding what an organization will achieve and how it will evaluate impact. Even with a known quantity, many factors relating to the program can change before it starts or as it proceeds.

38. The elements of the plan need to be suited to the project. Examples of possible elements include:

Anticipated Impact

39. The plan could state the nature of the type(s) of impact an organization aims to achieve (for example, regarding citizen knowledge, government responsiveness, or other factors). It also could state the anticipated scale of such impact, if possible. This applies to such matters as the number of citizens, communities, or policies affected.

40. The anticipated impact is illustrative of what an organization hopes to achieve. It is *one* potential basis for evaluating a program. It may in fact turn out to be the sole basis for evaluation. Where other types of impact materialize, anticipated impact may become less relevant, or even irrelevant.

Unanticipated Impact

41. It is important to try to predict at the outset what a program will accomplish, to set standards by which it can be assessed. Yet an exclusive focus on and investment in such prediction can delay or derail a legal empowerment initiative to no good end, when the reality of unintended consequences catches up with it. For example, people who learn about health benefit rights through a community health project might become engaged in good governance activities that have nothing to do with those specific rights. Farmers who receive training in land tenure laws may strengthen their previously weak community-based organization. They may even provide input into regulatory reform regarding land rights. None of these results can necessarily be anticipated.

42. With this in mind, an initiative must be open to seeking out whatever impact, good or bad, flows from its activities. The best results may not be planned. Even if there are counterproductive consequences, these need to be determined and understood in order to improve a project and avoid mistakes in the future.

Planning of Evaluation Mechanisms

43. The choice of evaluation mechanisms hinges on the nature of the program's anticipated impact. Determining citizen knowledge sometimes lends itself to surveys; assessing their input into law or regulatory reform is much more qualitative.

44. It also depends on the program's duration and budget. A few third-party interviews may well make sense for a relatively modest project. In-depth case studies may only be justified for a more major effort.

45. Like impact, evaluation mechanisms can only be "anticipated" in the evaluation plan. They may require modification or replacement once the program starts. This may be due to unexpected changes relating to the program, its apparent impact, or the broader society.

46. In selecting such mechanisms, the plan could also state illustrative questions that the organization will ask in assessing impact. Again, however, it may need to modify these questions by the time the program begins or as it proceeds.

47. In addition to mechanisms for assessing anticipated impact, the evaluation plan should explicitly include at least one method of identifying unanticipated impact. The two can be one and the same. Where, for example, follow-up interviews aim to determine anticipated impact, they also can probe for benefits that were considered possible but not likely at the outset of the program, or that were not considered at all. A survey that mainly probes for quantitative data of a predetermined nature may also include open-ended questions for the respondents.

Time Frame

48. The plan could state a timetable for utilizing the anticipated evaluation mechanisms. Because so much of the impact of legal empowerment assistance may only materialize long after the completion of a program, a final evaluation should ideally take place at least six months after the program's completion.

49. For a major program, an organization may want to conduct more than one post-program evaluation activity, doing the final one a few years after program completion. Obviously this cannot be done for most programs, but occasional use of this device is worthy investment. This may well be the most useful means of determining whether a program ultimately did any good, and the best way of drawing lessons from the experience. Given the realities of project funding, some organizations could cover the evaluation activity out of an indirect cost pool or funding categories that are not project-specific. Since evaluation benefits an organization as a whole (rather than just a specific program), standard accounting norms should ideally justify this expenditure.

Resources

50. Finally, an evaluation plan should estimate—and the program budget should allocate—the resources an organization needs to carry out evaluation. As with all other elements of the

plan, the budget estimate should be illustrative. That is, an organization should set aside a certain amount of funds for evaluation from the outset, but should employ those funds flexibly as it becomes clearer which information and mechanisms will best contribute to useful evaluation.

IV. Evaluation Reporting

51. How can a development organization integrate and weigh the information generated by its evaluation mechanisms? What types of reports suit these purposes? What kinds of questions could the reports address? Finally, but most fundamentally, how can the organization use and learn from the reports? As with other aspects of PEP, the answers hinge on the nature of the organization and project. This section nevertheless hazards some suggestions.

Weighing Impact Priorities in Reports

52. Relatively modest and short-term legal empowerment programs are most appropriately evaluated in terms of impact on citizen knowledge and attitudes. The more ambitious and long-term a program, the more it should be assessed in terms of citizen behavior, material circumstances, good governance, poverty reduction, and law/regulatory reform and implementation.

