

# Legal Empowerment Working Papers

Paper No. 8

Empowering the  
Disadvantaged After  
Dictatorship and Conflict:  
Legal Empowerment,  
Transitions and Traditional  
Justice

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International Development Law Organization  
Organisation Internationale de Droit du Développement

## **LEGAL EMPOWERMENT WORKING PAPERS**

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This project involves the preparation of a series of qualitative and quantitative empirical articles culminating in an edited volume on approaches to integrating justice and development in ways that benefit the poor and other disadvantaged populations.

The volume will be part of the IDLO book series *Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries*. Consistent with the thrust of the book series, the legal empowerment book and online papers seek to identify successes, challenges and lessons springing from the integration of law and development.

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## **EMPOWERING THE DISADVANTAGED AFTER DICTATORSHIP AND CONFLICT: LEGAL EMPOWERMENT, TRANSITIONS AND TRANSITIONAL JUSTICE**

Jamie O'Connell<sup>1</sup>

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### **Executive Summary**

Transitions from dictatorship and mass atrocities can provide space for the disadvantaged to use law to expand their influence over their government, their society and their own lives. This paper identifies opportunities for promoting legal empowerment during transitional periods, with particular attention to opportunities related to transitional justice. It also explains how legal empowerment can support transitions by reducing the risk of a return to violence.

The paper takes an expansive view of legal empowerment as including efforts that aim to empower one or more disadvantaged groups and that use a strategy that makes some use of law, understood broadly. Legal empowerment encompasses both one-time reforms of policy and law, such as new constitutional rights, and longer-term initiatives, such as paralegals programs.

This paper recommends that international institutions, foreign donors and NGOs working in any country that is approaching or has just gone through a transition – as well as the country's own government – should work to ensure that:

- peace treaties and other transition agreements mandate specific legal empowerment initiatives and reforms, such as nationwide legal assistance programs and constitutional provisions outlawing discrimination;
- truth commissions analyze and publicize systemic sources of disadvantage that contributed to or were exacerbated by the atrocities they examine, and recommend specific legal empowerment reforms and initiatives to address those problems;
- the needs of victims from traditionally disadvantaged groups are given special attention in the design and implementation of reparations programs;
- community-level transitional justice forums give prominent roles to those usually marginalized from other local decision-making processes and adequately respond to the needs of victims; and
- legal empowerment initiatives and reforms receive the resources necessary to succeed, including political support, technical assistance and funding.

Practitioners of development and transitional justice, too, should promote legal empowerment during transitions, including by:

- educating local and international actors on the prevalence and causes of systemic disadvantage, its impact and the potential of legal empowerment to address it;

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- assessing the potential of each opportunity described in this paper to advance legal empowerment in the society in question, taking into account the cost of pursuing the opportunity and alternative uses of those resources;
- supporting victim organizations and enlisting their support for social change;
- launching bold, but carefully considered, initiatives where a sense of crisis creates unusual openness to them, while discouraging programs based on inadequate understanding of the local context or the dynamics of social change; and
- securing a share of international funding and other resources for legal empowerment initiatives that contribute to recovery and reconstruction.

## Introduction

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This paper analyzes the relationship between legal empowerment and transitions from dictatorship and mass violence, with particular attention to transitional justice. Since the mid-1970s, dictatorships across the globe have been replaced by more and less democratic regimes and dozens of wars have ended. Numerous international institutions and donors now work with local governments and civil society to consolidate these transitions and avoid the return of dictatorship or conflict.

Transitional justice is an increasingly important component of their efforts. Governments and international organizations expend enormous resources to “deal with the past” after transitions;<sup>2</sup> scholars and policymakers increasingly state that the legacies of past human rights violations cannot be ignored.<sup>3</sup> In part, these elites are responding to those most affected: victims in scores of countries have mobilized to demand “justice”, often in the form of criminal prosecution of perpetrators, and “truth”, in the form of information about such questions as the fate of loved ones forcibly disappeared by state security forces.

The interactions among transitions, transitional justice and legal empowerment have received little attention, however. This paper suggests that transitional justice initiatives, and transitional periods more generally, create openings and attract resources that can be used to advance legal empowerment. In turn, legal empowerment may support transitions, including by advancing what is arguably the most important goal of transitional justice: preventing the recurrence of atrocities.<sup>4</sup>

Part 1 defines transitions, transitional justice and legal empowerment as these concepts are used in this paper. Part 2 explores the opportunities that transitional justice measures can create for legal empowerment and recommends how practitioners can take advantage of them. Part 3 identifies opportunities for legal empowerment that arise from the more general context of transition. Part 4 describes how legal empowerment can help prevent the return of violence, using the example of an innovative Sierra Leonean organization, Timap for Justice. The conclusion summarizes the paper’s implications for practitioners.

