Enabling Domestic Violence Survivors to Protect Themselves

Implications of the Access to Justice, Legal Empowerment, Rule of Law & Pro Bono Movements

Monday, July 17, 2017
Hill Faculty Conference Room

6 – 6:30 p.m., Check-in and refreshments
6:30 – 8 p.m., Program

CLE MATERIALS

CLE Credit
Credit for the program has been approved in accordance with the requirements of the New York State CLE Board for 1.5 transitional and nontransitional credits with 1 credit in professional practice and 0.5 credit in ethics. CLE course materials for this program are available at law.fordham.edu/clematerials.
As part of Fordham Law School's Access to Justice Initiative, tonight’s discussion will consider the pros and cons of approaches to domestic violence advocacy that emphasize access to justice, legal empowerment, the rule of law, and pro bono service; explore whether and how domestic violence and the justice system’s handling of it differ in different places; and examine traditional and emerging approaches to domestic violence that have special promise.

**Speakers**

**Akhila Kolisetty**
Staff Attorney, Family Law Project, Brooklyn Family Justice Center, Sanctuary for Families

**Endy Moraes**
Fellow, Institute on Religion, Law & Lawyer’s Work, Fordham Law

**Julieta Marrota**
Deputy Program Director / Researcher, Maastricht University (Netherlands); Visiting Scholar, National Center for Access to Justice at Fordham Law

**Sonya Passi**
Founder & CEO, FreeFrom

**David S. Udell, moderator**
Executive Director, National Center for Access to Justice

The Access to Justice Initiative at Fordham Law focuses the collective public service energy of the School to deliver on the promise of equal justice, which lies at the core of our concerns as a service-oriented institution and is the foundational bedrock of our constitutional society, through teaching, direct service, and scholarship, research and advocacy. The following centers and institutes, in particular, pursue access to justice issues in their work: Center on Race, Law and Justice; Coalition for Debtor Education; Feerick Center for Social Justice; Institute on Religion, Law and Lawyer’s Work; Leitner Center for International Law and Justice; National Center for Access to Justice; Stein Center for Law and Ethics; and Urban Law Center.

Learn more: law.fordham.edu/atoj

**SPEAKERS**

**Akhila Kolisetty** is a Staff Attorney with Sanctuary for Families, based at the Brooklyn Family Justice Center. Akhila provides representation and advice to survivors of domestic violence in order of protection, custody, support, and divorce matters. She previously worked with the Open Society Foundations in New York as a Presidential Fellow and with their foundation in Nepal, where she focused on policy, advocacy and capacity building of grassroots justice organizations on issues of legal empowerment, legal aid reform, and access to justice. She is a graduate of Harvard Law School.

**Julieta Marrota** is deputy academic program director of the Master Public Policy and Human Development programme (MPP) at MGSoG/UNU-MERIT, Maastricht University. She is currently a visiting fellow at the National Center for Access to Justice at Fordham Law School. Julieta undertakes research on inclusive forms of access to justice and legal empowerment, and teaches on topics related to public policy and qualitative methods. She holds a Ph.D. from Maastricht University (the Netherlands), an LL.M. degree from Louisiana State University (US), and LL.B. degree from the University of Buenos Aires (Argentina). Julieta is admitted to practice law in Argentina and has worked for law firms in Argentina and the US; since recently she is a certified mediator by Tulane University (US) and Humboldt University (Germany). Julieta worked as a coordinator for the Louisiana Civil Justice Center (US), was visiting scholar at the Institute for Foundation Law and the Law of Non-Profit Organizations at Bucerius Law School (Germany), and was an intern at UNESCO, Institute for Lifelong Learning.

**Endy Moraes** Fellow, Institute on Religion Law and Lawyer's Work at Fordham Law School, is a Brazilian lawyer with extensive experience in inter-religious and intercultural dialogue. At Fordham, Endy works directly with students in developing opportunities for promoting multi-faith and multicultural dialogue, as well as assist them in managing their religious commitments and lives as lawyers. Endy has also an LL.M., cum laude, from Fordham Law School, and is admitted to practice in New York. She is a member of the Focolare Movement of the Catholic Church, living in community.

**Sonya Passi** is the founder & CEO of FreeFrom, freefrom.org, a national organization empowering survivors of domestic violence to achieve economic justice and financial security so that they can afford to build safe lives for themselves and their children. For her work with FreeFrom, Sonya has been listed in Forbes’ 30 Under 30 Class of 2017 For Law and Policy. Sonya received her J.D. from UC Berkeley School of Law. While a 2L, Sonya founded the Family Violence Appellate Project, familylaw.org, which is the first and only organization in California providing free appellate legal services to survivors of domestic violence.

**David S. Udell** is the founder and Executive Director of the National Center for Access to Justice at Fordham Law School. He guides NCAJ in all its work, including its Justice Index Project, justiceindex.org, and its other initiatives on using data to expand access to justice, ncf/orai.org. David is a co-director of the Fordham Law School Access to Justice Initiative. He founded and directed for 12 years the Justice Program at the Brennan Center for Justice at NYU Law School and served as a managing attorney at Legal Services for the Elderly (NY) and at MFY Legal Services Legal Services (NY). He is a graduate of NYU Law School.
CLE MATERIALS


RECOMMENDED READINGS


Lessons from Voices: Empirical Findings on Domestic Violence and Legal Empowerment

Posted by William Bull on Mar 20, 2017 in PhD | 0 comments

By Dr. Julieta Marotta, Deputy Academic Director, MPP, UNU-MERIT/MGSoG

We approach the judicial system when facing problems. We assume that legal provisions and state organizations will serve us to find remedies to our problems. Violence against women is a global challenge. UNWomen estimates that 35% of women have experienced gender violence while less than 40% seek for help. For example, in the city of Buenos Aires (Argentina), a larger number of domestic violence complaints are being submitted daily by women.

Yet, how does access to justice legally empower victims of domestic violence? Legal empowerment uses the law as a tool for individual development, and affects legal provisions, providers, and victims. Qualitative empirical legal research is used to understand this given reality from the voices of actors.

Victims that obtain access to justice start visualizing an opportunity to change. Most of them share three characteristics: education, perception of an income, and a social network to reach out for help (mostly female peers). Moreover, victims frequently submit complaints in places commonly accepted by their network.
Victims are passive in their participation during the legal procedures, due to, amongst others, their limited understanding. This leaves them with few options beyond following directions, and gives them no tools to hold providers accountable. The lack of understanding increases the feeling of fear and victims do not know what to expect. Techniques to keep victims informed and flexibility in the process to allow providers to work with these vulnerable actors are recommended.

Concrete procedural rules to implement coordination amongst different organizations are absent. Consequently, coordination is left to the discretion of actors. Providers view the poor cooperation as an obstacle to assist victims effectively. Victims, moreover, express confusion by the amount of organizations participating in their cases.

Victims believe that when they access the police station someone will solve their problems; they soon learn that they enter into a path with unexpected tasks. Victims cannot prepare to participate and the system does not help them either. These vulnerable actors could be given a schedule to allow them to plan ahead.

The fact that domestic violence is in the policy agenda allows for changes in the minds of judges. This is primarily thanks to the work of specialized prosecutors trained in domestic violence, and to the volume of domestic violence complaints that are being submitted daily.

Legal provisions and legal organizations are recommended to further incorporate a legal empowerment approach, because even when access to justice might not entirely resolve a conflict, it can assist individuals to develop new tools to solve conflicts. A better understanding of rights and the process helps victims to embrace their situations, and to decide how they want to position themselves within that scenario. Understanding appears as the main tool to allow individuals to fully voice themselves.


Supporting Survivors

The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence

Jennifer S. Rosenberg
Denise A. Grab
July 2015
Domestic violence is a significant public health problem in the United States. It takes many forms, including rape, physical assault, emotional assault, and stalking, and its reach knows no social, religious, racial, or ethnic bounds.¹

Evidence indicates that the social costs of domestic violence² extend far beyond the private costs borne by the immediate families. Such costs, known in economic parlance as externalities, are borne by society generally, with the burdens falling especially heavily on some groups. For example, children whose parents are victims of domestic violence experience long-lasting emotional and psychological effects, which can also harm their current schoolmates, as well as their future relationships and families. Larger health care, law enforcement, and social services costs may fall on taxpayers in states and municipalities with higher levels of domestic violence.

The gravity of this issue warrants using all policymaking tools available, including economic reasoning and cost-benefit analysis. In no way does this report suggest that other moral and rights-based grounds lack importance—or should even fall second to economic considerations—in determining public policy on this issue. Indeed, international courts have found that freedom from domestic violence is a fundamental human right.³

This report, however, will focus on assessing the economic benefits of providing civil legal assistance to domestic violence victims by examining the underlying transaction between an attorney and her client. What are the social costs when a victim of domestic abuse cannot afford legal assistance and lacks access to free or subsidized assistance? Might greater subsidies for civil legal assistance be cost-benefit justified?

The evidence suggests that civil legal assistance might indeed be cost-benefit justified. Civil legal services improve the likelihood that women will be able to obtain protective orders from courts, which is a significant factor in reducing rates of domestic violence. In fact, studies have shown that the availability of civil legal aid can be effective in reducing rates of violence, and even more effective than alternative interventions such as the provision of shelters or counseling services.⁴ Increased funding to enhance the availability of civil legal services to low-income families can lower the societal costs of domestic violence, generating substantial economic benefits.
This report discusses significant categories of benefits that will be generated by reducing the incidence of domestic violence through the provision of legal services. These categories of benefits include savings in the following areas: medical and mental health care costs, criminal justice system costs, and the tangible and intangible benefits associated with lessening children's exposure to violence. This last category is especially salient, since the externalities imposed upon children whose parents are in abusive relationships affect not only those children, but many others, as well, and these effects have traditionally been ignored by policymakers. Where possible, we provide rough estimates of the magnitude of these costs and cost-savings, noting where additional research is needed to provide better monetized analysis.

The report examines the economic benefits of reducing domestic violence through legal services. Evidence suggests that there are quantifiable, evidence-based economic benefits associated with providing legal services to domestic violence survivors, and that the benefits to be gained by subsidizing more legal services can often justify their costs. How large these subsidies should be, and how they should best be dispersed, are separate public policy questions that will not be directly addressed here. The report closes with a brief discussion of critical factors policymakers and analysts should consider in deriving those answers.

This report proceeds in five parts:

- Part I compiles information about the prevalence of domestic violence against women.
- Part II explains how access to legal services has been shown to reduce the incidence of domestic violence through assistance in obtaining civil orders of protection, as well as help in other legal areas, such as immigration and housing.
- Part III discusses the societal costs of domestic violence in order to illustrate the economic benefits that can be realized through the reductions in violence that would come from providing more legal assistance to survivors. Some of these costs are obvious, such as medical care or criminal justice system costs, but others are less readily apparent, such as the costs society incurs whenever a child is exposed to domestic violence.
- Part IV discusses the inefficiencies in the market for legal services; these inefficiencies further justify government intervention.
- Part V addresses the public policy implications of all of the above.
Part I: The Prevalence of Domestic Violence

Since there is no national or state-wide system for collecting data about domestic violence, prevalence estimates are extrapolated from survey data. Police and hospital records are also sometimes used, however these records often lack complete information about a woman’s previous domestic violence history and her relationship to the abuser. Relying on such documentation is also problematic due to a severe underreporting problem: the Bureau of Justice Statistics in the U.S. Department of Justice estimates that nearly half of all domestic violence incidents go unreported.  

Another challenge to measuring the full extent of domestic violence is a lack of consensus about terminology and how different types of violence are categorized. Researchers who include stalking in their definition of domestic violence will necessarily find larger incidence rates than those who limit their analysis to physical and sexual assaults. In addition, different surveys may look at numbers of victims rather than numbers of victimizations.

Until recently, the best available information on the prevalence of domestic violence in the United States came from a survey conducted in 1995-1996 at the express request of Congress. The survey, known as the National Violence Against Women Survey, was funded jointly by the National Institute of Justice—the research arm of the Department of Justice—and the Centers for Disease Control and Prevention. It generated unprecedented information about the occurrence, characteristics, and effects of nonfatal intimate partner violence (IPV), which was defined as an incident of physical assault, rape, or stalking. Survey data was extrapolated to generate national estimates, showing that:

- Each year, 5.3 million IPV victimizations occur among American women 18 years of age and older.
- This violence results in 2.0 million injuries. 550,000 of these injuries require medical attention and more than 145,000 are serious enough to warrant hospitalization for one or more nights.
- IPV results in more than 18.5 million mental health care visits each year.
- Women subjected to violence by an intimate partner lose nearly 13.6 million days of productivity each year. This includes 8.0 million days of paid work—roughly equal to 32,000 full-time jobs—and 5.6 million days of childcare and other household work. 
- In 1995, the same year that incidents were reported to the National Violence Against Women Survey, 1,252 women ages 18 and older in the United States were killed by an intimate partner.
Recently, the Centers for Disease Control and Prevention initiated an ongoing, national survey effort dedicated to describing and monitoring domestic violence, sexual violence, and stalking. This new research effort, entitled the National Intimate Partner and Sexual Violence Survey, began with a 2010 survey, whose results were published in two installments in 2011 and 2014. The 2010 Survey included different questions, focused more on lifetime (rather than annual) prevalence of particular forms of IPV, and did not extrapolate from the sample to numbers in the general population. Of note, it found that, over their lifetimes: 9.4% of women have been raped by an intimate partner, 24.3% of women have experienced severe physical violence from an intimate partner, 48.8% of women have experienced at least one instance of psychologically aggressive behavior from an intimate partner, and 10.7% of women have experienced stalking by an intimate partner.

**Economic Status as a Determining Factor**

The economic status of an individual woman affects her likelihood of being in an abusive relationship. Being poor dramatically increases a woman’s chances of being abused. One analysis of data collected by the Department of Justice’s Bureau of Justice Statistics showed that women in the lowest income households experience seven times the rate of abuse suffered by women in the highest income households. (These measures of income include both wage and nonwage income, the latter consisting mostly of child support and public assistance.) Likewise, women who experience food and housing insecurity experience a significantly higher incidence of rape, physical violence, or stalking by an intimate partner.
Part II: The Role of Legal Assistance in Reducing the Incidence of Violence

The legal services provided by an attorney can range from simply advising survivors about their legal options to providing full representation through the complaint process. In between, lawyers may help clients file court papers, seek protective orders, or prepare for hearings and other court appearances. Whether a survivor has legal counsel can have a significant effect on the outcome of a domestic violence case, including whether a restraining order is successfully obtained. Several studies have explored the role of legal assistance in reducing the incidence of domestic violence and various ways it does so.

Provision of Legal Services Significantly Lowers Rates of Domestic Violence Against Women

A number of studies demonstrate that access to social services, including legal assistance, reduces the probability of future domestic violence. These findings are consistent with now well-established economic models of domestic violence. The models are discussed below, followed by a brief survey of the recent empirical literature.

Economic models of domestic violence predict an inverse relationship between rates of domestic violence and the scope of women’s alternatives outside of their relationships. That is, as battered women’s economic opportunities improve, they are better able to exit violent relationships.12

This is why social service programs directed at battered women are predicted to have long-term impacts on rates of violence against women: they enhance the availability of outside options.13 Some services inherently provide women with only short-term alternatives, such as the immediate refuge of a shelter or an emergency hotline. Other services seek to enhance women’s economic status, such as by providing them with direct payments or job training, placement, and educational programs. These programs help women become more economically self-sufficient over time and less tied to, or even dependent upon, their partners for financial stability. Evidence shows that as the prospect of being able to support themselves starts to become a reality, battered women are more likely to leave their relationships. Alternatively, those who stay with their partner do so with greater economic independence and an ability to assert more credible threats that they will leave their relationship if the abuse continues; this shifting of power forces abusers to curb the violence or risk losing their partners.14

Over the past quarter century, a growing body of literature has lent empirical weight to these economic models, demonstrating that women’s access to alternative options affects the levels of violence they experience. Studies conducted
in the 1970s and 1980s show that women with access to fewer economic resources are less likely to leave their abusive partners. Other evidence strongly suggests that women who are highly economically dependent on a marriage experience more severe abuse. Women in marriages where men dominate the finances and decisionmaking suffer even higher levels of violence.

There is less empirical work, however, examining the effect of social service provision on the rate of violence against women. One study published in 1999 analyzed the effect of service provision on the likelihood that a woman who is suffering violence at the hands of her husband will kill him. Results demonstrated that the existence of services for battered women, such as shelters, counseling centers, and advocacy groups, coupled with women's overall economic power, reduced the rate at which they killed their husbands. The authors posited that women with access to better outside options—especially those providing avenues toward economic self-sufficiency—are less likely to resort to killing their husbands in order to protect themselves.

In 2003, economists Amy Farmer and Jill Tiefenthaler took an unprecedented look at the impact of social service provision on the incidence of domestic violence. They sought to answer whether the national uptick in social services for battered women that took place during the 1990s could be linked to a decline in rates of domestic violence. According to the Department of Justice, domestic violence against women in the United States fell by 21 percent between 1993 and 1998, down from 1.1 million violent incidents to 876,340 incidents. Beginning in the mid-1980s, federal, state, and local governments increased the range of services available for battered women. Sometimes governments administered these services directly; in many cases the governments funded their provision by nonprofit organizations. Importantly, among these programs, the number of those providing legal services to women increased especially dramatically in the 1990s. In 1986, only 336 legal services programs served victims of domestic violence nationwide. In 1994 that number had increased 254 percent, to 1190 programs, and by 2000 it had increased to 1441 programs. Much of this expansion occurred not because new legal services agencies opened their doors, but because existing victim services organizations began adding legal counseling to their menu of social services offered. In some cases, the impetus for these additions – what made them feasible financially – was the creation of new federal grant programs established under the 1994 Violence Against Women Act. Although criminal justice initiatives were the primary focus of these grants, community-based agencies that delivered services to victims also benefited from an influx of VAWA-authorized spending.

Farmer and Tiefenthaler queried whether the increase in social services provided more women with better alternatives to their abusive relationships and could therefore be considered a causal factor in the decline of domestic violence. To conduct their analysis, the authors compiled county-level information across several variables, including ethnographic and income-level data. They also tallied up the existence of various programs for battered women by county. These programs ranged from shelters (sub-grouped by their number of beds), safe homes, counseling, hotlines, rape counseling, and emergency transportation, to legal service programs, programs for victims’ children and anger management programs for batterers. Farmer and Tiefenthaler then merged this information with individual-level data that included wage earnings and reported incidents of abuse. Overlaying these two levels of data allowed the economists to observe statistical relationships between rates of violence and the degree of women’s access to alternative options—i.e., social service programs—outside of their relationships.
The study’s findings are revealing. Among the myriad social service programs Farmer and Tiefenthaler observed, only the availability of legal services in a woman’s county of residence was found to reduce her likelihood of abuse. The provision of legal services, according to the authors, “significantly lowers the incidence of domestic violence.”

Extrapolating from their results, Farmer and Tiefenlauer write that “[b]ecause legal services help women with practical matters (such as protective orders, custody, and child support) they appear to actually present women with real, long-term alternatives to their relationships.” By contrast, the existence of hotlines, shelters, and counseling programs were found to have no significant impact on the likelihood of a woman being abused by her partner.

Given the dramatic increase in the number of programs providing legal services for battered women in the 1990s, Farmer and Tiefenlauer concluded that the expansion of access to legal assistance was likely one of the significant factors that drove down incidence rates. Noting, however, that women’s income levels and levels of educational attainment are also significant determinants of their likelihood of suffering domestic violence, Farmer and Tiefenlauer examined statistical relationships for these variables, as well. They found that together with the more widespread provision of legal services, positive trends in these two factors likely also played a substantial part in diminishing rates of domestic violence in the 1990s.

**Access to Legal Assistance Can Reduce Domestic Violence By Increasing the Likelihood That Women Will Seek and Obtain Protective Orders**

Civil court orders of protection are an important recourse for women seeking judicial intervention in abusive relationships. Survivors of domestic violence have rated the filing of a protective order as one of their most effective tools for stopping domestic violence, second only to leaving the abuser.

The term “protective order” encompasses a class of civil remedies that have different names depending on jurisdiction, from “restraining order” to “peace bond.” They are available in all fifty states, usually first as a temporary means of relief that petitioners can later request to be extended in a final order lasting as long as five years. Within this rubric, the possible contours of a protective order vary by state. In addition to requiring an abuser/respondent to cease perpetrating violence, an order may instruct him to have limited contact with the petitioner or no contact whatsoever (neither physical nor telephonic nor electronic), or to seek counseling, or to share childcare responsibilities in a prescribed fashion. Other state-by-state differentials are eligibility criteria, durational parameters, and the procedural requirements for obtaining an order. Orders of protection are civil remedies separate from criminal justice interventions, but they can supplement or run concurrently with a criminal case. They can also serve as an alternative legal option for women where no criminal action has been filed or for women who are reluctant to participate in a criminal proceeding against their abuser. Since protective orders have a lower evidentiary threshold than criminal charges—only a “preponderance of the evidence” test must be met, rather than “beyond a reasonable doubt”—they are also easier to obtain than criminal convictions.

Access to legal services increases the likelihood that a victim will successfully be able to obtain a protective order against her assailant. According to one study, 83 percent of victims represented by an attorney successfully obtained a protective order, as compared to just 32 percent of victims without an attorney. Another study in Wisconsin found
that the likelihood of receiving a protective order against an abuser jumped from 55 percent to 69 percent when the victim was represented by counsel.\textsuperscript{32}

Research on civil protective orders provides a complicated picture of how, exactly, they help prevent further abuse. Researchers currently have only a “limited understanding of which factors are most associated with violations [of protective orders].”\textsuperscript{33} Among the compounding variables that complicate this research are: (a) whether a petitioner drops the protective order; (b) whether the petitioner reports violations of an order to the police; and (c) the degree to which orders are enforced by police and courts. Yet the results of numerous studies support the proposition that protective orders are generally useful in reducing incidence of abuse; they also help reduce the severity of abuse and make women less fearful of future harm.