53. Why these broad distinctions? Knowledge often represents a first step toward changes in behavior. Changes in material circumstances are important if they are pursued as ends in themselves, as with farmers organizing and learning about the law in order to realize the benefits of agrarian reform. Yet they are equally important if one takes a purely process-oriented view of them, for they can serve as the firmest proof of behavior, participation, or other types of impact.

54. The same dual role applies to impact regarding law reform, legal implementation, and other government actions. These may be sought in and of themselves. Or, for those taking a process-oriented perspective, success regarding these matters may be seen as proof of impact regarding citizen participation.

Questions for Evaluation Reports

55. Unless the answers are self-evident, an evaluation report should consider addressing as many of the following questions as possible, whether explicitly or implicitly:

56. *What is the nature of the impact?* It is not always essential to break down the discussion into distinct analyses of knowledge, behavior, good governance, or other types of impact. While the nature of impact is rarely so neatly compartmentalized, an organization should keep the various kinds of impact in mind in preparing the report.

57. *What is the scale of the impact?* It is not always possible or appropriate, but an organization can try to state the number of people or communities affected, or the population actually or potentially affected by government actions to which a program has contributed.

58. *What is the significance of the impact?* This element addresses the crucial issue of context. In some instances, the significance of a particular impact may be self-explanatory. In others, it may be necessary to explain why cultural, political, economic, or other factors in the host society make an achievement that might seem minor in one country a milestone in another. Or it may be advisable to illuminate the importance of a particular policy achievement, or the

ripple effect of impact on a specific community. Conversely, the report might need to provide context that addresses why the project fell short of expectations or its potential.

59. *What is the legal empowerment program's contribution to the impact?* An organization should explain how it helped bring about the impact. The emphasis, of course, is on *contribution* to impact, rather than sole credit for changes that came about.

60. *What is the significance of the organization's contribution?* The importance of an organization's role may be self-explanatory, or may require some further illumination—as, for example, what might have happened (or not happened) had its program not taken place.

61. *What evaluation mechanisms were employed, and why?* This question goes to the heart of verification, and how it can be determined that impact took place and that the organization contributed to it. It also can address how the organization reached certain conclusions. This becomes important if it cannot clearly document these matters. Particularly for outside audiences, it could be helpful to explain why the evaluation report documents them as much as is reasonably possible, while acknowledging possible gaps in what can really be known about impact and attribution.

62. *What lessons have been learned?* This can be the most important element in the evaluation. The lessons can range from the relatively mundane (specific techniques for conducting educational seminars, for example) to strategic (such as considerations regarding whether and how to work with a government agency permeated by corruption).

63. *Who will see the evaluation?* This is a question of a different nature, but it is still worth asking—as well as answering in favor of dissemination to a variety of interested individuals and organizations. Too many evaluations end up collecting dust on the shelves of the organization that commissioned them, while other organizations scramble to reinvent the wheel, unaware of valuable lessons learned by previous or similar efforts. This situation contributes to duplication of effort, and failure to learn from past experience.

APPENDIX 4: TOWARD A LEGAL EMPOWERMENT RESEARCH PROGRAM¹

I. Introduction

1. A central finding of the Legal Empowerment Study is that this and related areas such as human rights, the rule of law, and democracy suffer from a shortage of in-depth research to ascertain impact and lessons learned in a more rigorous manner than is presently the case. Although much time was invested in the LES country reports and supplementary studies, these could ultimately go only a limited way toward illuminating key issues and answering important questions. A considerably greater investment of resources is needed to further flesh out the details of legal empowerment impact and insights. This appendix presents some initial thoughts on elements of one or more regional technical assistance initiatives that ADB or other international development agencies could undertake—or, using a more generic term for the same idea, a research program that other funding sources could support.

2. The proposed program would use surveys and other research methodologies to probe issues that the Legal Empowerment Study (particularly through the supplementary survey research in Bangladesh and the Philippines) has begun to address. The aim is to move from predominantly anecdotal reports of progress to firmer, verifiable data that can guide future legal empowerment work. In particular, the proposed program would: explore whether and how legal empowerment best helps to reduce poverty and improve governance; illuminate important elements of successful legal empowerment work, and disseminate findings in effective ways, for use by donors, NGOs, governments, and other concerned parties.

