

## Justice 2015: Legal Empowerment and the Global Development Framework

### Discussion Note

#### *Legal empowerment belongs in the international development framework.*

Justice plays a fundamental role in eliminating poverty. But justice is out of reach for too many people.

An estimated four billion people around the world live outside the protection of the law. They can be easily cheated by employers, driven from their land, and intimidated by violence. Lack of grassroots legal accountability allows local corruption to flourish unchallenged, diverting resources away from those who need them the most. Lack of legal identity leaves millions of people around the globe unable to participate fully in society or to access state benefits such as health care, education, and freedom of movement.<sup>i</sup>

Legal empowerment offers a way forward. It enhances people's capacity to understand, use, and improve the laws and institutions that govern them. Namati and many of our allies believe that legal empowerment should have an important place in the post-2015 global development framework – the regime that will succeed the existing Millennium Development Goals (“MDGs”).<sup>ii</sup>

We have made significant progress towards the MDGs thus far. But as Sir Fazle Abed and George Soros recently wrote, “we risk allowing these gains to come undone if we fail to strengthen the rule of law in developing countries. Without basic legal empowerment, the poor live an uncertain existence, in fear of deprivation, displacement and dispossession.”<sup>iii</sup>

This note is meant to open a conversation with the Global Legal Empowerment Network about concrete ways in which legal empowerment could be incorporated into the global policy agenda. Here we suggest potential targets in four areas: 1) access to legal forums and legal aid, 2) legal identity, 3) the right to information, and 4) community rights over land and natural resources.

**Let's discuss. Are these indeed priorities for legal empowerment? Would these targets be useful to advancing legal empowerment in your country? What other issues or targets would you suggest, and why?** We invite feedback and debate on these potential proposals, and warmly welcome suggestions for others not mentioned here.

Based on our conversations online over the next month, we will prepare a position paper on justice in the post-2015 development framework, which all of us can use as a basis for advocacy. Together, we can make legal empowerment a global priority.

Please participate in the conversation at <http://www.namati.org/consultations>.

***I Access to Legal Forums and Legal Aid***

People everywhere are demanding affordable, fast, and fair avenues for accessing justice. A growing body of evidence shows that access to justice can lead to tangible benefits, including greater personal safety and material well-being for the billions living outside the protection of the law.<sup>iv</sup> But around the world, legal forums – institutions like courts and tribunals that provide binding resolutions to disputes – are often expensive, tough to reach, slow to provide judgment, and subject to bias.

In addition, legal aid services—which assist people to pursue remedies to injustice—are grossly inadequate. Lawyers can be scarce, expensive, and impractical. A new generation of legal aid efforts combines a small corps of public interest lawyers with a larger frontline of community paralegals. The paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy.

Community paralegals can seek creative solutions and can engage traditional and formal institutions alike. Paralegals are linked to lawyers who provide guidance and who can resort to litigation if frontline methods fail.<sup>v</sup> In 2012, over fifty organizations from more than twenty African countries adopted the [Kampala Declaration on Community Paralegals](#). The Declaration calls on governments to recognize the role paralegals play and to invest in delivering legal aid at scale. Community paralegals, the Declaration states, “further both justice and development.”

<b>Target 1: Increase the number of people with access to legal forums and legal aid services that are affordable, fair, and timely.</b>		
<b>Possible Indicators</b>	<b>Data Collection Method</b>	<b>Similar proposals<sup>vi</sup></b>
The proportion of the population who live within reasonable reach (measured in km or time of travel) of a legal forum whose resolutions are fair and enforced	Administrative data, GIS, public surveys	Lawson-Remer, World Justice Project, G7+
The proportion of persons reporting confidence that they can access affordable and effective legal aid services (e.g. lawyer, paralegal, or other legal advisor) in the event that they need legal advice or assistance	Public surveys	World Justice Project, DFID, UNDP, G7+, CIGI, Frecheville (CAFOD), Lawson-Remer, Brinkman

*Questions for discussion:*

- Is this issue of importance to you? Would targets like these be useful in advancing legal empowerment in your country?
- Is there a better way to address problems of distribution, that is, prevent countries from reaching the goal by placing just a few paralegals or lawyers in high-density urban areas?
- What factors should be used to determine the quality (timeliness, cost, transparency, normative approaches, etc.) of justice services? How might these be included in a target or indicator?