The effectiveness of protective orders can be assessed along two major dimensions: (i) whether abuse persists after an order is obtained and (ii) whether petitioners perceive orders as being effective.\textsuperscript{34} With respect to the first metric, a number of studies report that significant numbers of women—between 23 and 70 percent\textsuperscript{35}—experience violations of protective orders in the form of stalking or physical abuse.\textsuperscript{36} One meta-analysis of the literature calculated that across 32 separate studies, restraining orders were violated 40 percent of the time on average.\textsuperscript{37} This wide disparity in estimated violation rates probably results from methodological differences in how violations were counted—e.g., whether they relied on official records like arrest records, which traditionally suffer from underreporting, versus relying on victim self-reports of reabuse.

The second dimension for the evaluation of protective orders centers on the subjective experiences of the women who obtained them. Whereas analyses of protective order violations hinge on a narrow set of variables—e.g., the occurrence or nonoccurrence of discrete acts of abuse after a particular date (when the judge signed the order)—analyses of women’s perceptions of their own safety implicitly account for a much broader range of variables. In answering survey questions about whether they feel their protective order was effective, a woman can draw from any number of developments: changes in the frequency or severity of abuse, changes in her partner’s outward behavior or demeanor, and her own increased knowledge of legal options available to her, among others. Therefore, this second dimension of evaluation is arguably more telling than the first, since it is grounded in a woman’s own sense of control and safety in her daily life. This factor has, therefore, been weighted heavily in many intimate partner victimization studies.\textsuperscript{38}

Most women who obtain protective orders believe that their orders have an effect. A study funded by the National Center for State Courts interviewed survivors one month after they obtained a protective order, and again six months afterward. The women reported favorable attitudes toward the effectiveness of the orders, noting a positive impact on their well-being that increased over time. Respondents reported low re-abuse rates, and 95 percent said they would seek a protective order again.\textsuperscript{39} Another study based on survey responses found that 98 percent of women who obtained protective orders felt more in control of their lives as a result of the order, and 89 percent felt more in control of their relationships.\textsuperscript{40}

Additional studies find that women who obtain protective orders report feeling safer and more empowered, better about themselves, and a sense of overall life improvement.\textsuperscript{41} In one sample of women who obtained orders, 70 percent reported that the order was helpful in communicating to her partner that his actions were wrong.\textsuperscript{42} Another
study found that 91 percent of women who obtained temporary orders of protection felt good about their decision to obtain one, and 87 percent of respondents to another survey believed that their reporting of the violence to a court “helped stop the physical abuse.”

Protective orders are not a guaranteed solution, and overall, the evidence on their ability to end violence definitively is inconclusive. But the effectiveness of protective orders should be evaluated using multiple dimensions, including whether the women obtaining them believe they have positive impacts. Indeed, a high percentage of women credit them with helping end or lessen the severity of abuse. Protective orders also indirectly empower women in various ways, allowing them to gain the resources to leave their relationship or to assert more power within it. Notably, access to legal services is a determining factor in whether a woman chooses to exercise her right to petition for a protective order—and whether her petition is successful.

**Legal Services Programs Help Women Obtain Additional Legal Remedies That Can Lead to Reductions in Violence**

Increasing a woman’s chances for obtaining a protective order is one of the most straightforward ways in which legal assistance can help reduce domestic violence. As we have seen, however, economic dependency often constrains a woman’s ability to leave an abusive relationship even after a protective order is granted. This is especially true in situations where a woman’s access to financial resources is controlled by her batterer.

This common thread gives rise to an additional way in which the provision of legal assistance in a domestic violence matter can lead to reductions in violence: by serving as an access point for women to get legal assistance on related matters.

Since the majority of domestic violence victims are low-income, it is not surprising that domestic violence cases are often interwoven with child support, housing and eviction, consumer debt, and immigration-related issues. Moreover, there may be causal links between the domestic violence and these other issues. For example, a tenuous immigration status can increase a woman’s risks of domestic violence because she may be afraid to take advantage of social service programs or her abuser may use threats of deportation to keep her in the relationship. Conversely, domestic violence may increase risks of eviction and homelessness due to landlord reactions to violence at the tenant’s home.

In general, having an attorney’s assistance with ancillary legal matters further helps women achieve greater economic self-sufficiency (and perceptions of self-sufficiency), which in turn makes leaving their relationships a more realistic option. Even where the outcome is unfavorable for the client, for instance where a court fails to order support payments or allows an eviction to proceed, having greater resolution or certainty on these issues may enhance a woman’s resolve to leave an abusive relationship.
Part III: Economic Benefits from the Marginal Reductions in Violence When Legal Services Are Increased

A Necessary Theoretical Framework

The costs of providing legal services for domestic violence survivors are fairly straightforward, encompassing primarily the value of the attorneys’ time required to pursue the cases. Measuring the benefits of a reduction in domestic violence due to increased availability of legal services is more complex.

The benefits of a reduction in domestic violence include both direct benefits to the survivor and externalities that help benefit society more broadly. Traditionally, externalities refer to costs or benefits that accrue to parties other than those involved in a particular transaction. Because domestic violence is not a voluntary transaction, the term “externalities” does not apply in the traditional sense, but we use it in this part to refer to effects that accrue to parties other than the assailant and the victim.

Many of these benefits are difficult to measure, but researchers have made strides in assessing their impacts. As research continues to improve on these issues, the analysis will become even more robust. This part goes on to discuss the major categories of benefits from reducing domestic violence, both those accruing to the survivor and the externalities accruing to society more broadly. Where quantitative data exists, the report discusses the benefits quantitatively. Where quantitative data is weaker, the report discusses the benefits qualitatively and recommends avenues for future research.

Direct Benefits to the Survivor

A reduction in domestic violence resulting from increased provision of legal assistance will result in many direct economic benefits to the survivors. As stated in the introduction, there are important moral and rights-based reasons why society should take steps to end domestic violence, but for purposes of analysis, this report will focus on the economic impacts accruing to survivors. Some of these direct economic benefits are more easily monetized than others, such as decreased health care costs and increased productivity. The benefits that are trickier to value include increased quality of life and improved psychosocial effects. Many of these benefits can be measured by looking at the costs of domestic violence that could be avoided by a reduction in violence, so we begin the analysis by reviewing studies of domestic violence’s costs.
When Congress commissioned the National Violence Against Women Survey, it did so in order to generate not only better measurements of the magnitude of domestic violence in America, but also better information about its costs, especially the costs of treating IPV-related injuries. In 2003, the CDC released a follow-up report entitled Costs of Intimate Partner Violence in the United States, in which data from the National Violence Against Women Survey is used to calculate partial estimates of the economic costs of IPV.

The costs estimated by the CDC fall into three large categories: (1) medical care for physical injuries and mental health care; (2) lost productivity; and (3) lost lifetime earnings. Naturally, the size of the costs varies according to the type of violence—while physical assaults may incur higher hospitalization costs than stalking, for example, the drawn-out psychological trauma caused by stalking may incur more expensive mental health care treatment over a protracted period. With regard to these three categories of costs, the CDC estimated that:

- Each year, violence perpetrated by intimate partners generates costs in excess of $9.05 billion.

This $9.05 billion figure includes:

- **Medical and mental health care services.** These costs totaled nearly $6.4 billion, including the costs of emergency room visits and visits to psychiatrists or psychologists. The costs of medical care are in fact likely higher, since the CDC did not take into account certain medical care costs, such as treatment for sexually transmitted diseases, due to incomplete data. This is acknowledged by the report’s authors.

- **Lost productivity.** As a result of physical injuries and psychological problems, victims of IPV lose time from their regular activities. The estimated total value of days lost from employment is $1.34 billion (8.0 million days). The estimated total value of days lost from household work, including childcare, is $204.2 million.

- **Lost lifetime earnings.** This category of costs account for the lost lifetime earnings that women who are killed by an intimate partner each year would have contributed to society. Based on the ages of the 1,252 victims and other factors, CDC analysts estimated the present value of their lost lifetime to be $1.39 billion, or an average of $1.11 million per woman. It is important to note that lost lifetime earnings is not an economically rational approach to valuing mortality risks because it focuses only on the value of the victim’s employment. Using estimates from the Environmental Protection Agency (EPA) of the value of mortality risk reduction, the costs of the mortalities identified by the CDC is over $10 billion.

Most of the costs estimated in the CDC report arose from physical assaults. A substantial amount of the total costs—$6.4 billion—were direct expenditures for medical and mental health care treatments.

These health care costs are not solely borne by the victim and her family. On average, victims pay more than one-quarter of all medical care costs, such as hospital visits. Private or group insurance plans pay for nearly half of those
costs, while the remaining quarter of the costs are either paid for by others or incurred as unpaid liabilities by the health providers themselves. For mental health care costs, victims end up paying roughly one-third of those costs, with insurance or unpaid liabilities accounting for the remainder of the costs.

By the CDC’s own admission, its report vastly underestimates the full costs of domestic violence, since it excludes altogether large categories of costs for which the CDC lacked sufficient data. For instance, the CDC report does not include any intangible costs, such as the pain and suffering of survivors and their families. Nor does the report take into account criminal justice system costs, such as the cost of prosecuting abusers, or the costs of social services such as women’s shelters or counseling offices, or any of the impacts on children. As discussed below in sections C and D, these excluded costs are likely enormously economically significant. Thus, to the extent that the CDC’s figures can be considered useful for the purpose of evaluating the economic costs and benefits of a domestic violence intervention, they must be regarded as a conservative lower bound and supplemented with additional data as it becomes available.

Externalities that Affect Society More Broadly

Although there are challenges to monetizing the positive externalities associated with expanding legal services for domestic violence survivors, evidence strongly suggests that these benefits would be substantial.

Tangible benefits would accrue to the private sector, including insurance companies and hospitals, as well as the public sector. Reducing domestic violence would save large amounts of public money that would otherwise be spent on responding to domestic violence through law enforcement, health care, and homeless services, among other services. An independent analysis focusing on the state of New York found that providing legal assistance to female domestic violence survivors could save the state $85 million annually in expenses resulting from domestic violence. A similar study focusing on the state of Massachusetts found that providing legal assistance to low-income female domestic violence survivors could save $16 million in medical care costs alone annually, half of which would otherwise be borne by the federal government and half by the state. Since the authors of these studies excluded large categories of costs from their analysis, including criminal justice system costs and the negative effects of domestic violence on children, this figure significantly underestimates the states’ potential cost savings. Other states stand to reap similar returns.

A robust economic analysis of civil legal services for survivors of domestic violence must account for all significant cost-savings arising from reductions in the incidence of abuse. At least three major types of positive externalities result from a reduction in domestic violence. The first involves a reduction in costs of criminal justice system interventions including law enforcement responses to 911 calls and criminal prosecutions. The second consists of savings in social service program outlays; as incidence of violence drop, so does demand for various publicly funded services related to domestic violence, such as shelters and counseling programs. The third comprises the benefits of reducing the variety of negative effects that domestic violence imposes on children. As discussed below, domestic violence inflicts harm on all children, both those who live in abusive home environments and those who do not.

In accordance with best practices, wherever quantification of a particular cost is not possible or practical, qualitative descriptions are provided for consideration alongside a monetized analysis.
1. Cost Savings From Fewer Criminal Justice Interventions

Reductions in domestic violence save on all of the direct costs associated with processing related criminal justice cases—expenses that are all incurred by taxpayers. An economic analysis of a legal services program for domestic violence victims must account for the full range of costs associated with processing these cases, and determine how many future cases will likely be avoided if more legal services are made available to women.

Over 1.5 million domestic violence police reports are filed each year in the United States. Over 79,000 of these cases ultimately result in jail time or a prison sentence; an even higher number of them result in arrests. These cases generate numerous related costs, including the costs of responding to 911 calls, the administrative and personnel costs of criminal investigations, of prosecuting abusers, of feeding, clothing, and housing offenders who are incarcerated, and the costs of parole and probation.

Increasing the provision of civil legal services is likely to help drive down the incidence of domestic violence overall. As a result, police will have to respond to fewer domestic violence calls, and prosecutors will have to investigate and press fewer criminal charges.

It is surprisingly difficult to find reliable data on the law enforcement-related costs of domestic violence. The major national data source is the Uniform Crime Report, released by the Department of Justice, but a pervasive lack of continuity in recordkeeping practices by police departments around the country renders official estimates suspect. Calls are frequently tagged with ambiguous labels and, even within a department, how a 911 operator classifies a call may conflict with the classification ultimately reported by the officer on the scene. Though studies on the topic are scarce, publicly available data allows for a rough estimate of the average cost of a domestic violence-related 911 call. New York City, for instance, has estimated that its total cost of domestic violence-related 911 calls per year is $2.7 million, with an average cost of about $9.50 per call.

Various factors affect how police respond to incidents of domestic violence. Decisions to make an arrest often turn on situational characteristics such as whether the victim has sustained serious physical injury, whether a weapon was involved, the assailant’s attitude toward the investigating officers, and whether the police perceive a likelihood of continued violence. Studies on the costs of police responding to domestic violence incidents are limited, but some data exists. New York City reported that it spent about $44 million “responding to reports of domestic violence, and arresting, prosecuting, and supervising batterers” in 2005.

Civil responses to domestic violence, including court-ordered protective orders, can also be cheaper than criminal justice system interventions. Criminal domestic violence cases are costly to the criminal justice system: they require more personnel and more evidentiary proof; they also involve a great deal more bureaucracy and, depending on the jurisdiction, can take a longer time to reach resolution. Criminal hearings often incur procedural delays; even in a proactive court setting it can take between 6 to 8 months for an average domestic violence criminal case to go from intake to disposition.
2. Costs of Social Services Programs Related to Domestic Violence

By contributing to a decrease in the incidence of domestic violence, civil legal assistance also saves on the costs of various social services that are part of society’s domestic violence response. These services include transitional housing, homeless and battered women’s shelters, and counseling services. Some data exists as to the costs associated with these programs, but additional study is warranted.

**Domestic Violence Programs**

An extensive network of local programs helps bridge the divide between the criminal justice system’s response to domestic violence and the health care system’s response. These programs provide a wide array of services. Some of them are safety-based, operating crisis hotlines, emergency shelters, or transitional housing. Others focus more on long-term treatment and provide psychological counseling, job-training, housing support, or legal services. Most are holistic in some way, either providing a combination of services or maintaining working referral-based relationships with other programs.

Most of these community-based programs rely upon federal and/or state funding. Some programs receive grants from federal agencies, mostly from the Department of Justice and Department of Health and Human Services. Within the Department of Justice, the Office of Violence Against Women administers a range of grant programs, such as the Transitional Housing Assistance Program, the Grants for Outreach and Services to Underserved Populations, and the Legal Assistance for Victims Program discussed above.

Little research has been done on these programs—how they cross-serve their communities, the impacts of their services, ways in which they can be improved, and how much they cost. Part of this is due to technological difficulty: many programs have different ways of collecting client information; programs often use different definitions when collecting data; and privacy and safety concerns arise from the personal nature of the data and the ubiquity of insecure databases.

A 2008 study funded by the Bureau of Economic Research was an important breakthrough in this regard. Using information from the National Census of Domestic Violence Services, a small team of economists designed a survey instrument that took a “snapshot” of the number of people served in a 24-hour period by any organization whose primary focus is to serve survivors of intimate partner violence and their families. Based on survey results, researchers were able to estimate that in a single day, around 50,000 individuals around the United States are served, in person, by community-based domestic violence programs. Around 96 percent of these individuals are women, nearly half seek some type of housing (emergency or transitional) and, on average, they are accompanied by at least one child.

In addition, local programs respond to over 16,000 crisis calls each day, at a rate of more than 11 calls each minute.

**Homelessness**

There is a strong link between domestic violence and homelessness. Evidence supporting this relationship is overwhelming and also indicates that domestic violence can be a direct cause of homelessness. Studies indicate that half of all homeless women and children are fleeing domestic violence, and nearly 38 percent of all victims of domestic
Given this link between domestic violence and homelessness, any reductions in domestic violence resulting from greater access to legal services is likely to have the positive ancillary effect of reducing homelessness—both the size of the homeless population and the duration of homelessness. Society as a whole bears a range of economic costs resulting from homelessness, including shelter costs, emergency room costs, and justice system enforcement costs. Estimates of these costs vary, but have been found to be in the tens of thousands of dollars per individual per year.

The cost-savings resulting from reduced homelessness are likely to be economically significant and should be considered alongside proposals to increase or decrease funding for civil legal assistance programs that serve domestic violence victims. The likely size of these savings merits further evidence-based analysis that can be used to generate rough estimates.

As the Bureau of Economic Research findings suggest, increased funding for housing programs can also help reduce incidence of domestic violence. Emergency shelters are imperative for women and children who face immediate threats to their safety. Transitional shelter is, by contrast, much harder for women to come by: the Bureau of Economic Research study found that 22 percent of domestic violence programs offer emergency but no transitional housing. And those who visit emergency shelters most often return to their abusers for a lack of alternative living options. Shelters that offer transitional housing experience much lower rates of return visits, and a majority of women in transitional housing programs have reported they would have returned to their batterers but for the program.

### 3. Externalities Imposed on Children

Ample research demonstrates the range of effects that domestic violence has on children, as well as the magnitude of those effects. It is estimated that between ten and twenty percent of all children (ages 3 to 17) in the U.S. are exposed to domestic violence each year. Children often bear witness to the violence, in that they observe it visually or overhear it transpire. Beyond being a witness, children may experience domestic violence in a variety of ways: they may become a target of the violence or be forced to watch the conflict; they may become a participant by attempting to intervene, or be used as a shield against assault. Domestic violence can also be traumatic for a child who never sees or hears it directly, but who experiences its aftermath. Willingly or unwillingly, children often have no choice but to engage with one or both parents, to notice physical injuries sustained, to speak with police who are called upon to intervene, or to take refuge with their mother at a shelter or someone else’s home.

Exposure to domestic violence can have a wide range of negative effects on a child, all of which come with associated costs. First, there are direct costs, such as immediate medical and mental health care costs. Many children are also temporarily relocated as a result of the violence, spending periods of time either in shelters with their mother or, in more extreme cases, they are shepherded by courts or children’s services agencies into foster care. In both scenarios, the government assumes many of the administrative costs associated with these placements, whether it is providing the basic necessities of food and lodging, or employing social workers to monitor a child’s well-being in foster care. Children’s school attendance might also be disrupted due to these relocations.
Second, indirect costs arise from the psychological and psychosocial effects of a child’s exposure to domestic violence. A substantial body of literature demonstrates that children who are exposed to domestic violence suffer, as a result, a multitude of emotional, cognitive, and social problems.\(^8\) These problems range from outward behaviors, such as aggression; to internal behaviors, such as anxiety and depression; to impaired intellectual and cognitive functioning, as evinced by an inability to concentrate; to diminished social competence. Children exposed to domestic violence also score significantly lower on measures of verbal and motor skills than children from nonviolent homes; they also display prominent somatic symptoms including headaches, peptic ulcers, insomnia, stuttering, and asthma.\(^8\) It comes as little surprise then, that children exposed to domestic violence demonstrate lower academic performance, suicidality, and trouble relating to both peers and adults.\(^9\)

The negative effects of childhood exposure to domestic violence likely carry forward through adulthood. Unfortunately, there is a dearth of longitudinal studies on the topic, but existing research does show that childhood exposure to domestic violence has negative long-term effects on psychosocial well-being and possibly even long-term earning potential as adults.\(^1\)

Research also establishes the intergenerational pattern of domestic violence, meaning that children who are exposed to domestic violence are more likely to perpetuate the cycle of abuse in their own families. The American Psychological Association has concluded that a child’s exposure to the father abusing the mother is the strongest risk factor for transmitting violent behavior from one generation to the next.\(^2\) This phenomenon amplifies the positive impact of policies that successfully reduce the rate of domestic violence today; these policies are likely to reduce domestic violence even further in the long run, generating additional benefits.\(^3\)

The effects also extend beyond the individual child who is exposed to domestic violence, to her schoolmates, in the form of lower educational outcomes. Numerous studies document this phenomenon, which is known as “negative peer effects” or “negative classroom spillovers.” Children from violent homes tend to exhibit disruptive behavior in the classroom, whether in the form of anger, aggression, outward defiance of a teacher’s authority, or otherwise. This behavior negatively affects other students’ learning in statistically meaningful ways.

One recent study found that children exposed to domestic violence significantly decreased their fellow students’ reading and math test scores and significantly increased misbehavior in the classroom overall.\(^4\) Using a unique data set linking student outcomes to domestic violence court cases, the researchers were able to estimate that adding one more troubled child to a classroom of twenty peers would lower students’ test scores by 0.69 percentile points and raise by nearly 17 percent the number of disciplinary infractions committed by students.\(^5\) The researchers also found that of children exposed to domestic violence, two sub-groups primarily drove these negative spillovers: boys and children from low-income families. While boys exposed to domestic violence commit nearly three times as many disciplinary infractions as girls, children from low-income families who are exposed to domestic violence commit almost six times as many infractions as similarly exposed children from high-income families.\(^6\)

Importantly, the data also suggests that negative classroom spillovers are reduced once domestic violence is reported to a court. In the study described above, the researchers found that the peer effects they had identified—lower test scores and higher disciplinary infractions—were “almost entirely driven by children whose abused parents had not yet reported the domestic violence [to a court] but would do so at some point in the future.”\(^7\) Whereas exposure to
children from families with as-yet-unreported domestic violence lowered academic performance significantly, those negative peer effects “disappeared” once a parent (typically the mother) filed a civil claim for temporary protection. By going back through school records predating the court case, the researchers found evidence of children causing negative spillovers as far back as four years before the parent finally sought a restraining order. (This four-year time-frame accords with survey research estimating that domestic violence persists, on average, for more than four years before it is officially reported.) Negative peer effects increased over time and were largest in the year in which the court case was filed; this result “likely reflects that the home situation gets worse” before it ultimately prompts the abused parent to seek relief from the legal system.

Policies and interventions that help reduce children’s exposure to domestic violence may therefore generate significant benefits that extend to a very broad group of children who come from nonviolent households. When violence is reported, victims and their families are able to enlist police protection and get access to supportive services, such as counseling centers or shelters that may improve a child’s immediate home life. In addition, especially if a protective order includes custody arrangements, a child’s school may be notified about the existence of the restraining order and that legal steps are being taken to improve a child’s family environment. Where notice is made, teachers and school counselors will be better equipped to address the needs of the troubled student, as well as her impact in the classroom.