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<sup>2</sup> A recent study estimates that in the last 40 years over 100 countries have implemented more than 800 transitional justice arrangements, such as prosecutions of perpetrators, truth commissions and reparations programs. See T D Olsen, L A Payne, and A G Reiter, ‘At What Cost?’ in *Engaging the Past to Safeguard the Future*, unpublished book manuscript, on file with author, 7. Global spending on transitional justice totals hundreds of millions of US dollars per year for criminal prosecutions alone. For example, the International Criminal Tribunals for the former Yugoslavia and Rwanda cost over US\$300 million per year. International Criminal Tribunal for Rwanda, *General Information* <<http://69.94.11.53/ENGLISH/geninfo/index.htm>> at 21 June 2009; International Criminal Tribunal for the former Yugoslavia, *The Cost of Justice* <<http://www.icty.org/sid/325>> at 21 June 2009. In Argentina, over 400 people face criminal charges for atrocities committed during the country’s 1976–83 dictatorship. Human Rights Watch, *World Report: Argentina, Events of 2008* <<http://www.hrw.org/en/node/79336>> at 21 June 2009.

<sup>3</sup> This general statement masks divergent views on what these lingering effects are and how they must be addressed. Furthermore, the assertion has insufficient empirical foundation: most analyses leave key concepts vague and provide anecdotal support, at best, for causal claims. See O N T Thoms, J Ron, and R Paris, *The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners*, University of Ottawa, Centre for International Policy Studies Working Paper (2008) 32. On the other hand, no major method of addressing past atrocities has been definitively shown to be ineffective or counterproductive.

<sup>4</sup> Additional, systematic research is needed to establish the extent to which transitions and legal empowerment support each other, as well as the impact of particular legal empowerment efforts.

## 1. Key concepts: transitions, transitional justice and legal empowerment

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### 1.1 Transitions

The transitions considered in this paper are those that involve a substantial, quick liberalization of a country's system of government or the end of a period of intense, large-scale violence against civilians.<sup>5</sup> An example of the former is the sudden collapse of the Argentine military dictatorship in 1983 and its replacement by a democratic regime. An example of the latter is the end of the war in Bosnia, which included extensive attacks on civilians, after the 1995 Dayton Peace Accords. As these examples suggest, the two kinds of transition often coincide: the Argentine transition ended the state's mass-scale disappearance and torture of its citizens, and the Dayton Accords created a limited democracy to replace the pre-war Titoist system.

Transitions often trigger myriad changes in a country's politics, law, governance, economy and social relations. New constitutions entrench democratic political processes and individual rights. Increased foreign aid helps rebuild shattered infrastructure. Refugees return to areas from which they were expelled or resettle in another part of the country. Some changes persist indefinitely, while others end after a pre-set time or when a certain goal is met.

The beginning and end of a transition can be defined by any of a number of milestones, depending on the purpose of the analysis. The beginning of Poland's transition from Communist rule to democracy may have occurred in February 1989, when the government began negotiations with the opposition Solidarity movement, or in June 1989, when the first democratic elections took place. Some would place it in August 1989, when the first non-Communist prime minister took office, while others look back to 1980, when Solidarity formed and challenged the government's authority. Endpoints are likewise plural: East Timor's transition from Indonesian occupation can be seen as ending in May 2002, when the country declared independence; in May 2005, when foreign peacekeepers withdrew; or in October 2005, when a truth commission delivered its final report on human rights violations during the occupation.<sup>6</sup> One could even argue that the transition is still in progress, since the East Timorese government relies on an Australian-led peacekeeping force to ensure civil order. The length of transitions varies greatly from country to country, even when their starting and ending points are defined similarly.

In this paper, some analytic points apply to the entire length of a transition, defined most expansively. Others address shorter phases, such as the first few years or a period when foreign aid is pouring in. Some of the analysis applies more to transitions from mass violence than to changes of political regime, or vice versa.

