



International Development Law Organization
Organisation Internationale de Droit du Développement



Universiteit Leiden
Faculty of Law

Van Vollenhoven Institute
for Law, Governance, and Development

Call for Papers

Legal Empowerment and Customary Law

I. Background

The links between legal empowerment, poverty reduction and development are now increasingly clear. In 2008 the Commission on the Legal Empowerment of the Poor estimated that four billion people live with inadequate legal protection, leaving them vulnerable to rights violations and unable to advance their interests as economic actors. Indeed for leading donors and agencies, development outcomes cannot be achieved unless legal empowerment and access to justice interventions are integrated into broader social, political and economic reform.

A parallel trend is the widespread recognition that in many areas of law across the developing world, customary legal systems represent the most relevant normative frameworks and dispute resolution processes, particularly for the rural poor. Thus for numerous developing countries, rights to land (access, usage, transfer, and inheritance), family disputes, criminal acts and civil matters are largely regulated by customary law. Although customary legal systems provide legal services that may be locally legitimate, efficient and accessible, these must be balanced against serious flaws. Customary systems are often discriminatory towards women, migrants and youth, lack transparency and accountability, and are vulnerable to elite capture.

Yet for the most part, there remains a distinct lack of awareness as to how customary legal systems function and accordingly how they can be strengthened and made more accountable. A growing body of research, in particular on customary land tenure, emphasizes the adaptive and flexible capacity of customary legal systems, dispelling widely held conceptions regarding their static, 'traditional' nature. However, as customary legal systems are characterized by their great diversity and complexity – even within a single country – the knowledge deficit is extensive. It is this inherent complexity that makes engaging with customary legal systems a problematic exercise and necessitates the adaptation of general policies for each specific context.

It is now clear that making legal empowerment a reality in the developing world requires engagement with customary legal systems. A fundamental transition in legal development thinking has therefore taken place. While aid policies formerly favored top-down assistance centered on judicial training and infrastructure for formal legal institutions, today there is increased focus on community-level programming, raising legal awareness and providing access to justice, including through an increased role for customary institutions.

However, while the policy prescriptions are becoming more established, there remain significant research gaps regarding what interventions work and why. IDLO seeks to address this issue by answering one key research question: how and to what extent can legal empowerment be achieved through engagement with customary legal systems? In partnership with the Van Vollenhoven Institute for Law, Governance and Development at Leiden University (VVI), IDLO will encourage research that aims to make a contribution to filling this knowledge gap by identifying entry points for engagement with customary systems and by analyzing how customary justice systems can be strengthened to become a vehicle for the legal empowerment of the poor.

The focus is on generating knowledge that will be of use in an operational context. Program designers and implementing staff struggle with the negative aspects of customary justice systems, and seek ways to improve their functioning in terms of equality, accountability, predictability, and individual rights protection. Their search for solutions is hampered by the lack of knowledge of local perceptions of customary legal processes, the community needs regarding legal empowerment, and how customary legal interventions can be integrated into broader reforms.

A particular area of focus is the role of customary tenure systems in securing land rights. It has long been assumed that customary tenure systems provide farmers with insecure and poorly defined land rights, thereby discouraging investment and restricting productivity. Although recent research questions this assumption, there remains insufficient awareness of how increased security of land rights can be practically achieved through engagement and support to customary legal systems.

IDLO's objective is to contribute to the knowledge base for practitioners and policy makers trying to achieve legal empowerment through engagement with customary legal systems. As a result, research will focus on contexts where (i) customary systems play an important role in dispute resolution; (ii) access to formal legal systems is weak, especially for poor and vulnerable populations, and; (iii) interventions by domestic actors and the international community in the areas of legal empowerment and access to justice are expected to increase significantly over coming years. This will be achieved by developing a knowledge bank of entry points for legal empowerment, evaluating interventions in customary legal systems as a means of improving legal empowerment, and building greater awareness of strategies that have worked in practice. Given the relative novelty of this approach, an overall objective is to enable comparative analysis of different practical approaches.

Thus while the potential of customary legal systems to achieve legal empowerment, provide access to justice and promote overall development has been recognized, making this a reality is some way off. Accordingly, practical strategies to minimize the shortcomings of customary systems and enhance their strengths need to be evaluated and documented. The broader challenge is to integrate and mainstream support to customary legal systems with broader legal sector reform efforts. Only then can the largely untapped potential of customary legal systems in achieving legal empowerment be realized.

II. Objective

IDLO and VVI are seeking submissions for an edited volume on the links between customary legal systems and legal empowerment, particularly on how engagement with customary legal systems may promote legal empowerment. The publication aims to enhance knowledge and understanding among academics, policymakers, and donors regarding the functioning of customary legal systems, and in particular their strengths and weaknesses, as tools for legal empowerment. It is expected that the authors of several papers included in the volume will be invited to present their work at conferences arranged by IDLO and VVI in two international locations.

III. Research Areas

Research should focus on contexts or interventions where customary justice systems are being harnessed, explicitly or implicitly, as vehicles for legal empowerment. While papers can adopt a policy, academic or practice-oriented approach, and are not restricted by geographical area, preference will be given for research that adopts predominately empirical methodology. While solid qualitative studies are welcomed, research that quantitatively evaluates the impact of efforts to achieve legal empowerment through strengthening customary legal systems is also needed. A thematic area that will receive particular attention is the role of customary legal systems in securing land rights and achieving legal empowerment in relation to property.

Examples of relevant research include evaluations of existing projects, thematic papers which capture innovative ideas for integrating support for customary legal systems into broader reform, and country-specific studies which track the interaction of customary legal systems within the formal legal system.

IV. Paper Specifications

Articles should be between 10,000-15,000 words in length and comply with the IDLO style guide.

V. IDLO Inputs

Papers will be published by IDLO in a peer-reviewed volume edited by IDLO and VVI.

VI. Application Process

To apply, applicants should email a brief biography and an abstract of no more than 300 words to legalempowerment@idlo.int by 30 September 2009. Where articles are practice-oriented, the abstract should detail how the research evaluates impact. Applicants whose articles are short-listed will be contacted and provided with further details.