



Good Practices Guide for Incorporating Legal Empowerment into Operations

ADB



The Asia Foundation

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6 ADB Avenue, Mandaluyong City

1550 Metro Manila, Philippines

Tel: +63 2 632 4444

Fax: +63 2 636 2444

www.adb.org

For orders, please contact:

Department of External Relations

Fax: +63 2 636 2648

adbpub@adb.org

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Abbreviations

ADB	–	Asian Development Bank
ADR	–	alternative dispute resolution
CSO	–	civil society organization
M&E	–	monitoring and evaluation
NGO	–	nongovernment organization
TAF	–	The Asia Foundation

Introduction

Legal empowerment has the potential to enhance sector development work by building the capacity of project beneficiaries to participate in and benefit from development projects. But, to harness its power, development specialists need to understand the ins and outs of this field. This document is designed to be used as a practical guide to undertaking legal empowerment work. It seeks to give program specialists (i) a basic understanding of legal empowerment as a concept; and (ii) practical strategies for designing, implementing, and monitoring legal empowerment projects.

This guide provides a background to legal empowerment work. It contains a conceptual framework that describes the (i) importance of legal empowerment and its potential role in advancing broader development goals (see page 3); (ii) constraints that women and other disadvantaged groups face in participating in development initiatives (see page 6); (iii) different levels of legal empowerment interventions and their benefits (see page 18); and (iv) role of legal empowerment in sector development initiatives (see page 19). It also discusses the strategic factors for consideration and suggested approaches to follow in designing and implementing a legal empowerment component to complement a sector development project. The guide uses tables and flow charts to summarize the steps to be followed, and provides guidance on developing and applying rigorous empirical tools to monitor and assess the impact of legal empowerment activities.

Why Incorporate Legal Empowerment into Sector Development Initiatives?

Legal empowerment can help advance the goals of sector development initiatives. Sector development programs are frequently constrained in meeting their broad objectives or reaching their target beneficiaries, who are

This guide is the product of a three-country Asian Development Bank (ADB) technical assistance initiative on Legal Empowerment for Women and Disadvantaged Groups (6248-REG). This project sought to enhance the institutional capacity, knowledge base, and practical experience of ADB, other international agencies, and domestic legal service and development organizations in designing, implementing, and assessing the impact of legal empowerment activities. Its activities aimed to advance the rights and interests of women and other disadvantaged groups. The Asia Foundation (TAF) implemented the project in Bangladesh, Indonesia, and Pakistan. The project built on a seven-country study by ADB in 2001 on legal empowerment's role in advancing governance and poverty reduction. The project: (i) reviewed experiences in legal empowerment in the three countries; (ii) tested legal empowerment strategies to increase access to basic social services and productive resources by women and disadvantaged groups; and (iii) developed recommendations for incorporating legal empowerment components within ADB loans.

usually women and disadvantaged groups. Program beneficiaries may be prevented from accessing project benefits by a combination of inadequate knowledge, weak human rights protection, an inability to access formal legal or administrative procedures, or other law or governance-related factors that a layperson would not necessarily recognize as having a basis in law. For example, a sector development project aimed at empowering women economically may not meet its full potential if women in conservative develop-

ing communities experience problems leaving their homes to take advantage of the opportunities that the project is intended to confer. Alternatively, a sector development program may be governed by legal or administrative procedures that are not fully understood by (i) partner agencies in government, meaning they will not implement the project effectively; or (ii) project beneficiaries, meaning they will not take advantage of the program's benefits. Legal empowerment can help overcome these constraints.

Background and Conceptual Framework

What Is Legal Empowerment? Why Is Legal Empowerment Important? What Does Legal Empowerment Aim to Achieve?

Refining the Definition of Legal Empowerment. In its 2001 study on legal empowerment, the Asian Development Bank (ADB) defined legal empowerment as “the use of law to increase the control that disadvantaged populations exercise over their lives.”¹ In this definition, “control” referred to the ability of disadvantaged populations to influence or engage in dialogue and public decision making concerning basic priorities such as public security, livelihood, and access to essential resources. The term was also intended to reflect disadvantaged groups’ increased knowledge resulting from projects and, ideally, their greater capacity and confidence to work together (and with gradual independence from external support) to enforce legal rights, streamline administrative decision-making procedures, and advance common development objectives. The 2001 study found that legal empowerment can help advance rights and governance standards, and alleviate poverty. In particular, it found that legal empowerment is most effective when pursued through integrated

approaches that engage partner populations at the community level and when civil society organizations work in cooperation with government agencies and officials in public–private partnership.

In defining legal empowerment, the Legal Empowerment for Women and Disadvantaged Groups Project opted to link the basic concepts behind the earlier definition with the operational mission, mandate, and sector program activities of ADB and other multilateral and bilateral development agencies. For the purposes of this project, ADB defined legal empowerment as “the ability of women and disadvantaged groups to use legal and administrative processes and structures to access resources, services, and opportunities.” The term “ability” refers to specific legal knowledge, confidence, and practical skills, while “resources, services, and opportunities” refer to economic or productive resources (especially those associated with specific ADB loans), basic social services, and local employment-focused opportunities.²

¹ ADB. 2001. *Legal Empowerment: Advancing Good Governance and Poverty Reduction, in Law and Policy Reform at ADB*. Manila.

² Some observers have suggested that the revised definition is too simple and streamlined to capture the nuance of legal empowerment adequately. However, the new definition has the advantage of capturing the essential features of the concept, without suggesting that legal empowerment inevitably allows people to “get what they want” simply by engaging existing laws, or compels people to act in a particular way or to adopt a particular course of action simply because they know something about the law that pertains to their personal circumstances.

Legal Empowerment Is Important. Legal empowerment equips women and other disadvantaged groups to advance their interests more effectively by engaging with the legal system, public agencies, civil society, private parties, and law reform efforts. It may also increase the benefits that the disadvantaged enjoy as participants in development projects in the fields of education, public health, water management, agriculture, social forestry, environmental conservation, and virtually any other development sector. This latter element is particularly important for all development agencies. The success of development projects depends largely on two indicators:

- (i) relevant public institutions and officials responsibly exercise legal and administrative powers that affect the rights and interests of project beneficiaries; and
- (ii) opportunities are created for beneficiaries to advance their rights and interests through informed participation in project-related decision-making processes.

Legal Empowerment as a Process. In this regard, legal empowerment is concerned with support interventions through which women, the poor, and other marginalized groups—that is, those whose basic rights and security, and prospects of social, economic, and political advancement are routinely subject to threat or violation in the home, community, and workplace—are able to use legal and related administrative mechanisms to exercise and enforce their rights; assume a stronger voice in public decision making; and thereby advance their social, economic, and political status.

Legal empowerment as a goal. As a goal, legal empowerment refers to actual achievement by disadvantaged groups in terms of

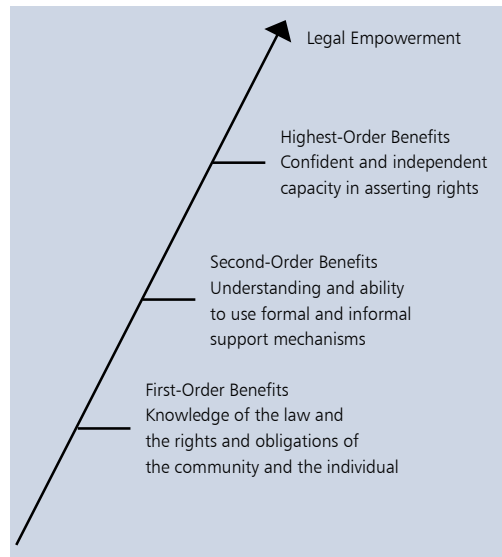


Figure 1: Basic Legal Literacy

their capacity and confidence to use legal and related administrative mechanisms to enforce rights and advance social, economic, and political status and well-being. Confidence raising is an important element of legal empowerment for women and other marginalized groups who might otherwise be resigned to the fact that they are powerless to protect or advance their legal rights.

Legal empowerment works on an ascending scale. It is useful to think of legal empowerment initiatives as operating on an ascending scale of knowledge and capacity (Figure 1). First-order benefits or capacity refer to project beneficiaries gaining a basic knowledge of the law, the legal system, and rights that they can use to protect their individual interests or those of the community at large. Second-order benefits or capacity refers to a stage where a disadvantaged individual achieves an understanding of and ability to utilize the various formal and informal support mechanisms available to access the legal system and administrative decision-making mechanisms, such as legal

aid or alternative dispute resolution (ADR). At its highest level of sophistication—the highest-order benefits or capacity—legal empowerment nurtures confidence and independent capacity among individuals and communities to use the law to protect their rights and advance their common interests. A similar vertical rise in sophistication is reflected in the tools and support mechanisms applied by legal empowerment practitioners to facilitate each step in the process. In its most advanced form, legal empowerment helps to impart *critical consciousness*—the ability of women, the poor, and other marginalized groups to understand and think analytically about the inequitable power relationships that affect their lives and to take action in challenging and transforming those relationships and thereby enhance their quality of life.

Distinguishing legal empowerment. Legal empowerment differs from other forms of empowerment. It involves the explicit or implicit use of the law through training, counseling, litigation, representation of individuals or communities whose members share a common interest in administrative procedures (such as a licensing mechanism), advocacy before public agencies (such as a human rights tribunal), or other legal procedures. These activities may also be combined with initiatives that are not inherently law-oriented, such as community organizing or livelihood development. Legal empowerment work can involve both knowledge-raising education activities (in the sense of basic legal literacy) and action. The most advanced legal empowerment initiatives go beyond simply educating people. They provide women and other disadvantaged groups with opportunities to apply the knowledge or skills imparted to advance their legal interests, including taking independent action to enforce their rights and to improve their well-being.

Legal Empowerment Initiatives Target Disadvantaged Populations. Legal empowerment is concerned with the experience of women, the poor, ethnic and religious minority populations, and other disadvantaged groups. Their rights and opportunities have, for generations, been routinely threatened, violated, or in other ways constrained by poverty, modest education and low literacy, and inequitable power relations. Such factors disadvantage them in their dealings with individuals or agencies that exercise formal or informal decision-making powers, affecting their rights. Their low social and economic station leaves them vulnerable to intimidation, violence, or other abuse. Consequently, their lives and quality of life are relegated to the fringe of the economy, public decision making, resource allocation, and social service delivery, leaving them with little prospect of social, economic, and political advancement.

A combination of factors place disadvantaged populations in weak relationships with the legal system, public administrative mechanisms, decision-making authorities, and other structures and seats of power in their societies. These include (i) social and religious values, norms, and practices that relegate women to a marginal role and leave their rights and security subject to abuse in the home, community, and workplace; (ii) absence of sound laws and accessible systems of legal administration and decision making to protect or advance the rights of women and other disadvantaged groups; (iii) failure of the courts and administrative agencies to apply and enforce sound existing laws and regulations; and (iv) lack of knowledge, resources, and other means of access to the formal legal and administrative systems or alternative informal mechanisms of dispute resolution and decision making.

At the core of these challenges and constraints is the particular relationship that

Box 1: Legal Empowerment vs. Rule of Law

Legal empowerment is not the same as promoting the rule of law, although the two concepts and the practical program activities through which they are pursued frequently overlap and complement each other. Efforts to promote the rule of law have traditionally focused on the courts, judges, and other formal legal institutions and actors, and emphasized legal reform. These efforts aim to strengthen and reform legal institutions and systems so that they operate more fairly and efficiently, free of interference by the state or powerful private interests. In some cases, rule of law initiatives involve, and indirectly benefit, the disadvantaged. In contrast, while legal empowerment has clear rule of law implications, its processes and goals focus specifically on the circumstances and needs of the disadvantaged. It focuses on using law to benefit the disadvantaged in a broad array of development fields that are not ordinarily thought of as having a formal legal dimension. In this way, legal empowerment bridges a gap between the rule of law and socioeconomic development, integrating the rule of law to meet priorities in other development fields.

marginalized populations have with the law—or, more precisely, the lack of relationship with the law, the legal system, and the broader structures of administrative governance and resource allocation that rest on legal foundations. These systems and institutions of justice and decision making either fail to take adequate account of the circumstances of disadvantaged groups or neglect them entirely. In some circumstances, the

disadvantaged are purposely excluded from justice and decision making. Whatever the nature of the relationship, the law and broader systems of administrative governance operate in a world that is far removed from the daily lives of disadvantaged groups—beyond their comprehension; beyond their daily life experience; and beyond their reach (because of prohibitive costs and lengthy delays). As a result, the disadvantaged have no expectation that they could actually use the legal process to improve their circumstances and achieve greater empowerment. This behavior may be characterized as learned helplessness or a feeling of powerlessness among those whose experience leads them to conclude that traditional social barriers and the dynamic of power relations will invariably prevent them from asserting their rights or participating in public decision-making processes. It poses one of the greatest challenges to legal empowerment efforts, for individuals themselves must assume an active and determined role if legal empowerment is to achieve its full potential.