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<sup>5</sup> The variations and definitional issues noted here have been explored in depth by scholars, although gaps and disagreements remain. Thomas Carothers and Larry J Diamond are highly respected scholars whose work is accessible to non-specialists. See, for example, T Carothers, 'Why Dictators Aren't Dominoes' (July/August 2003) *Foreign Policy*, available at <<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=1309>> at 6 November 2009; T Carothers, 'The End of the Transition Paradigm' (2002) 13(1) *Journal of Democracy* 5, available at <<http://www.journalofdemocracy.org/articles/gratis/Carothers-13-1.pdf>> at 27 June 2009; L Diamond, 'Building Democracy after Conflict: Lessons from Iraq' (2005) 16(1) *Journal of Democracy* 9, available at <<http://www.journalofdemocracy.org/articles/gratis/Diamond-16-1.pdf>> at 27 June 2009. Most pieces in *Journal of Democracy* are clear to non-academics and many take a practical perspective.

<sup>6</sup> This paper refers to "East Timor", as that territory was known internationally until it became independent, rather than "Timor Leste", its official name as an independent country, because most of the events in that area's history that are discussed here occurred before independence.

## 1.2 Transitional justice

Transitional justice encompasses efforts to address the legacies of atrocities committed before a transition – that is, the problems that exist after a period of dictatorship or mass violence and that caused or were caused by atrocities that occurred during the period.<sup>7</sup> The problems most commonly highlighted by academics and policymakers concerned with transitional justice include:

- the risk that the country will fall back into dictatorship or mass violence;
- a state of “impunity”, in which perpetrators go unpunished and fear no consequences if they commit further atrocities;
- various physical, psychological and material needs of victims of the atrocities;
- victims’ desire for information about the abuse they suffered, such as the perpetrators’ identities;
- flawed government structures and a weak culture of democracy and respect for the rule of law;
- polarization of ethnic or political groups, based on radically different experiences and interpretations of the past; and
- the continued employment of human rights violators in the state security forces and other positions of power.

Scholars and practitioners of transitional justice seldom devote attention to poverty and other forms of disadvantage, even when these may have contributed to or been exacerbated by the atrocities. A few analysts, however, have begun to argue that transitional justice should address violations of economic and social rights.<sup>8</sup>

Widely differing countries tend to base their transitional justice programs on the same, small set of institutions and policies. They generally attempt to “prosecut[e] perpetrators, documen[t] and acknowledg[e] violations through non-judicial means such as truth commissions, refor[m] abusive institutions, provid[e] reparations to victims [and/or] facilitat[e] reconciliation processes.”<sup>9</sup>

## 1.3 Legal empowerment

This paper understands “legal empowerment” broadly, as encompassing the many initiatives and reforms that fulfill two criteria: they are intended to empower at least one disadvantaged group and they employ a strategy that makes some use of law. “Initiative” refers to a process that operates over time to achieve change, such as an organization, a particular foundation grant program or a social movement. “Reform” means a change in policy or law that occurs at a specific time.

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<sup>7</sup> Scholars and practitioners have not reached consensus about the name and exact boundaries of this field of practice and inquiry. Some refer to what this paper calls “transitional justice” as “dealing with the past”, “facing history”, “the politics of memory” or post-war and post-dictatorship “reconciliation”, rather than “transitional justice”. Some define it as encompassing only certain institutions or policy responses — such as criminal trials, amnesties and truth commissions — rather than including all responses to particular problems, as this paper does.

<sup>8</sup> See, for example, L Arbour, ‘Economic and Social Justice for Societies in Transition’ (lecture delivered at New York University School of Law, 25 October 2006) available at <[http://www.ictj.org/static/Events/AnnualLecture\\_Arbour.pdf](http://www.ictj.org/static/Events/AnnualLecture_Arbour.pdf)> at 6 November 2009; R Mani, ‘Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development’ (2008) 2(3) *International Journal of Transitional Justice* 253; Z Miller, ‘Effects of Invisibility: In Search of the “Economic” in Transitional Justice’ (2008) 2(3) *International Journal of Transitional Justice* 266. For a different perspective, see N Roht-Arriaza, ‘The New Landscape of Transitional Justice’ in N Roht-Arriaza and J Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century* (2006).

<sup>9</sup> International Center for Transitional Justice, *Mission and History* <<http://www.ictj.org/en/about/mission/>> at 10 August 2009.