**II Right to Legal Identity**

Legal identity is crucial for legal empowerment. If you are not legally recognized as a person, it is difficult to make the law work for you.<sup>vii</sup> And people who do not have proof of their legal status are often vulnerable to discrimination and exploitation.<sup>viii</sup>

Birth registration is a precondition for most formal identity documents, including ID cards, birth certificates, and passports. It is also a right recognized by the vast majority of countries. Yet, in 2012, an estimated 49% of births worldwide went unregistered. For 60% of children born in South Asia and Sub-Saharan Africa last year, no formal record of their existence exists.<sup>ix</sup>

Governments should expand access to legal identity. While they do so, they should also ensure that a lack of legal identity does not lead to violations of basic rights. This may mean eliminating identity requirements for critical services like health and education.

<b>Reduce the number of people who suffer for lack of secure legal identity.</b>		
<b>Possible Indicators</b>	<b>Data Collection Method</b>	<b>Similar proposals<sup>x</sup></b>
The proportion of people in a state who possess a registered form of legal identification	Administrative data, 3 <sup>rd</sup> party monitoring	UNHCR, Podesta (CAP)
Reduction in the proportion of people denied access to services (e.g. healthcare, education) because of lack of identity documentation	Administrative data, 3 <sup>rd</sup> party monitoring	

<b>Universal birth registration implemented by law for all children in all countries.</b>		
<b>Possible Indicators</b>	<b>Data Collection Method</b>	<b>Similar proposals</b>
Proportion of babies who receive registration at birth per year	Administrative data, 3 <sup>rd</sup> party monitoring	UNICEF, Lawson-Remer, Brinkman, Andrews

*Questions for discussion:*

- Is this issue of importance to you? Would targets like these be useful in advancing legal empowerment in your country?
- How might the Post-2015 development framework be adapted to prevent states from misusing documentation requirements for discriminatory purposes?

**III Right to Information**

Right to information (“RTI”) laws guarantee access to government information. There is a growing body of evidence showing how RTI empowers people to hold their governments accountable. In India, for example, New Delhi slum dwellers used RTI to combat delay in the distribution of ration cards. According to a Yale study, 94% of ration card applicants who filed RTI inquiries into the status of their applications received their cards within a year, as opposed to the 21% of those who did not file an RTI petition.<sup>xi</sup>

People have also used RTI to monitor public spending and advocate for change. In Chiapas, Mexico, rural community members and the NGO Maderas del Pueblo del Sureste found out through RTI requests that a government sewage project was contaminating local water. With that information they successfully advocated for authorities to halt the project and install proper filter systems.<sup>xii</sup>

The right to information should be universally available. There are now RTI acts in approximately 90 countries,<sup>xiii</sup> but many of those laws are unfunded and unimplemented.<sup>xiv</sup>

<b>Universal and effective implementation of comprehensive right to information legislation.</b>		
<b>Possible Indicators</b>	<b>Data Collection Method</b>	<b>Similar proposals<sup>xv</sup></b>
Existence of a Right to Information Law that establishes (1) citizens' access to information, including laws, budget documents, and expenditures, (2) defines a time limit for responding to RTI requests, and (3) establishes a mechanism for appeal in the event of denial.	Legal analysis	Banisar (Privacy International), Coliver (OSJI), Dokeniya, Frecheville (CAFOD), Global Integrity, International Budget Partnership, Global Campaign for Aid Transparency, Mendel, Vleugels
The proportion of requests for information answered fully in a reasonable amount of time, defined as X days	Administrative data, 3 <sup>rd</sup> party monitoring	Global Integrity, Dokeniya

*Questions for discussion:*

- Is enforcing the human right to information indeed a priority for legal empowerment?
- How can we best measure whether RTI legislation is well-designed and well-implemented?

**IV Community Rights over Land and Natural Resources**

Approximately three billion people around the world live without secure rights to their lands, forests, and pastures. More than ever, these lands are in demand, due to population growth and increased investment interest. In 2009 alone, transactions covering at least 56.6 million hectares were concluded or under negotiation, more than 13 times the average amount of land opened to cultivation annually between 1961 and 2007.<sup>xvi</sup>

In principle, these transactions have the potential to improve economic productivity and stimulate growth. But when the rights of existing owners are insecure, there is great risk of exploitation and of land use decisions that are not in a nation's long-term interest.<sup>xvii</sup> Indeed, recent evidence suggests that investment projects sometimes do grave damage to non-renewable natural resources, create significantly fewer jobs than promised, and cut off

rural villagers’ access to the farms, forests, and grazing lands they depend upon to survive.<sup>xviii</sup> Uncertainty regarding land rights also creates risks for firms and impedes economic growth.<sup>xix</sup>

Securing rural land tenure in the developing world is therefore critical to sustainable development. Community land claims, in particular, should be prioritized for a number of reasons. Substantial research shows that secure community land rights are fundamental to success in slowing deforestation, providing food security, and lifting the poorest people out of poverty.<sup>xx</sup> Moreover, by starting with the larger boundary of the community, it is possible to protect more land faster, and at a lower cost per hectare, than would be the case with individual land claims. Finally, community lands include common resources like forests and water bodies, which are particularly vulnerable to exploitation and yet are left out if one pays exclusive attention to individual holdings.