To be sure, existing research on classroom spillovers does not by itself demonstrate a conclusive causal link between the filing of a court case and the elimination of negative peer effects. Several other factors or a combination of factors may also explain why the initiation of a court proceeding is correlated with striking reductions in peer effects. For instance, it is possible that around the same time the mother filed her case, she ended the relationship or moved herself and the children out of the house, or took some other additional steps that are themselves responsible for the drop-off in negative spillovers. In any case, the policy implications are very similar: there is a substantial social benefit to programs that assist victims of domestic violence in taking action to reduce the violence. And the earlier the intervention is, the greater that benefit will be.

Moreover, while classroom-based studies can shed light on how children exposed to domestic violence can have a negative effect on the educational achievement of other students, they almost certainly undercapture the full dimensions of the negative spillovers imposed on other children. Children from violent homes interact regularly with a range of children outside of their classrooms, including other children at school and from around their neighborhood. Estimates of classroom effects should therefore be viewed as a lower bound when assessing how domestic violence negatively affects non-family members and the resulting social costs borne by us all.
With all of the tremendous benefits to be gained by increasing the provision of legal services to survivors of domestic violence, the question arises why most survivors do not retain their own counsel. Part of the story may be that some benefits associated with a reduction in domestic violence are externalities that do not accrue to survivors directly, as discussed in Part III. Yet there is also reason to believe that survivors do not retain attorneys at a level commensurate with the benefits of doing so because of failures in the legal services market. Some of these market failures include limits on the availability of legal services, asymmetries between survivors and batterers in the legal services market, steep transaction costs combined with limited availability of credit, and information asymmetries between survivors and attorneys concerning the benefits of legal services.

Restrictions on the Supply of Legal Assistance

One set of market failures for legal services stems from the limitations on supply—namely the limitation imposed by bar licensing requirements. Bar licensing requirements are strict and sweeping, with strong punishments possible for anyone who practices law without a license. These licensing requirements both reduce supply and increase prices of the services of licensed lawyers.

The market failures associated with this restriction in supply disproportionately affect low-income individuals. In the case of domestic violence survivors, those with limited income and those whose partners control their finances may be unable to pay for representation at the time it is needed; they may also have difficulty accessing credit markets that would enable them to obtain the funds on short notice.

Moreover, attorneys may decline to take on low-income clients out of concern that they might not ever be able to recover their fee in full, or they may need to hire a collection agent to do so.

Many legal market observers argue that bans on non-lawyers providing legal services have artificially restricted the supply of those who are able to offer such services, reducing their availability and increasing their price. The result is a legal market that some go so far as to describe as an economically inefficient cartel. On the other hand, some commentators believe that bar admission requirements effectuate necessary quality control and that inexperienced legal representatives can sometimes do more harm than good. (This report does not take a position on whether the legal market is inefficiently exclusionary, except to say that to the extent the bar requirements do serve to perpetuate an inefficient restriction on supply of legal services, states should take steps to reform that inefficiency.)
Various reforms have been proposed. Pro bono requirements, for instance, would go some distance toward increasing the availability of legal services, but this approach does not address the underlying monopoly problem. Instead, it would effectuate a redistribution of wealth by transferring free services to the poor.\textsuperscript{110}

One interesting proposal that deserves greater scrutiny would be to allow non-lawyers who specialize in particular legal matters—including domestic violence—to do more substantive work. Deborah Rhode, for instance, calls for a regulatory framework that would allow certain non-lawyers to provide a distinct set of services.\textsuperscript{111} Pointing to experiences both in the United States and abroad, she asserts that a regulatory framework—as opposed to an outright prohibition on nonlawyers—could lead to lower prices in the legal market, increased accessibility and efficiency, and increased consumer satisfaction.\textsuperscript{112}

**Asymmetries in the Market for Domestic Violence Legal Services**

Another source of market failures in the domestic violence context arises from the fact that perpetrators of violence may already have mandated representation from a related criminal proceeding.\textsuperscript{113} In contrast, survivors are not represented by anyone in a criminal case, including the prosecutor.\textsuperscript{114} At best, victim advocates may assist survivors in accessing certain social services. This imbalance may systematically disadvantage survivors in a concurrent civil restraining order proceeding.\textsuperscript{115}

Although an appointed criminal attorney technically represents someone accused of violence only at the criminal proceeding, the advice provided there may well carry over into the civil restraining order proceeding. Additionally, where a court appoints private counsel (rather than a public defender) to represent someone accused of domestic violence, that private counsel may offer to represent the defendant in a related civil proceeding for a fee. This lowers the transaction costs of finding an attorney and streamlines the civil legal process for assailants, while leaving survivors in the dark. Moreover, abusers may control access to the family’s resources, allowing them to more easily obtain counsel than survivors.

Given the fact that the protective order process is an adversarial proceeding, having only one side represented by an attorney presents not only fairness concerns but also efficiency concerns for judges.\textsuperscript{116} In particular, presiding judges may have to spend more time to understand self-represented survivors’ claims than might be necessary if counsel were present, and the socially optimal resolution of the case might not be reached.\textsuperscript{117}

**Steep Transaction Expenses**

Another potential market failure for legal services arises from the high transaction costs associated with obtaining a lawyer. For some survivors who might otherwise be interested in obtaining representation, the process of finding a lawyer might seem too complicated, time-consuming, and expensive. In surveys questioning people in low- and moderate-income households about their reasons for not seeking legal help when presented with a legal problem, a number of respondents indicated that they did not know how to find a lawyer, while others responded that they “never got to it.”\textsuperscript{118} While public awareness campaigns could help facilitate connections between lawyers and potential clients, some individuals will still likely be dissuaded by the transaction costs associated with hiring an attorney.
Legal Services as a Credence Good

Goods for which it is difficult for consumers to judge their quality are called credence goods. Market failures can occur with credence goods due to the information asymmetries between suppliers and purchasers. Whereas suppliers of legal services—lawyers—have regular interactions with the legal services market, typical potential clients have little experience with the market. Where domestic violence survivors come from disadvantaged backgrounds, they may have a particular distrust of the legal system and lawyers, as well as skepticism about the benefits of spending scarce resources on legal assistance.

When surveyed about their reasons for not seeking legal help when presented with a legal problem, twenty percent of people in low-income households indicated that they believed it “wouldn’t help,” and another nearly five percent indicated that it was “not a legal problem.” This is despite the fact that in the domestic violence context, survivors who are represented by an attorney can be 2.5 times as likely to successfully obtain a protective order than those who do not have a lawyer.

While providing additional information to survivors about the benefits of retaining counsel could help ameliorate some of the distortions in the market due to the imbalance of information, it still might not fully impose the right incentives, and subsidies for legal services—or potentially even a right to counsel—might be warranted.

Externalities Associated with Inadequate Provision of Legal Services

The links between market failures and inadequate provision of legal services run in both directions. In addition to the market failures described above that diminish the availability of legal services, a shortage of legal services can cause externalities in the legal system, as well. For example, assume a self-represented survivor wins a protective order against an attorney-represented batterer in relatively pro-se friendly family court. The batterer’s attorney might then appeal the protective order, moving the case up to a more formalistic appellate court, where the self-represented survivor would be at a larger disadvantage. Moreover, in contrast to family court, where the decisions are not binding on other proceedings, the appellate court decision would create precedent that will affect how future courts must approach their analysis of cases. So having batterers but not survivors represented by counsel in appellate proceedings could create a ripple effect that may negatively impact future petitioners and family courts.
Domestic violence is a serious problem with far-reaching consequences. Some of these consequences are monetizable, but many are not. Though domestic violence raises serious moral and ethical issues regardless of what the numbers say, an analysis that looks at the economic dimensions of the problem can help inform how best to spend societal resources in addressing the issue. This report has focused primarily on one potential policy tool—the increased provision of legal services—but other alternative or complementary tools exist that could also help reduce the incidence of domestic violence. Additional research and analysis will help inform the best use of resources toward this end.

Based on the preceding analysis, we make the following three policy recommendations:

**Recommendation #1: More research on domestic violence issues.** In order to determine the optimal level of public support for legal services, additional research is needed, as well as analysis quantifying the benefits likely to accrue from enhancing the availability of legal services. Specific areas deserving a closer look include:

- Data on the costs and benefits of criminal versus civil responses to domestic violence;
- Better information on the efficacy of attorneys in helping clients reduce exposure to domestic violence (both through obtaining protective orders and through increasing access to related social services); and
- A more sophisticated understanding of the most effective social programs for reducing the incidence and severity of domestic violence.

**Recommendation #2: Comparative analysis of funding mechanisms.** In order to determine how best to target available resources toward improved legal services, we need additional analysis of alternative allocation scenarios. Questions that need to be addressed include:

- **Amount of the support.** States should analyze how much funding is appropriate to allocate to supporting legal services. One possible approach could be to assess how much social benefit is gained for each additional hour of legal services provided and then provide that amount as a subsidy to support legal services—either at an hourly rate for private attorneys or on an aggregate, annualized basis for legal aid attorneys. Subsidizing
private attorneys at an hourly rate could increase access to paid legal services, while providing free legal aid attorneys could increase availability of free legal aid to those who qualify.

- **How the support should be distributed.** There are two main possible approaches to distributing support for legal services—a direct approach and an indirect approach—each with their own potential advantages and disadvantages.

  - **Direct Approach.** A direct approach would involve providing the funding necessary for legal aid directly to either the lawyers or clients. A direct approach may have certain advantages from the perspective of economic efficiency, but it may lack some public policy advantages of an indirect approach, as described below. The funding under a direct approach could be given either as a basic in-kind redistribution, like vouchers for housing or charter schools, or as cash. If given to survivors as cash, there would be an option for them to use it for purposes other than legal aid (which could be an advantage based on economic theory, but might fail to support legal aid or account for the externalities in the market, as described above).

  - **Indirect Approach.** An indirect approach would involve distributing the support through groups like Legal Aid. This approach could have certain advantages over a direct approach. For example, with this approach, the funding will look less like a subsidy—because it won’t be distributed on a case-by-case basis—and more like a free-of-charge service that is being provided by government employees or sub-contractors. This approach would also allow the support to be combined with other initiatives aimed at reducing domestic violence, such as targeted educational, counseling, or shelter services programs. Moreover, existing studies of local domestic violence programs suggest that integrating the support for legal services into holistic programming will increase the likelihood that more women will learn about the availability of subsidized legal assistance and be able to take advantage of it.

**Recommendation #3: Additional study as to whether other social programs might effectively address domestic violence, either alone or in combination with enhanced legal services.** Improved access to legal services has proven effective at reducing domestic violence. Evidence suggests that increasing access to legal services will help to decrease domestic violence and empower survivors. However, the evidence is not conclusive that funding for legal aid is the only effective use of resources. As programs to increase the availability of legal aid are created, researchers should continue to study their effectiveness, as well as the effectiveness of other approaches. Moreover, researchers should assess whether the provision of legal aid is most effective in combination with other particular policy approaches, such as housing assistance or job training. If the evidence suggests that other policy combinations may be more effective than legal services standing alone, decision makers should consider reallocating resources toward the most effective combinations of programs.
Domestic violence is a serious public health problem, with effects reaching far beyond just the victims themselves. In addition to the substantial costs to the victims, society is forced to bear a significant burden in the form of, among other effects, criminal justice costs, social services costs, and externalities on children. These substantial costs provide additional support for society’s interest in reducing the incidence of domestic violence through whatever policy tools are most cost-effective. Studies have shown that access to counsel in protective order proceedings can make a substantial difference in reducing the incidence of domestic violence. Moreover, there are reasons to believe that the legal services market is providing inefficiently low levels of access to counsel for domestic violence victims. Additional study may further support a right to counsel as an effective policy instrument to reduce domestic violence. States and municipalities should assess the evidence and consider adopting a policy granting domestic violence victims free or reduced-cost counsel in civil protective order proceedings.
Domestic violence is not limited to opposite-sex couples, nor are men the only perpetrators. Approximately 43.8 percent of lesbian women and 61.1 percent of bisexual women have experienced rape, physical violence, or stalking by an intimate partner at some point in their lives. National Center for Injury Prevention and Control, Centers for Disease Control, Intimate Partner Violence in the United States—2010, at 30 (2014) [hereinafter National Intimate Partner and Sexual Violence Survey (NISVS)]. With respect to men, 26.0 percent of gay men, 37.3 percent of bisexual men, and 29.0 percent of heterosexual men have experienced rape, physical violence, or stalking by an intimate partner during their lifetimes. Id. at 31. However, since many of the empirical studies relied upon for this report were gender-specific, focusing on violence against women and legal services provided to women, this report follows suit. More work must be done to assess the prevalence of intimate partner violence committed by women against men and the prevalence of IPV within LGBTI communities. Additional research and outreach will help bring the occurrence of such violence into public view and help ensure that public resources (health, criminal justice, civil legal assistance, etc.) are directed appropriately. That said, there is no reason to believe that the same economic rationales that justify increasing legal assistance to women domestic violence survivors would not apply with equal force to male or LGBTI survivors.

Domestic violence is also often referred to as “intimate partner violence” or IPV. This report uses the term “domestic violence” and defines it to include violence occurring between romantic partners, regardless of whether they cohabitate or whether the violence occurs in the home.

See, e.g., Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011) (finding that the United States’ failure to properly ensure the enforcement of protective orders violated international human rights standards).

As in many areas of social policy, the evidence base concerning domestic violence interventions is limited and research continues. The findings and recommendations developed here are subject to revision with new information.


Department of Health and Human Services, supra note 6, at 19.


This number may be an underestimate of the number of women who have been sexually abused by intimate partners, due to potential reluctance by survey respondents to classify sexual abuse as “rape.”

NISVS, supra note 8, at 1-2.

NISVS, supra note 8, at 2.

Community factors may also affect levels of violence in a relationship by shaping both how women view their outside options and how their abusers view those options. For instance, if a woman lives in an area where a large percentage of women are employed at high wages, her threat to leave her abuser is more credible in both of their eyes.

Farmer & Tiefenthaler, supra note 12, at 339.

See, e.g., EVAN STARK & EVE BUZAWA, VIOLENCE AGAINST WOMEN IN FAMILIES (2009); MILDRED D. PAGELOW, WOMAN BATTERING: VICTIMS AND THEIR EXPERIENCES (1981); Richard J. Gelles, Abused Wives: Why Do They Stay?, 38 J. OF MARRIAGE & THE FAMILY 659 (1976)


See, e.g., Diane H. Coleman & Murray A. Straus, Marital Power, Conflict and Violence in a Nationally Representative Sample of American Couples, 1 VIOLENCE & VICTIMS 141 (1986).

See Laura Dugan et al., Explaining the Decline in Intimate Partner Homicide: The Effects of Changing Domesticity, Women’s Status, and Domestic Violence Resources, 3 HOMICIDE STUD. 187, 208-09 (1999).

See id.

Id.


Since the primary focus of the original VAWA was to improve the criminal justice system’s response to domestic violence, it contained no explicit recognition of the challenges victims encountered in accessing civil legal remedies, including protective orders. Nonetheless, many community-based service organizations sought and obtained VAWA-authorized grant money. In 1998, in light of the growing increase in demand for VAWA funding by civil legal services providers, Congress appropriated $11 million for a Domestic Violence Victims’ Civil Legal Assistance Program. Pub. L. 105-277, 112 Stat. 2681-62. That program, which was subsequently renamed the Legal Assistance for Victims Program (LAV), is administered today by the Department of Justice’s Office of Violence Against Women. Between 2009 and 2011, LAV provided grants to over 200 community-based organizations, with most grant money put toward salaries for staff attorneys. See U.S. DEP’T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, 2012 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT 220 (2012), available at http://www.justice.gov/sites/default/files/owv/legacy/2014/03/13/2012-biennial-report-to-congress.pdf.

Farmer & Tiefenthaler, supra note 21, at 159.

To obtain this county-level data the authors were granted access to an Area-Identified version of the NCVS report, which is not available to the public.

They used NCVS statistics.

Farmer & Tiefenthaler, supra note 21, at 167.

Farmer & Tiefenthaler, supra note 21, at 164.

Farmer & Tiefenthaler, supra note 21, at 159. The authors also find that several more general demographic trends, such as the aging of the population and an increase in racial diversity, also likely played a significant role in contributing to the decline in intimate partner abuse against women in the 1990s. Id. at 169.

conducted in Quincy, Massachusetts where the mere issuance of a restraining order failed to prevent future abuse against victims in nearly 50 percent of cases, but noting that the results shed no light on whether the order lessened the severity of the continued abuse or the number of abusive episodes.)


33 TK Logan & Robert Walker, Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness, 24 J. of Interpersonal Violence 675 (2009) (finding that two factors best predict whether a protective order will be violated: stalking and staying in the relationship). Other research indicates that the abuser’s criminal justice history can predict their likelihood of violating a protective order; so can non-compliance with court-ordered domestic violence programs. See Carol E. Jordan et al., Criminal Offending Among Respondents to Protective Orders: Crime Types and Patterns That Predict Victim Risk, 16 Violence Against Women 1396 (2010); Alana Kindness et al., Court Compliance as a Predictor of Post-Adjudication Recidivism for Domestic Violence Offenders, 24 J. of Interpersonal Violence 1222 (2009); Susan L. Keilitz et al., Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence (1997), available at https://www.ncjrs.gov/pdffiles1/pr/172223.pdf; Andrew R. Klein, supra note 29.

34 Logan & Walker, supra note 33, at 677. See also Carolyn N. Ko, supra note 30 (reviewing literature on data of restraining order effectiveness).

35 It is important to note that women tend to take out restraining orders disproportionately on assailants who already have criminal histories of violent behavior. For this reason, much of the research that suggests protective orders are ineffective based on re-offense rates likely suffers from endogeneity or selection bias, problems and their results therefore “may be misleading.” Eve S. Buzawa & Carl G. Buzawa, Domestic Violence: The Criminal Justice Response 242-45 (3d ed. 2003).

36 See Logan & Walker, supra note 33, at 677 (citing seven studies pulling data from sources that included police reports and individual surveys).


39 Keilitz et al., supra note 33.


41 See, e.g. Keilitz et al., supra note 33; Fischer & Rose, supra note 40; Adele V. Harrell et al., Court Processing and the Effects of Restraining Orders for Domestic Violence Victims (1993); Kaci, supra note 29.

42 Harrell et al., supra note 41.

43 Fischer & Rose, supra note 40.
44 Kaci, supra note 29. In Spitzberg’s meta-analysis of 32 studies, supra note 37, he found that restraining orders were “perceived as followed by worse events” only 21 percent of the time.

45 Access to legal services for obtaining a protective order does not guarantee a survivor access to legal services on related legal issues. Pro bono representation of domestic violence victims may be limited in scope to cover just the protective order hearing. However, even if the representation is so limited, the attorney may be able to provide informal guidance, resources, and referrals to assist the victim in resolving other legal matters.


48 There are additional costs to the victim associated with leaving an abuser, the largest one being the petitioner’s loss of access to financial resources, including access to the abuser’s income, loss of a shared vehicle, and loss of shared insurance. However, these costs are offset by the costs avoided by a reduction in violence. See Elwart et al., supra note 32.

49 Of course, as mentioned in the introduction, there are non-economic reasons for making efforts to reduce domestic violence, as well. Most importantly, freedom from domestic violence is broadly accepted as a human right. See, e.g., Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011) (finding that the United States’ failure to properly ensure the enforcement of protective orders violated international human rights standards).

50 Externalities are one of four main kinds of market failures. The others are information asymmetries, where one party to a transaction has information that the other side does not; market power, where a monopoly or cartel is able to control supply and price; and public goods problems, where a good is non-rival and non-excludable and the market does not provide it in a sufficient quantity as a result. Market failures can be a strong economic justification for regulation or providing economic incentives (like subsidies or taxes) to encourage certain behavior.

51 Though a domestic violence incident does not constitute a market transaction, there are market transactions associated with domestic violence. Of particular importance to this report, a domestic violence victim hiring counsel to represent her in a protective order proceeding is a market transaction. There can be externalities and other market failures associated with this legal services market. These externalities are discussed separately in Part IV below.

52 Note that some of these costs may accrue to society, as well, for example through paid sick days. This report focuses on the direct economic impacts on survivors, but future analyses could expand to include broader productivity and cost impacts.

53 The amounts in the CDC study were originally calculated in 1995 dollars. All amounts have been adjusted for inflation here to 2014 dollars.

54 Breaking this figure down by type of violence, the CDC found that, on average, the total medical and mental health care cost per victimization was $1,308 per rape, $1,274 per physical assault, and $459 per stalking. See Department of Health and Human Services, supra note 6, at 30.

55 By estimating the present value of these lost lifetime earnings, the analysts have adjusted the future costs to account for the time value of money. Present value simply means discounting the value of future costs to reflect the fact that a dollar today is considered by most people to be “worth more” than a dollar acquired or spent far into the future, say twenty years from now. When translating costs (or benefits) into present value measures, the effects of inflation must also be considered; these effects can be accounted for by using a price index and an inflation-adjusted discount rate (often between three and seven percent annually in the United States).

56 See Department of Health and Human Services, supra note 6, at 31
Increased availability of legal services might also initially increase survivors’ awareness of the availability of these social services and might temporarily increase costs. However, if, as the evidence suggests, legal services decrease the incidence of domestic violence, the need for these social services will decrease over time.
Most local domestic violence programs are members of their state domestic violence coalition networks.


[74] Iyengar, supra note 74, at 9-10.

[75] Iyengar, supra note 74, at 13.


[77] Zorza, supra note 77.

[78] Baker et al., supra note 77.

[79] In addition to the economic costs of homelessness, there are myriad other harms from homelessness, from moral, ethical, and rights-based perspectives.


[81] Iyengar, supra note 74, at 11.

[82] Id.

[83] See Iyengar, supra note 74, at 11; Melbin et al., supra note 77.


[86] In addition to the economic impacts of observing violence, children also have a right to be free from both physical and mental violence from a moral and ethical standpoint. See, e.g., Convention on the Rights of the Child, art. 19, Sept. 2, 1990, 1577 U.N.T.S. 3, 50 (signed but not ratified by the United States).

[87] These studies compare children exposed to domestic violence with children from nonviolent households.

[88] See also Elaine Hilberman & Kit Munson, Sixty Battered Women, 2 VICTIMOLOGY 460, 463 (1978).