3. It will quickly become clear that this research program overlaps with the Participatory Evaluation Process sketched in Appendix Three above. In fact, evaluation can in the long run contribute to an ongoing learning process for ADB and other development agencies. The point of separately arguing for a research program is twofold: first, such a program will not hinge on the activities specifically funded by any given institution; and second, such research will be more structured and comparative in nature than that which is linked to evaluating a specific legal empowerment initiative.

II. The Nature of the Problem

4. Despite decades of social justice and development work around the world, the international community still does not know with certainty whether legal empowerment, legal reform, and related rule of law work reduces poverty and improves governance. Nor does it adequately understand the dynamics through which poverty reduction might spur improvements in governance.

5. Many feel that the connection is there. There is a wealth of personal and professional experience to that effect. Those who have interviewed members of disadvantaged groups for consulting or research projects around the world find that they frequently report benefiting from education, mobilization, and advocacy that has a rights-oriented thrust and a poverty-reducing impact. For example, women claim that domestic violence in their communities diminishes

¹ Appendix 4 substantially draws on research and related work conducted by Legal Empowerment Study co-team leader and Overview Report co-author Stephen Golub under an Open Society Institute Individual Project Fellowship. An expanded and modified version of the appendix will be published as a product of that fellowship.

when they organize against it. Beyond immediate gains, this also brings long-term health benefits to them and their children. Farmers speak of success in making agrarian reform (and concomitant increases in income and independence) a reality due to the efforts of farmer paralegals, the community-based organizations (CBOs) to which they belong, or the legal services NGOs with which they partner. The Legal Empowerment Study summarizes related research and experience.

6. Though this information is important and useful, large problems remain. First, the data is not quantified or verified in a way that persuades the many international agency, government, academic, and even NGO personnel who understandably seek harder proof than anecdotal evidence offers.

7. Governments and international agencies inevitably face competing priorities in allocating limited resources. Organizations active in many other development fields document results far better than those pursuing legal empowerment (or democracy, human rights, and rule of law) endeavors do.

8. The second problem with the existing data on legal empowerment and related fields is that it provides too little information about the ingredients of successful work and how such work might help to reduce poverty. What features tend to make legal services more effective? Does combining such services with socioeconomic development work make a difference? What role might community organizing play? What about the various approaches to teaching the disadvantaged about their rights? How do people best get favorable regulations and laws implemented in the many societies where powerful forces routinely ignore them?

9. The list of open questions, and those for which only the most tentative of answers have thus far been obtained, is endless. The Legal Empowerment Study addresses these issues and reaches relevant conclusions in ways that other research has not. While this represents a significant step forward, it is not enough. In key respects, it only scratches the surface. Further research can serve to clarify, verify, and persuade.

III. State of the Field: The Gap Between Anecdotal Reporting and Empirical Inquiry

10. A gap exists in documenting the impact of the many fields that overlap with legal empowerment. On the one hand, a wide array of largely anecdotal reporting (typically by consultants, NGOs, or government officials) illuminates these fields in ways that are useful but, for many audiences, unpersuasive. On the other hand, empirical inquiries (such as survey research, other statistical comparisons, or in-depth studies) concerning social capital or other development fields do not sort out the impact, if any, of legal empowerment and related activities.

11. Anecdotal reporting lacks sufficient rigor for many audiences and purposes. The existing empirical inquiries do not have the legal empowerment, human rights, democracy, and/or rule of law focus most useful for concerned donors, governments, and activists. This accounts for the gap between the two: a paucity of empirical research linking specific legal empowerment activities to poverty reduction.

12. An partial exception to this rule is that USAID has conducted studies of civic education in Poland, the Dominican Republic, and South Africa. But those draft studies say relatively little about human rights education, less about the far broader range of other legal empowerment activities, and nothing about poverty reduction.

13. While the preceding comments are not intended to denigrate the value of anecdotal reporting, it is important to acknowledge the limitations of the anecdotal approach. Consultants' papers for funding organizations or NGOs' write-ups of their own work may feature insightful analysis. Occasionally they reach beyond the purely anecdotal, by reviewing documents or interviewing independent parties regarding impact claimed by NGO leaders. Such reports can stimulate thinking, provide lessons, identify potential models, tell informative stories, and weave patterns out of diverse efforts. Unfortunately, they do not provide the firm data that are a feature of some development fields in which results are more easily quantified.

14. For example, in the words of the World Bank economist overseeing a review of gender literature, "it is important that the people interviewed be randomly selected...[and that an examination of the impact of human rights work] include and control for social capital issues in a survey."² A consultant conducting a two-week evaluation, or an NGO more attuned to action than research, cannot meet these and other methodological challenges.