Constraints, Legal Empowerment Strategies, and Benefits

To understand how legal empowerment works in practical terms, it is useful to identify the kinds of legal, administrative, and governance constraints that affect women and other disadvantaged groups in developing countries. This makes it easier to identify what kind of legal empowerment activities need to be undertaken to combat the constraints, and the ways in which these activities can benefit disadvantaged groups. This relationship is illustrated in table 1, which examines the various (i) constraints, (ii) legal empowerment strategies and activities, and (iii) benefits of legal empowerment.

Obstacles and Constraints

Disadvantaged populations face a combination of obstacles that affect their social, economic, and political status and circumstances. In simple terms, they also operate on an ascending three-tier scale. They begin with lowest-order obstacles—these affect physical and economic security, ownership of property and other economic assets, and the citizens' voice in public affairs. Secondly, there are middle-order obstacles—these affect access to legal and other public institutions and support mechanisms (for example, the ability of an individual to engage a lawyer, file a court case, or resolve a problem through ADR mechanisms). Thirdly, the highest-order policy obstacles and systemic challenges pose barriers to the broader advancement of disadvantaged populations notwithstanding the fact that individuals may be well served by practical support mechanisms. Thus, those who clear the first hurdle of basic access to justice impediments face a second tier of constraints that are more complex than those encountered in the lowest tier.

The second tier of constraints are equally capable of stifling the citizens' quest for justice or voice in administrative governance. They include the maze of entrenched patron-client and other power relations encountered on a daily basis; political interference in public security and decision making; standards of performance in judicial and administrative decision making; the equitable standards of the informal justice sector (that is, whether informal dispute resolution mechanisms treat all parties equally, or are more likely to favor men or local elites); corruption; the quality of laws and lawmaking; and inconsistencies between formal law and traditional values. The highest-order legal and administrative constraints transcend individual problems and solutions and affect women and other

disadvantaged groups as an underclass of society.

Legal Empowerment Activities

As discussed previously, legal empowerment work is built on a sliding scale of activities, which aim to respond to the ascending hierarchy of access to justice constraints. It begins with first-order activities, continues through second-order activities that focus on the actual legal problems faced by individuals through a combination of formal and informal support mechanisms, and peaks with highest-order strategies that focus on the policy constraints that persist regardless of the progress made in resolving individual cases.

At the first-order level, legal empowerment activities focus on basic awareness raising by organizing formal and informal support activities that benefit individuals but not necessarily all classes of similarly placed persons. More sophisticated legal empowerment activities aim to change the relationship of entire communities with the law, legal system, and broader structures of administrative governance. They seek to do this by equipping entire classes or communities of the disadvantaged with the capacity to use legal and administrative remedies creatively, confidently, and independently. They also seek to address the policy or other constraints that tend to spawn new challenges as swiftly as individual problems are resolved through second-tier interventions. These activities also represent the most promising aspect of legal empowerment work. They are new and dynamic and therefore their results are not yet thoroughly documented. While legal empowerment activities are presented in the table as separate initiatives, it is important to bear in mind that, in practice, these tools are seldom applied as stand-alone activities.

A comprehensive and well-conceived legal empowerment strategy will typically include a multipronged combination of concurrent program activities.

First-Order Strategies. There has been a shift in the approach toward legal empowerment initiatives, and this is reflected in the development of new terminology for the process. “Legal empowerment” has replaced “legal literacy” as the preferred term to describe the process of enabling disadvantaged groups to use the law and broader structures of administrative governance, resources allocation, and decision making to advance their social, economic, and political circumstances. Despite this, “legal literacy” remains a valid term. It describes the nature of the first-order program activities that respond to the first tier of challenges and constraints described in the preceding section. Legal literacy focuses on raising public awareness of the legal rights and obligations; the institutional structure and procedures of the legal system; and the mechanisms that women, the poor, and other marginalized groups can use to advance their rights and interests. As a strategy, legal literacy has limitations because it arguably does not respond to the higher-order constraints. Legal empowerment goes beyond just educating people about their rights. It provides target populations with opportunities to apply the knowledge and skills acquired to enforce their legal rights and improve their access to resources and opportunities.

Second-Order Strategies and Program Activities. Second-tier legal empowerment interventions are largely focused on resolving the legal problems and administrative challenges faced by women, the poor, and other disadvantaged groups. Program interventions of this kind are primarily in the domain of community legal service organizations and development nongovernment organizations

(NGOs) that provide legal support services as an integrated component of their broader community development work. Within the second tier of legal empowerment activities, program activities are concentrated in the informal justice sector (for example, ADR mechanisms to facilitate the resolution of a property dispute between neighbors); the formal justice sector (for example, legal aid to assist battered women in bringing cases to court); or combinations of both.

Highest-Order Strategies and Activities. The third and highest tier of legal empowerment interventions are designed to shape the circumstances in which legal problems arise and to alter the inequitable power relations that undermine the interests of disadvantaged groups. They employ techniques such as advocacy, participating in law reform initiatives, and public interest litigation. The initiatives seek to benefit entire classes of disadvantaged groups. They aim to challenge and reshape traditional, social, religious, and cultural norms and practices that condemn the disadvantaged to an inferior position in law, decision making, resource allocation, and governance.

Intended Benefits of Legal Empowerment

There is a growing body of empirical evidence and anecdotal findings demonstrating that legal empowerment helps advance good governance and poverty reduction. At its best, legal empowerment helps overcome the crucial constraints faced by disadvantaged groups in accessing justice and participating in governance. Such constraints ultimately undermine poverty reduction efforts.

ADB now defines poverty more broadly than only referring to income level. In addition to income level, ADB considers factors such as equality of rights; protection against harmful or illegal practices; and

access to existing resources, services, and opportunities. This means that poverty reduction efforts are no longer limited to increasing income or otherwise improving the material circumstances of the poor. Poverty reduction strategies now focus on enabling the poor and other marginalized populations to knowledgably participate in decisions affecting their lives and have better access to resources and opportunities. When legal empowerment helps citizens or the commu-

nity to participate in public decision-making processes, it is contributing to good governance. The impact of legal empowerment ranges in sophistication and scope. It may impart basic knowledge of law and rights; resolve individual legal problems and governance constraints; or improve the capacity of disadvantaged populations to confidently apply the skills and knowledge acquired to engage in legal, administrative, and other public decision-making processes.