[89] See studies cited supra note 85. Although the negative effects of child exposure to domestic violence are, by now, well-established, most researchers note in their studies the methodological challenges attendant to collecting and analyzing data on the topic. For instance, there is a gap in the literature owing to a dearth of longitudinal studies. For a discussion of this and other challenges, see Wolfe et al., supra note 85.
Carrell & Hoekstra, supra note 94, at 226. Amongst boys, the negative effects were even more pronounced: placing an additional troubled boy in a twenty-student classroom reduced student test scores by nearly two percentile points and increased the number of disciplinary fractions by nearly 40 percent. Id. High incidence of classroom disruptions have also been correlated with high teacher turnover rates and low levels of teacher morale; this correlation is a particularly salient issue for schools in urban communities that may already be experiencing difficulty recruiting and retaining high quality teachers. See Scott E. Carrell and Mark Hoekstra, Family Business or Social Problem? The Cost of Unreported Domestic Violence, 31 J. POL’Y ANALYSIS & MGMT. 861, 862 (2012).

Carrell & Hoekstra, supra note 94, at 225. The results of the study also showed that disruptive children disproportionately impact the academic achievement of children from high-income families. Although the precise reasons for this are unclear, the finding underscores that while the negative costs of DV are spread across society, certain costs may be more acutely felt by specific sub-groups; likewise, certain benefits of reducing domestic violence through interventions like the provision of legal assistance may be felt more strongly by certain sub-groups, depending on the nature of the benefit. Domestic violence is highly correlated with other negative family characteristics, such as poverty, unemployment, substance abuse, and low educational attainment.

Carrell & Hoekstra, supra note 94, at 225.

Carrell & Hoekstra, supra note 95, at 862.

See Kaci, supra note 29.

Carrell & Hoekstra, supra note 95, at 870.

There is some empirical difficulty of showing unmet need to legal services generally. J.J. Prescott, The Challenges of Calculating the Benefits of Providing Access to Legal Services, 37 FORDHAM URB. L.J. 303, 310 (2010). Part of the problem is a lack of information about the demand elasticity for legal services. Initial data does suggest that there is an efficiency gap. However, most of these studies suffer from the shortcoming of focusing solely on the number of people who say they need legal services and are turned away, which ignores opportunity costs and fails to adjust for transfers. Id. at 311-12. Additional research specifically comparing the accessibility of civil legal aid to the likelihood of victims seeking protective orders or the rates of abuse would help shed light on this issue.

Deborah L. Rhode & Lucy Buford Ricca, Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement, 82 FORDHAM L. REV. 2587 (2014).


A number of studies indicate that low-income individuals are unable to obtain the legal services that they need or desire. See, e.g., LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; AM. BAR ASS’N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS, MAJOR FINDINGS FROM THE COM-

See Shanta R. Dube et al., Exposure to abuse, neglect, and household dysfunction among adults who witnessed intimate partner violence as children: implications for health and social services, 17 VIOLENCE & VICTIMS 3 (2002) (finding that witnessing domestic violence as a child increased the likelihood of substance abuse and depression as an adult); David M. Fergusson & L. John Horwood, Exposure to Interparental Violence in Childhood and Psychosocial Adjustment in Young Adulthood, 22 CHILD ABUSE & NEGLECT 339 (1998).

AM. PSYCHOL. ASS’N, VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY (1996). See also Alan Rosenbaum & K. Daniel O’Leary, Children: The Unintended Victims of Marital Violence, 51 AM. J. OF ORTHOPSYCHIATRY 692 (1981) (noting that boys who witness the abuse of mothers by fathers are more likely to become men who batter in adulthood than boys raised in homes free from violence); Charles L. Whitfield et al., Violent Childhood Experiences and the Risk of Intimate Partner Violence in Adults, 18 J. INTERPERS. VIOLENCE 166 (2003) (finding that children from violent families have more than a 50 percent chance of growing up to be abused by their partners or to become abusers themselves).


Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence


Prescott, supra note 101, at 336. As discussed above, domestic violence victims are also unable to pay the full value of the legal services due to the incidence of many of the benefits falling on other individuals and society more broadly, which further contributes to under-supply.


In addition, domestic violence advocates note that not all attorneys are created equal, and that mere representation by an advocate untrained in the intricacies of domestic violence can be insufficient. See, e.g., Testimony of Debbie Segal, Immediate Past Chair of and Special Advisor to the ABA Commission on Domestic & Sexual Violence 3 (2015), available at http://www.americanbar.org/content/dam/aba/images/office_president/debbie_segal.pdf. Likewise, advocates explain that limited scope representation that ends once a restraining order is obtained and does not extend to other related issues like housing, child support, and social services may be insufficient. Id.

See Hadfield, supra note 103, at 1001.


Id.


The prosecutor represents the state’s interest, not those of the survivor.

Id.

Cf., e.g., Ronald M. George, Challenges Facing an Independent Judiciary, 80 NYU. L. Rev. 1345, 1354 (2005) (noting that the “increasing number of self-represented litigants” place “unprecedented demands upon the courts”).


Am. Bar Ass’n, supra note 104, at 21.

See, e.g., Uwe Dulleck & Rudolf Kerschbamer, On Doctors, Mechanics, and Computer Specialists: The Economics of Credence Goods, 44 J. Econ. Lit. 5, 5-6 (2006). Other examples of credence goods include automobile repair and medical services.

Am. Bar Ass’n, supra note 104, at 20-21. The types of legal problems faced by the survey respondents varied, but family and domestic problems were the most common. Id. at 19.

See Murphy, supra note 31, at 511-12.

LEGAL EMPOWERMENT OF THE POOR: FROM CONCEPTS TO ASSESSMENT
Legal Empowerment of the Poor: From Concepts to Assessment. Paper by John W. Bruce (Team Leader), Omar Garcia-Bolivar, Tim Hanstad, Michael Roth, Robin Nielsen, Anna Knox, and Jon Schmidt

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Cover Photo: Courtesy of USAID. At a village bank in Djiguinoune, Senegal, women line up with account booklets and monthly savings that help secure fresh loans to fuel their small businesses.
LEGAL EMPOWERMENT OF THE POOR
FROM CONCEPTS TO ASSESSMENT

MARCH 2007

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CONTENTS

ACRONYMS AND ABBREVIATIONS ........................................................................................................ iii

1.0 DEFINING LEGAL EMPOWERMENT OF THE POOR ................................................................. 1

2.0 SUBSTANTIVE DIMENSIONS OF LEGAL EMPOWERMENT ................................................. 5
  2.1 ECONOMIC DIMENSIONS ..................................................................................................... 6
  2.2 SOCIAL DIMENSIONS .......................................................................................................... 8
  2.3 POLITICAL DIMENSIONS .................................................................................................... 9

3.0 INITIATIVES TO LEGALLY EMPOWER THE POOR ............................................................... 11
  3.1 RIGHTS ENHANCEMENT ...................................................................................................... 12
    3.1.1 REFORMING THE SUBSTANCE OF LAW .............................................................. 12
    3.1.2 REFORMING THE PROCESS OF LAW MAKING ........................................... 14
  3.2 RIGHTS AWARENESS .......................................................................................................... 17
    3.2.1 Barriers to Awareness ................................................................................................. 17
    3.2.2 Accessible Laws and Legal Procedures ..................................................................... 17
    3.2.3 Legal Literacy Campaigns .......................................................................................... 18
  3.3 RIGHTS ENABLEMENT ........................................................................................................ 20
    3.3.1 Procedural Assistance ................................................................................................. 21
    3.3.2 Integration and Affirmative Action .......................................................................... 22
    3.3.3 Institutional and Individual Capacity Building ......................................................... 22
    3.3.4 Compensatory Benefits .............................................................................................. 24
  3.4 RIGHTS ENFORCEMENT ...................................................................................................... 24

4.0 LEGAL EMPOWERMENT RECONSIDERED .......................................................................... 29
  4.1 A REVISED DEFINITION ..................................................................................................... 29
  4.2 OPERATIONAL IMPLICATIONS ......................................................................................... 30
  4.3 ASSESSING LEGAL EMPOWERMENT OF THE POOR .................................................... 32

5.0 CONCLUSION .......................................................................................................................... 38

SOURCES ........................................................................................................................................... 39
## ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative dispute resolution</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil society organization</td>
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<tr>
<td>DFID</td>
<td>(UK) Department for International Development</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAO</td>
<td>United Nations Food and Agricultural Organization</td>
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<tr>
<td>HDI</td>
<td>Human development index</td>
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<tr>
<td>HLCLEP</td>
<td>High Level Commission for the Legal Empowerment of the Poor</td>
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<tr>
<td>ILD</td>
<td>Institute for Liberty and Democracy</td>
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<tr>
<td>ILO</td>
<td>International Labor Office</td>
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<tr>
<td>LEP</td>
<td>Legal empowerment of the poor</td>
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<tr>
<td>NGO</td>
<td>Nongovernmental organization</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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1.0 DEFINING LEGAL EMPOWERMENT OF THE POOR

The relatively modest literature that bears an explicit “legal empowerment of the poor (LEP)” tag has developed since 2000. It came into being in reaction to what was seen as an excessively narrow concept of legal and judicial reform in the rule of law literature. A number of LEP strategies (law reform, judicial reform, legal aid and literacy, democratization, and formalization) are currently jockeying for position within the general concept, which is as yet poorly bounded and integrated.

There is also substantial overlap among the literature on LEP, particularly in governance and human rights. The latter has older and more substantial literature associated with it, while the broad concept of LEP only received its first relatively full expression in 2001, in an Asia Foundation study (initially commissioned as a legal literacy study) published in the annual report of the Asian Development Bank’s Legal Department. The concept’s adoption by the United Nations Development Program (UNDP)-based Commission on Legal Empowerment of the Poor in 2005 dramatically raised its public profile and stimulated a number of papers from development institutions on the topic (e.g., the 2005 World Bank Strategy Statement).

Different sources have offered varying definitions of the concept (see Box 1); these definitions vary because the definers attach or emphasize different meanings to the terms empowerment, legal, and poor—specifically, whether (1) empowerment is viewed primarily as a strategy, a means to an end, or both; (2) legal describes the means of empowerment or describes the end result (legal empowerment); and (3) the definition of the poor includes only the economically poor or other marginalized populations. These ele-

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3 See, for example, Organization for Economic Cooperation and Development. 2006. Integrating Human Rights into Development; Donor Approaches, Experiences, and Challenges. Paris: OECD.


5 While the focus of the commission was clear from its name, its first authoritative statement of purpose and principles is: High Level Commission for the Legal Empowerment of the Poor (HLCLEP). 2005. Co-Chair’s Outcome Document. First Meeting of the HLCLEP, 20–21 January 2006. New York: HLCLEP.

ments need to be carefully examined before further considering how they are integrated in the concept of LEP and acquire a shared life in LEP programming.

**BOX 1. DEFINITIONS OF LEGAL EMPOWERMENT OF THE POOR**

**Asian Development Bank (ADB):** “[Legal empowerment of the poor] involves the use of law to increase disadvantaged populations’ control over their lives through a combination of education and action.” (Golub and McQuay, 2001, p. 7)

**Carnegie Endowment:** “Legal empowerment of the poor is a rights-based strategy for improving governance and alleviating poverty ... [and involves] ... the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.” (Golub, 2003 [pp. 3])

**World Bank (WB):** “Legal empowerment promotes safety, security, and access to justice and helps poor people solve problems and overcome administrative barriers.” (Palacio, 2006 [pp. 15])

**High Level Commission for Legal Empowerment of the Poor (HLCLEP):** “Legal empowerment of the poor expands the rule of law to the benefit of all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people, or other minorities.” (Palacio, 2006 [pp. 15])

**USAID:** “Legal empowerment of the poor refers to actions and processes, including but not limited to legal reforms, by which the poor are legally enabled to act more effectively to improve their economic situation and livelihoods, allowing them to alleviate or escape poverty.” (Bruce et al., 2006 [pp. 9])

**Empowerment.** In a major World Bank study, Ruth Alsop, Mette Bertelsen, and Jeremy Holland (2006) define empowerment as “the process of enhancing an individual’s or group’s capacity to make purposive choices and to transform those choices into desired actions and outcomes.” This involves strengthening the ability of actors to envisage and purposively choose options (largely predicted by their assets, which include property, capacity, and attitudes), and ability that is framed by the opportunity structures they face under the *rules of the game* (the set of rules, laws, and regulatory frameworks that govern the operation of political processes, public services, private organizations, and markets). This is empowerment as a process, but as this study points out, empowerment is also an end in itself. Empowerment as an objective can be seen as a critical link between a process and the ultimate goal of poverty alleviation; this needs to be included in any clear definition.

**Legal Empowerment.** How is legal empowerment different from empowerment generally? In the previous paragraph, rules and laws are indicated as potential constraints to be overcome in the process of empowerment. The legal empowerment literature instead sees law as a major tool for enabling the poor; however, the concept is not well-defined and is still evolving. Legal empowerment in the development literature consists of an expanding collection of specific strategies. It certainly includes legislative, regulatory, judicial, and dispute resolution reforms that empower the poor and, as Golub and McQuay (2001) stress, “the use of any of a diverse array of legal services for the poor.” But empowerment is not just a matter of stronger rights for the poor or even helping them exercise those rights, but of giving them the power to realize old rights and acquire new ones by tackling the systemic pathologies that limit access to rights possession and rights enforcement (see Box 8, p. 30).

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8 Golub and McQuay, 2001 (pp. 76).
In defining legal empowerment, one fundamental issue is whether the term “legal” qualifies empower-
ment as a means or an end. Is the empowerment legal because it uses law and other measures of a legal
nature to empower the poor or because the poor in the end have greater legal power as a result? Most of
the definitions mentioned above seem to tend toward the former view. The World Bank document in-
volves a more expansive vision, seeing empowerment as an intermediate result and focusing attention on
the need to create new legal power for the poor that enables them to both protect existing rights and pur-
sue new rights through political processes.9

The Poor. The poor are the designated beneficiaries of LEP. In Box 1, the ADB uses the term disadvantage-
ted; Palacio suggests that this is perhaps preferable but is outweighed by the visibility of the term
poor.10 In addition, disadvantaged requires judgments about fairness, whereas poor is easier to apply, es-
pecially if it is thought of in exclusively economic terms. But of what does poverty consist? Is it simply a
lack of income and economic assets, as is the assumption in most development literature? The terms dis-
advantaged and control over one’s lives can suggest an escape not only from economic but also social
and political deprivation in pursuit of freedom, respect, and status. Some economists, such as Sen, would
certainly agree.11 Should not our concept of poverty be inclusive, and should not legal empowerment be
seen as a potential way to address relative deprivation in all these forms?

There is one issue of importance that is not adequately addressed in any of the existing definitions but
deserves addressing in a reconsidered definition: Who empowers the poor? The wording of most of the
existing definitions imply that this is something done for the poor, presumably by governments and vari-
ous non-state actors. Only the ADB definition suggests that the poor must play a role. Should the poor
then participate in their own empowerment to achieve legal empowerment in the way the concept is in-
tended? What roles in particular should they play to achieve desirable LEP outcomes? And, who should
judge the outcome of whether the poor have been empowered? At a minimum, if the poor do not partici-
pate in the measures to empower them, should they at least be the ones that judge the outcome?

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9 Palacio, 2006 (pp. 8): “LEP should be envisaged as a broad concept in which ‘legal’ extends far beyond the confines of the
purely formal legal system. It is a concept in which empowerment is understood as part of ‘political empowerment’ that provides
citizens with a stake in the state.” and pp. 24: “LEP involves poor people (i) knowing and understanding their rights and (ii) be-
ing able to effectively assert and enforce their rights. This, in turn, requires stronger voice, ability to organize collectively, and
greater state responsiveness.” A similarly broad ambit is suggested in a paper prepared recently for the High Level Commis-
sion for the Legal Empowerment of the Poor: ‘The word ‘power’ refers to authority, strength, ability, or right. Legal empower-
ment would therefore mean to bring the poor to a position of authority, strength, ability, and right within the meaning of the law.
Such position would serve as a legitimate medium to engage the state and other entities and institutions towards individual and
group goals. It would serve as a platform to make claims from the state and other members of society, and a protective shield
against violation of their rights.” Ngondi-Houghton, Connie. 2006. Access to Justice and the Rule of Law in Kenya, a Paper De-
veloped for the High Level Commission for the Empowerment of the Poor. Nairobi (pp. 1).

10 Palacio, 2006 (pp. 3).

2.0 SUBSTANTIve Dimensions of Legal Empowerment

It is important that those seeking legal empowerment of the poor understand the full depth and width of the concept. Past initiatives seeking to legally empower the poor have suffered from a narrow definition of objectives or have been based on a narrow reform domain, such as property rights or the judiciary. By considering poverty in terms of the deprivation of capabilities and opportunities rather than solely a function of income, the rationale for a broader understanding of LEP becomes clear. In this broader context, poverty refers to the extent to which an individual’s capacity and opportunity to exercise and shape his/her basic rights are limited by external constraints. Thus, holding other factors constant, a reduction in opportunity deprivation (i.e., an increase in one’s freedom) is the analog of the income growth objective in an income-based approach. A narrow sectoral initiative (such as granting real property rights to the poor) has the potential of empowering them, but this broader lens on empowerment and development should also avoid seeing such initiatives as sufficient, “magic bullet” solutions. In addition, legal empowerment involves economic, social, and political dimensions (see Box 2).

Box 2: A Sampler of Laws That Legally Empower the Poor

Legal reforms play an important role in legal empowerment of the poor, but what kind of legislation specifically makes a difference? Some laws aim to empower the poor, while others empower the poor along with everyone else, but with special importance for the poor. It is impossible to be exhaustive, but some examples are:

- **Property**: Laws that expand access to credit by providing for immoveable/intangible guarantees; provide for registration and facilitate use of moveable property as loan security; provide property rights unencumbered by conditions, consents, and bureaucratic procedures; prohibit public takings of property without full and prompt compensation; allow informal occupants to acquire rights to the land they occupy by peaceful occupation, even in the case of state land; provide due process to land occupants, informal or formal, who face foreclosure or eviction; and eliminate legal discriminations against members of socially disadvantaged groups.

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12 Sen, 1999. (pp. 87).

13 Such conceptualizations of poverty and welfare do not ignore the importance of income in determining an individual’s well-being, but rather reclassify variables such as gross national product per head as means for development rather than the ultimate objective.

2.1 ECONOMIC DIMENSIONS

The economic dimensions of LEP are probably those most broadly recognized, but the current consensus on the strong correlation between rule of law, strong institutions, and income growth glosses over a long historical debate over the appropriate role of the state in creating the legal foundations for economic growth (see Box 3). The ineffectiveness of past initiatives to promote economic growth by means of legal reform has often stemmed from failure to sufficiently account for non-legal factors in determining human and corporate behavior. Attributes such as strong property rights or limited personal liability for that of a corporation contribute to economic growth not through the legal text per se, but through the coordinative influence they impose on actual behavior. Changes of legislative text in the absence of even basic considerations of enforcement and incentives do not provide sufficient means to increase the predictability of commercial transactions or provide the economic security critical to investment in productivity.

Indeed, the cost of doing business and of the creation and enforcement of property and labor rights are crucial issues to be tackled in order to empower the poor. Lack of access to legal and effective commercial institutions increases the cost of doing business by increasing the cost associated with enforcing property or labor rights. When the cost and time involved in starting a business are too large, the business fails, ideas are not transformed into enterprises, and jobs are not created. The same rationale can be extended to cases where expensive and time-consuming licenses are required to operate, or when bribes are regularly demanded. In other cases, the market may obstruct “easy” entry or exit affecting both business creation and consumers by increasing the prices paid for usually low-quality products.
The right to own and trade assets is an important element for empowering the economic rights of the poor. The factual possession of assets is typically not sufficient, for to be able to make transactions with assets, the legal and social systems need to recognize ownership or other secure property rights. If one has physical possession but not recognized rights to an asset, at least three consequences typically follow. First, the person may have to spend more time and effort defending his/her possession against others. Second, it will be more difficult—perhaps even impractical—to make a transaction with the asset. Third, the asset will have lower value (i.e., even if the possessor can transact the asset, he/she is likely to receive a lower price). Thus, recognition of property rights to land and moveable and intangible property is crucial for empowering the poor, and in the commercial sphere where transactions have high commercial value, this usually means “legal” recognition.

There are also many settings where secure transactions occur between parties that are not sanctioned by law but have validity because they are “socially” recognized. And, in spheres where the poor are likely to find themselves sidelined in an informal economy, or perhaps where they seek harbor to avoid the formal economy deemed unjust or oppressive, making rights real means much more than simple recognition in the formal legal system. Legal recognition can help pave the way for social recognition, but it requires legal and social legitimacy to be effective. Hence, in many non-commercial spheres, recognition of property rights to land and moveable and intangible property is crucial for the poor’s empowerment, but recognition may draw its weight from formalization and/or social acceptance.

Legal recognition of the poor’s property rights—in particular, land rights—has appropriately received considerable attention in the literature. However, legal recognition of other property possessed by the

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15 The rights need not be individual. Many communities and indigenous social movements are demanding collective rights to land, which can have the effect of empowering the poor as a community.
poor can also be important. In certain cases, the poor may have access to movable or intangible assets such as inventories, future crops, or account receivables that could possibly serve as collateral to secure loans with the appropriate legal framework.\footnote{See, for example, de la Peña, Nuria, and Heywood Fleisig. 2002. SMEs and Collateral. Center for the Economic Analysis of Law (CEAL) Issues Brief, Washington, D.C.; Fleisig, Heywood. 1995. “The Power of Collateral: How Problems in Secured Transactions Limit Private Credit for Movable Property.” Viewpoint series, Note 43. World Bank Group, Private Sector Development Vice Presidency, Washington, D.C.; or Fleisig, Haywood, and Nuria de la Peña. 2002. “Microenterprises and Collateral.” Center for Economic Analysis of Law (CEAL) Issues Brief, No. 2. Washington, D.C. September. \url{http://www.ceal.org/ceal-org/publications/IB_02.pdf}.} Property rights recognition can make it easier for the poor to access credit because they can provide security.\footnote{Even when collateral is offered, banks can be quite reluctant to lend to the poor who tend to lack regular income streams; small loan transaction costs also make lending to the poor unattractive. Moreover, if the poor lose land or a house because they were unable to repay a loan, they lose their major source of livelihood security, a very disempowering outcome.} It can also enable the poor to engage in transactions such as leases, buy-outs, pledges, and trusts. In sum, legally and socially recognizing property rights of the poor can result in numerous beneficial outcomes, including higher asset values, lower private costs of enforcement, greater investment, access to government programs and services, better access to credit, and greater transactability.