IV. The Opportunity: Applied Research to Fill the Gap

15. The absence of rigorous empirical inquiry into human rights work's impact should be seen as an opportunity to fill this gap. The precise nature of relevant research would differ from place to place and from issue to issue. It would need to draw on social scientists' expertise and be far more refined than what is sketched below. At least five approaches merit initial consideration. They should not be seen as mutually exclusive. In fact, they may be most useful if combined in various ways.

16. These five potential approaches are:

a. Survey research involving control populations

17. Indigenous research institutes' surveys of statistically significant populations would compare certain results between communities where legal empowerment work has been carried out over time and demographically similar communities where it has not. The variables could include people's knowledge (of their rights), attitudes (toward themselves, their rights, or the government), behavior (as demonstrated by participation in relevant processes), and material circumstances (income, health, shelter, or other measures). As important as the first two attributes are, the latter two are clearer reflections of poverty reduction.

18. To the extent possible, questions in the survey interviews would not focus on the legal empowerment initiatives themselves, since respondents might conclude that favorable comments about those activities are being sought.³ That is, people would not be asked how a given NGO helped them, or about more specific variations on that theme. Instead, the questions would probe their knowledge of certain legal issues, and how they learned what they know. Where respondents are reluctant or unable to state their incomes, the interviews could ascertain material circumstances in other ways. Appropriately worded questions might ask how recently the last family crisis (such as the illness of the principal income earner) occurred and whether the family had the resources to cope with the situation.

² Stephen Golub interview with Susan Razzaz, Economist, Poverty Reduction and Economic Management, Gender and Development Group, the World Bank. June 26, 2000 in Washington, D.C.

³ This is one of numerous ways in which the applied research suggested here would differ from anecdotal reporting. The latter typically relies on questions to which beneficiaries can infer the desired answer—to the extent that beneficiaries are interviewed at all.

19. An important element of this and the other approaches described below is that those surveyed should not primarily be objects of the studies, but rather beneficiaries of them. For instance, the control populations should be in areas into which an NGO is planning to expand or to provide new services. The findings could then provide insights that would benefit the NGO and the survey respondents alike.

b. Survey research involving comparisons of legal empowerment initiatives

20. Research (possibly coupled with surveys involving control populations) would also compare the impact of different types of legal empowerment activities. One of many possible approaches would contrast: specialized legal aid work; legal services integrated with other development activities (such as group mobilization or family planning); and/or development work that does not have an explicitly legal component.

21. Such research should be undertaken with caution. The point is not to affirm or dismiss different activities undertaken in different contexts, for all of these may prove better than no legal empowerment work at all. The findings would benefit both the organizations whose work is studied and the far broader communities of individuals and organizations concerned with development, human rights, democracy, and the rule of law.

c. Comparisons of government records

22. Certain types of issues, such as land tenure, may lend themselves to reviews of government records. As with the surveys, these would contrast impact on communities where legal empowerment work has been carried out extensively over time and demographically similar communities where it has not. Land reform might be a case in point.

23. Of course, not all government documents tell a clear story. Is it a sign of progress that police record more reports of domestic violence in a community where legal services are being provided? Does this indicate that they are more responsive, or simply that more incidents are being reported, or even that abuse has increased? But this suggests that the use of government records be approached carefully, not that it should be avoided.

d. In-depth qualitative research on the community level

24. Selective qualitative research would probe beneath the surface impact, to uncover useful nuances and insights. It would be almost anthropological in nature, consisting of local social scientists' or graduate students' extended residence in or frequent visits to communities where such impact has occurred or where it is taking place.

25. This research would complement both quantitative studies and anecdotal reporting. It would differ from the latter in at least three key respects. First, it would involve building informative relationships with community residents in ways that a consultant's brief visit cannot. Second, carried out by indigenous actors, it would feature far more societal insight than a foreign consultant could bring to bear.