Table 1: *Legal Empowerment Constraints, Strategies, and Benefits*

<p>Constraints</p>	<p>Legal Empowerment Strategies and Activities</p>	<p>Benefits of Legal Empowerment</p>
<p>First-Order Constraints</p> <p>Traditional Religious, Cultural, and Social Norms. For individuals and communities that subsist at the margins of developing societies, traditional religious or cultural norms and values define their experience with little regard to any formal rights or entitlements prescribed by law.</p> <p>Lack of Knowledge among Citizens and Public Officials. Inadequate citizen knowledge of the law and the rights and obligations that it confers poses a fundamental constraint to access to justice in developing countries. Limited education and poor literacy deprive marginalized groups of the information that they need to protect their rights under the law. Inadequate resources and knowledge of the law by public officials also reinforces this constraint. For example, a public official that is tasked with exercising a decision-making authority may have no clearer knowledge of the steps to be followed or the legal or administrative principles to apply than the ordinary citizen.</p> <p>Lack of Economic Independence. Lack of economic independence places broad constraints on citizens' access to justice, essential resources, and participation in administrative and other public decision-making processes. Those who depend on husbands, employers, landlords, local power brokers, or others with whom they stand in unequal power relations are bound to face constraints in exercising their rights or in calling for public authorities to render equitable decisions on matter of interest to them.</p>	<p>First-Order Strategies and Interventions</p> <p>Basic Legal Awareness Raising through Print (e.g., pamphlets, posters, comic books, newspapers and Broadcast Media). Print and broadcast media can be used as primary tool for information dissemination and a practical, cost-efficient way to share basic legal information targeting general audiences.</p> <p>Television, Radio, and Other Electronic Outreach. Television (TV) and radio serve as increasingly important media for national information dissemination. While radio used to have a larger geographic outreach and longer broadcast hours, that is no longer the case in most countries today. TV is now the preferred media for information sharing through public service announcements and programming on specific legal or governance issues. TVs and radios are now common fixtures in village community centers, tea shops, bazaars, and other public gathering places. People assemble at these places during leisure or marketing hours to watch TV, listen to radio programs, and discuss among themselves the content of public service announcements and talk shows. In recent times, legal empowerment practitioners have harnessed the communications power of the internet, mobile telephone messaging, and other information and communication technology tools to share information.</p>	<p>First-Order Impact</p> <p>Increased General Awareness of Rights and Legal Protection. At a most basic level, legal empowerment helps women and other disadvantaged groups appreciate that they have rights and obligations under the law—even if they have no more than a rudimentary sense of what these are. This basic awareness is different to the specific legal knowledge discussed below, although the two concepts may overlap in practice. The difference is that disadvantaged populations can learn that they have rights even if they do not fully understand the nature and implications of those rights.</p> <p>Increased Knowledge of Specific Legal Rights and Issues. Instilling the disadvantaged with basic legal knowledge is a very basic contribution of legal empowerment. It can involve educating people about specific laws, regulations, constitutional provisions, and even milestone court rulings that directly affect their status or rights as citizens. It is not necessary to educate citizens to the point that they can cite the terms of particular laws or rights. It may be enough that a daughter can confidently state that she is entitled under the law to a portion of her deceased parents' land, or that a woman understands that she must register her marriage to protect her legal rights if her marriage later breaks down.</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>First-Order Constraints</p>	<p>First-Order Strategies and Interventions</p> <p>Popular Culture. Musical performances, karaoke songs that combine popular melodies and serious messages, improvisational comedy, street theater, poster art competitions, and other forms of popular culture, serve as a proven medium for legal information dissemination across Asia. The combination of entertainment and serious messages captures viewer and listener attention. Experience has demonstrated that some degree of follow up by NGOs or other facilitators may be necessary to ensure that messages are clearly understood and that beneficiaries receive the additional details necessary to access support services successfully through which they can act on the information provided.</p>	<p>First-Order Impact</p>
<p>Middle-Order Constraints</p> <p>Complex and Inequitable Power Relationships. Complex power relationships and the social dynamics of decision making or resource allocation are not unique to developing nations. However, in the developing world, the impact of these dynamics are exacerbated by factors such as economic development challenges, hierarchical social structures, traditional patron–client relationships, corruption and impunity, and political and other powerful actors seeking to manipulate independent authorities and decision-making bodies. This creates special challenges that affect the relationship between women, the poor, religious and ethnic minorities, and other marginalized groups and the legal and administrative authorities that exercise decision-making functions.</p>	<p>Middle-Order Strategies and Interventions</p> <p>Community-Based Training. Community-based legal training takes information of the kind imparted through mass-based print and broadcast media and adapts it for targeted delivery and engagement with citizens at the community level. It tends to be more intensive, hands-on, and interactive than media campaigns. Community-based training targets the specific needs of select communities and allows legal empowerment providers to work closely with beneficiary groups. This, in turn, enables providers to better understand the problems faced by beneficiaries and to design and implement strategies to assist them.</p>	<p>Middle-Order Impact</p> <p>Improved Access to the Formal and Informal Legal System and Public Decision-Making Processes. Organization, education, and access to legal services psychologically and politically empower marginalized groups in ways that translate into confident action. Behavioral change of this kind is a central goal of many legal empowerment efforts. Where physical, political, or economic opposition is too strong for individuals to challenge, legal empowerment work combines with allied efforts such as community organizing to encourage and equip disadvantaged groups to act on what they have learned. The very fact that people assemble in a group is a potentially important advance in behavior. For example, when citizens collectively and cohesively assert themselves through the medium of local microcredit groups or other informal associations, it increases their political clout—making it more difficult for those who oppose their views to dismiss or ignore them.</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Middle-Order Constraints</p> <p>Quality of Formal Legal and Institutional Decision Making and/or Legal Services. Problems compromising the efficiency or integrity of the courts, administrative tribunals, licensing agencies, or other public institutions tend to affect both disadvantaged groups and the general population alike. Poor standards of performance supersede any specific biases affecting women, the poor, or disadvantaged. Typical problems include backlogs of cases that choke the lower and higher courts, unjust or inequitable decision making resulting from inadequate professional training for judges, or governments failing to disseminate information on appellate cases that set new precedents for the lower courts. Administrative tribunals that fail to follow consistent standards, or are prepared to accept or demand bribes to secure a particular result or expedite a matter, also harm disadvantaged groups' interests. Disadvantaged populations are also injured by poor quality legal representation rendered by lawyers or court agents, because they cannot afford to engage individuals with greater competence or integrity to represent them.</p>	<p>Middle-Order Strategies and Interventions</p> <p>Community Counseling. Community-based training may extend to include basic legal counseling services, marking the first step in the transition from basic information sharing to hands-on support services. Some legal service providers refer to these periodic legal counseling sessions as "legal aid camps." They typically involve a small team of lawyers setting up a booth in a community hall or market center following an introductory general information session. Citizens queue up to seek professional advice on particular problems. The advice or guidance provided is generally a one-off interaction as opposed to the establishment of an ongoing professional service relationship of the kind established through formal legal aid mechanisms.</p>	<p>Middle-Order Impact</p> <p>Enhanced Citizen Participation in Development Planning and Project Implementation. Citizen-directed monitoring efforts help to ensure that development efforts stay on course, projects do not prove counterproductive, government personnel involved in projects remain accountable and responsive, and beneficiaries stay committed to initiatives that require their sustained engagement. More broadly, an understanding of relevant laws and processes helps to secure effective participation in all stages of a development project cycle. Also, it can assess the downside risks of development initiatives (such as environmental damage) and contribute to accountability on the part of both government parties and influential private actors.</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Middle-Order Constraints</p> <p>Quality of Informal Justice Alternatives. In many developing Asian countries, the informal justice system has greater relevance to the economic means and other circumstances of disadvantaged groups than the formal system. In most developing countries, NGOs have assumed a leading role in facilitating public access to the informal justice sector. Alternative dispute resolution (ADR) is one of the most popular informal mechanisms for resolving legal problems in a timely and cost-efficient manner. ADR can resolve issues more quickly and cheaply than formal legal and administrative systems. Also, ADR mediation sessions tend to be watched by community members, meaning it can be used to reinforce positive behavioral standards. Notwithstanding these positive factors, ADR can be compromised by a combination of factors, including inequitable power relations among parties to the dispute, gender bias, and the tendency of proceedings to be overly court-like.</p> <p>Poorly Drafted Laws and Regulations. Unclear, inconsistent, and outdated laws can contribute to the ongoing suppression of disadvantaged groups. A combination of factors fuel this problem, including poor education standards and professional competency, poor adaptation of international laws resulting from international pressure to adopt new laws that are modeled on laws from other legal systems, and a legal system that fuses civil and common law elements but which is inadequately structured and contains inconsistent laws.</p>	<p>Middle-Order Strategies and Interventions</p> <p>Paralegal Services. A paralegal is a lay person who is selected by a legal service organization to complete a specialized training program that typically includes a general introduction to law and human rights; a degree of specialty training in particular areas such as family law, inheritance, or property; and guidance on how to provide effective counseling support services to community members. Since paralegals must establish relationships of trust with the community members they serve, they are ideally drawn from communities of teachers and NGO workers whose vocation depends on effective relationship building, networking, and information sharing. They are typically assigned to communities that they live and work in. This helps them to understand the local dynamics of power, conflict, and decision-making, and to establish trust relations with community members. Paralegals can be cost-effective alternatives to lawyers. In some cases, they play a purely intermediary role in representing citizen interests in formal or informal legal proceedings. In other cases, they train community members to directly engage in administrative and other procedures that are grounded in law. Paralegals may work in a voluntary or professional capacity.</p>	<p>Middle-Order Impact</p> <p>Enhancement of Practical Legal Skills. Legal empowerment helps to impart the basic legal skills that the disadvantaged require to apply their legal knowledge. It is one thing to know one's legal rights, but quite another to know how and where to assert them. A disadvantaged person may have a general awareness or specific knowledge of the law, but still not know how to use it effectively. For example, a man may know that he is entitled to appeal an administrative decision to reject his application for a national identity card, but have no idea what government office to approach to launch his appeal, how to document his claim, or what steps to follow in pursuing it. Similarly, a woman may understand that registering her marriage with the government can benefit her if an abusive husband later orders her and their children to leave the family home, but if neither she nor someone she knows is familiar with the registration process, her knowledge has little value.</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Middle-Order Constraints</p> <p>Inconsistency between Formal Law and Traditional Values. Access to justice and citizen participation in public decision making by disadvantaged populations is further impeded by traditional community norms and other deeply ingrained attitudes. For example, the specter of public scrutiny and shame that relegate women to a subservient place in society may discourage a female victim of domestic violence from seeking legal protection from an abusive husband. Similarly, the police may be hesitant to intervene in domestic matters of this kind, citing the traditional view that domestic tensions or violence are personal matters to which formal legal protections do not extend. This is notwithstanding the fact that the laws of a country are clear that domestic violence is a criminal offence.</p>	<p>Middle-Order Strategies and Interventions</p> <p>Alternative Dispute Resolution. ADR is faster and more cost-efficient than the formal court system. It is more likely to result in both parties to a dispute reaching a compromise rather than one party winning outright over the other party. ADR encompasses a broad range of processes designed to settle disputes outside of the formal court setting. Although most of the larger community legal service NGOs have gradually adopted models that involve mediation sessions chaired or administered by panels of respected community members, there are variations to these processes. Community dispute resolution is often the only option available to poor and marginalized citizens, who lack the resources and social and administrative connections to pursue formal dispute resolution mechanisms. ADR is affordable, comprehensible, convenient, and efficient (even in contrast with a well-functioning judicial system). It has a participatory dimension that confers a degree of social sanction to decisions reached by the mediation panel. In recent years, court annexed mediation has been introduced in Bangladesh, Indonesia, and other Asian countries in an effort to reduce the administrative burden on the courts.</p>	<p>Middle-Order Impact</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Middle-Order Constraints</p> <p>Failure to Implement Sound Laws and Regulations or to Follow Prescribed Procedural Standards. One of the most common constraints to just legal outcomes and sound governance standards in developing countries is the failure on the part of judges, administrative decision makers, and other decision makers to apply laws, regulations, or procedural standards. While the laws of many developing countries are generally well-conceived and clear, they are routinely ignored by those tasked with applying them or inconsistently applied. This results in no consistency of practice and outcomes among those whose circumstances are identical.</p>	<p>Middle-Order Strategies and Interventions</p> <p>Legal Aid. Pro bono legal aid services by lawyers take legal empowerment from the informal justice sector to the formal sector. No cost or subsidized legal aid services make it possible for women, the poor, and disadvantaged groups to commence formal legal action to protect their rights. Without pro bono legal services, women, the poor, and disadvantaged groups could not overcome the prohibitive costs, chronic administrative delays, and other impediments associated with formal legal action. While legal aid occupies an important niche, a combination of factors can limit its impact. These include a shortage of competent lawyers that are prepared to give up a portion of their practice or forego better income earning prospects to undertake legal aid work, variations in the quality of services rendered by legal aid lawyers, judicial corruption, weak judicial administration, and variations in the professional standards and competence of judges and court officials.</p>	<p>Middle-Order Impact</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Highest-Order Constraints</p> <p>Factors beyond the Control of Individuals or Communities. The highest order of legal and administrative constraints to accessing justice and sound administrative decision making and resource allocation transcend individual problems and solutions. These constraints affect women and other disadvantaged groups as an underclass of society. The most serious implication of these highest-order constraints are that, even if a poor woman from rural Bangladesh, Indonesia, or Pakistan overcomes barriers of poverty, education, and geographic isolation to acquire and exercise a knowledge of law with the support of a capable community legal service NGO, her quest for justice may ultimately be thwarted by factors that lie beyond her personal control and those of the interlocutors who rally to represent her interests through the formal justice system or informal mechanisms. The first challenge lies in traditions of patronage, or elite indifference, while the second lies in policy issues that generate legal problems or administrative barriers faster than support mechanisms can resolve individual cases. An individual success has value as a personal victory and means of empowerment, but holds little value for those who face similar problems but have no recourse to successful individual support mechanisms.</p>	<p>Highest-Order Strategies and Activities</p> <p>Public Interest Litigation. Public interest litigation aims to represent sections of society for the benefit of society as a whole. In ruling on a public interest case, a court may set a precedent that guides inferior courts in determining similar cases in the future. Even where such a decision is not binding, as in civil law countries, it may still carry great weight and therefore be determinative in subsequent cases, especially if it attracts a lot of publicity. Public interest litigation is typically used to address issues that threaten the rights or quality of life of entire classes or communities of vulnerable groups, such as health problems resulting from the discharge of toxic industrial waste into the local environment.</p>	<p>Highest-Order Impact</p> <p>Increased Confidence and Higher Expectations. Building general legal awareness contributes to attitudinal change. It results in the disadvantaged being more inclined to acquire specific knowledge and skills, more confident in their ability to apply their knowledge and skills, and more likely to voice their expectations in demanding responsible action by public officials and agencies. The distinction drawn between legal awareness and attitudinal change sometimes breaks down in practice—that is, the realization that one has rights can be one and the same process as assuming a willingness to assert them.</p> <p>Successful Participation in Legal Implementation and Public Decision Making. Legal empowerment plays an important role in improving the implementation of laws. This typically results from informed participation by affected populations in legal and governmental processes and decisions. Group mobilization, in particular, helps secure implementation. Where relations among NGOs, the communities that they serve, and government officials are open and collaborative, such mobilization helps to advance state civil sector cooperation, or to bring public pressure to bear on officials to do their jobs responsibly.</p> <p>Participation in Legal, Regulatory, and Budgetary Reform. Legal empowerment mobilizes the disadvantaged to help shape laws and resource allocation. This involves empowering people to identify problems with existing laws, rather than simply accepting them regardless of quality. In many countries, decisions of this kind take place at the state or provincial level, as well as the national level.</p>

Constraints	Legal Empowerment Strategies and Activities	Benefits of Legal Empowerment
<p>Highest-Order Constraints</p>	<p>Highest-Order Strategies and Activities</p> <p>Administrative Advocacy. Civil society organizations also help disadvantaged communities make applications to administrative tribunals. Such tribunals operate under the authority of executive agencies or local government bodies. They review decisions made by government representatives under an administrative power, for example, whether to grant a license or permit or to undertake some other specific action. Administrative tribunals engage in quasi-judicial procedures and decide on applications brought by private parties appealing the outcome of a decision.</p> <p>Legal Reform Advocacy and Legislative Drafting. Violation of the rights and security of women and other disadvantaged groups persists in certain instances because the law fails to provide them with adequate protection. For example, legislators may fail to respond to the rising incidence of domestic violence, land grabbing, environmental degradation, or other issues that have a more serious impact on the disadvantaged communities than on the population at large. Civil society organizations in Indonesia and other Asian countries have responded by drafting model legislation for the protection of women victims. They have also undertaken large-scale public advocacy activities to raise public awareness of the problem; stimulated a public call for legal action; and supported legislators in drafting and passing laws by providing technical assistance, mobilizing the media, and providing other support.</p>	<p>Highest-Order Impact</p> <p>Improvements in Material Circumstances. Legal empowerment contributes to improvements in the material circumstances of those who benefit from socioeconomic development efforts, particularly in the context of poverty reduction. Such impact can take a variety of forms. Learning about the law may help women reduce the incidence of domestic violence in their communities. Likewise, it can help farmers take advantage of agrarian reform laws in ways that increase their income. Similarly, it can help citizens understand that enforcing laws that ban certain environmentally harmful practices will enhance their quality of life and livelihood, and equip them to take appropriate action.</p> <p>Greater Sensitivity, Responsiveness, and Accountability of Government Officials. The objective of legal empowerment is not simply to improve the knowledge, attitudes, behavior, and other capacity of citizens, but also to impart similar knowledge and capacity among government officials. Improving the capacity and performance of public officials enhances their ability to implement laws and therefore improves the circumstances of disadvantaged populations. Also, the disadvantaged will have better prospects of participating in governance under responsive government.</p>

Contexts in which Legal Empowerment Interventions are Most Successful

Legal Empowerment is Best Advanced through Integrated Strategies. One of the key lessons learned from the 2001 legal empowerment study (footnote 1), and borne out by practical program experience in the intervening years, is the significance of integrated legal empowerment activities. Examples drawn from Bangladesh, Indonesia, Pakistan, and other countries suggest that legal empowerment activities are more effective when they are included as components of mainstream development programs in public health, resource management, local governance reform, and other areas. There is always scope and need for organizations that focus specifically on legal service delivery and provide important technical support to organizations that follow an integrated approach. However, the integration model is more likely to secure stakeholder confidence and support within communities and to nurture permanent community capacity. Integrated strategies typically combine two or more types of activities, or in some instances involve two or more organizations working collaboratively. Some operate strictly in the legal realm, combining education, training, counseling, mediation, litigation, and other legal services. Integrated strategies consistently show the best success in advancing legal empowerment because they are flexible in adopting various activities that reinforce each other.