Recognition of workers’ rights is also critical for empowering the poor. The right to organize and bargain collectively is central, but equally important is the need to eradicate the opprobrious cases of working children and poorly compensated women (although eliminating these phenomena could make families worse off unless effective substitutes are provided). Similarly, many poor are self-employed, but many survive on low wages, little job security, and working conditions that are often unsafe and unhealthy. Lack of education, information, and involvement in social networks combined with high vulnerability restrict their capabilities to attain a higher wage, more secure, and healthier work. Lack of rights and rights enforcement is a deterrent to exiting poverty. Onerous labor laws can also create an unnecessary burden on small business, preventing them from growing.\footnote{World Bank and International Finance Corporation. 2006. \textit{Doing Business 2006}. \url{http://www.doingbusiness.org/}.} For LEP sustainability, a “smart” pro-poor policy must move beyond shared coexistence between business and the poor to a genuine partnership.

One rather large issue of rights equality remains, for in many areas of the world, tenure insecurity or breadth of rights is not the problem; it is rather the unequal distribution of wealth that is disempowering. In many societies, the poor remain poor not because of the rights they have, but because those rights are confined to few assets and employment opportunities. Tenure and land reform programs are important policy and program mechanisms to broaden access to rights, assets, and employment opportunities in ways that favor the poor. Transferring ownership of natural resources or state-owned companies from the public sector to citizens also has the potential to significantly empower the poor by enhancing their natural, material, or financial assets.\footnote{Shleifer, A. and R. Vishny. \textit{The Grabbing Hand—Government Pathologies and their Cures}. Cambridge, MA: Harvard University Press, 1998. See also García-Bolívar, Omar. 2006. \textit{Entre la Libertad y la Igualdad: Una propuesta de fortalecimiento para los pobres de Venezuela}, Revista de la Facultad de Ciencias Políticas y Jurídicas de la Universidad Central de Venezuela, No. 125. Caracas.} However, care needs to be taken in how such transfers occur such that the benefits of privatization are not captured principally by the wealthy and powerful.

### 2.2 SOCIAL DIMENSIONS

The majority of issues and measures raised in the previous section treat LEP and the poor in a top-down fashion and ignore the issue of the capacity to claim or act on their rights once supplied or delivered. Legally empowering the poor requires more than legal reform aimed at broadening rights and opportunities for the poor. Social dimensions include:

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\footnote{Even when collateral is offered, banks can be quite reluctant to lend to the poor who tend to lack regular income streams; small loan transaction costs also make lending to the poor unattractive. Moreover, if the poor lose land or a house because they were unable to repay a loan, they lose their major source of livelihood security, a very disempowering outcome.}


• **Law and Order.** The lack of a system that guarantees law and order (and thus security) to the poor’s assets and personal lives also deprives them of opportunities. Crime and violent conflict not only take away physical and human resources, but also negatively affect the flow of economic activities and decrease people’s capacity to secure their rights. This is true in Colombia, where violence not only strips people of their property and lives, but also paralyzes poor people’s capacity to organize and defend their rights, as armed groups target those who are seen organizing.20

• **Inclusion.** Social exclusion can negatively affect poor people. The most obvious examples of this are rules that exclude the poor and other marginalized groups from decision making. In many countries, women are officially or unofficially excluded from participation in exercising rights that their male counterparts take for granted. The same is often true of indigenous peoples and historically disadvantaged groups. Minority status as well as lack of information on law, rules, and procedures in an accessible language can deny access to opportunities, as can enforcement institutions that are either unsympathetic or located far away.21

• **Education.** Education in numerous areas and at various levels is important, but literacy is a particular problem. People who cannot gain access to information through reading will have great difficulty knowing and advocating for their rights, opportunities, and legal protection.

• **Health.** Unhealthy people cannot advocate for or defend their rights, let alone take advantage of opportunity. Limited public access to health services; lack of protection for the handicapped; and high rates of mortality due to epidemics, poor nutrition, and lack of clean water22 and affordable shelter can negatively affect any initiative designed to empower the poor.23

• **Social Security.** Lack of food and income safety nets, employment protection, and pension schemes can hamper the poor in fulfilling their basic needs and securing their livelihoods. Weak social security is also a hindrance to poor people’s capacity to access their rights and political participation. When faced with a high degree of livelihood risk, people find time to do little else besides ensure basic survival. They will sometimes endure rights violations if they fear that doing otherwise could compromise their survival (e.g., widows who do not complain when in-laws grab their property because doing so could put them and/or their children in an even more precarious situation).

Whereas rule of law and social inclusion have more immediate, direct impacts on the effectiveness of legal empowerment measures, education, health, and social security of the poor act to constrain or enable the poor’s realization of legal empowerment and can be invested in over time to improve LEP.

### 2.3 POLITICAL DIMENSIONS

The poor are frequently excluded from rule-making and other social and political decision-making processes. Limited democracy and lack of education affect the ability of the poor to effectively voice their needs.24 Effective participation in political processes is critical to the poor’s longer-term legal empowerment.

20 Knox, Anna. Personal experience in Colombia.

21 Sen, op. cit. supra.

22 Clean water is a right. 2006, November 11. *The Economist* (pp. 67).

23 Sachs, op. cit. supra.

24 Even in democracies, rules (whether formal or informal) often either purposely exclude or create high-entry barriers for the poor to enter the political process and gain political power. It is unusual, for example, that grassroots representatives of poor people’s interests gain access to public debate on legal reforms, let alone be given the floor in those debates. Many “rules” make it such that a “dollar” is more important than a vote.
Some critical factors are:

- **Human Rights.** While the rich have influence and connections to protect themselves from abuses by the state and private actors, the poor must rely on enforceable rights. It is not only the recognition of human rights that is needed, but also the real possibility of enforcing those rights through accessible and effective institutions. Political rights are of paramount importance because they are fundamental to participation in the law-making process.\(^\text{25}\) Lack of freedom of speech or rights to government information will deny them the information necessary to legal empowerment, and lack of freedom to organize or assemble will adversely affect participation in political processes. The poor also need ways to hold officials accountable, and they need to know how to access these accountability mechanisms.

- **Democratization.** In the absence of democratic institutions, the poor face obstacles in the process of forming, shaping, and enforcing their rights. For rights to match with their priorities, the poor need to be able to participate in the decision-making process. That is only possible with democratic institutions that provide the right to participate. This goes well beyond elections for political office, extending, for example, to the ability of peasants, workers, and small producers to organize themselves through associations, unions, and policy forums that promote and affect commercial activity. This also calls for participatory policy-making institutions that include the poor and for measures that counteract often strong power imbalances that exist even in democratic political processes.\(^\text{26}\)

- **Vested Interests.** While disadvantages in wealth, education, access to information, and social networks challenge the inclusion of the poor in governance at various levels, those who do occupy decision-making positions or have the ear of those decision makers often have few incentives to invite the poor to the table or to help them surmount those challenges. Overcoming this resistance is both a matter of the poor carving those spaces and altering the political landscape for themselves as well as altering the incentives and mentalities that feed the formation of interest groups and contribute to resistance.

- **Weak Institutions.** Rights that cannot be enforced or can be only partially or conditionally enforced are not truly effective. In many cases, the responsible institutions are weak for lack of relevance, as is the situation in authoritarian regimes where institutions are only a formality. In other cases, institutions are weak because they are captured by vested interests. For example, when institutions are not independent or are controlled by a political party or interest group, the poor cannot influence the political agenda to protect their own interests. Excessive centralization of decision making and monopolization of the political arena by existing parties have a similar effect.\(^\text{27}\)

An intrinsic disequilibrium in many countries between the rich and poor affects and distorts the political process that defines the distribution of rights in society, how they are enforced, and ease of access to supporting institutions. This is not an outcome that the wealthy necessarily promote or espouse, but whether by purposeful design or benign neglect, the outcome for the poor is the same. In the absence of a framework that offers poor people the economic, social, and political tools to secure their legal rights, poverty is much more likely to prevail. The corollary is that poverty reduction involves enhancing not just the economic but also the social and political “assets” that expand the poor’s capabilities and opportunities, so that they can function on a level playing field with those having greater assets and capabilities.

\(^{25}\) Golub, op. cit. supra


\(^{27}\) Ibid.
3.0 INITIATIVES TO LEGALLY EMPOWER THE POOR

If the ways in which the poor can be legally empowered are diverse, so are the initiatives by which empowerment can be pursued. This chapter seeks to identify and explore the diverse measures that can contribute to LEP. Law and legal reform are part of the story. Their role is potentially important to the poor because it structures economic opportunities and aspires, under most modern social and legal systems, to treat people the same without reference to whether they are poor or wealthy. However, beyond issues posed by substantive fairness or unfairness of legal provisions and rules, costs of accessing and using the law interpose themselves in ways that make it hard to achieve effective equality under law. LEP needs to realize that aspiration.

LEP should thus involve four tasks:

1. **Reforming Law and Giving the Poor Voice**: Ensuring that the poor are able to influence the development of policy and law and enhance their rights through democratic and transparent political processes—rights enhancement.

2. **Providing Knowledge as a Means for Empowerment**: Making sure that the poor understand their rights and the processes by which they can be exercised and enforced—rights awareness.

3. **Leveling the Playing Field**: Ensuring that the poor are able to overcome bureaucratic and cost barriers that broadly affect their access to economic opportunity and wealth generation—rights enablement.

4. **Providing Access to Enforcement**: Making sure that the poor can protect their rights in and access to opportunities and assets through affordable, fair mechanisms for enforcement of rights and contracts and dispute resolution—rights enforcement.

The above tasks are linked to policy and program mechanisms to legally empower the poor, as shown in Figure 3.1, which illustrates both interactions and the dynamics involved.
3.1 RIGHTS ENHANCEMENT

From the standpoint of legal empowerment of the poor, the potential of law lies in its ability to change behavior. Policies reflect the hopes and plans of governments of the day and are often ephemeral, but laws are decisions that transcend changes in governments, remaining in force until lawfully changed. Laws have no magical power, but they place the authority and resources of the state—or the smaller community making the rules—behind demands for certain behavior. Laws are orders to citizens and officials to behave in certain ways, and they take their force from incentives for compliance, sanctions for non-compliance, or in some cases from social consensus. They can also release potential and allow the pursuit of human aspirations—this is when they are most powerful.28

Law can be also be used as easily to reinforce privilege and constrain opportunity as to empower the poor and reduce inequality. Laws come into being through a process of negotiation, and more powerful groups are often in a better position to influence what the laws say and how they are implemented.29 Law is a neutral force, and if it has any inherently pro-poor character, it lies in the concept of the rule of law: that the powerful are not “above the law.”30 How then can legal reform empower the poor?

3.1.1 Reformsing the Substance of Law

First and most obviously, legal reform can create legal rights that confer new legal power on the poor. A reform may seek to establish rights favorable to the poor where none existed or clarify ambiguously conceived or poorly articulated rights. Progressive taxation systems, formal recognition of common law mar-

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29 Cotula, 2005.

30 Cotula, in his paper Making Law Work for the Poor, also highlights the role of law in empowering poor countries, for instance, through WTO rules. However, the capacity to use these rules to one’s benefit also is linked to one’s economic power.
riage, and intellectual property rights protecting indigenous knowledge are examples of legal reforms that help the poor by securing economic and social rights. The poor are also often empowered by legislation that is not primarily focused on legal empowerment. For example, a law may provide a right to information. It may create a right to vote. It may create a right to force officials of government, corporations, or unions to account for their actions. It may create a right to organize to negotiate salaries and other terms of work. It may create the possibility of using one’s bicycle to secure a small loan. It may create a right to have one’s informal landholding titled and registered. When coupled with focused legislation, broadly conceived legal reforms with multiple objectives such as the decentralization of government can also (by impact if not always by design) create new opportunities for the social and political participation of the poor.31

A special case of providing new rights through legal recognition concerns rights under customary law. Customary law is a body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members. That polity and/or its norms may or may not be recognized by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. They come with administrative institutions and powerful advocates, and have deep cultural resonance. An example is customary land tenure: many African states have asserted state ownership of all land, refused to provide recognition to customary rights, but then failed to provide an effective alternative tenure regime. The result is a wide gap between national law and the law-in-action, which remains custom. Recognition of customary rights is potentially empowering to the poor, but must be approached with some caution: a particular customary tenure system may have undemocratic governance systems, lack transparency and accountability, and reflect strongly patriarchal values.

Second, legal reform may eliminate restrictions that disadvantage the poor. A law can abolish a servile status. It can lift restrictions that economically disadvantage the poor, such as quality control regulations that are framed so that only large established businesses can hope to satisfy them. It can allow proof of land rights by oral evidence in a society where the poor hold their land by informal or customary arrangements that are only rarely reduced to writing. It can reduce costs of meeting the legal requirements for entry into a market or eliminate a poll tax or simplify processes so that the poor are, for the first time, able to take advantage of rights they have always enjoyed in theory.

Third, legal reforms can strengthen other dimensions of the legal empowerment framework: rights awareness, rights enablement, and rights enforcement. For example, reforms can create more accessible and user-friendly dispute settlement and opportunities. The types of reforms associated with these components are discussed in their respective sections below.

Fourth, in addition to these substantive categories, law spells out how both citizens and officials must behave in the pursuit and enforcement of rights. These rules are sometimes embedded in laws themselves (see Box 4) but are more often found in regulations and administrative instructions. In some countries, party documents and policy statements play this role as well, and they have the force of law. Procedural rules are critical to fairness. Substantive rights of the poor can be neutralized and lost in processes that disadvantage the poor. This applies to procedures in courts and other enforcement bodies, such as notice requirements, rights to be heard, rights to prompt hearings, and rights to require access to information held by others. But procedural rules are not just a matter of courts. Administrative law similarly creates procedures that must be followed by officials dealing with citizens, and corporate law creates procedures that corporate officials must observe in dealing with shareholders. Examples are the rules governing the

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31 For example, India implemented a policy of decentralized governance by establishing a uniform, democratically elected local government (panchayat) structure throughout the country. Decentralization served a variety of objectives, but specific legislative terms that require local elections at five-year intervals, reserved seats on the panchayat for women and members of scheduled castes and scheduled tribes, and established the gram Sabha (an assembly of villagers to serve as a watchdog over the governing bodies) provided the poor with new opportunities to impact local government. Constitution of India, Article 243 (73rd Constitutional Amendment of 1992); see Jha, Shikha. 2002, June 29. Strengthening Local Governments: Rural Fiscal Decentralisation in India. Economic and Political Weekly (pp. 2612).
filing of complaints, rules designed to ensure efficiency in processing claims or requests, and rules on response time or conduct, such as those applicable to the police. It cannot be emphasized too strongly that these rules governing process are as critical to the realization of rights as the substantive law creating the rights, and that law reforms requiring good process have potentially large pay-offs in terms of LEP.

**BOX 4: PROCEDURAL RULES: LAND LAW AS ADMINISTRATIVE LAW**

Patrick McAuslan, drafter of the most recent Tanzanian land legislation, argues for a “painstakingly detailed” approach to legislative drafting, in which considerable procedural detail is included in the land law itself rather than in regulations under the land law. He writes:

> Officials armed with powers and subject to few or no restraints cannot be relied upon to behave reasonably … but at least where there are rules and procedures which have to be followed, a challenge can be mounted to unreasonable behavior. In much of Africa, the allodial title to land is vested in the state … this means that the citizen has to obtain land from the state and its organs, with state officials managing the land as landlords or trustees. In such cases as these, land law ceases to be a private matter, but becomes part of public law; it is in fact, administrative law. Administrative law or administrative justice requires that official power be bounded by legal rules, be exercised in accordance with certain principles of fairness, allows for hearings and appeals, and be subject to review. (A further) reason for supporting an approach of “more” rather than “less” law is, paradoxically perhaps, the existence of the market. [O]nce the land law recognizes and protects private rights, and facilitates dealing with those rights in the market place, the law has to be much more specific, detailed and clear. The crucial issue … is to find the right balance between public and private law for each problem.”


Fifth, law determines the participation of the poor in the law-making process itself. This is somewhat different than the categories mentioned above, as it involves a number of them. Law determines who is a member of the law-making community. It determines who has access to that community and what those access channels are. It determines how decisions are made about its content. It determines whether the poor can participate in that decision making process, the means by which they participate, and the costs they must incur for their participation. It can impose penalties on those who seek to deny the poor their right to participate. This participation is critical both because it increases the opportunities for law reform to work in favor of the poor and also because such participation itself, by developing the capacity of the poor, empowers them.

Changes in the law that empower the poor will often imply changes in the distribution of economic benefits and power. Bureaucrats, judges, and economic elites have great influence over what legal reforms are enacted and how far they are implemented. Laws that promote legal empowerment of the poor may threaten jobs and power by decentralizing roles and decision making, and threaten rent-seeking opportunities by reducing complexity and discretion. Preliminary stakeholder analysis of the legal reform process can reveal important pockets of potential resistance and guide reformers about how to manage it effectively, such as creating new opportunities for those who stand to lose employment or status, or by building in performance-based incentives that reward service to the poor.

**3.1.2. Reforming the Process of Law Making**

In empowering the poor, the process by which law is changed can be as important as the substance of the changes. Processes that involve the poor in the design of legal reforms pay off in three ways: they assure that the priorities of the poor, as perceived by the poor, are inserted into these discussions; they strengthen democracy by building the poor’s capacity to engage as proactive citizens; and they enhance possibilities for the development of a social consensus concerning law reforms that make effective implementation more likely.

Box 5 outlines a sequence through which government may involve the poor in changing law.
The first significant opportunity to engage the poor is through applied research that can involve organizations and social movements seeking to represent the poor. Input at this stage is particularly important, because it contributes to problem identification and can influence the framing of the issues to be resolved.

A public information campaign that precedes the public consultation gives people, down to the local level, time to think about the issues. This should include public meetings and consultations with members and representatives of vulnerable groups who may be reticent in meeting publicly. The public consultation process on a preliminary policy document is the most important opportunity to engage the poor, and it is best that it focuses on defining the problems, reviewing options, and proposing solutions rather than technical content. Input from the poor and those who represent them is critical at this early stage in the process because it provides the poor with an opportunity to shape the content of the law before the legal drafting stage when it is less comprehensible and potentially less mutable.

Civil society organizations (CSOs) today play an important role in voicing the concerns of the poor and advocating for law reforms that will aid them. Note, however, that the credibility of such groups as representatives of the poor varies dramatically. Some consist of urban elites pursuing ideological agendas, largely out of touch with the poor. Their legitimacy in terms of representing the interests of the poor must be carefully assessed. Social movements and membership organizations that actually have poor members and legitimately elected officials generally deserve greater credence. The input of any nongovernmental organization (NGO) or CSO will have greater credibility if it engages in systematic consultations with the poor and use these to inform their objectives and actions.

However, good consultation is expensive, time consuming, and requires a certain degree of experience in communicating with and engaging communities in honest dialogue. Donor organizations can enhance the quality of consultation by making the needed funding available and providing technical assistance on the process. Excellent models are available. The prospects for effective inputs by the poor will also be enhanced if a realistic time frame for the law reform process is established at the outset, usually not less than two years. The process by which law is reformed is important because the real objective is not just enactment but effective implementation, and the process has important effects on ownership and the quality of implementation.

Further opportunities for pro-poor inputs exist when a draft law has been prepared and is discussed, but it will only be possible if the new law is given substantial publicity and communicated in terms that are easily understood by those without legal education. A final opportunity for pro-poor input comes through representations to members of the legislature. These last two opportunities, however, are more likely to involve inputs by advocates for the poor rather than direct input by the poor. Finally, the quality of the legal drafting can make a law more or less accessible to the poor and the advocates of their interests.

Elites often do not have the foresight to accept proposed reforms, pursuing their short-term interest in income streams and power over their longer-term interest in constructive change and political stability. Getting reforms enacted and implemented often requires the political mobilization of the poor. What can be
done to enable the poor to secure seats at the table and soften the resistance of the politically powerful? Box 6 highlights some alternatives.

Probably one of the most effective means of supporting the inclusion of the poor in the political process is investing in the support of those who are seeking this end: champions within government, civil society movements, or visionary leaders. It can involve financial assistance but can also extend to helping leaders and groups gain exposure in the international media and donor publicity materials. It is nevertheless important that these investments be preceded by careful analysis, to ensure that helping to empower one group of the poor does not result in increased marginalization of another.

Laws that mandate the inclusion of the poor (or those who represent them) in decision-making structures and “procedural” laws that hold those responsible for guaranteeing their inclusion accountable are another mechanisms for reshaping the political space. Identifying champions within the government and cultivating a keen sense for political opportunity enable donors to strategically mobilize support for such legal reforms. Enshrining the participation of the poor in the laws of governance makes it much more challenging to exclude them when political circumstances are not in their favor.

Even in a democratic society, money is often the means by which political candidates become known and exert influence among potential constituents in order to be voted into office. While some candidates enter into the decision-making forums with the best of intentions of representing the interests of the poor, their incentives are often geared toward rewarding those who enabled them to get into office in the first place. Measures to weaken these incentives include tax-based public financing to support election campaigns, awarded based on low-cost indicators of public support (e.g., petitions). It is necessary to tackle underlying social values, norms, and structures that feed quests for power and self-enrichment. Greater support is needed for education programs that promote values of public service and appreciation for the “rewards” that come from exerting a positive change in poor people’s lives, including supporting their capacity to shape their own destinies. It is important that such education not only be targeted at those already in the political system, but also youth and future leaders whose values are still in the formative stage and the best opportunities exist for rewarding their tendencies toward idealism. Those seeking to reinforce norms and values of public service can sometime appeal effectively to global norms and values, a prominent example being the Universal Declaration of Human Rights.

Including the poor in the political process and getting the law right for them are only the first steps. Often there is a discouraging gap between the rights the poor already have by law and their ability to realize them. How can that gap be closed?