26. Finally, the studies would go beyond NGOs, CBOs, or their partner populations as sources of information. Anecdotal reporting typically stops at the water's edge of interviewing just those three groups—sometimes only the NGOs. The in-depth research suggested here could seek to learn from local elected officials, police, landlords, or environmental officials why they took action in response to disadvantaged populations' pressure or persuasion. It would

build relationships that yield deeper insights from both governmental and nongovernmental actors alike. It could also shed light on what persuades a sympathetic, indifferent, or even resistant government official to take actions that effectively advance the rights of the disadvantaged in the face of powerful opposition.

e. Before-and-after survey research

27. Another device for documenting impact would be to survey selected communities before legal empowerment work begins and after it yields apparent impact. This approach presents certain practical problems, however. One is that there is no guarantee that impact will take place in a given community at the outset of the work. Another is that frequently take years to materialize. This simply weighs in favor of interviews in several communities at the outset, on the theory that subsequent surveys of some of them will yield illuminating results.

V. Organizations, Issues, and Countries

28. The proposed research programs would comprise a series of studies involving scrutiny of a limited number of organizations, issues, and countries. A central consideration is the duration of the organizations' operations. Since impact typically takes a long time to materialize, the focus should be on groups that started working with specific communities several years earlier, regardless of whether that engagement has ended or is ongoing.

29. This in turn has implications for the countries in which the research is conducted. In some societies, legal empowerment activities that might affect poverty are a recent phenomenon. They have not been going on long enough to yield useful data. Another consideration is local research capacity, with a view to making the studies as sophisticated and cost-effective as possible. Yet another is that regime changes may alter the nature of human rights activism or development initiatives in ways that cloud assessment of past impact.

30. With these criteria in mind, Asian countries that would lend themselves to fruitful study include the PRC, India, the Philippines, and Thailand. All feature sophistication in social science and legal empowerment work, and sufficient stability to permit examination of the long-term operations of certain NGOs and possibly government agencies. While PRC might seem a relative newcomer to this group, a number of interesting governmental, nongovernmental, and university-based initiatives have been underway for several years now.

31. The research would not comprehensively address all of a given NGO's or government agencies' operations. A study involving survey research would focus on the NGO's work in a few communities, at most. It would ascertain poverty impact in comparison with control populations and/or other communities served by different NGOs.

32. The issues that would be subject of study should be those that resonate for various audiences. Violence against women, land tenure, and natural resource management and protection are a few categories of widespread interest.

VI. Caveats and Considerations

33. Two caveats and a few related considerations attach to any effort to assume this challenge. First, no single research program can provide all of the answers. It can and should lead to more questions. While the state of research is rudimentary, when compared with other

development fields, this is a key reason for launching inquiries into whether and how impact occurs.

34. While documenting legal empowerment impact is more difficult than demonstrating results in many other fields, its difficulty does not imply that it cannot be done. In fact, the impact of legal empowerment work on poverty reduction may lend itself to scrutiny, as demonstrated in a very preliminary manner by the Legal Empowerment Study's supplementary research in Bangladesh and the Philippines.

35. Nor does such impact always boil down to numbers—this is anything but the case. ADB and other development agencies should not strictly bind themselves to quantitative indicators, as some institutions have done. Quantitative findings should be understood in the context of qualitative analysis.

36. A second caveat: for the proposed studies to be legitimate, researchers must be open to the possibility that the studies may reveal things that they might prefer not to learn. As much as the Legal Empowerment Study suggests that work in this field can reduce poverty and improve governance, more in-depth scrutiny may reveal factors that qualify this hypothesis. Yet even such findings as these may point in constructive directions.

37. As an example from a related field, some early research on Philippine agrarian reform indicated that pro-tenant changes in land tenure did not alter farmers' incomes. Further inquiry indicated that support services could help to achieve this end. Tenurial changes *per se* were important but not sufficient for income growth. Furthermore, even as research may have given pause to pro-reform forces, it also undercut anti-reform elements that had claimed that changing land tenure would decrease farmers' incomes.

38. As a converse of the potential to learn unpleasant truths, much may be learned that is positive in nature. For example, many NGOs actually understate their accomplishments in describing them to donors. Some of this reflects an admirable modesty about their work and a desire to give credit where it is most due—to their partner populations. Sometimes, however, they simply are unaware of what they have contributed to, since they are always busy moving on to the next challenge and have little time to study impact. They may also lose touch with communities that make good use of their assistance.

39. This leads to a final consideration. ADB and other international development agencies aim to build trusting, supportive partnerships with governments and NGOs alike. In scrutinizing aspects of the work of selected organizations, the proposed studies would fortify rather than undercut those relationships. Many groups and agencies across the globe welcome research that will help them to better document impact and to learn about how they might improve their work, yet they often find that donors are reluctant to support such research. The proposed research program would be well received by many governments and legal service providers.

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