Knowledge Alone is Insufficient. As noted previously, the starting point of legal empowerment initiatives needs to be a basic introduction to the concepts of legal rights and obligations. This includes training participants on their right to demand that public institutions and officials are accountable, consistent, and inclusive in their

operations. With knowledge comes higher expectations. Target populations should rightly question how they can enforce their rights, who will help them enforce their rights, and who will compel public authorities to respect their rights. In this context, knowledge empowers disadvantaged populations by raising their basic consciousness. But, the raised expectations will swiftly deflate if the training is not accompanied with strategies and support mechanisms that women and the poor can use to further and enforce their rights.

Organization is Power. Legal empowerment has a greater chance of success when it is collectively undertaken by like-minded stakeholder groups that work in a cohesive and coordinated manner. The disadvantaged may understand their rights very precisely and count on basic support interventions like legal aid or ADR to resolve individual problems. However, as a community, they are prone to remaining powerless to secure higher-order changes of policy or practice unless they work together to assert common interests or to protect group members. Village membership groups coordinating microcredit, health education, or livelihood development, and community water user associations coordinating local resource management measures can be excellent vehicles for legal empowerment initiatives because they already are adept at program delivery. Collective action tends to carry greater weight than individual efforts. It also lends greater momentum to advocacy efforts lobbying for the removal of traditional power advantages and the economic and political benefits that this power ensures.

Civil Society Plays an Important Role in Legal Empowerment. The examples cited in previous sections demonstrate that civil society organizations (CSOs) can have the ideal combination of capacity, initiative, flexibility, and stubborn determination to

help disadvantaged groups learn about and exercise their rights. NGOs, community-based organizations, media associations, university-based research units, and clinical legal education units have a proven capacity to facilitate local community efforts by facilitating strong networks at the grassroots and national level. They also achieve success in undertaking national-level advocacy initiatives. This reflects the fact that NGOs attract committed young lawyers and development professionals; understand the complexity of local culture, politics, and power relations; and enjoy the trust of community members. This means that national NGOs can be excellent partners for development agencies in designing, implementing, and monitoring legal empowerment activities.

Complementary Role of Government.

Although CSOs have tended to demonstrate greater initiative in undertaking legal empowerment initiatives, public agencies and officials also have an equally important role to play. Legal empowerment has traditionally been thought of as belonging in the domain of CSOs but this overlooks the capacity and commitment of reform-minded public officials to contribute to legal empowerment. Such officials operate in a very challenging environment and will have a better chance of effectively contributing to legal empowerment activities if they understand and competently exercise their roles and responsibilities or have the chance to work in cooperation with civil society partners. Government also plays an important role in legal empowerment initiatives. Many government officials act as decision makers and their decisions affect the rights and economic status of marginalized groups. Therefore, it is fundamental that public officials are given appropriate skills training.

Public–Private Partnerships in Legal Empowerment. Historically, interactions between

CSOs and government agencies have been marked by tension and mistrust. However, when CSOs and government agencies work together, they have a greater capacity to design and implement legal empowerment initiatives. Examples of effective public–private partnerships have in fact emerged across Asia and other parts of the world. Although there are challenges to be faced in drawing together CSOs and government agencies on projects, the potential benefits are too compelling to ignore. NGOs and government agencies have worked together to establish community policing programs in Bangladesh, to craft a blueprint for judicial reform in Indonesia, and to establish a joint response to disaster needs in Pakistan. Therefore, legal empowerment goals are enhanced by reducing or eliminating tensions and promoting opportunities for government agencies, civil society, and other stakeholder groups to cooperate. Where tensions are reduced, there is greater prospect of compromise, and where all stakeholders are prepared to yield some ground for the sake of compromise, the prospect of productive public–private partnerships between government and civil society increases. When the quality of public–private relationships are central to a legal empowerment strategy of any kind, approaches that involve good faith dialogue, cooperation, and compromise between civil society and government stakeholder groups have greater potential than those pressed solely by CSOs without the benefit of common understanding and negotiation.

How Is Legal Empowerment Relevant to Sector Development Initiatives?

The access to justice constraints facing women and disadvantaged groups also have an impact on the effectiveness of sector development programs.

A Natural Extension of Proven Integrated Approaches. In the past, programs have typically focused on providing women and disadvantaged groups with legal aid as a way of resolving their legal problems. But, experience suggests that legal aid barely makes a dent in the broader needs of target populations. In most cases, these projects miss opportunities to address the underlying legal, administrative, and governance constraints that prevent women and other disadvantaged groups from enjoying the benefits of sector development initiatives.

Although conventional legal aid interventions clearly benefit individuals, they do not necessarily reduce widespread poverty and/or improve governance. They only serve one beneficiary at a time and therefore do not necessarily serve the higher goal of legal empowerment. In its highest form, legal empowerment seeks to equip entire communities to use legal and administrative processes and structures to access services and opportunities. In this way, legal empowerment aims to facilitate long-term and sustainable change that benefits entire communities and directly benefits women and disadvantaged groups. Class action lawsuits and public interest litigation are the exception to this, particularly where an individual's circumstances mirror the broader community's circumstances.

Understanding that Certain Sector Program Constraints Reflect Underlying Legal and Governance Issues. Sometimes the parties involved in mainstream development initiatives do not fully appreciate the underlying legal dimensions of their projects. For example, beneficiary populations (especially the poor, women, and other marginalized populations) may not be aware that the administrative framework of a development

assistance project creates rights for them to participate in project design and implementation or entitles them to receive benefits. For this reason, integrating legal empowerment components into mainstream development initiatives can create opportunities to leverage donor funds to engage government officials, elites, and other powerful constituencies on governance issues and poverty alleviation. Through targeted support for legal empowerment initiatives, all development agencies can incorporate essential rights and governance dimensions into mainstream development projects. In addition, by focusing on sector legal empowerment interventions—as opposed to narrowly focusing on legal services that draw on a finite resource base that is dependent on local philanthropy or international funding—development projects can potentially access the larger pool of resources that are earmarked for sector program activities.

Is Legal Empowerment a Universally Supported Public Good? Legal empowerment initiatives have exciting and wide-reaching potential. Despite this, they represent a new and relatively experimental concept in project loans. They will not necessarily be automatically and widely embraced. Some of the harshest critics are likely to come from certain groups with an interest in keeping disadvantaged groups on the margins of society. These hostile groups have an interest in retaining the power advantages that they currently hold over women, ethnic and religious minority communities, and other disadvantaged groups. One of the most significant challenges for legal empowerment initiatives will be to convince those in positions of power and influence to surrender to a level playing field.

Strategic Considerations and Approaches for Integrating Legal Empowerment Activities in Sector Development Programs—Lessons Learned from Experience

This section of the guide focuses on lessons learned from the Legal Empowerment for Women and Disadvantaged Groups Project and other experiences in integrating legal empowerment components in sector development programs. To date, work in specific development sectors such as education, public health, water management, or infrastructure development has shown the greatest potential for partnering with legal empowerment initiatives. Even so, there are recurrent challenges of which legal empowerment practitioners must be mindful when working with partner communities, counterpart government agencies and officials, and international development partners.

There is a growing interest among international agencies, government partners, and civil society organizations (CSOs) in understanding and advancing the complementary relationship among the empowerment of citizens and communities, poverty alleviation, and good governance. The 2001

study (footnote 1) found that legal empowerment can help advance rights, improve governance standards, and alleviate poverty. In particular, it found that legal empowerment is most effective when pursued through integrated approaches that engage partner populations at the community level and when CSOs work in cooperation with government agencies and officials. The recommendations of the earlier study have been further tested through a variety of pilot program initiatives. Such programs include the Indonesia Irrigation Sector Legal Empowerment Study (2001–2003), conducted by TAF, in coordination with ADB,³ and the

³ The Asia Foundation. 2002. *Indonesia Irrigation Sector Legal Empowerment Study—Program Strategy and Implementation Plan for the Integration of a Legal Empowerment Component in the Participatory Irrigation Sector Project*. San Francisco.

World Bank's milestone Justice for the Poor program in Indonesia.⁴

The sections that follow share practical suggestions for NGO managers and program personnel who are considering introducing a legal empowerment component as an integral part of an existing or planned sector development program. These suggestions are relevant to programs that are administered by a government agency and/or international development agency in the fields of public health service delivery, education, urban infrastructure development, water and sanitation, resource management, or other areas.

Virtually every sector development program faces legal and related administrative challenges of some kind that a legal empowerment strategy can help address. Frequently, however, the busy sector program specialists with whom NGOs interact have no reason or opportunity to reflect on the fact that such challenges are rooted in law. Realistically, the challenges may stem from poor legal rights enforcement, fulfillment of legal obligations by program managers and/or responsible government officials, or administrative dispute resolution and decision-making procedures.

Integrating Legal Empowerment in an Existing Sector Program

Which one is easier: adding a legal empowerment component to an existing sector development project or incorporating it into the design of a new project? The answer depends more on the circumstances of each project. There are no hard-and-fast rules, and consideration must be given to the nature of the

(i) present or prospective project; (ii) institutional actors and individual personalities involved in the community of stakeholder interests; and (iii) issues affecting the pace and progress of the sector development project.

In general terms, a legal empowerment program that is designed as an integral part in the broader process of planning a new sector development program has greater scope for thoughtful assessment and advance planning—including robust empirical research to establish baseline data that can be used to monitor progress over time.

That said, it is equally viable to introduce a successful legal empowerment component into an existing project. This is especially so where project implementers can draw on their experience of actual project implementation and formal assessment of barriers to disadvantaged groups. The interest and commitment of key individuals is a factor of paramount importance in planning and decision making. Even where all other disposing factors affirm the value of legal empowerment interventions, the program manager must be confident that relevant government officials and political actors are ready to cooperate—or are, at the very least, prepared to give a legal empowerment component sufficient space and freedom to succeed rather than actively resisting the changes that it aims to secure.

Will an Existing or Planned Sector Development Program Benefit from an Integrated Legal Empowerment Component?

There is scope for legal empowerment in virtually any sector development program that aims to advance the economic, social, or political status of women and disadvantaged groups. A sound strategic planning process should weigh the required investment of time, energy, and resources needed against the likely

⁴ See www.justiceforthe poor.or.id/

benefits from the investment. Parties will be more convinced of the value of integrating a legal empowerment component if program managers can demonstrate that they have undertaken analysis regarding the (i) challenges facing an existing program or that are likely to be faced with the introduction of a new initiative; (ii) kinds of program activities to be included as part of an integrated legal empowerment strategy; (iii) benefits that are expected to flow from the legal empowerment activities; and (iv) administrative issues to be faced in designing, implementing, and monitoring the legal empowerment activities.

Does the Particular Sector Program Aim to Benefit Women and/or Other Disadvantaged Groups? A sector development program that aims to contribute to poverty reduction or a better quality of life by improving education, health care, roads, resource management, other infrastructure, or public service delivery will almost certainly also benefit disadvantaged populations. If a prospective host project passes this basic threshold requirement, it would be useful for the project manager to assess whether the project directly or indirectly benefits disadvantaged groups. This is a useful assessment to undertake when considering the probable effectiveness of legal empowerment initiatives.

Some sector programs will indirectly benefit women and other disadvantaged groups. For example, a roads improvement program can be expected to benefit all members of society by making major roads safer and more efficient to travel on. Disadvantaged groups will derive benefit from these improvements in general terms. But, they will not benefit in a manner that is distinct from the broader population of occasional road users or parties who use roads to transport essential goods to local markets faster and with fewer arbitrary tolls and other levies. In

contrast, a national water management program may specifically aim to establish formal mechanisms through which ordinary citizens (who have previously been excluded from water management practices) are engaged as members of local water management committees. For example, the project may include a requirement that three of the twelve seats on a local committee are occupied by women, and provide a special skills development training program for current and prospective female members of the management committees.

While almost any sector development program could benefit from a legal empowerment component, projects that target women and other disadvantaged communities as specific beneficiaries are better candidates for legal empowerment components, particularly because the legal empowerment component can help to ensure that the intended benefits are realized. While the preceding examples draw sharp distinctions between direct, indirect, or less direct beneficiary relationships, in reality most sector development programs have an impact on disadvantaged groups as direct and indirect beneficiaries.

How Do Legal and Related Administrative Issues Affect the Benefits that Disadvantaged Groups Derive from a sector development program?

It is useful to think of two broad categories of legal constraints affecting program performance, those affecting the (i) general status of disadvantaged groups; and (ii) particular benefits that disadvantaged groups derive from sector programs.