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32 Too heavy reliance on a political champion can be dangerous, as illustrated by the difficulties faced by efforts at low-cost formalization of land occupations in Peru after the departure of President Fujimori. Champions are important, but even more important is careful stakeholder analysis and accommodation of stakeholder interests, developing a political consensus for needed reforms, and neutralizing potential opposition.
3.2 RIGHTS AWARENESS

The foundation of legal empowerment is awareness of rights. The poor must know their rights and understand contexts in which those rights exist and function. Mere knowledge that a right exists is insufficient to ignite the legal empowerment process. Rather, rights awareness requires both comprehension of the right and concrete understanding of how to assert, protect, and ultimately effect it. As a precondition to and essential component of legal empowerment, rights awareness is necessarily action oriented.

3.2.1 Barriers to Awareness

Creating and improving the poor’s awareness of legal rights requires informed identification of the barriers and disadvantages they face. Lack of adequate health care, education, economic wealth, and social experience—coupled with an unrelenting pressure to perform daily labor to meet basic needs—isolates the poor economically, socially, and physically. Rural residents, women, ethnic and religious minorities, and the disabled and socially stigmatized are typically further marginalized and well represented among the world’s poorest.

The multidimensional isolation attendant to poverty in developing countries dictates the need for intentional and well-considered awareness building. In the developed world, most poor live in an environment saturated with accessible public media and open discussion of legal rights. In contrast, the barriers faced by the poor in developing countries can combine to restrict their awareness. The poorest may never travel beyond the outskirts of their village, town, or the section of a city in which they make their home. They may never read a newspaper, understand a radio broadcast, or access the Internet. Absent intervention, the poor’s awareness of legal rights may be limited to anecdotal information gleaned from those with whom they interact in the community. Compounding the potential for receiving inaccurate and incomplete information, the poor often first learn about a legal right under stressful circumstances, such as a death in the family, land expropriation, job loss, or natural disaster. Absent intervention, the poor’s awareness of their legal rights is likely to be imperfect in content and ultimately unable to sustain the process of legal empowerment.

3.2.2 Accessible Laws and Legal Procedures

Given the prevalence of barriers and disadvantages faced by the poor, the legal empowerment process requires intentionally crafted efforts to create and increase rights awareness. Common awareness-building efforts, such as legal literacy campaigns, attempt to reach the poor where they live. Less common and less evident are methods of building awareness through integrating the poor into mainstream economic, social, and political environments (e.g., through inclusion in union-organizing efforts, requiring resident representatives on slum improvement committees, establishing contract set-asides for small businesses, and setting required percentages of low-income mortgages in a given community). Both types of methods share a need for a foundation of accessible and comprehensible laws and legal procedures.

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33 Golub, 2001 (pp. 7).
For individuals not immersed and trained in the legal and judicial professions, laws are often physically and technically inaccessible. Customary laws are typically unwritten and rarely codified. Written laws and regulations may be poorly produced, written in a different language, inadequately disseminated, and expensive to access. Those who have physical access to written laws in their own language often confront lengthy legislation bloated with terms of art, excessive formality, and convoluted syntactic structures seemingly designed to obscure rather than impart information. Efforts to make the expressions of law more accessible and allow awareness building include drafting laws using plain and simple words; printing laws with large, legible type; requiring laws (or summaries of longer laws) in all local languages; shortening legal procedures to essential steps; and disseminating laws and regulations throughout relevant jurisdictions and in all tribunals with particular attention to those handling cases involving the interests of the poor. These measures can create a foundation for building awareness of legal rights.

### 3.2.3 Legal Literacy Campaigns

Legal literacy campaigns share the objectives of rights awareness: imparting knowledge of legal rights and the exercise of those rights. These campaigns tend to be conceived and executed with relation to specific projects or in the context of broader programs, such as the countryside formalization of land rights or establishment of legal aid offices in an urban center. Campaign methods include educational messages disseminated through the public media and training programs for providers of services and benefits to the poor, including government officials, professionals, and members of civil society.

Less visible at a national level but potentially highly effective are community-based legal literacy efforts. Operating at the local level, planners can tailor a campaign to the needs of a particular population, which in turn can suggest and generate the content for the campaign. Local legal literacy campaigns can range from community workers advising self-help groups of domestic violence laws to a performance of a tour-

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37 Examples include the customary laws governing India’s tribal people, which comprise approximately 7% of the country’s population, and the customary laws of African countries. Formal law may recognize the validity and jurisdiction of customary law, but the law is not reduced to writing. For example, Nigeria’s Land Use Act of 1978 allows inheritance of occupancy rights in accordance with the customary law of the area, but the principles of inheritance applied by different tribes and tribal subgroups are unwritten.


39 Comprehensive guidelines for creating comprehensible legislation and legal documents are included in Sandeep Dave’s *Plain Language in Law*, at [www.llrx.com](http://www.llrx.com) and [www.plainlanguage.gov](http://www.plainlanguage.gov), a 2002 USG mandate that all legislation must be written in plain, concise language in order to make it more responsive, accessible, and understandable to the public (see [http://www.plainlanguage.gov/whatispl/govmandates/memo.cfm](http://www.plainlanguage.gov/whatispl/govmandates/memo.cfm)).

40 Legal literacy has been defined as substantively equivalent to legal empowerment. Golub and McQuay, 2001, at pp. 8. To avoid confusion, we use the term in this paper with reference to legal literacy campaigns—one type of rights awareness-building activity. A classic example of a legal literacy campaign is the radio broadcast designed by Women’s Feature Service (WFS), a Delhi-based NGO to provide women with information about their legal rights. WFS broadcasts 28 weekly segments, discussing issues such as dowry, domestic violence, life insurance, and sex worker laws. Each program included legal advocates explaining the law in lay terms, call-in question and answer sessions, and advice on how to proceed with a claim or defend a right. The program is described in the Communications Initiative at [http://www.comminit.com/experiences/pdsaug/experiences-679.html](http://www.comminit.com/experiences/pdsaug/experiences-679.html).


42 In the state of Gujarat, India, the NGO the Centre for Social Justice (CSJ) employs and trains residents of selected regions to work as paralegals. The paralegals provide education awareness training in the community, conduct investigations, and assist circuit lawyers. As an organization, CSJ undertakes various topics for which it develops educational materials, conducts training, undertakes test cases, and supports legislative reforms. The topics are often chosen from those identified by community residents and paralegals. The program is described in the CSJ pamphlet, *Taking Justice to the People: Law as a Tool for Social Engineering*. Ahmedabad: Centre for Social Justice (on file with the Rural Development Institute).
ing theater troupe advocating the right to vote. Campaigns may include a mixture of approaches: coping with a public health crisis; a health ministry broadcasting a radio announcement nationally to alert its citizens to the legal rights of HIV-positive individuals; a local NGO advising patients in a village clinic how to file a claim against their employers for unpaid wages when their illness prevents continued work. Effective legal education should use media that engage the interest of those to be informed; cartoons that highlight legal problems and solutions are a good example. Box 7 shows a panel from a publication in Cambodia.43

Selecting the most effective method to create and increase awareness of legal rights begins with identifying the intended audience. The size, composition, and characteristics of the audience will shape the content and ultimately narrow choices for effective methods for communication of the message.44 If a targeted poor audience lives and works in a community with no television or radio and high illiteracy, campaigns might use posters illustrating the message with graphics or rely solely on personal contact. If

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43 See also the publications of Pact Cambodia, which include posters, booklets, personal stories, and picture books addressing legal and social issues, are designed to be used in combination in order to reach all corners of a population on an issue. See, for example, poster entitled, Helping People Living with AIDS, and a picture book depicting the legal rights of persons with HIV/AIDS, We Participate Together for our Safety and Security, available at http://www.pactcambodia.org/publications.

the audience is economically and socially diverse, campaign designers must identify barriers faced by marginalized sections and consider creating and delivering communications separately to those groups.\textsuperscript{45}

In addition to communications intended for the poor, campaigns may need to raise legal awareness among those who interpret and administer the law, including judges, lawyers, police, and administrative officials. In some settings, campaigns effectively target traditional leaders in order to raise awareness of formal law in an effective and respectful manner, while also exploring possible ways of merging or otherwise reconciling customary and formal law in a manner designed to establish, extend, and protect the rights of indigenous populations, including women and other marginalized persons.\textsuperscript{46}

In designing campaigns, planners often need to balance the need to reach a large audience with the need to ensure understanding among the poor. The broader the dissemination area, the more diverse the audience will be, requiring a more generic message.\textsuperscript{47} Smaller audiences allow for more tailored messages that can provide information about the methods of exercising legal rights specific to a community, but may not reach a significant number of people. This challenge of promoting legal literacy is further confounded in countries with many languages and no widely known national language.

\textbf{3.3 RIGHTS ENABLEMENT}

The processes of rights enablement are those measures and mechanisms that can assist the poor in using the law and legal tools to expand their opportunities. Enabling processes, such as legal reforms and legal aid services, can facilitate the poor’s ability to assert and defend their rights. In the context of legal empowerment, however, the goals of enablement extend beyond ensuring the ability of the poor to exercise a legal right; the processes of enablement are the means through which the poor can access the legal, economic, and social opportunities attendant to that right. As such, enablement is the core process of legal empowerment.

As with effective awareness-building, enablement processes respond to the barriers and disadvantages faced by the poor. The barriers that occlude and obscure the poor’s awareness of legal rights\textsuperscript{48} pose similarly persistent barriers to the process of rights enablement. In addition, laws and policies, deeply rooted customs and traditions, and market economies and evolving social structures can harbor unanticipated barriers for the poor. Competing formal and customary legal frameworks, institutional incapacity and resource deficiencies, market imperfections and failures, and the costs of corruption can perpetuate the poor’s economic, social, and political disenfranchisement.

Those same laws, mechanisms, and institutions can, however, also serve as agents of rights enablement and ultimately, legal empowerment. Policies, legislation, government, civil society, and all manner of

\begin{itemize}
\item \textsuperscript{45} In efforts to educate the poor about issues such as family laws, gender equity, dowry, and domestic violence, implementers find that raising the issues separately with women and men before conducting any mixed gender communication essential to an effective campaign. See, for example, ICRW, 2002. \textit{Innovative, Women-Initiated Community-Level Responses to Domestic Violence: A Study of Nari Adalat, Baroda, and Mahila Panch, Rajkot.} New Delhi: ICRW (on file with the Rural Development Institute).
\item \textsuperscript{47} For example, the population of Angola speaks a dozen or more different languages, and literacy rates are low, especially in rural areas. Key excerpts from the country’s family laws relating to marriage, divorce, and the obligations of parents to children are available in a picture book form, which allows community workers and local officials to use the text throughout the country. People’s Republic of Uganda. \textit{Assemblei do Povo.} 1989. \textit{Codigo da Familia.} Luanda: Centro de Documentacao e Biblioteca.
\item \textsuperscript{48} These barriers and disadvantages include lack of adequate education, health care, economic assets, and social experience. See discussion in Section 3.2.
\end{itemize}
groups and individuals—including the poor themselves—can facilitate the exercise of legal rights by eliminating barriers, providing the poor with the means to recognize barriers and dismantle or circumvent them, or compensating the poor for impenetrable barriers. Such enabling efforts, which can occur alone or in combination, can take the form of (1) procedural assistance for the poor; (2) integration and affirmative action; (3) institutional and individual capacity building; and (4) the provision of compensatory benefits. As described below, the enabling measures can assume dramatically different forms, but as tools of legal empowerment, they share a common objective: providing the poor with the means to escape poverty.

3.3.1 Procedural Assistance

Among the most visible enablement efforts are those extended by individuals and organizations providing the poor with procedural assistance in exercising their rights. Legal aid, which provides low- or no-cost legal assistance to the disadvantaged, plays a central role in providing procedural assistance. Individuals and entities offering legal aid services are highly diverse and can include activities ranging from completing forms and deconstructing regulations to representing the poor in legal and administrative proceedings. Despite the diversity of potential activities, legal aid efforts usually share core objectives: in the area of procedural assistance, legal aid bridges the gap between rights granted to poor populations and their ability to exercise those rights effectively.

As a process enabling legal empowerment, the bridge provided by procedural assistance must actively engage the poor rather than simply serve their legal needs. Most prominent of such engagement are programs that employ local residents to work as paralegals. Paralegals serve not only as efficient providers of procedural assistance, but their presence in the community creates a local base of legal knowledge and experience with legal matters that can expand within those communities.

Collaborative programs that identify untapped potential within institutions and communities can be equally effective processes of enablement. Legal aid clinics that train local traditional leaders and elders to serve as advocates for their constituents can create a powerful presence in their communities. With a modest amount of training and appropriate incentives, court system employees can help the poor complete forms and fulfill processing requirements. Teachers and educated members of communities can help with reading and interpreting legal documents. Regular visitors to remote communities, such as health care workers and NGOs, can provide transportation for the poor to visit government offices and courts. These types of ad hoc efforts may lack the disciplined approach of organized legal aid, but what they lack in substance, they may make up for in proximity, understanding of local circumstances, and creating a body of knowledge, legal experience, and capacity within communities and the institutions that serve them.

49 The discussion of the reform of law and policy as an enabling process is contained in Section 3.1.
50 Kessler, Mark. Legal Services for the Poor: A Comparative and Contemporary Analysis on Interorganizational Politics. New York: Greenwood Press, 1987. See, for example, the key objective of South Africa’s Legal Resources Centre, which is “[e]nabling the vulnerable and marginalized to assert and protect their rights” https://www.lrc.co.za.
52 The system used by the Alternative Law Groups (ALGs) in the Philippines is an example of legal aid services enabling a community to assert its rights. ALGs partner with communities to address issues within those communities, such as the need to file land reform applications with the Department of Agrarian Reform in order to secure land rights. ALGs trained selected residents to assist farmers in gathering the necessary evidence, preparing, and presenting the applications. Golub, Stephen. Participatory Justice in the Philippines. In Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World, Mary McClymont and Stephen Golub, Eds. New York: Ford Foundation, 2000. (pp. 213); Golub, 2000 (pp. 297–314).
3.3.2 Integration and Affirmative Action

Integrating the poor in public processes and environments is usually a more individualized method of creating rights awareness than technical revisions to legal language and legal literacy campaigns. Least controversial are integration methods that pull another chair up to the table by consciously including the poor in public processes.\(^{54}\) Methods can be voluntary, such as policy makers canvassing the poor for opinions and priorities in the process of establishing policy, or government officials including the poor in decisions on the allocation of project benefits.\(^{55}\) Other methods of including the poor may be mandated, such as legislation requiring public notice and hearings in all communities to be affected by a public works project or private development with environmental impact.\(^{56}\)

More controversial are methods creating mandatory reservations for the poor, which provide guaranteed space at a policy- or decision-making forum with a limited number of seats.\(^{57}\) The methods, which are often broadly referred to as affirmative action, create controversy because for every poor person included, someone seemingly more advantaged appears to have been displaced. In some cases, the method has created hostility toward or further stigmatized the poor. The ultimate impact of the method on poverty alleviation is debated.\(^{58}\)

Barriers to awareness-building processes are echoed in processes to integrate the poor into government meetings, forums for policy making on project planning, and other mainstream environments. The poor may experience difficulties attending scheduled meetings on a regular basis, understanding the proceedings, and expressing themselves in an effective manner.\(^{59}\) Nonetheless, undervaluing the use of integration methods in rights-awareness building does a disservice to the process of legal empowerment. While the methods are often more labor intensive, individualized, and considered less scalable than broad legal literacy campaigns, by their nature they require the active involvement of the poor in the process.\(^{60}\) That involvement can create the engagement necessary for empowerment.

3.3.3 Institutional and Individual Capacity Building

Capacity building\(^{61}\) creates and expands the ability of individuals, communities, and institutions to support the poor’s exercise of legal rights and use of legal tools. Capacity building helps ground legal knowl-

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56 See, for example, South Africa’s mandatory public participation processes contained in the 1998 National Environmental Management Act (NEMA).

57 Examples include reservation of panchayat (local governing body) seats for members of scheduled castes, scheduled tribes, and women in India. Constitution of India, op. cit. supra.


59 Claeyys, 2001 (pp. 136).

60 Schneider, 2006.

61 In the development context, capacity building is the process of providing individuals and groups with the knowledge, skills, and understanding necessary to perform effectively and bring about desired change. At a group level, capacity building includes improving the group’s ability to organize and manage itself, establish values, set priorities, create strategic plans based on models and opportunities, and implement the plans. At an institutional level, capacity building may involve creating administrative and legal frameworks and implementing changes to enable the institution to enhance its capabilities to meet objectives. See compilation of definitions prepared by Global Development Resource Center, Defining Capacity Building, at
knowledge and experience in a community and within institutions, creating environments in which the poor can actively participate in the development, exercise, and enforcement of their rights.  

Whether directed at the poor, at professionals serving the poor, or at institutions such as local government bodies, effective capacity building may initially require attention to creating awareness of the legal rights of the poor and the processes for exercising those rights. Once awareness is established, capacity-building approaches will often be tailored in accordance with the target group. Community-level programs are often created and implemented by activists for the poor, and practical methods for the poor to assert their rights dominate the curriculum. Some programs focus on forming groups around common concerns and interests and educating group members on how to use laws and institutions available to them to forge social change.

Within the government, capacity building focuses on institutions responsible for creating, implementing, and enforcing the legal rights of the poor. Those with whom the poor interact regularly, such as local government officials who have responsibility for public works and police who enforce local laws, often lack understanding of the rights of the poor and barriers faced by the poor. As critically, these frontline officials often have no incentive to interact with the poor and serve their needs equitably. They may instead succumb to real and perceived disincentives to provide equitable service, such as the poor’s limited ability to pay legitimate and illegitimate fees, the time and cost necessary to visit remote areas when the poor live, and concerns over visiting uncomfortable and unhealthy impoverished areas.

To similar disabling effect, the legal profession and judiciary’s experience with issues relating to the poor’s exercise of legal rights and access to justice may be quite limited. Judicial reforms are often focused on correcting administrative inefficiencies and promoting rule of law reforms designed to attract investment and encourage economic growth—reforms that while not inherently inimical to the interests of the poor, are not targeting the specific barriers faced by the poor. Judges and court officials often lack any knowledge of the daily circumstances of the poor. Canceling a hearing without prior notice may cause the poor litigant to abandon the case. Similarly, lawyers, who often come from rarified, economically secure, urban backgrounds, may better serve the poor (and may, indeed, consider a career of public service) with understanding of the poor’s circumstances. Capacity-building programs seek to create recognition of the poor’s experience and work with officials, institutions, and professionals to design practical mechanisms to eliminate barriers and provide alternatives.

One of the distinguishing features of capacity-building programs within a framework of legal empowerment is the effort to establish opportunities for the poor to participate in public processes representing their own interests. User groups, cooperatives, and coalitions often serve as the foundation, with those groups in turn supplying representatives to decision-making bodies. Establishing forums in which the poor and members of institutions such as local government meet regularly to address issues and discuss...
possible solutions creates opportunities to institutionalize the process of capacity building even as the group addresses the issues of the community.65

3.3.4 Compensatory Benefits

Processes of enablement also encompass measures designed to compensate for barriers faced by the poor. Compensatory measures are designed to provide the poor with access to an opportunity denied them because of their economic status. Mechanisms can include many of the integration efforts that can assist in awareness building,66 such as reserving a percentage of seats on a local governing council for the poor or creating employment guarantee programs. In areas where imperfections in the labor and land markets artificially depress laborer wage rates and raise land prices to the extent that the poor are precluded from purchasing land, programs subsidizing the purchase of agricultural land by the poor, or programs providing tax credits to financial services cooperatives extending credit to the poor, serve as enabling processes.67

Compensatory programs are often less favored than the other types of enabling methods. On a conceptual level, compensating the poor for disadvantages suffered potentially places the poor in the role of passive beneficiaries and may not encourage the effort necessary to improve their economic and social position. Even if the financial benefit is a one-time payment or benefit, arguably the poor may accept it as an entitlement rather than an incentive—an attitude at odds with the empowerment process.

The same criticism could, however, be directed at all enabling efforts to some degree: in order for enabling efforts to support the process and objective of legal empowerment, the poor must become active participants in the process of exercising their legal rights and recognizing resulting economic and social opportunities. Equal social rights and entitlements must include the right to participate in decision making and in shaping the set of social rights to meet their particular needs.68 Absent that engagement, any enabling process has the potential to deflate and its ability to encourage empowerment reduced to that of any other benefit program. Those enabling efforts that integrate the poor at every stage—in setting priorities and establishing agendas, conceiving of necessary legal reforms, creating rights awareness campaigns, and designing processes through which the poor can exercise their rights—will be best positioned to foster legal empowerment.

3.4 RIGHTS ENFORCEMENT

Recognition of civil, economic, social, and political rights will lack weight and credibility without procedural rights. People need pathways to enforce their rights. These pathways need to be known, easily followed, and economically affordable. Slow, expensive, and corrupt judicial systems undermine the protections and rights provided by law. Frequently, the government fails in its responsibility of providing a sound dispute settlement mechanism, and the private sector then incurs additional costs to solve conflicts. As a result, businesses do not flourish, rights are not enforced, and poverty prevails.69 The poor are part-

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65 The Islamabad-based NGO, Rozan, conducts a training program for police designed to enhance the relationship between the community and police and improve understanding of issues such as domestic violence. See description of Rabta program at http://www.rozan.org/rabta.
66 Discussed in Section 3.2.
68 Ibid.
particularly disadvantaged in the face of corruption, lacking both economic resources to pay bribes and social/political status with which to influence judges.

The courts are the traditional venue for vindication of rights, but their inadequacies as a means of recourse for the poor are manifest. They are commonly slow and expensive, their processes complex, and their language arcane. Law reforms can improve this, simplifying processes and creating more accessible and user-friendly adjudication opportunities. They can also provide other more promising approaches to dispute settlement, including alternative dispute resolution (ADR, emphasizing mediation and arbitration) and opportunities for field adjudication of rights, such as those during systematic land titling. Law reforms can also establish institutions and mechanisms that help the poor hold to account those who administer the law. These would include creating ombudsmen or community watchdog groups to supervise the performance of local officials, or creating the right to file complaints and call public meetings that local officials are required to attend and respond to grievances. These innovations all require law reform, even in the case of ADR (which is consensual), because legal authorization is needed for the state to fund ADR and to ensure court enforcement of resolutions arrived at through this process.