<b>Increase the amount of land for which 1) communities have secure land tenure and 2) decisions about land and natural resource use are taken through a process of local democratic governance.</b>		
Possible Indicators	Data Collection Method	Similar proposals <sup>xxi</sup>
The number of countries that legally recognize customary land tenure and/or community land and resource rights	Legal analysis	USAID, Alden Wily (Rights and Resources Initiative)
Amount of land (ha) for which a) local communities possess rights to own, use, and conserve, and b) decisions about land and natural resource use are taken through a process of local democratic governance	Administrative data, public surveys, 3 <sup>rd</sup> party monitoring	a) FAO, Ubiñas (Ford Foundation) b) Knight et al., Deininger et al.

*Questions for discussion:*

- Is this issue of importance to you? Would this target be useful in advancing legal empowerment in your country?
- How could targets for community land and natural resource rights better meet the criteria of universal applicability? That is, how can we create targets that are equally relevant to developed and developing countries?
- What methods exist for measuring downwardly-accountable governance of land and natural resources, taking into account variance across nations?

- <sup>i</sup> Open Society Foundations and Namati. (2013). Justice 2015 Factsheet: Justice plays a fundamental role in eliminating poverty, 1. <<http://www.namati.org/entry/justice-2015-justice-plays-a-fundamental-role-in-eliminating-poverty>>.
- <sup>ii</sup> Organizations issuing public statements or language supportive of a strong role for justice in the MDGs include: Save the Children; Saferworld; Open Society Institute; Human Rights Watch; Amnesty International; Hammerskoljd Foundation; G7+ Group; World Vision; Vera Institute; World Justice Project; Center for Economic and Social Rights; Advocats sans Frontiers. Justice emerged as an issue among civil society and the public in the United Nations Global Consultations on the post-2015 agenda, as well. Finally, the UN High Level Panel Report on the Post-2015 Development Agenda, which lays the foundation for the global debate on the Millennium Development Goals, urges governments to encourage access to justice, rule of law, and accountable public institutions.
- <sup>iii</sup> Soros, George and Fazle Abed. (2012, September 26). Rule of Law Can Rid the World of Poverty. *Financial Times*. <<http://www.namati.org/newsposts/rule-of-law-can-rid-the-world-of-poverty/>>.
- <sup>iv</sup> See, for example, Sandefur, Justin and Bilal Siddiqi. (2013). Delivering Justice to the Poor: Theory and Experimental Evidence from a Field Experiment in Liberia.; Rodriguez, M. (2000). Empowering Women - An Assessment of Legal Aid Under Ecuador's Judicial Reform Project.; Seron et al. (2001). Impact of Legal Counsel on Outcomes for Poor Tenants in New York City. *Law & Society Review* 35(2), 419-434; Castagnola, M. A. (2003); Asian Development Bank. (2001). *Law and Policy Reform at the ADB, Appendix 1: Philippines*. The estimate of four billion persons outside protection of the law is from the UN Commission on Legal Empowerment for the Poor. (2008). *Final Report*, Volume 2, 3.
- <sup>v</sup> See Maru, Vivek. (2006). Between Law and Society: Paralegals and the provision of justice services in Sierra Leone and worldwide. *Yale Journal of International Law*, 31(2); Dale, Pamela. (2009). Delivering Justice to Sierra Leone's Poor: An Analysis of the Work of Timap for Justice. *World Bank*, iv, 33; Carter, J. (2008). Reconstructing the Rule of Law: Post Conflict Liberia. *Harvard International Review*, 15; UN Commission on Legal Empowerment of the Poor. (2008). *Making the Law Work for Everyone*, Volume 2, 24, 44; Transparency International. (2007). *Global Corruption Report*, 135-137.
- <sup>vi</sup> Other supporters of an access to justice goal include: Save the Children; Saferworld; OSJI; Hammerskoljd Foundation; G7+ Group; World Vision; World Justice Project; Vera Institute. Complete citations are in the annex.