General Status Constraints. This first category concerns factors that affect the general, social, economic, and political status of women and other disadvantaged populations

in developing countries, which are in no way unique to a particular sector program. For example, conservative religious or societal values may significantly impede a woman's ability to move freely outside the home, complete a secondary school education, inherit property or establish independent title to land, or contribute to the economic welfare of the family by securing outside employment. Similarly, relegating women to a marginal place in the family and broader society may leave women vulnerable to domestic violence or being unable to travel safely outside the home after dark. Traditional social biases may place members of religious and ethnic communities at particular risk of violence, loss of property to land grabbers, or relegation to lower-paying jobs. Legal constraints of this kind compromise the benefits that disadvantaged communities derive from sector development programs, but are not unique to the program itself.

This category of legal constraints has an indirect impact on the benefits that disadvantaged populations derive from the program. Women and disadvantaged beneficiaries may fail to benefit from the program because they are barred by external factors from participating in the manner intended.

Particular Benefits Constraints. These constraints relate more specifically to the ability of disadvantaged groups to derive intended benefits from a sector development program. An excellent example is where the rules and procedures of a sector development program are contained within a formal regulation or instrument that is linked to the formal legal and administrative system of the project's nation or local authority. Problems arise where

- (i) the project managers and government officials tasked with implementing the project are not familiar with the formal administrative requirements of the program or the relevant laws. It follows that if the project managers do not understand the project's rules, the women beneficiaries (who are unable to read) will also have no understanding of their rights and responsibilities under the project;
- (ii) the project has strict procedural guidelines for the appointment and operation of local citizen management or monitoring committees but no training is given on how to elect the committees' members. Further problems arise where members receive no special training on their role and responsibilities, and how to deal with pressure from local parties who have their own agendas and do not wish to lose power or authority to the newly formed committees;
- (iii) the project specifies procedures to be followed if an individual is denied a benefit under the project, but community members receive no information on the basic entitlements or the steps to be followed if procedures are ignored; and
- (iv) the program managers have developed a comprehensive training manual to educate local management committees about the regulatory and procedural framework of the sector program, but they can only deliver the training program once in every community because the scale of the program is so large. Without refresher sessions or initiatives to assess the quality of the training sessions, it is unlikely the training sessions will be sufficient to change the behavior of community members.

This category of constraints has a direct impact on the benefits that disadvantaged groups derive from the program by compromising the quality of their participation in the program. Both types of constraint are important, but the strategies followed to address them will be different.

In most cases, the performance and outreach of a sector development program is compromised by a combination of direct and indirect constraints that compromise the quality of participation and benefits derived by disadvantaged groups.

Sources of Information on Legal and Administrative Constraints

The previous examples serve as decidedly simple illustrations of the kinds of direct and indirect legal constraints that affect the performance of a sector development program with respect to the experience of women and other disadvantaged beneficiaries. No single checklist of actions can cover an almost infinite variety of specific scenarios. However, there are resources (box 2) available to assist legal empowerment providers and their corresponding sector development program managers in identifying, assessing, and weighing the strategic significance of constraints that affect sector programs and determine the value of an integrated legal empowerment component.

Sources of Technical Support for the Design and Implementation of Legal Empowerment Strategies

Internal Technical Specialists. Like most multilateral and bilateral development agencies, ADB has a superb technical human resource base in its resident missions and headquarters that can be tapped for technical support. At headquarters, there is legal empowerment expertise in a variety of pro-

gram support units. The local resident missions are staffed by governance and gender advisors and technical specialists associated with particular projects who have a wealth of knowledge.

External Technical Specialists. There are a number of sources of technical expertise on which program specialists can draw in designing, implementing, and assessing integrated legal empowerment activities as components of existing programs. These include other domestic CSOs, research organizations and firms with specialized experience in survey research and monitoring and evaluation, and domestic and international consultants.

Legal service NGOs have become a good source of technical expertise for integrated legal empowerment activities. Their effectiveness has been demonstrated in Bangladesh, Indonesia, and Pakistan, where they have taken a leading role in legal empowerment activities. While civil society partnerships would not have been a typical course in the past, international agencies are increasingly committed to tapping the potential of working relations of this kind. A number of factors make domestic NGOs a natural choice, in particular

- (i) community legal service and advocacy organizations have frequently played a leading role in legal empowerment initiatives. They have used their experience to develop their programs, so they now respond to the different categories of legal constraints. Their initiatives include basic awareness-raising activities, individual client services (alternative dispute resolution and formal legal aid), and advocacy initiatives that have raised community capacity and confidence in taking independent action;

Box 2: Sources of Information on Legal and Administrative Constraints

Country Governance Assessments. Governance assessments typically include a combination of core governance analysis (covering issues such as public administration, access to justice, public financial management, and corruption prevention) and analysis of specific governance constraints affecting sectors of particular relevance to the agency (including education, public health, energy, and transport). They are a source of practical, country-specific examples of the relationship between rights and access to justice issues as well as broader governance challenges.

Country Gender Assessments. Gender assessments provide a wealth of analysis of issues that affect the rights and social, economic, and political advancement of women in developing countries. Gender action plans, developed for individual projects, will also serve as important sources of information on issues affecting women's participation in or benefit from the project and the strategies followed in addressing these issues.

Project Documents. Project documents prepared by bilateral and multilateral agencies provide a comprehensive record of the factors that shape program design. Where an existing or planned program builds on the earlier experience of the agency in the sector, the project documents may chronicle (i) the factors that influenced particular strategies, (ii) the lessons learned from earlier experiences, and (iii) how strategies were refined to take account of earlier experience or changing political and other circumstances.

Analysis by Local Research Institutions and Civil Society Organizations. The increasing wealth of high-quality sector governance

and performance analysis rendered by local research institutions in developing countries is an essential source of knowledge in assessing the prospect of a legal empowerment strategy. Local firms have a deep knowledge of local politics and other factors affecting the performance of sector programs.

Media Reports. As print and broadcast journalists place increasing emphasis on investigative research and reporting, their analysis and insights complement those of local research institutions. As discussed below, local media relations should be cultivated by program managers as a source of information and as a mechanism for sharing information on legal empowerment programs undertaken by international agencies—the media can promote broader public understanding of and dialogue on the concept of legal empowerment.

Stakeholder Consultations. These are arguably the most important source of information. Local elites may dismiss the input of women, religious and ethnic minorities, and other disadvantaged groups, believing instead that they have a superior understanding of what is important to marginalized groups. This is an error to be avoided by legal empowerment activity designers and implementers. While community members may lack the polish of elite patrons in articulating their views, they have a very clear understanding of the challenges and constraints that they face, and are an excellent barometer for testing potential strategies. Finally, for a potential legal empowerment strategy to be taken seriously by beneficiaries there must be evidence that they are ready and committed to participating in the project—their commitment is essential to the success of a legal empowerment initiative.

- (ii) local NGOs have a practical understanding of the nuances of the local program environment for legal empowerment. They frequently have a particular focus on the political dynamics of access to justice and empowerment of women and other marginalized groups; and
 - (iii) local NGOs have taken the lead in establishing public–private working partnerships with government agencies on select legal empowerment interventions, which hold great potential for future strategies.
- empowerment strategy will take the following into account:
- (i) **Host Sector Development Program’s Goals, Objectives, and Intended Benefits.** Managers need to take into account whether the proposed benefits for women and/or other disadvantaged groups will be in broad terms, as specifically targeted beneficiaries, or through combination of broad and specific benefits.
 - (ii) **Circumstances of the Groups Served by the Sector Development Program.** Consideration should be given to the circumstances of women and disadvantaged groups in general terms and as members of communities. Consideration should also be given to (a) their status in society, (b) the general challenges they face in exercising their legal rights, (c) how they can access legal and administrative decision-making procedures, (d) how they can participate in public decision-making processes, and (e) the specific challenges that they face in accessing the intended benefits of the sector program.
 - (iii) **Factors Affecting Disadvantaged Groups’ Legal Status and Circumstances.** It is important to understand whether the present circumstances of disadvantaged groups reflect benign factors that can be resolved and whether there are prospects of change. It may be that there is poor information or inadequate effort made to engage them in legal and administrative procedures (about which they know nothing). Alternatively, there may be certain individuals or groups within government or the local

Designing and Implementing a Legal Empowerment Component

This final section provides suggestions on some practical steps to be followed in designing, implementing, and assessing an integrated legal empowerment project to complement a sector development program. While some slight variations in approach should be followed between an existing host program and one that is being newly developed with an integrated legal empowerment component, the suggestions that follow focus primarily on the approach to be followed in the case of a new program. These are supplemented by the additional strategic considerations presented in table 2.

Clear Understanding of the Program Environment

A legal empowerment program strategy should be shaped by a clear understanding of the program environment in which it will be implemented. In addition to taking into account the types of resources and technical support outlined above, a good legal empow-

Table 2: Strategic Considerations in Designing and Implementing a Legal Empowerment Program

Issues	Strategic Considerations
<p>Monitoring and Evaluation</p>	<p>Program specialists with an interest in legal empowerment are encouraged to invest in pilot program activities that also monitor and evaluate the impact of legal empowerment activities in advancing the goals or sector development programs.</p> <p>The monitoring and evaluation tools should seek convincing empirical evidence of the value of legal empowerment in advancing sector development goals, in particular, overcoming the constraints that prevent program beneficiaries from accessing resources, services, and opportunities. Legal empowerment initiatives should be treated as a learning experience. Program managers and local implementing partners are encouraged to report on the positive results achieved and the challenges faced in implementing legal empowerment activities.</p> <p>A key question to be posed is: can changes observed be attributed to legal empowerment interventions?</p>
<p>Information Sharing and Exchange of Experience</p>	<p>It is essential that those involved in legal empowerment activities, particularly those who pioneer the integration of legal empowerment in sector development programs, share information and learning.</p> <p>A commitment to exchanging information in good faith will ensure that others can benefit from individual efforts. It will also ensure that legal empowerment practitioners, government counterparts, legal and development scholars, and international agencies can collectively develop a common base of knowledge that may be shared, discussed, and enhanced as legal empowerment activities expand in Asia and internationally.</p>
<p>Cooperative Working Relations among All Stakeholders</p>	<p>Strong cooperative working relations between those responsible for the design and implementation of legal empowerment activities and their development agency and government counterparts are essential.</p> <p>Those involved in legal empowerment should develop common terminology that ensures that legal empowerment concepts and experiences are easily understood by lay persons.</p> <p>Most importantly, practitioners need to share experience in ways that underline the value of legal empowerment in contributing to the achievement of sector development goals.</p>
<p>Working Relations with Government Counterparts</p>	<p>The quality of working relations with government counterparts typically vary from one country to another and from one context to another, with certain challenges commonly encountered in working with government counterparts on a legal empowerment project. For example, the very term “legal empowerment” may concern government counterparts (and local elites) if they believe that the project will undermine their traditional power advantage over marginalized populations. This is particularly so if they believe they are required to surrender traditional power advantages, will face pressure from legal empowerment practitioners, will face criticism, or will otherwise be compelled to relinquish benefits or privileges that they have enjoyed as a result of their traditional role and relationship with disadvantaged populations. In some instances, their concerns are actually well-founded.</p>

Issues	Strategic Considerations
	<p>The challenge lies in convincing hesitant government officials that, while their traditional power advantages may indeed need to change or be reevaluated in certain ways, there are other incentives from which they stand to benefit if they support legal empowerment initiatives. It is essential that legal empowerment practitioners work in a transparent manner, meeting regularly with government counterparts to share information and establish a sense of ownership on the part of public officials and agencies.</p> <p>A positive working relationship of this kind is critical to the success of legal empowerment initiatives, with program implementation shaped by a combination of goals and considerations of importance to all stakeholders.</p> <p>A positive attitude on the part of government counterparts will also encourage women and other disadvantaged groups that are intended to benefit from a legal empowerment activity.</p>
Selection of Pilot Project Sites	<p>Great care and consideration must be taken in selecting the project location that will host the legal empowerment activity.</p> <p>In the case of a pilot legal empowerment project, it is important to take account of the evolution of the host project, particularly where the primary activities have been implemented in phases—at different times in different locations. An ideal pilot project location may be one where the host project has been working for a reasonable amount of time and has reached certain milestones in the sequence of implementation, rather than a location where the host project is still in its infancy.</p> <p>For example, a national water management project may facilitate the establishment of local water user associations following a number of preparatory activities. The launch of the legal empowerment component could coincide with some of the preparatory steps. The success of the legal empowerment project may be determined in part by the timing of its launch and whether its commencement ties in well with the sequenced steps of host project implementation in a particular community.</p>
Legal Empowerment is a Long-term Process that Warrants Extended Investment	<p>Legal empowerment is a long-term process and its best results are achieved over time.</p> <p>International agencies need to allow ample time to design, implement, monitor, and assess the impact of pilot legal empowerment projects, and afford opportunities to implement pilot activities in a variety of contexts so that comparisons can be drawn among activities implemented in a variety of circumstances.</p>
Legal Empowerment for Citizens and State Functionaries	<p>The greatest challenge for those seeking to bring legal empowerment activities into the mainstream will be to expand their research and negotiate with government agencies at the national and local levels to strike a more effective balance between legal empowerment for local citizens and for state functionaries.</p> <p>Legal empowerment initiatives frequently assume that the state is somehow more legally empowered than local citizen. But, this assumption may be incorrect. Practitioners need to consider the circumstances of the state agencies and officials implementing program activities, especially where they are responsible for making decisions that affect access to resources, services, and opportunities under the project. This consideration needs to be given at the design and implementation stage.</p>

community whose interests or historical power advantages will be undermined by the success of legal empowerment interventions. Such parties may resist efforts to introduce or implement legal empowerment interventions.