While the courts are traditionally an important mechanism for rights enforcement, there may also be a need of administrative reform, particularly when rights are demanded vis-à-vis the government. Efficiency is paramount for the stakeholders; of particular concern are inefficient institutions that create bottlenecks and increase costs, such as when courts are slow or corrupt and when the lack of procedural rules makes the possibility of enforcing rights unreal.

Corruption is another important issue. Impartiality is essential for rights enforcement; judges or administrative officers who make decisions based on factors other than the facts are in essence denying rights. The best international practice in this field shows that the criteria and process for judge and officer appointment are critical. Judges appointed based upon political affiliations, with no previous credentials and who can be removed at the will of political operators, are not independent and are often prone to bribes. In Nicaragua, for example, judges are constantly criticized for lacking independence. The potential of a clear and predictable judicial appointment process should not be underestimated. Civil society at large should be involved in that process, and the poor, if they organize to do so, can play an important role by nominating and scrutinizing candidates. Good salaries, permanent training, high ethical standards, and a clear and stable career path are all elements that have proven to be useful in promoting transparency among judges and administrative officers.

Specialization and ease of access may also improve dispute settlement. Experience has shown that specialized courts are much more efficient in this area. For example, Rwanda created specialized chambers in trial courts for litigation related to business, financial, and tax matters. It was able to reduce delays by

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70 “Important” is stressed because there are many other mechanisms and institutions that potentially come into play. Conventional wisdom often assumes that in developing countries the courts are the only or primary mechanism/institution through which the rights can be enforced, and yet people—especially poor people—often go to many institutions first before going to the courts. These institutions can include traditional authorities such as family, clan, or village elders, or formal authorities such as the police or local non-judicial government.


72 Slow courts often do benefit those who prefer the status quo. In India, for example, the rich and powerful often use the courts for just this reason. By filing a case, they can delay threatening change for years, decades, or even forever. Thus, slow courts are not necessarily bad for everyone, but they almost always are for the poor.


In other cases, small claims courts have proven useful in creating accessible mechanisms to enforce rights. Decentralization is an important element toward making justice accessible to everyone in all parts of the country. For example, until mobile courts were implemented in remote areas of Brazil, it had been impossible to access the judicial system. In the absence of effective dispute settlement mechanisms, people resort to their own ways of enforcing rights. Experience with customary rules and tribal chiefs as mechanisms of enforcing rights in some parts of Africa has been positive.

In many countries, mechanisms have been designed to bypass the courts to enforce certain rights through agreements of the parties. That is the case of Albania, where in the context of moveable guarantees, parties can agree that the lender can take possession of the collateral directly with no need of court intervention if the borrower defaults. In other cases, court procedures have been reformed, experience showing that an oral process tends to be more transparent and faster than written dispute settlement, a factor that diminishes enforcement costs. In Venezuela, enforcing labor rights in courts used to take around 10 years. With the passing of a new law that promotes mediation and oral procedures, more than 80% of the labor disputes are settled before going to trial and court cases are now decided in no more than four months. Legal clinics and aid organizations have proved useful in helping the poor to enforce their rights; however, legal aid programs frequently lack funds to make their services available to all, are unknown by those that need it the most, or are not available in all locations.

Even when a court decision has been obtained, it sometimes cannot be enforced. The decision then may become a new counter on the bargaining table or, if the loser is powerful enough, it may simply be ignored. In many cases, developing efficient mechanisms to enforce judgments is a pending task to legally empower the poor. For example, in Central America, the potential benefit of arbitration to reduce the burden on the judicial system is eclipsed by the requirement that arbitral awards be enforced by traditional courts.

Likewise, elimination of costly steps and formalities can play an important role. Reduction of costs, such as the need for photocopies or notarization, has proven to be significant for enforcing people’s rights. The language used in paperwork can also pose an obstacle; an extensive study of the primary causes for the proliferation of the extralegal economy in Tanzania found that the majority of documents necessary to legally operate a business in that country are found only in English, whereas a majority of the country’s citizens speaks only Kiswahili or tribal languages.

75 World Bank, 2006 (pp. 62).
77 Ibid.
82 Garcia-Bolivar, Omar. Personal experience in El Salvador.
83 Institute for Liberty and Democracy. 2005. Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law. Lima, Peru: ILD.
Rights enforcement through administrative bodies, such as requests for public services, is often affected by inefficient procedures as well. It is common in many countries for service requests to be backlogged for years on the desks of officers with no decision being taken. Those delays are, per se, denials of rights. An international best practice that is becoming popular in many countries is the device called “affirmative silence,” in which administrative procedures must be decided within a specified time period. If the relevant officer has not made a decision by that time, the request is considered to be approved.\(^\text{84}\)

Other mechanisms that can assist the poor are group-based action strategies to encourage rights enforcement, toll-free hotlines that provide immediate information on rights enforcement options and procedures, ombudsmen or other officials dedicated to serving the poor in justice institutions, police stations and public health offices, and the establishment of ADR systems.\(^\text{85, 86, 87}\) These types of mechanisms and institutions create avenues for informal, local, and low-cost processes that enable the poor to exercise and enforce their rights.

ADR mechanisms such as arbitration, mediation, or conciliation can be useful in bypassing inefficient rights enforcement mechanisms.\(^\text{88}\) There is a potential utility in associating binding arbitration provisions with certain contractual agreements in order to lessen the burden on formal courts.\(^\text{89}\) Besides reducing the administrative burden on judicial systems, binding arbitration is a useful catalyst for the formation of commercial associations within a country.\(^\text{90}\) Georgia, the country that realized the greatest year-to-year gain in the World Bank Governance Indicators, has not only rewritten its labor regulations to provide mobility for workers and reduced the required entitlement contributions made by employers, it has also set up specialized commercial courts using ADR to allow willing firms to resolve disputes by means other than the formal judicial system (which is of poor quality).\(^\text{91}\)

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84 Garcia-Bolivar, Omar. Personal experience in Lesotho.

85 In India’s Gujarat state, hundreds of women used networks of self-help groups to protest police failure in arresting government officials who had raped several local women. The public protests resulted in the dismissal and arrest of several officials and the creation of a joint community action committee. Nielsen, Robin. Personal communication with Sejal Dand, Executive Director, Anandi, October 2004.

86 A critical actor for LEP in Colombia is an Attorney General dedicated to upholding the rights of civil society when those rights are violated or ignored by the government. This position has proven to be an outstanding champion for the rights of the poor, especially indigenous populations.

87 ADR systems usually include options for negotiation, mediation, and arbitration—mechanisms that are more conciliatory and less adversarial that formal litigation. USAID. 1998. Alternative Dispute Resolution Practitioners’ Guide. Center for Democracy and Governance Technical Publication Series (pp. 4–7). For a classic work that makes the point that alternative dispute resolution is widely practiced traditionally in many developing societies in the third world, see Nader, Laura and Harry Todd, Jr. The Disputing Process: Law in Ten Societies. New York: Columbia University Press, 1978.


91 During the period Georgia was able to reduce the unemployment by 2%. World Bank and International Finance Corporation. 2007 Doing Business 2007: How to Reform. http://www.doingbusiness.org/.
4.0 LEGAL EMPOWERMENT RECONSIDERED

This paper began by examining a variety of definitions of LEP, analyzing their elements, and noting that LEP was in fact both a process and an objective. In this final chapter, the paper suggests a revised definition, drawing on insights from the preceding chapters, and then turns to two other key challenges: how those seeking to support LEP can program more effectively for its achievement, and how they can assess whether it is being achieved, both as a process and an objective.

4.1 A REVISED DEFINITION

On the basis of the foregoing discussion, we propose a refined definition of LEP:

Legal empowerment of the poor occurs when the poor, their supporters, or governments—employing legal and other means—create rights, capacities, and/or opportunities for the poor that give them new power to use law and legal tools to escape poverty and marginalization. Empowerment is a process, an end in itself, and a means of escaping poverty.

This definition helps reduce some of the vagueness of LEP definitions offered by other important sources (see Section 1 and Box 1). It includes elements noted in earlier definitions: (1) empowerment as a strategy; (2) identification of law as a means to empowerment; (3) specification of the poor as those to be empowered; and (4) an objective of escape from poverty.

The new definition expands and further specifies, however, in these respects:

1. The source of the empowerment could be government or it could be the poor and others.
2. The means used may be legal or not legal (administrative, physical, other).
3. Empowerment is not empowerment in general but empowerment to use law and legal mechanisms.
4. Legal empowerment is achieved through not only economic, but also social and political means.

The most fundamental vagary addressed by the revised definition is point 2: whether in legal empowerment, the term legal refers to the means used or the nature of the power created. The definition presented in this section comes down in favor of power. In fact, the means to empowerment will often be legal (confering power to use law is naturally often accomplished by a legal means—for instance, new legislation or legal aid), but they need not be. Placing voting stations in poor neighborhoods can be legally empowering for the poor. The empowerment, however, must be the power to better use law and legal means. A measure that confers a simple material benefit, such as a tax cut, even if accomplished by a legal means, would not fit the definition.
4.2 OPERATIONAL IMPLICATIONS

From a programming standpoint, interventions that seek to legally empower the poor can be categorized by the extent to which they require changes in the law. Interventions to legally empower the poor can be divided into four categories: (1) those that involve major constitutional or legislative change; (2) those that involve major institutional change (which will usually require major legal change); (3) those that only require changes in regulations or ministerial instructions or that can be accomplished within the ministry or other agency concerned; and (4) measures that can be undertaken without any legal change or through contractual means.

This breakdown is helpful from a programming standpoint because of varying lead times and considerations. Interventions that involve major legal or institutional change potentially have big payoffs but require substantial preparation and often require major resources for implementation, so they should be approached cautiously and selectively. Within any given country, there are likely a number of legal reforms, in a variety of substantive areas, which could benefit the poor. Which of these is encouraged and supported by donors will depend upon the donor’s program objectives and, to a significant extent, opportunity; legal reforms are not something that donors can create out of whole cloth. These reforms begin with a local conviction of the need for them, the result of processes of popular demand, studies, consultations, and the careful balancing of stakeholder interests, and they generally take years to accomplish. In spite of careful efforts to foster them on the part of donor organizations, success or failure relies to an important degree on events beyond the control of those seeking the legal change, such as the political survival of a champion of the legislation.

In addition, major legal and institutional reforms, however potentially empowering, can come to nothing if implementation follow through is lacking. Most major legal reforms are not self-executing; many require considerable work on the part of officials, politicians, and others before there is real change on the ground. These potential costs should be assessed early on, and legal reforms should only be pursued if the prospect of implementation funding is available. It would be irresponsible for a donor to press for costly reforms if it is unwilling to provide follow through and support, an area that has often been found lacking. This is unfortunate, because unimplemented new laws only undermine the rule of law.

Unlike law reforms that must be carried out by parliament or the presidency, the competent ministry acting on its own can change regulations and instructions or the contractual forms used. These latter reforms are thus much easier to attain, and reform advocates should ask if their objectives can be achieved this way before resorting to major law reforms. Even if minor legal changes are needed (for instance, in regulations), they can be agreed upon up front. Because the work significantly involves the existing legal framework, different questions need to be asked. Is the legal framework adequate to make moving forward with LEP efforts in this context worthwhile? Does it have that potential and offer significant opportunities? Are the institutions involved reliable, or do they need capacity building to play the roles envisaged? Is the Rule of Law sufficiently established so that programming that relies on law and legal institutions and expects the poor to benefit from legal change can be pursued with a degree of confidence?

These are hard choices. Failure to tackle a legal empowerment reform issue at a deep enough level—for instance, by failing to press for fundamental institutional reform—can result in failure (see Box 8). Ambitious reforms, on the other hand, risk running into the walls of vested interests, and if they fail, an opportunity to work at a more modest level may have been foregone. But is it necessary to choose, or can some

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92 For example, in both Uganda and Mozambique in the 1990s, USAID invested heavily in a research and policy development buildup to the passage of new land laws, but after their passage, declared victory and moved off in other program directions. As a result, only a modest part of the potential of these laws, recognized as landmark enactments, has been achieved.
of these interventions for LEP be combined in useful ways that avoid foregoing important but risky opportunities?

There are potential complementarities among various types of LEP interventions that have not been systematically exploited. Usually, a legal aid program is undertaken in isolation from law reform, or vice versa. There is nothing wrong with this, in that one intervention alone is needed, but there are important opportunities to program mutually-enhancing combinations of the different LEP interventions examined in this paper. For example:

- It is common to combine rights enablement elements such as legal literacy and legal aid in a single program, but it may also be possible to use a legal aid program to diagnose needs for legal change, to build popular support for such changes, to develop the poor’s capacity to articulate demands, to support policy dialogue with government, or to educate government officials in charge of implementing new laws about the new legal framework. A recent USAID Central Asia land tenure reform project, under its Kazakhstan component, utilized information generated by a legal aid program to highlight flaws in the Land Code and engage government on issues that, in the abstract, they were not willing to explore.93

- In Cambodia, where the Asian Development Bank in recent years has supported a successful land law and regulatory framework reform, a complementary World Bank land titling project has provided funding for a national structure for administrative mediation/decision of land titling disputes. GTZ, a partner in the titling project, has provided funding to local legal NGOs to support poor and disadvantaged peoples in making their claims before the land commissions.94

- In Andhra Pradesh state of India, the land component of a World Bank-funded rural poverty alleviation project seeks to address the past implementation gaps in the government’s allocation of more than 4 million acres of land to the poor. In approximately 30% of the cases, the beneficiaries on record had not received both legal and physical possession of the government land. Many of these cases lie stuck in the administrative (revenue) courts, and a good portion are still there because the allocated land was not surveyed and partitioned. The project has innovatively trained groups of paralegals and “community surveyors” to work together to identify and solve the implementation gaps.

These are examples, and other configurations can be imagined. What is urged here is a more holistic imagining of such projects, employing in an integrated fashion a fuller range to tools for LEP.

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93 Li, op. cit supra.

94 Bruce, et al., op. cit supra.
4.3 ASSESSING LEGAL EMPOWERMENT OF THE POOR

The preceding sections paint with a very large stroke the types of issues associated with LEP and the means to secure it. Yet, design of policy and program intervention for any problem must start with an assessment and diagnosis of the problem (e.g., see Box 6) before envisioning potential solutions. Identifying the scope and severity of LEP deprivation among the poor would be greatly eased if one could rely on a set of reliable indicators as a basis for characterizing the state of LEP. The value of indicators is not only in their ability to improving donor programming in response to one situation, but also in enabling donors to evaluate different situations in a consistent manner leading to greater coherency across contexts in the programming applied to remedy or add value to a given situation.

Indicators also significantly facilitate the ability to assess change and progress by allowing direct comparison of their states over time. Quantitative indicators tend to be especially attractive because they permit measuring change with greater degrees of precision and are easy to compare and record. Objective indicators likewise facilitate comparison. Developing indicators for LEP and periodically populating them with data would suggest whether a country’s policies and investments are contributing to legal empowerment or disenfranchising the poor even further. Over time, such measures can be used to help countries realize the need to make corrections. Time series indicators can also suggest how committed a country is to change and even serve to motivate that change. This is especially so when several countries are measured according to the same criteria and the results of these assessments are made public. Hence, LEP indicators could have a role in forging legal empowerment of the poor where vested interests might otherwise stymie its realization. The World Bank’s Doing Business report is an example of how indicators have been effective in motivating country commitment to reform.

This paper suggests that LEP, or an LEP index, can be represented by the following general equation:

\[
LEP = RH + RA + RE + RN,
\]

where RH refers to Rights Enhancement, RA refers to Rights Awareness, RE refers to Rights Enablement, and RN refers to Rights Enforcement (i.e., the four components identified in Figure 3.1). Conceptually, each component might be thought of as a bundle of “issues” represented by a set of indicators that cumulatively capture the essence of the component in its entirety. Table 4.1 suggests clusters of general indicators for each of the four components, though it does not attempt to develop specific and measurable indicators, be comprehensive nor to prioritize these. The table further divides the indicators into those which reflect efforts to deliver LEP, and those which measure the realization of LEP. This differentiation can help governments, donors, and civil society alike appreciate when their actions are yielding the expected results and when they are not. If they are not, this may indicate either of problems in the provision mechanism, or weaknesses in terms of the poor’s capacity or willingness to take advantage of what is available.

Nevertheless, developing indicators for a concept as complex as LEP, even when broken down into four components, still poses important challenges. Most data relating to these four components are not currently collected by countries, donors, or international bodies, while the cost of collection of many of the outcome/effectiveness indicators identified in Table 4.1 would be formidable at a scale large enough to be a representative sample for the entire country. This is especially true considering the multiple sectors of LEP and points toward narrowing the scope to one or two sectors when it comes to such assessment. Good indicators capture what they seek to measure in a robust fashion, but are simple and precise; this is difficult in the case of the LEP components. Moreover, several measures are not conducive to quantification undermining potential to monitor small degrees of change over time.

While using indicators holds substantial promise for inducing greater political commitment to LEP, it can also be risky and misleading. A country that has made significant investments in strengthening LEP and has realized significant change as a result may still fall far short of another that has a longer history of LEP but is currently making few investments. Comparative rankings can then serve to dole out rewards.
and punishments that are not correlated with current commitments and efforts. Moreover, unless indicators are entirely objective and subject to little interpretation, their population is subject to the bias of the person(s) collecting the information. For most of these indicators, it would not be realistic to have the same set of people evaluating these measures for all countries for which indicators of LEP were desired. Perhaps the most valid basis for comparing LEP across countries is in comparing individual countries’ progress toward LEP—that is, the degree and rate of change in key indicators rather than the state of the indicators themselves.

By helping us appreciate the direction and degree of change, LEP indicators bring us one step closer in understanding what motivates change. Nevertheless, by themselves, indicators do not point to the causes of the changes they measure. They are merely indicative of the outcomes of a host of factors working together, the breadth of which becomes wider the more removed assumed causes and outcomes are on the chain of causality. This complicates understanding the relationship between the provision of LEP interventions (indicators in the left column of Table 4.1) and their utilization and other outcomes (indicators in the right column). Baseline data gathered at the start of interventions can be compared with post-intervention data to determine degrees of change, but collecting the data necessary to make the causal connections between indicators and interventions implies a substantially greater investment.

Next Steps

Making the leap from identifying the conceptual elements of LEP and potential indicators to establishing a minimal but robust indicator set for LEP calls for a careful weighing of the benefits and challenges. It also implies mapping out steps that would lead to its realization, including:

- **Conceptual work.** This involves identifying (1) LEP for what sector, type, or rights, and degree of disaggregation; (2) appropriate construction of LEP index and components; and (3) theoretical and functional relationship between different LEP components and indicators.

- **LEP Assessment Methodology.** The feasibility of constructing an LEP index based on widely available data that adequately captures LEP deprivation is extremely doubtful. Most of the dimensions in Table 4.1 will not be found in statistical abstracts produced with regularity in the developing world. There is need for both an LEP assessment approach and LEP assessment tool to guide field level enquiry.

- **LEP Assessments.** Much of the dialogue on LEP, including this paper, has focused on theoretical development. There is need to move beyond concepts to work with the poor to capture their understanding and experience of LEP deprivation. Such assessments or pilots may either be used to develop and test the LEP assessment methodology or be guided by it. In either case, ongoing refinement is needed.

- **Surveys.** Socioeconomic surveys and investment climate surveys will provide lessons on how to measure LEP. These surveys already capture some of the dimensions of LEP outcomes and effectiveness in Table 4.1. Well-designed and well-focused survey instruments ask the respondent to rank perception (e.g., frequency of use, level of access, and attitudes) on a numerical scale. A comparable LEP survey is feasible, asking a sample of the poor and/or representatives of organizations and agencies serving the poor to rank their perceptions on questions related to dimensions of RH, RA, RE, and RN in Table 4.1; the rankings would form the basis for indicators to measure change over time. There would also be need to ask the same questions to the non-poor in the same country to measure and evaluate relative differences between the poor and non-poor groups.

- **Longitudinal Studies and Expert Evaluation.** For the reasons discussed above, assessing change over time holds greater value than assessments that are one-off events, capturing only single snap-
shots. One option is to administer the surveys to the same population of poor and non-poor at multiple points in time. However, the time and expense involved in surveys (whether qualitative or quantitative) can be considerable and beyond the means of governments or donors. An alternative approach is a transdisciplinary expert panel that meets periodically to discuss the status of LEP in a country on the basis of prevailing knowledge and to rank LEP performance at periodic intervals using consistent criteria. If pursued, serious attention will need to be given to sectoral focus, group selection, methodology for assessing LEP progress, and standardizing assessments to enable comparability over time.