- <sup>vii</sup> See, for example, Podesta, John. (2013, February 13). Inclusive Economic Growth: Increasing Connectivity, Expanding Opportunity and Reducing Vulnerability. *Center for American Progress (CAP)*. <<http://www.americanprogress.org/issues/economy/report/2013/02/07/52160/inclusive-economic-growth-increasing-connectivity-expanding-opportunity-and-reducing-vulnerability/>>.
- <sup>viii</sup> Institute for Human Rights and Development in Africa (IHRDA) and the Open Society Justice Initiative. (2010). *Communication Submitted to the African Committee of Experts on the Rights and Welfare of the Child*. <<http://www.opensocietyfoundations.org/sites/default/files/nubian-minors-submission-20100603.pdf>>; Gerber, Paula. (2009). Making Indigenous Australians 'disappear': Problems arising from our birth registration systems. *Alternative Law Journal*, 34(3), 157-162; Islam, S. (2007, December 19). Kenyan Nubians: Without Papers, Who Are You?" *Open Society Justice Initiative*. <<http://www.opensocietyfoundations.org/voices/kenyan-nubians-without-papers-who-are-you>>.
- <sup>ix</sup> UNICEF. (2012). *State of the World's Children*. <[http://www.unicef.org/sowc2012/pdfs/SOWC%202012-Main%20Report\\_EN\\_13Mar2012.pdf](http://www.unicef.org/sowc2012/pdfs/SOWC%202012-Main%20Report_EN_13Mar2012.pdf)>; see also Todres, J. (2003). Birth registration: an essential first step toward ensuring the rights of all children. *Human Rights Brief*, 32.; In Somalia, a mere 3 percent of children were registered at birth in 2010, compared with 92 percent of children in South Africa. UNICEF. (2012). *Birth Registration*. <[http://www.unicef.org/esaro/5480\\_birth\\_registration.html](http://www.unicef.org/esaro/5480_birth_registration.html)>.
- <sup>x</sup> For all citations of Similar Proposals, refer to the Annex.
- <sup>xi</sup> Peisakhin, L. & Pinto P. (2010, September). Is transparency an effective anti-corruption strategy? Evidence from a field experiment in India. *Regulation and Governance*, 4(3), 261-280.
- <sup>xii</sup> Martinez-Morales, Emilene. (2009). Documents in Action: FOI Success Stories in Mexico. *Freedom Info*. <<http://www.freedominfo.org/2009/03/mexico-success-stories/>>.
- <sup>xiii</sup> Michener, Greg. (2011). FOI Laws Around the World. *Journal of Democracy*, 22(2), 145-146; Vleugels, Roger. (2011). Overview of all FOI Laws. *The Fringe*, 1-5.
- <sup>xiv</sup> Hazell, Robert and Ben Worthy. (2010, October). Assessing the performance of Freedom of Information. *Government Information Quarterly*, 27(4), 392.
- <sup>xv</sup> For all citations of Similar Proposals, refer to the Annex.

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<sup>xvi</sup> Arezki, Rabah, Klaus Deininger, and Harris Selod. (2012). Global Land Rush. *Finance and Development*, 49(1), 352.

<sup>xvii</sup> Language adapted from Maru, Vivek and Andy White. (2012, June 14). A Letter to Rio+20 - Sustainable Development Isn't Possible Without Land Rights. Nextbillion.net.

<sup>xviii</sup> See, for example, Deininger, Klaus et al. (2011). Rising Interest in Farmland. *The World Bank*. 69; The Oakland Institute. (2011). Understanding Land Investment Deals in Africa: Country Report Mozambique.; Anseeuw, Ward, Liz Alden Wily, Lorenzo Cotula and Michael Taylor. (2012). Land Rights and the Rush for Land. *International Land Coalition*, 10, 31.

<sup>xix</sup> See, for example, Rights and Resources Initiative and The Munden Project. (2012). The Financial Risks of Insecure Land Tenure: Investment View, 2. <[http://www.rightsandresources.org/documents/files/doc\\_5715.pdf](http://www.rightsandresources.org/documents/files/doc_5715.pdf)>

<sup>xx</sup> See, for example, Chhatre, Ashwini and Arun Agrawal. (2009). Trade-offs and synergies between carbon storage and livelihood benefits from forest commons. *PNAS*, 106(42), 17667-17670. A study of 80 forest areas across Asia, Africa, and Latin America found that greater rule-making autonomy at the local level was associated with high carbon storage and livelihood benefits.

<sup>xxi</sup> For all citations of Similar Proposals, refer to the Annex.