- (iv) **Capacity of Project Implementers.** Managers need to ensure that those who will be responsible for implementing the sector program will have the capacity to do so, including (a) program managers; (b) technical program specialists in gender, governance, and other related fields; (c) government counterparts; (d) implementing agencies; and (e) individuals appointed to serve the sector program in a periodic assessment or advisory capacity. The key question is whether those parties have sufficient capacity to design, implement, and assess the sector program; or whether specialty support is required to contribute to the design, implementation, and assessment of the program and/or to help raise internal capacity.
- (v) **Key Sources of Support.** Managers need to identify the key sources of external domestic and international support on which sector program managers can draw in designing, implementing, monitoring, and assessing the impact of legal empowerment strategies. In most cases, domestic CSOs are the best placed to advise on the social and political environment operating at the proposed site. Their knowledge can be used to shape the course and outcome of legal empowerment strategies. Such organizations also frequently have the capacity to

engage in a combination of national information sharing, advocacy strategies, and program delivery mechanisms through which legal empowerment activities can be implemented at the community level.

Special Working Relationships between Government, Civil Society, and Development Partners and Clear Understanding of the Program Environment

While civil society brings the best possible depth of local knowledge, experience, and technical capacity, recent pilot project experience yields important lessons learned about the roles of different actors and stakeholder groups. In particular, the special circumstances of legal empowerment initiatives in sector development programs demand considerable patience, flexibility, and reciprocal understanding on the part of civil society leaders, government officials, and development partners to forge the special working relationships on which success depends. For example, the community legal service organizations that have played a pioneering role in legal empowerment efforts in Bangladesh, Indonesia, and Pakistan routinely interact with government agencies and officials at the national and local level in supporting beneficiary communities in legal dispute resolution and administrative procedures. Whether cooperative, adversarial, or focused on information sharing and advocacy representation, periodic engagement of this kind is very different from the ongoing interaction and partnership relations on which a sector legal empowerment strategy is based.

Where past relations between government and civil society have been characterized by reciprocal tensions or misunderstanding, the legal empowerment team needs to

encourage the parties to put aside their past differences and establish a common ground for cooperation. In some cases, the resolution of differences and establishment of common ground can be as simple as moving past barriers of language. For example, government officials may be uncomfortable with the term “legal empowerment.” To them, it may signal unwelcome change, particularly if they feel out of their depth because they do not have specialized legal expertise or do not understand the terminology. They may also be concerned about departing from established procedures or changes to the power dynamic of a community. In a working environment and culture in which power derives from political or economic authority and is exercised in one direction, the prospect of extending power to other stakeholders can be disconcerting.

Specific Design Considerations

Conform to Established Design Procedures. Most international development agencies follow established procedures in refining existing sector programs and in designing, implementing, and monitoring new ones. Apart from exceptional circumstances, these procedures should be understood and strictly adhered to by prospective NGO partners when designing an integrated legal empowerment component. Although there may be some flexibility to refine an existing sector program to include a legal empowerment component when the initiative has the support of program managers and government counterparts, there is little prospect of adding it as an afterthought.

Socialize the Concept of Legal Empowerment among Key Stakeholders. Beyond the sequence of procedures set by protocol, other steps can be taken to secure stakeholder sup-

port for legal empowerment activities. Formal program design procedures and consultations should be accompanied by concurrent dialogue with key government officials, local stakeholders, and others whose support is essential in approving the integrated program and subsequently ensuring its successful implementation.

Ground Program Design in Robust Empirical Research. Program design should ideally be based on robust empirical research. Where resources allow, a combination of quantitative survey research, focus group discussions, and other qualitative research should be undertaken. The research should be used to establish a clear understanding of the existing legal and administrative circumstances of women and other disadvantaged groups, and their relationship to the public authorities and other stakeholders in the sector targeted by a planned program.

Understand the Political Economy of Reform. Background analysis and baseline assessment tools must take careful account of the political and economic factors that influence the relationship between disadvantaged groups and a sector development program administered by government or an international development agency. There is limited hope of a legal empowerment strategy succeeding if it fails to comprehend (i) what the interests and influence of local political actors, economic elites, and other stakeholders are; (ii) how those factors influence the circumstances and experience of disadvantaged groups; and (iii) the probable response of local political actors, economic elites, and other stakeholders to a legal empowerment initiative that threatens their traditional power advantages. Management of relations with powerful stakeholder groups must figure prominently in every legal empowerment

strategy if the program is to move from basic awareness raising to the highest-order interventions that secure policy reform and related outcomes. To this end, program strategies should firmly focus on changing the political rights and status of disadvantaged groups. This core strategic approach should apply regardless of the actual pace and sequence of program interventions.

Take Careful Account of Resource Requirements. The program design strategy should also take careful account of resource requirements, long-term investment and resource flows, and sustainability considerations. Project sustainability is the second most fundamental goal of legal empowerment projects. As a starting point, legal empowerment strategies should be designed to be as cost-efficient as possible, with the aim of establishing information sharing and support mechanisms for which beneficiary communities gradually assume leadership responsibility over time. Resource requirements may be significant at the outset of a program, when greater technical inputs are required to provide necessary training and design and to test monitoring and evaluation strategies. Moreover, resource needs may increase through the middle term of a program if the strategy calls for a gradual expansion of activities to new program areas. While resources should be linked to the scale of outputs and set to avoid the mistake of promising much and budgeting little, the strategy and associated resource requirements should always be guided by the expectation that local partner organizations will assume program leadership at the close of the project.

Choice of Funding Mechanisms. In sector development programs, significant considerations are attached to the choice of funding mechanism for a legal empower-

ment program. It may be important to take into account a variety of stakeholder views. For example, in most ADB projects, the substantial investment comes from the loan facility, while associated technical inputs or learning innovations may be provided under separate grant mechanisms. Government counterparts prefer that loan obligations be allocated for investments in infrastructure and other “hard” costs. They are less disposed toward assuming debt obligations for “soft” investments such as legal empowerment. Experience suggests that grant funds present the most flexible option for large-scale legal empowerment initiatives that are intended to serve as proof of concept models for broader future adoption by ADB and other agencies. In the long-term, loan facilities offer the greatest future scale of investment. Therefore, if program managers are to persuade a government that legal empowerment should be funded by loan facilities, they will need to provide compelling evidence from early grant-funded activities that legal empowerment contributes to the success of loan-funded sector development programs.

Practical Considerations from Experience

In addition to the above considerations, pilot program experience in Bangladesh, Indonesia, Pakistan, other Asian countries, and other countries from around the globe yields a wealth of practical experience that may inform the future design and implementation of integrated legal empowerment strategies.

Start Modestly and Expand Activities Incrementally. The larger and more complex a development program becomes, the more difficult it is to learn from the experience and refine future strategies. Those responsible

for the design, implementation, or funding of sector development programs should not be pressured to begin with large legal empowerment programs. While important experience can be drawn from working in a number of program areas that have unique cultural or other features or challenges, it is best to begin with a manageable number of program activities and implementation sites. By expanding a program incrementally, there is time to learn from preliminary experience, learn from mistakes, make adjustments based on experience, and increase the prospect of program success.

Establish Relationships of Trust with All Stakeholders through Candid Dialogue and Information Sharing. One of the most striking lessons learnt from the Indonesia Irrigation Sector Legal Empowerment Study and the three pilot projects undertaken under the Legal Empowerment for Women and Disadvantaged Groups Project was the importance of good communication among all stakeholders in a legal empowerment program. Good communication, candor, and transparency are the basis of sustainable trust relations among program personnel, government counterparts, and the CSOs that contribute to a program. Public-private partnerships hold tremendous potential but are notoriously difficult to repair when communications fail and trust fades. When multiple stakeholders are involved in legal empowerment program design, each should be sensitive to the perspectives of the other and meet regularly to share information, review the progress of activities, identify existing issues and anticipate others before they materialize, and acknowledge and appreciate the contributions of fellow stakeholders.

Flexibility is Essential. If legal empowerment were an easy process and goal, it would

have been achieved decades ago. Few fields of development include so daunting a mix of stakeholder sensitivities that are rooted in power and influence, politics, economic benefit, roles and responsibilities, learned helplessness, and the semantics of terms and concepts. Legal empowerment interventions will only succeed where all stakeholders are prepared to be flexible in adjusting or responding to unanticipated changes, issues, and opportunities that arise through the process of program design, implementation, and monitoring and evaluation.

Strategically Select Areas of Focus and Set Reasonable Targets. While legal empowerment experience and assessment results have increased exponentially in recent years, integrating legal empowerment activities in sector development programs has barely begun. It is a given that any new program initiative will aim to have value to the beneficiaries so it is important to be strategic when selecting host projects, activities, and areas of focus. Given that this work is still in its infancy and there are yet many lessons to be learned, there is sense in choosing “low hanging fruit,” that is, programs that have a strong probability of success based on a variety of factors. Those projects with the strongest prospects of success are likely to be those where there is strong support among government counterparts and stakeholders, keen interest on the part of program managers of prospective host programs, and a particular issue that enjoys a high public profile that is likely to generate strong media coverage of the program as a whole. By being strategic about program selection, generating positive program outcomes is more likely.

Anticipate and Manage Resistance to Change. Where women or other disadvantaged populations face security, education,

economic, or other challenges, there are certain powerful interest groups that will resist any effort to empower the disadvantaged. In some cases, resistance is based on a threatened loss of genuine economic, political, or other power advantage that the stakeholder is loath to give up. In other cases, the stakeholder perspective is based on wrong information or misunderstanding. Different tactics will apply in every case, but those res-

possible for implementing a program should be prepared to face resistance and manage it through a combination of responses. The responses could include (i) dialogue, (ii) economic and other incentive arguments that stress the advantages of supporting reform initiatives, and (iii) positive media coverage that endorses legal empowerment and praises public officials and private interest groups that support it.

Appendix 1: Nongovernment Organization Strategic Program Planning Checklist and Recommendations

This appendix is intended to provide practical guidance to nongovernment organizations that are considering undertaking legal empowerment work, and those that are already engaged in legal empowerment work but want to refine their existing work. It is focused on providing practical strategies for developing, implementing, and monitoring integrated legal empowerment activities that will help advance the goals and impact of sector development projects.

Table A1.1: Strategic Recommendations

Topic	Issues for Consideration	Strategic Recommendation
I. Institutional and Geographic Context Institutional Focus	Institutional and Geographic Focus of the Potential Legal Empowerment Program Provider <ul style="list-style-type: none"> • Does the nongovernment organization (NGO) specialize in community legal service delivery, legal advocacy, or other access to justice matters? • Is the NGO a community development organization that has an interest in legal empowerment as a complement to its broader work? 	<ul style="list-style-type: none"> • The NGO may consider undertaking independent legal empowerment activities, or alternatively provide specialized technical support to other civil society organizations (CSOs) that lack its specialty focus and experience. • Research indicates that integrated legal empowerment activities are particularly effective. An NGO that specializes in community development may require, or benefit from, cooperative working relations with a specialty legal service provider to fulfill certain functions—for example, referral of lawyers to undertake legal aid.

Topic	Issues for Consideration	Strategic Recommendation
Geographic Focus	<ul style="list-style-type: none"> Is the prospective legal empowerment NGO a national-level organization? If so, does it operate through an established community-level network? Is the prospective legal empowerment program provider a provincial, district-level, or community-based organization? 	<ul style="list-style-type: none"> <i>National Capital-Based Operation with Modest Geographic Outreach and Network Contacts.</i> Is the NGO positioned to undertake legal empowerment work in this capacity, or is it better equipped to focus on national level policy issues? The NGO might need to establish network contacts with other organizations that have a local presence before launching a legal empowerment program. <i>National Capital Headquartered Organization, with a Provincial and/or District- or Community-Level/Network of Field Offices.</i> The NGO may be well positioned to undertake a combination of targeted legal service activities and national-level advocacy activities, or to assume a lead role in establishing network links for a broader reaching legal empowerment activities. <i>Capital Headquartered, with a Network of Local Partner Organizations (NGOs, Community-Based Organizations, Other).</i> The NGO may be ideally placed to assume a technical support role for smaller organizations—including the design and dissemination of legal awareness materials and methodologies. <i>Provincial and/or District Headquartered, with a Network of Community-Based Field Offices.</i> The NGO may be best suited to introducing a community legal service program, with a variety of support services. <i>Provincial and/or District Headquartered, with a Network of Local Partner Organizations (NGOs and/or Community-Based Organizations) Working at the Grassroots Level.</i> The NGO may be best suited to serving in a provincial level technical support capacity and working with smaller local partner organizations. <i>Based in a Single Community.</i> The NGO may be best placed to address community issues and to establish links with potential partner organizations that work at the provincial and national level.