- **Piloting Methodology.** Regardless of the methodology chosen, there will be need for an LEP assessment framework that is replicable, easy to use, and affordable if it is to have widespread application. Early piloting will be necessary to test effectiveness and achieve these objectives.
<table>
<thead>
<tr>
<th>DIMENSION</th>
<th>GENERAL “INDICATORS” OF LEP PROVISION/DELIVERY</th>
<th>GENERAL “INDICATORS” OF LEP OUTCOMES OR EFFECTIVENESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RIGHTS ENHANCEMENT</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Absence of restrictions that disadvantage the poor and/or existence of legal reforms that eliminate them</td>
<td>• The poor are consulted on problems, policy, and legal drafts</td>
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<td></td>
<td>• Existence of law that creates clear legal rights for the poor and confers upon them legal empowerment (see Box 3)</td>
<td>• Policy and law as perceived by the poor are robust in the rights conferred, have minimal restrictions, and are relevant to their needs and interests</td>
</tr>
<tr>
<td></td>
<td>• Laws securing economic and social rights are simple, easily understood, and enforceable</td>
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<tr>
<td></td>
<td>• Legal reforms are backed by administrative processes that are “user friendly” in terms of easy access and affordability</td>
<td>• Extent and severity of barriers that impede exercise of these rights and mechanisms by the poor and their use of them</td>
</tr>
<tr>
<td></td>
<td>• Existence of mechanisms and procedural rules that ensure fairness, rights to be heard, proper conduct, efficiency in processing claims, and holding authorities accountable for upholding their rights</td>
<td>• The poor are knowledgeable of these rules and mechanisms and make use of them</td>
</tr>
<tr>
<td></td>
<td>• Laws guarantee representation by poor and marginalized populations in important policy and rule-making forums</td>
<td>• Costs or time requirements involved to secure rights, enter a market, obtain licenses and permits, and enable wage employment or business enterprise are affordable</td>
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<tr>
<td></td>
<td>• Law making and policy formation has been supported by careful and thoughtful public consultation that improve the poor’s understanding of law and their input into its design</td>
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<tr>
<td><strong>RIGHTS AWARENESS</strong></td>
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<td></td>
<td>• Government has adequately diagnosed the disadvantages faced by the poor in order to understand their situation</td>
<td>• The poor perceive they have been adequately consulted and policy and law are in tune with their needs, interests, and circumstances</td>
</tr>
<tr>
<td></td>
<td>• Laws are drafted in plain and simple language that enable easy communication</td>
<td>• Extent to which poor people are able to read disseminated materials and tune into media messages</td>
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<tr>
<td></td>
<td>• Legislation exists that requires public notice and hearings on issues directly affecting the poor, and state compliance with those laws</td>
<td>• Compliance by the state with these laws</td>
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<tr>
<td></td>
<td>• Mass media campaigns and other forms of legal literacy outreach are frequent, well-targeted, convey appropriate messages, and suit the needs of the poor</td>
<td>• Participation of the poor in public hearings</td>
</tr>
<tr>
<td></td>
<td>• Rights awareness materials and media spots are produced in local languages and are widely distributed/covered</td>
<td>• Knowledge of law and procedures, rights, and obligations, are independently measured</td>
</tr>
<tr>
<td>DIMENSION</td>
<td>GENERAL &quot;INDICATORS&quot; OF LEP PROVISION/Delivery</td>
<td>GENERAL &quot;INDICATORS&quot; OF LEP OUTCOMES OR EFFECTIVENESS</td>
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</tr>
<tr>
<td><strong>RIGHTS ENABLEMENT</strong></td>
<td>• Training is provided to judges, lawyers, local authorities, and police on new laws and procedures</td>
<td>• Participation of these target groups in capacity building forums</td>
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<tr>
<td></td>
<td>• Free or low cost legal aid services are available to help the poor exercise their legal rights (by geographical area and segment of poor)</td>
<td>• Changes over time in awareness of key provisions of law by legal and public enforcement officials and administrators</td>
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<td></td>
<td>• Availability (density) of trained paralegals offering procedural assistance to the poor</td>
<td>• Availability, access to, and use of legal aid clinics by the poor</td>
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<td></td>
<td>• Effort made to target the poor and build their rights awareness through integration into economic, social, and political spheres</td>
<td>• Effectiveness of legal aid in terms of claims lodged and rec-ompense obtained</td>
</tr>
<tr>
<td></td>
<td>• Availability of capacity building programs available that target and help the poor in accessing legal rights</td>
<td>• Public participation in associations, societies, unions, slum improvement committees, and small business associations that help provide cooperative action and political power</td>
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<td></td>
<td>• Existence and coverage of capacity building programs targeting government authorities in processing rights claims</td>
<td>• Participation of individuals and communities in these programs</td>
</tr>
<tr>
<td></td>
<td>• Existence of compensatory benefits/programs designed to enable the poor to overcome disadvantages in the exercise of their rights</td>
<td>• Participation of government authorities in these programs</td>
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<tr>
<td></td>
<td>• Judicial system is independent and free of nepotism and corruption</td>
<td>• Effectiveness of government authorities in administering their duties in rights and service delivery</td>
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<td></td>
<td>• Judges and adjudicators are impartial in applying the law</td>
<td>• Use of compensatory benefits by the poor</td>
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<td></td>
<td>• Judges are paid a reasonable salary, are well trained, have ethical standards, and apply law impartially</td>
<td>• Beneficiaries perceive the operation of courts as free of corruption, nepotism, and abuse of power by the privileged or well-to-do</td>
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<td></td>
<td>• Government provision of multiple avenues that enable the poor to seek justice including decentralized courts, specialized courts, and mobile courts at appropriate levels of decentralization</td>
<td>• Extent to which use is made of these courts by the poor without bias of ethnicity, gender, or creed</td>
</tr>
<tr>
<td></td>
<td>• Existence of low cost and time efficient procedures that enable the poor to realize their rights rapidly and affordably</td>
<td>• Average cost, time, and number of steps to process common administrative claims as reported by poor claimants seeking justice</td>
</tr>
<tr>
<td></td>
<td>• Degree to which court procedures are simple and low cost in terms of time and fees and permit the use of customary dispute adjudicators</td>
<td></td>
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<tr>
<td>DIMENSION</td>
<td>GENERAL &quot;INDICATORS&quot; OF LEP PROVISION/DELIVERY</td>
<td>GENERAL &quot;INDICATORS&quot; OF LEP OUTCOMES OR EFFECTIVENESS</td>
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<tr>
<td></td>
<td>• Existence of ombudsman or special attorney general to enforce the collective rights of the poor (and sufficient funding to back the position(s))</td>
<td>• Use of this service by the poor</td>
</tr>
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<td></td>
<td>• Acceptance of ADR mechanisms such as arbitration, mediation and conciliation in law and efforts made by national and local governments to facilitate and support their operation</td>
<td>• Use of ADR by the poor and their beliefs about its fairness and effectiveness</td>
</tr>
<tr>
<td></td>
<td>• Law makes adequate provision for oral rather than written evidence to expedite settlement</td>
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</table>
5.0 CONCLUSION

LEP is a valuable concept. To the extent that a nation’s body of law contains rules that provide all people with undifferentiated opportunities to improve their livelihoods, it holds potential for those who most urgently require positive change, the poor. However, the extent of access to the law and the institutions that uphold and enforce it often depends on one’s wealth, education, access to information and inclusion in social networks—areas in which the poor tend to be most disadvantaged or excluded.

But LEP has gained such currency in development discourse that it is being increasingly used with little understanding of the territory it covers and its boundaries. This paper has “unbundled” LEP, characterizing the components—Rights Enhancement, Rights Awareness, Rights Enablement, and Rights Enforcement—and their interconnections. It has sought to refine our definition of the term, and to identify opportunities for USAID programming in this area, not so much within each of the components above (which are now programmed separately in many USAID projects), but through development of projects that capture the potential synergies of pursuing them jointly. Finally, it has examined possibilities for assessing progress toward LEP. This is a challenging task, but if LEP is to serve as a useful development objective, the challenge must be taken.
Sources


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Clean water is a right. 2006, November 11. The Economist (pp. 67).


WHEN I CALL FOR HELP: A PASTORAL RESPONSE TO DOMESTIC VIOLENCE AGAINST WOMEN

In the beginning, I was young . . . he was handsome. He said I was beautiful, smart, worthy of love . . . made me feel that way. And so we were married, walking joyfully together down a church aisle, our union blessed by God.

Then came the angry words . . . the verbal tearing apart. . . . Now I was made to feel ugly, unintelligent, unworthy of any love, God's or man's.

Next came the beatings . . . unrelenting violence . . . unceasing pain. I shouldn't stay, but this is my husband . . . promised forever. He says I deserve it . . . maybe I do . . . if I could just be good. I feel so alone . . . doesn't God hear me when I cry out silently as I lie in bed each night?

Finally came the release, the realization. It's not me . . . it's him. . . . I am worthy of love, God's and man's. One spring morning, my heart was filled with hope and with fear now only of starting over on my own. And so again I walked . . . down the hallway of our apartment building . . . never again to be silent . . . never again to live with that kind of violence, to suffer that kind of pain.

—A battered wife

Introduction
As pastors of the Catholic Church in the United States, we state as clearly and strongly as we can that violence against women, inside or outside the home, is never justified. Violence in any form”—physical, sexual, psychological, or verbal”—is sinful; often, it is a crime as well. We have called for a moral revolution to replace a culture of violence. We acknowledge that violence has many forms, many causes, and many victims—men as well as women.

The Catholic Church teaches that violence against another person in any form fails to treat that person as someone worthy of love. Instead, it treats the person as an object to be used. When violence occurs within a sacramental marriage, the abused spouse may question, "How do these violent acts relate to my promise to take my spouse for better or for worse?” The person being assaulted needs to know that acting to end the abuse does not violate the marriage promises. While violence can be directed towards men, it tends to harm women and children more.
In 1992 we spoke out against domestic violence. We called on the Christian community to work vigorously against it. Since then, many dioceses, parishes, and organizations have made domestic violence a priority issue. We commend and encourage these efforts.

In this update of our 1992 statement, we again express our desire to offer the Church's resources to both the women who are abused and the men who abuse. Both groups need Jesus' strength and healing.3

We focus here on violence against women, since 85 percent of the victims of reported cases of non-lethal domestic violence are women.4 Women's greatest risk of violence comes from intimate partners—a current or former husband or boyfriend.5

Violence against women in the home has serious repercussions for children. Over 50 percent of men who abuse their wives also beat their children.6 Children who grow up in violent homes are more likely to develop alcohol and drug addictions and to become abusers themselves.7 The stage is set for a cycle of violence that may continue from generation to generation.

The Church can help break this cycle. Many abused women seek help first from the Church because they see it as a safe place. Even if their abusers isolate them from other social contacts, they may still allow them to go to church. Recognizing the critical role that the Church can play, we address this statement to several audiences:

- To women who are victims of violence and who may need the Church's help to break out of their pain and isolation;
- To pastors, parish personnel, and educators, who are often the first responders for abused women;
- To men who abuse and may not know how to break out of the cycle of violence; and
- To society, which has made some strides towards recognizing the extent of domestic violence against women.

We recognize that violence against women has many dimensions. This statement is not meant to be all-inclusive, but rather to be an introduction, along with some practical suggestions of what dioceses and parishes can do now.

**An Overview of Domestic Violence**

Domestic violence is any kind of behavior that a person uses to control an intimate partner through fear and intimidation. It includes physical, sexual, psychological, verbal, and economic abuse. Some examples of domestic abuse include battering, name-calling and insults, threats to kill or harm one's partner or children, destruction of property, marital rape, and forced sterilization or abortion.8

Younger, unmarried women are at greatest risk for domestic violence. According to a U.S. government survey, 53 percent of victims were abused by a current or former girlfriend or boyfriend. One-third of all victims were abused by a spouse, while 14 percent said that the offender was an ex-spouse. Women ages 16 to 24 are nearly three times as vulnerable to attacks by intimate partners as those in other age groups; abuse victims between ages 35 and
49 run the highest risk of being killed.\(^9\)

While abuse cuts across all ethnic and economic backgrounds, some women face particular obstacles. Women of color may not view the criminal justice system as a source of help. Additionally, in some cultures women feel pressured to keep problems within the home and to keep the family together at all costs. Some fear that they will lose face in the community if they leave. Immigrant women often lack familiarity with the language and legal systems of this country. Their abusers may threaten them with deportation.

Women in rural communities may find themselves with fewer resources. The isolation imposed by distance and lack of transportation can aggravate their situation. Isolation can also be a factor for women who do not work outside the home. They may have less access to financial resources and to information about domestic violence. Women with disabilities and elderly women are also particularly vulnerable to violence.

Some who suffer from domestic violence are also victims of stalking, which includes following a person, making harassing phone calls, and vandalizing property. Eight percent of women in the United States have been stalked at some time in their lives, and more than one million are stalked annually.\(^{10}\) Stalking is a unique crime because stalkers are obsessed with controlling their victims’ actions and feelings. A victim can experience extreme stress, rage, depression, and an inability to trust anyone.

Domestic violence is often shrouded in silence. People outside the family hesitate to interfere, even when they suspect abuse is occurring. Many times even extended family denies that abuse exists, out of loyalty to the abuser and in order to protect the image of the family. Some people still argue—mistakenly—that intervention by outside sources endangers the sanctity of the home. Yet abuse and assault are no less serious when they occur within a family. Even when domestic violence is reported, sometimes there are failures to protect victims adequately or to punish perpetrators.

**Why Men Batter**

Domestic violence is learned behavior. Men who batter learn to abuse through observation, experience, and reinforcement. They believe that they have a right to use violence; they are also rewarded, that is, their behavior gives them power and control over their partner.

Abusive men come from all economic classes, races, religions, and occupations. The batterer may be a “good provider” and a respected member of his church and community. While there is no one type, men who abuse share some common characteristics. They tend to be extremely jealous, possessive, and easily angered. A man may fly into a rage because his spouse called her mother too often or because she didn't take the car in for servicing. Many try to isolate their partners by limiting their contact with family and friends.

Typically, abusive men deny that the abuse is happening, or they minimize it. They often blame their abusive behavior on someone or something other than themselves. They tell their partner, “You made me do this.”
Many abusive men hold a view of women as inferior. Their conversation and language reveal their attitude towards a woman’s place in society. Many believe that men are meant to dominate and control women.

Alcohol and drugs are often associated with domestic violence, but they do not cause it. An abusive man who drinks or uses drugs has two distinct problems: substance abuse and violence. Both must be treated.

Why Women Stay
Women stay with men who abuse them primarily out of fear. Some fear that they will lose their children. Many believe that they cannot support themselves, much less their children.

When the first violent act occurs, the woman is likely to be incredulous. She believes her abuser when he apologizes and promises that it will not happen again. When it does—repeatedly—many women believe that if they just act differently they can stop the abuse. They may be ashamed to admit that the man they love is terrorizing them. Some cannot admit or realize that they are battered women. Others have endured trauma and suffer from battered woman syndrome.

REMEMBER: Some battered women run a high risk of being killed when they leave their abuser or seek help from the legal system. It is important to be honest with women about the risks involved. If a woman decides to leave, she needs to have a safety plan, including the names and phone numbers of shelters and programs. Some victims may choose to stay at this time because it seems safer. Ultimately, abused women must make their own decisions about staying or leaving.

The Church Responds to Domestic Violence
Scripture and Church Teachings
Religion can be either a resource or a roadblock for battered women. As a resource, it encourages women to resist mistreatment. As a roadblock, its misinterpretation can contribute to the victim’s self-blame and suffering and to the abuser’s rationalizations.

Abused women often say, "I can't leave this relationship. The Bible says it would be wrong." Abusive men often say, "The Bible says my wife should be submissive to me." They take the biblical text and distort it to support their right to batter.

As bishops, we condemn the use of the Bible to support abusive behavior in any form. A correct reading of Scripture leads people to an understanding of the equal dignity of men and women and to relationships based on mutuality and love. Beginning with Genesis, Scripture teaches that women and men are created in God's image. Jesus himself always respected the human dignity of women. Pope John Paul II reminds us that "Christ's way of acting, the Gospel of his words and deeds, is a consistent protest against whatever offends the dignity of women."111

Men who abuse often use Ephesians 5:22, taken out of context, to justify their behavior, but the passage (v. 21-33) refers to the mutual submission of husband and wife out of love for Christ.
Husbands should love their wives as they love their own body, as Christ loves the Church.

Men who batter also cite Scripture to insist that their victims forgive them (see, for example, Mt 6:9-15). A victim then feels guilty if she cannot do so. Forgiveness, however, does not mean forgetting the abuse or pretending that it did not happen. Neither is possible. Forgiveness is not permission to repeat the abuse. Rather, forgiveness means that the victim decides to let go of the experience and move on with greater insight and conviction not to tolerate abuse of any kind again.

An abused woman may see her suffering as just punishment for a past deed for which she feels guilty. She may try to explain suffering by saying that it is "God's will" or "part of God's plan for my life" or "God's way of teaching me a lesson." This image of a harsh, cruel God runs contrary to the biblical image of a kind, merciful, and loving God. Jesus went out of his way to help suffering women. Think of the woman with the hemorrhage (Mk 5:25-34) or the woman caught in adultery (Jn 8:1-11). God promises to be present to us in our suffering, even when it is unjust.

Finally, we emphasize that no person is expected to stay in an abusive marriage. Some abused women believe that church teaching on the permanence of marriage requires them to stay in an abusive relationship. They may hesitate to seek a separation or divorce. They may fear that they cannot re-marry in the Church. Violence and abuse, not divorce, break up a marriage. We encourage abused persons who have divorced to investigate the possibility of seeking an annulment. An annulment, which determines that the marriage bond is not valid, can frequently open the door to healing.

**First Responders: Priests, Deacons, and Lay Ministers**

Many church ministers want to help abused women but worry that they are not experts on domestic violence. Clergy may hesitate to preach about domestic violence because they are unsure what to do if an abused woman approaches them for help.

We ask them to keep in mind that intervention by church ministers has three goals, in the following order:

1. Safety for the victim and children;
2. Accountability for the abuser; and
3. Restoration of the relationship (if possible), or mourning over the loss of the relationship.

We also encourage church ministers to see themselves as "first responders" who

- Listen to and believe the victim's story,
- Help her to assess the danger to herself and her children, and
- Refer her to counseling and other specialized services.

Church ministers should become familiar with and follow the reporting requirements of their state. Many professionals who deal with vulnerable people are required to report suspected crimes, which may include domestic abuse.

In dealing with people who abuse, church ministers need to hold them accountable for their behavior.
They can support the abusive person as he seeks specialized counseling to change his abusive behavior. Couple counseling is not appropriate and can endanger the victim's safety.

What You Can Do to Help
We offer the following practical suggestions for several audiences.

For Abused Women
- Begin to believe that you are not alone and that help is available for you and your children.
- Talk in confidence to someone you trust: a relative, friend, parish priest, deacon, religious sister or brother, or lay minister.
- If you choose to stay in the situation, at least for now, set up a plan of action to ensure your safety. This includes hiding a car key, personal documents, and some money in a safe place and locating somewhere to go in an emergency.
- Find out about resources in your area that offer help to battered women and their children. The phone book lists numbers to call in your local area. Your diocesan Catholic Charities office or family life office can help. Catholic Charities often has qualified counselors on staff and can provide emergency assistance and other kinds of help.
- The National Domestic Violence Hotline provides crisis intervention and referrals to local service providers. Call 800-799-SAFE (7233) or 800-787-3224 (TTY). E-mail assistance is available at ndvh@ndvh.org. In some communities, cell phones programmed to 911 are made available to abused women.

For Men Who Abuse
- Admit that the abuse is your problem, not your partner's, and have the manly courage to seek help. Begin to believe that you can change your behavior if you choose to do so.
- Be willing to reach out for help. Talk to someone you trust who can help you evaluate the situation. Contact Catholic Charities or other church or community agencies for the name of a program for abusers.
- Keep in mind that the Church is available to help you. Part of the mission Jesus entrusted to us is to offer healing when it is needed. Contact your parish.
- Find alternative ways to act when you become frustrated or angry. Talk to other men who have overcome abusive behavior. Find out what they did and how they did it.

For Pastors and Pastoral Staff
Make your parish a safe place where abused women and abusive men can come for help. Here are some specific suggestions:
• Include information about domestic violence and local resources in parish bulletins and newsletters and on websites.

• Place copies of this brochure and/or other information, including local telephone numbers for assistance about domestic violence, in the women's restroom(s).

• Keep an updated list of resources for abused women. This can be a project for the parish pastoral council, social justice committee, or women's group.

• Find a staff person or volunteer who is willing to receive in-depth training on domestic violence; ask this person to serve as a resource and to help educate others about abuse.

• Provide training on domestic violence to all church ministers, including priests, deacons and lay ministers. When possible, provide opportunities for them to hear directly from victims of violence.

• Join in the national observance of October as “Domestic Violence Awareness Month.” Dedicate at least one weekend that month to inform parishioners about domestic abuse. During that month, make available educational and training programs in order to sensitize men and women, girls and boys to the personal and social effects of violence in the family. Help them to see how psychological abuse may escalate over time. Teach them how to communicate without violence.

Use liturgies to draw attention to violence and abuse. Here are some specific suggestions:

• In homilies, include a reference to domestic violence when appropriate. Just a mention of domestic violence lets abused women know that someone cares. Describe what abuse is so that women begin to recognize and name what is happening to them. Watch the video When You Preach, Remember Me (see Resources).

• In parish reconciliation services, identify violence against women as a sin.

• Include intercessions for victims of abuse, people who abuse people, and those who work with them.

• If you suspect abuse, ask direct questions. Ask the woman if she is being hit or hurt at home. Carefully evaluate her response. Some women do not realize they are being abused, or they lie to protect their spouses. Be careful not to say anything that will bolster her belief that it is her fault and that she must change her behavior.

• Have an action plan in place to follow if an abused woman calls on you for help. This includes knowing how and where to refer her for help. This will be easier if you have already established contact with local shelters and domestic violence agencies.

• Include a discussion of domestic violence in marriage preparation sessions. If violence has already begun in the relationship, it will only escalate after marriage.

• In baptismal preparation programs, be alert that the arrival of a child and its attendant stress may increase the risk of domestic violence.
When I Call for Help: A Prayer

One source of healing we have in our lives as Christians is prayer. Psalm 55 may be an especially apt prayer for women who are dealing with abusive situations. With all of you we pray these verses:

Listen, God, to my prayer;
do not hide from my pleading;
hear me and give answer.

If an enemy had reviled me,
that I could bear;
If my foe had viewed me with contempt,
from that I could hide.
But it was you, my other self,
my comrade and friend,
You, whose company I enjoyed,
at whose side I walked
in procession in the house of God.

But I will call upon God,
and the Lord will save me.
At dusk, dawn, and noon
I will grieve and complain,
and my prayer will be heard.
(Ps 55:2-3, 13-15, 17-18)
Come to me, all you that are weary and are carrying heavy burdens, and I will give you rest.

– MATTHEW 11:28

If you or someone you know is experiencing domestic abuse, there is help in the Catholic Community.
How do I know if I am being abused?

Persons experiencing abuse often don’t think of themselves as “abused.” But they can suffer physical injuries that endanger their health and may result in life-long disabilities.

The emotional effects of domestic abuse can be as devastating as the physical harm. The abuse can also interfere with a person’s job and result in loss of promotion or even the job itself.

In your intimate relationship, you may be experiencing:

- Constant insults and belittling
- Threats against you or your children
- Intimidation and harassment
- Social isolation and deprivation
- Pushing, shoving or holding down
- Punching, slapping, kicking or choking
- Forced or unwanted sex or sexual acts

Once you recognize the abuse, know you are not to blame and you are not alone. No one deserves to be abused. This is not just the law in America. This is the teaching of the Catholic Church.

How do I know if I am abusing?

- If you are extremely jealous
- If you control your partner’s activities
- If you use physical force to solve problems
- If you believe that you are the head of the household and should not be challenged, you are probably hurting the people you love and you need to seek help.