Topic	Issues for Consideration	Strategic Recommendation
<p>II. Issues to be Addressed</p> <p>Local, National, or International Issue</p>	<p>Nature of the Issues Affecting Disadvantaged Groups</p> <ul style="list-style-type: none"> • Community-specific issue. • Community variations of national level issues—for example, domestic violence affecting the rights, security, and economic opportunities of women. • Community variation of an international issue—for example, marginalization of women under traditional religious or cultural norms and values. 	<ul style="list-style-type: none"> • Consider relevant experience of counterpart organizations in addressing similar issues in other communities. Do not waste time reinventing the wheel when ample guidance and insights can be drawn from existing experience. • Draw on strategies and materials developed at the national level for application in the community context. An NGO working at the subnational level may establish links with national-level advocacy activities, or adapt national materials for application in the community context. • Draw on international experience and materials to guide work at the community level. Adapt international materials for local language and context.
<p>Basis of Knowledge of Issues.</p>	<ul style="list-style-type: none"> • Has the information been gathered through independent observation and judgment? • Is the perspective informed by the perspective of community partners—the poor, women, and other marginalized populations? • Is the perspective informed by the perspective of broader stakeholders—including government officials and elite groups? 	<ul style="list-style-type: none"> • NGOs should reflect on additional information that may be required to develop a legal empowerment strategy. • Community trust, ownership, and commitment are an essential part of any legal working relationship in legal empowerment. It is essential to consult beneficiaries, even if the NGO is convinced of its understanding of issues and their importance to community members. It is important to refine strategy and establish working relationships of trust with partner communities, to ensure that their views and interests are taken seriously. • Seek additional consultations with broader stakeholders, including government officials and elites. Community members have a clear and articulate understanding of the problems facing them, but it is important to understand the perspective of all stakeholders. • Consider the potential value of more sophisticated empirical research and the establishment of baseline information. Confirm key assumptions and establish a baseline that can be used to monitor progress and impact over time and to fine-tune program strategies on the basis of lessons learned.

Topic	Issues for Consideration	Strategic Recommendation
Nature of the Problem to be Addressed Through a Legal Empowerment Component	<ul style="list-style-type: none"> What is the nature of the problem faced by women or other disadvantaged groups? 	<ul style="list-style-type: none"> Different issues require different strategies and different combinations of program activities. Examples include <ul style="list-style-type: none"> (i) human rights violations; (ii) individual security (such as domestic violence) or community security (police performance and relations between the community and police); (iii) recurrent legal disputes regarding families, land, or environmental degradation; (iv) displaced persons; (v) administrative law; (vi) corruption; and (vii) underlying legal dimensions reflecting broader development or governance issues (see below). Consider the experience of NGOs in other parts of the country, or elsewhere in the region.
III. Cause of the Problem Benign Circumstances	1. Benign Circumstances or Deliberate Interference or Malfeasance? <ul style="list-style-type: none"> These typically result from unintended actions by elites, power brokers, government officials, or others in authority and result in the exclusion of marginalized groups. Examples include <ul style="list-style-type: none"> (i) Lack of knowledge among citizens, government officials, or both. (ii) Lack of formal legal or administrative support services available to citizens. 	<ul style="list-style-type: none"> Determine whether the problem can be addressed simply by raising the knowledge and capacity of citizens, communities, and public officials. Determine whether the problem can be addressed by providing a combination of community legal services (consultations, legal aid, or alternative dispute resolution). Problems that result from benign causes tend to be more easily addressed, where no opponent stakeholders seek to undermine legal empowerment efforts.

Topic	Issues for Consideration	Strategic Recommendation
Deliberate Interference or Malfeasance	<ul style="list-style-type: none"> • Are government officials, powerful elites, or other hostile agents targeting or excluding vulnerable populations, or refusing to surrender traditional power advantages? 	<ul style="list-style-type: none"> • Program strategies must take account of the motivations and actions of opponents— informed by political economy and incentives analysis. While interested NGOs can expect to solve individual legal problems with minimal interference, the broader issues can only be addressed by countering resistance from vested interest groups. • Problems of this kind tend to be more difficult to address, where opponents actively seek to undermine legal empowerment efforts. • Some options are to exclude opponents or seek to build bridges with them. Where reasonable prospects exist, it is always preferable to build bridges with opponents and to establish effective partnership relations with government counterparts and other stakeholders whose support is essential.
Combination of Benign Causes and Deliberate Interference	<ul style="list-style-type: none"> • Problems frequently result from benign and deliberate interference. It is more unusual for problems to be sustained in some way by parties whose power advantages are threatened or undermined by legal empowerment activities. 	<ul style="list-style-type: none"> • Program strategies should ideally combine awareness-raising and support services with parallel activities that take account of opposition from vested interests. NGOs should expect greater initial progress on awareness activities than in countering opponents. As knowledge and community confidence increase, there is greater prospect of community resistance to vested interests.
	<ol style="list-style-type: none"> 2. Underlying Social Factors <ul style="list-style-type: none"> • Is the problem rooted in traditional social, cultural, or religious values and practices? 	<ul style="list-style-type: none"> • Problems of this kind may require multipronged strategies, through which legal service providers and/or advocates assist individual beneficiaries while at the same time working to change broader societal values or to secure the support of key persons of influence—for example, local religious leaders.
	<ol style="list-style-type: none"> 3. Underlying Governance or Development Dimensions <ul style="list-style-type: none"> • Is there a clear human rights or legal dimension, or is the legal dimension rooted in broader governance or development issues? 	<ul style="list-style-type: none"> • Beneficiary communities and stakeholders may not be aware of the underlying legal or governance dimensions. Program activities should take account of this and raise people's awareness that many legal problems are not recognized as such by laypersons—including sector development program managers who have experience with law. • Take the opportunity to align legal empowerment strategies with broader governance reform, sector, or core governance work, which may potentially access a broader pool of resources. This approach needs thoughtful monitoring and evaluation strategies (see below).

Topic	Issues for Consideration	Strategic Recommendation
IV. Basis of Engagement	<p>Trust and Goodwill Relations</p> <ul style="list-style-type: none"> Has the implementing organization already built up a relationship of trust with the target community? Or, will successful legal empowerment activities depend on the implementing organization investing time and effort to build relationships with community members, associated public agencies, and officials? Does the quality of existing relations, trust, and goodwill between the legal empowerment NGO and the target community have implications for the timing and sequencing of activities? 	<ul style="list-style-type: none"> Include a national advocacy campaign as part of a comprehensive, independently administered program strategy. Establish formal links with organizations specializing in advocacy. Join or associate with a national advocacy coalitions. Draw on national/international sources. <ul style="list-style-type: none"> NGOs should be prepared to invest time and effort in building up relationships of trust with the beneficiary community and other key stakeholders, including government officials. NGOs should be prepared to brief government officials on program activities and seek opportunities to engage with government officials and agencies, according to best judgment on their willingness to engage and contribute to the goals of a legal empowerment program. The timing and sequencing of activities should take account of the time reasonably needed to establish working relationships. Be generous in estimating the time needed to lay a foundation of sound working relations—the additional time required to establish relations of trust will pay dividends through the course of program implementation.

Topic	Issues for Consideration	Strategic Recommendation
V. Modalities	<p>Independent or Collaborative Engagement</p> <ul style="list-style-type: none"> Should the NGO work completely independently? In broad coordination with other CSOs—at the community level alone or at the national and community levels? In close cooperation with other CSOs? Is there an opportunity to establish or associate with a national coalition? <p>What Combination of Activities?</p>	<ul style="list-style-type: none"> Learn about the work of other organizations, share experience and relevant materials, and participate in periodic roundtable meetings. Establish working relations with dedicated legal aid providers or organizations with a specialty capacity in advocacy work. Share responsibilities for different project components or interventions: legal awareness, legal aid, alternative dispute resolution, advocacy. Reflect on prospective partnership relations and collaboration and the strategies required to establish them.
VI. Planning Program and Awareness Raising	<ul style="list-style-type: none"> What information needs are essential for the target audience? Create new materials or draw on existing sources? What combination of media? Seek technical inputs on design, content, and methodology for education? Adopt a participatory approach toward developing education strategies? 	<ul style="list-style-type: none"> Consult studies regarding best education methodologies and media outreach activities. It may be more cost-effective to share materials or adapt materials for a particular context. Take account of literacy levels among beneficiary communities and what kinds of messages and materials the beneficiary communities will most readily absorb—for example, print, electronic, popular culture, public forums, and/or a combination of these activities. Seek professional input. Pilot test awareness-raising materials and refine them based on practical experience.

Topic	Issues for Consideration	Strategic Recommendation
		<ul style="list-style-type: none"> Consult materials on participatory human rights education by Professor Richard Claude.^a Implement follow-up sessions with beneficiary communities to ensure they have understood and appropriately applied the legal awareness materials.
Second-Order Legal Service Activities	<ul style="list-style-type: none"> Legal counseling. Alternative dispute resolution: existing traditional practices—effective or in need of refinement? Legal aid: hire lawyers or engage existing legal aid organizations, including government-administered programs? 	<ul style="list-style-type: none"> Basic legal counseling is useful, but will raise immediate expectations for comprehensive legal services. Look to relevant national, regional, and international experience in designing and implementing program strategies. Consider cost and other considerations in determining whether and how to engage or employ lawyers to provide legal aid services—can the needs be effectively addressed by a lower cost paralegal services, or through a sensible combination of professional and paralegal services.
Highest-Order Advocacy Activities	<ul style="list-style-type: none"> National- or community-level? Consider what stakeholders are being targeted—law and policy makers, government officials, judges, legal professionals, or other CSOs? Are there legislative reform elements? Do government partners require technical inputs? 	<ul style="list-style-type: none"> It may be useful for NGOs to choose between single or combined strategies that target different stakeholders, vested interests, or potential champions of reform.
Combination of Activities	<ul style="list-style-type: none"> Chose between a single, narrowly focused approach, or a more typical combination of program approaches. 	<ul style="list-style-type: none"> Legal empowerment strategies typically include a combination of activities. Take careful account of sequencing in determining initial program activities.

^a Claude, Richard Pierre. 2000. *Popular Education for Human Rights: 24 Participatory Exercises for Facilitators and Teachers*. Amsterdam/Cambridge, MA: Human Rights Education Associates. Available: www.hrea.org/pubs/Popular_Education/PopEd.html

Topic	Issues for Consideration	Strategic Recommendation
VII. Sequencing of Activities	Strategic Planning and Resource Considerations	
Strategic Planning	<ul style="list-style-type: none"> • Goodwill relationship building—beneficiary communities, government officials, other stakeholders. • Human resource development. • Pilot testing of materials, services, advocacy initiatives. 	<ul style="list-style-type: none"> • Invest in building relationships with key beneficiaries, other stakeholders, and other organizations involved in legal empowerment. • Invest in developing the skills of institutional personnel (professional program personnel); community members (community counterparts, paralegals); and government counterparts. • Invest in pilot testing and refining strategies and materials based on observations and input from beneficiaries and stakeholders.
Resource Considerations	<ul style="list-style-type: none"> • What are the anticipated costs of undertaking the sequenced steps? 	<ul style="list-style-type: none"> • Study existing donor investments. • Consult donors to gauge potential resources. • Undertake modest preparatory activities. • Prepare a geographic outreach model which takes into account a gradual expansion of activities and an increased need for resources. • Consider whether the program can be sustained in the absence of ongoing financial support.

Topic	Issues for Consideration	Strategic Recommendation
VIII. Monitoring and Evaluation	<p>Sound Monitoring and Evaluation (M&E) Strategies are Essential</p> <ul style="list-style-type: none"> • Beyond counting heads or cases, link strategy to high-level poverty reduction and governance issues. • Identify policy reforms, milestone jurisprudence, or other reforms that are attributable to legal empowerment activities. 	<ul style="list-style-type: none"> • Invest in human resource development to enhance M&E capacity. • Strike a balance between ease of use and sophistication of analysis. • With the support of donor agencies, standardize M&E tools to the extent practical. • Pay due attention to the M&E process and data quality. • Develop specialized tools for assessing how legal empowerment affects poverty reduction and governance, settlement duration, access to justice constraints, justice-seeking behavior, beneficiary patterns, community awareness of available services, mediated settlements, and gender equity issues.
IX. Fundraising	<ul style="list-style-type: none"> • Identify potential development partners by developing an understanding of their interests and operating styles. 	<ul style="list-style-type: none"> • Get to know potential funding agencies, including their interests and orientation, and their current work.

Appendix 2: Enhancing Nongovernment Organizations' Legal Empowerment Capacity

Table A2.1: Strategic Recommendations to Nongovernment Organizations

Category	Issues or Challenges	Recommendations
<p>I. Program Substance Issues</p> <p>General Legal Awareness Raising</p>	<ul style="list-style-type: none"> Most legal awareness strategies use conventional tools and traditional teaching theories to educate citizens about legal rights. Strategies may fail to appreciate that abstract concepts often fail to resonate with the daily life experience of women and other disadvantaged groups. It is important to ensure that television viewers, radio listeners, and observers of popular cultural performances can understand the intended lessons and therefore draw the correct conclusions; alternatively, they must be able to use the information in the manner intended. 	<ul style="list-style-type: none"> Introduce participatory educational methodologies that aim to register human rights, legal inequities, and other themes in the daily life experience of marginalized groups. Invest in independent or collective research and assessment on legal awareness tools and strategies to determine (i) what is the most popular media; (ii) what strategies and tools work best; (iii) how can recipients use the information received; and (iv) what are the best structures for passing on information, filtering information, and imparting and teaching lessons, taking into account literacy constraints and other challenges. Develop legal awareness-raising strategies and tools based on a thorough knowledge of education levels, preferences, and existing information gathering mechanisms among target population. Legal empowerment nongovernment organizations (NGOs) should adopt many of the same tools applied by consumer behavior specialists to understand the market for commercial goods and services. Much of this information already exists and has only to be accessed.

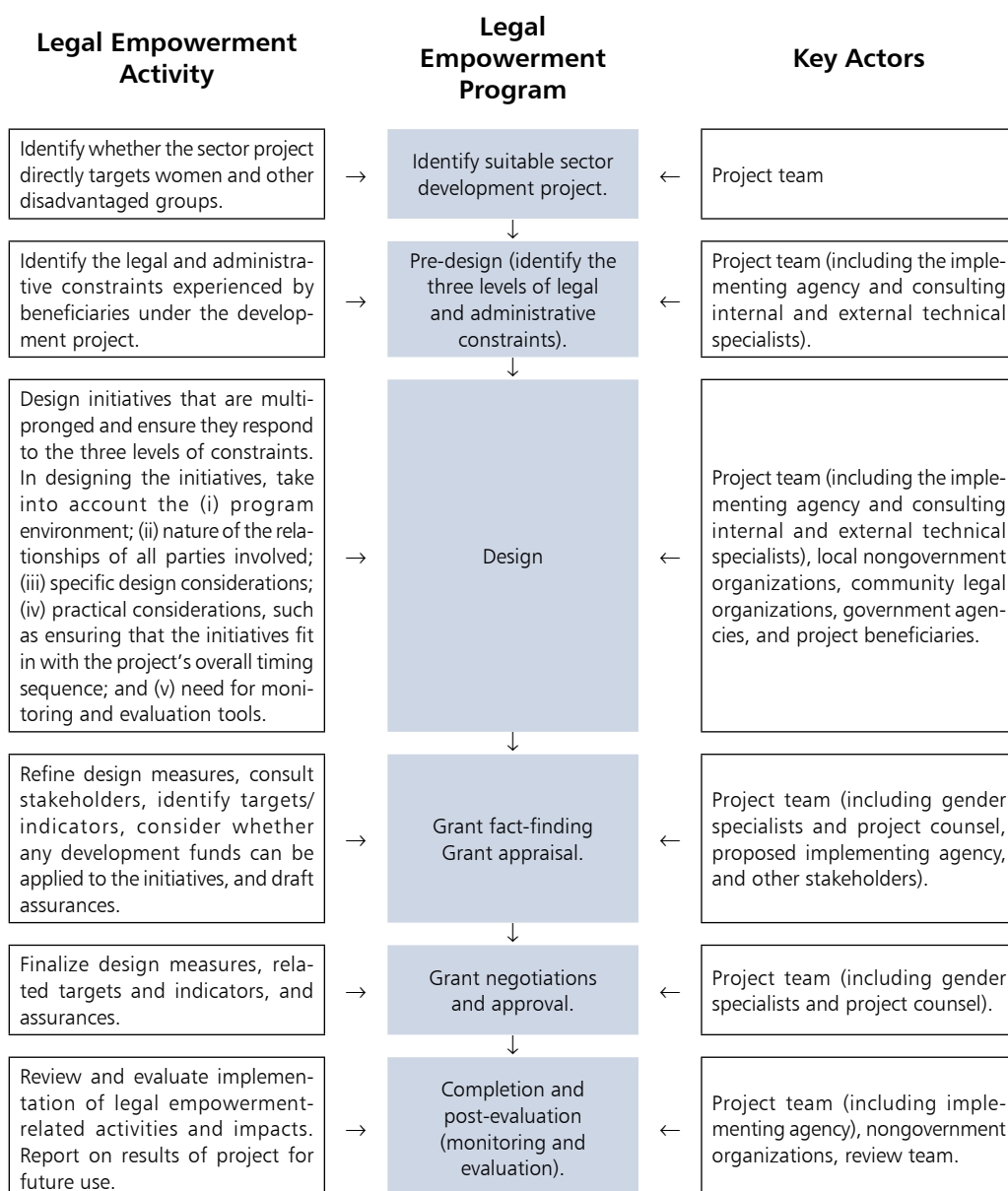
Category	Issues or Challenges	Recommendations
Alternative Dispute Resolution (ADR)	<ul style="list-style-type: none"> Gender inequities and other implications of imbalanced power relations continue to affect the quality of justice experienced by women and marginalized groups. It is difficult to say what is the most effective ADR methodology followed by legal empowerment and/or community legal service organizations. This reflects insufficient research on which approaches are effective, in what contexts, and why. 	<ul style="list-style-type: none"> Invest in more sophisticated research and assessment tools to understand the context and manifestations of gender and other imbalances. This need not be a single institutional investment, but can be borne by multiple organizations or funded by donors. Design, test, and disseminate more sophisticated research and assessment tools. Examples of assessment criteria include (i) beneficiary access, (ii) process justice, (iii) observation and enforcement of settlements over time, and (iv) social change impact. Consider alternative models of program delivery to the grassroots level.
II. Institutional Capacity Development		
Monitoring and Evaluation	<ul style="list-style-type: none"> The ultimate goal of legal empowerment work is to achieve a demonstrable impact on set targets. It is constrained to some degree by stubborn adherence to conventional rights-based approaches that make little impression on certain stakeholders. Virtually every legal empowerment organization has some form of monitoring and evaluation (M&E) system in place—most are very basic and equipped to do little more than count basic outputs. Notwithstanding the increasing global emphasis on achieving the Millennium Development Goals and legally empowering disadvantaged groups, very few NGOs and donors actually monitor the broader impact of their legal empowerment interventions on poverty reduction and governance reform. 	<ul style="list-style-type: none"> The rationale and results frameworks for legal empowerment (e.g., LogFrame analysis) need to be grounded in alternative indicators and incentives. They need to pursue robust empirical methodologies to assess the relationship between legal empowerment activities and outcomes in order to determine the impact of activities. There also needs to be greater emphasis on understanding the economic impact of legal empowerment work. Invest in human resource development to enhance M&E capacity. Balance sophistication of analysis with ease of application. Gain the support of donor agencies to standardize M&E tools to the extent that is practical. Pay due attention to the M&E process and quality of data collected. Develop specialized tools for assessing the impact of legal empowerment on (i) poverty reduction and governance; (ii) how quickly legal disputes settle; (iii) political economy of access to justice constraints; (iv) beneficiary behavior, including whether legal empowerment impacts on justice-seeking behavior and community awareness of available services; (v) mediated settlements over time; and (vi) gender equity issues.

Category	Issues or Challenges	Recommendations
	<ul style="list-style-type: none"> M&E tools tend to satisfy basic reporting requirements. But, they do not promote thoughtful reflection about program impact, program refinement, and future program strategies. NGOs have different motivations for undertaking M&E, and they frequently do so in response to donor pressure. This institutional burden can detract from other important tasks. Frequently, there are internal human resource capacity issues. In some cases, the best resourced organizations hire consultants to coordinate M&E, but this is problematic where the M&E tools do not assess ways in which the organization can develop its capacity in the future. There is an untapped potential to develop more sophisticated monitoring tools. 	<ul style="list-style-type: none"> Apply more sophisticated empirical tools to establishing baselines, assessing performance, and refining program strategies. Share experience and good practices among legal empowerment NGOs. Resist the urge to defend negative results—encourage and reward candid M&E analysis.

Category	Issues or Challenges	Recommendations
<p>III. Improved Coordination and Networking among Legal Empowerment NGOs</p> <p>Geographic Outreach of Legal Empowerment Services</p>	<ul style="list-style-type: none"> • There are few initiatives that map the geographic outreach of community legal service delivery and other legal empowerment support. Even individual legal empowerment NGOs have difficulty explaining the size and location of their service areas, and the rationale behind the size and location of their activities. • Legal empowerment initiatives are frequently concentrated in small areas that sit next to areas receiving minimal coverage. In many cases, the areas with minimal coverage have a greater need for legal empowerment initiatives than those with full coverage. 	<ul style="list-style-type: none"> • Develop innovative mapping tools and methodologies, including surveys, research teams, and focus group discussions. • Establish dialogue among legal empowerment NGOs to discuss mapping findings and recommendations. • Pursue a more sensible division of geographic responsibility and avoid overlap.
<p>Enhanced Communications and Coordination among Legal Empowerment NGOs</p>	<ul style="list-style-type: none"> • Different NGOs often overlap in the type or scope of legal empowerment activities—most organizations seek resources for a set pattern of activities, without reflecting on their core competencies or how they could sensibly divide labor. • Busy legal empowerment NGOs have little time or inclination to communicate with one another and share experience—the situation reflects in part a fierce competition for funds. • There is little independent facilitation of opportunities for dialogue and information-sharing among legal empowerment NGOs. 	<ul style="list-style-type: none"> • Establish partnerships with other legal empowerment NGOs in pursuing donor funding, demonstrating a sensible division of labor. • Make the effort to establish regular or periodic information sharing arrangements with other legal empowerment NGOs. • Encourage donor partners to convene periodic information sharing sessions in a neutral forum.

Category	Issues or Challenges	Recommendations
IV. Innovation, Sustainability, and Resource Mobilization		
Cultivating Next Generation Legal Empowerment Leadership	<ul style="list-style-type: none"> Fewer young lawyers and development specialists are seeking careers in legal empowerment and/or legal service delivery. Consequently, as senior NGO leaders and legal empowerment specialists approach retirement age, there are no obvious successors among the next generation of legal professionals. 	<ul style="list-style-type: none"> Visit law schools to share information on legal empowerment work and participate in career fairs. Host law student internships and participate in law school clinical legal education programs. Host fellowship programs for young lawyers with legal empowerment NGOs.
Promoting Public–Private Partnerships in Legal Empowerment	<ul style="list-style-type: none"> Collaborative working relationships between government and civil society are important to achieving outcomes—i.e., legal empowerment is not simply about empowering citizens, but also about equipping public officials to discharge their legal and administrative decision-making powers. Government is one of the traditional seats of resistance to legal empowerment—public–private partnerships help overcome this fundamental challenge with minimal investment. Present working relationships continue to be circumscribed by reciprocal tensions and mistrust. It is essential that public officials and NGOs set aside these traditional tensions and establish common understanding and working relationships. 	<ul style="list-style-type: none"> Work toward setting aside traditional tensions and engage in cooperative relationships with government agencies. Meet with public officials and find out what challenges they face in discharging their legal and administrative duties. This will engender their trust and lay the foundation for strong partnership. Implement incentive strategies to encourage legal empowerment NGOs to cooperate with government agencies. Engage the print and broadcast media to highlight the benefits of public–private partnerships.

Appendix 3: Entry Points for Incorporating Legal Empowerment Initiatives into a Sector Development Program



Good Practices Guide for Incorporating Legal Empowerment into Operations

The guide seeks to give project specialists a basic understanding of legal empowerment and suggests practical strategies for designing, implementing, and monitoring legal empowerment projects.

The guide also describes the (i) importance of legal empowerment and its role in achieving broader development goals, (ii) constraints that women and disadvantaged groups face in participating in development initiatives, (iii) different levels of legal empowerment interventions and their benefits, and (iv) role of legal empowerment in sector development.

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Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Tel +63 2 632 4444
Fax +63 2 636 2444
www.adb.org
information@adb.org