The first criterion provides that a primary purpose of the initiative or reform must be to empower one or more specific disadvantaged groups – accidental impact is insufficient. “Empower”, as used here, means to increase the influence that members of the group can exert over their own lives, over social conditions and processes and over politics and governance.<sup>10</sup> The goals of legal empowerment thus include economic advancement, but extend beyond it.<sup>11</sup>

The second criterion requires some use of law, defined broadly. An effort may qualify as legal empowerment even if law is just one element of its strategy for promoting change.<sup>12</sup> Furthermore, this paper conceives of law expansively, as the authoritative regulation of human interactions and institutions at any level, from international to local.<sup>13</sup> This conception encompasses actions usually recognized as legal in character, so the enactment of statutes, litigation and provision of legal aid all satisfy the second prong of the legal empowerment definition. But it extends beyond them to include informal norms and processes such as “traditional” or “customary” law.<sup>14</sup> Efforts that make use of those informal norms and processes therefore also may constitute legal empowerment.

Certain legal empowerment reforms and initiatives may be more effective in promoting progressive social change than others.<sup>15</sup> As they take advantage of the opportunities for legal empowerment identified in this paper, practitioners should give particular consideration to reforms and initiatives with one or more of the following characteristics:

- *A well-considered strategy for grassroots impact:* Some reforms and initiatives aim to change specific power dynamics at the grassroots level – for example, to improve the fairness of tribal chiefs’ adjudications – through a fully thought-out strategy informed by detailed knowledge of local context.<sup>16</sup> These efforts may be more successful than ones that operate at elite levels of government or society with the vague hope that benefits will trickle down.
- *A vision beyond the state:* State institutions are important, but legal development programs have over-emphasized them and neglected non-state actors and processes, such as traditional dispute resolution mechanisms.
- *Involvement of the disadvantaged themselves:* Initiatives and movements for reform that are conceived or managed by the intended beneficiaries may better reflect their priorities than those dominated by outsiders. These efforts

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<sup>10</sup> For example, a law that required government agencies to solicit citizen input before taking certain actions would increase the power of all citizens, including impoverished ones, to influence government policies. The law would qualify as a legal empowerment reform if lawmakers had enacted it in order to amplify the voices of the poor (even if they were aware it would benefit all citizens), but not if their purpose had been to aid all citizens (even though some of those intended beneficiaries would be poor).

<sup>11</sup> The Commission on Legal Empowerment of the Poor, by contrast, examined legal empowerment primarily as a means to alleviate poverty. See S Golub, ‘The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice’ (2009) 1 *Hague Journal on the Rule of Law* 101, 112. This paper’s conception of empowerment tracks that suggested by Golub, who describes legal empowerment as helping the disadvantaged “improve their influence on government actions and services, or otherwise increase their freedom”, as well as alleviate their poverty. *Ibid* 105.

<sup>12</sup> A group that tried to change power structures in a particular village by encouraging ordinary citizens to participate more assertively in community meetings would therefore qualify as a “legal empowerment” initiative, as would a campaign that used the language of rights to promote certain reforms, even if it did not aim to change any law.

<sup>13</sup> Cf. W M Reisman, *Law in Brief Encounters* (1999); W M Reisman, ‘International Law-making: A Process of Communication’, Harold D. Lasswell Memorial Lecture (1981) 75 *American Society of International Law Proceedings* 101.

<sup>14</sup> On the problems these terms present, see L Huyse, ‘Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies’ in L Huyse and M Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (2008) 8.

<sup>15</sup> Indeed, the term legal empowerment is sometimes defined as including only this smaller subset. See S Golub, ‘The Legal Empowerment Alternative’ in T Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 161-62.

<sup>16</sup> Timap for Justice, profiled below in Part 4, is a good example.

also may be more effective, because the affected people themselves may have important insights on the sources of their disadvantage, ways to alleviate it and other critical matters.<sup>17</sup>

- *Focus on the most disadvantaged:* The vast majority of people worldwide are part of some group that is disadvantaged in their society, but some are more needy than others. In many places, the disadvantaged include women; the poor; members of racial, ethnic and religious minorities; youth; and the disabled. People who are disadvantaged in multiple ways – such as by both poverty and gender discrimination – and those groups that are most deeply subordinated deserve the greatest attention.

## 2. Transitional justice: opportunities for legal empowerment

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Transitional justice initiatives such as truth commissions, prosecutions and reparations programs can facilitate legal empowerment reforms and initiatives in a variety of ways. In some cases, they themselves function as legal empowerment initiatives, because they use law intentionally to empower disadvantaged groups. This Part describes six ways in which particular transitional justice initiatives can advance legal empowerment and suggests concrete steps that practitioners can take to make the most of each opportunity.

- Truth commissions can call attention to the nature and prevalence of problems that legal empowerment can address, such as discrimination.
- Truth commissions can endorse particular legal empowerment reforms or initiatives.
- Reparations programs can function as legal empowerment initiatives under certain circumstances.
- Organizations of victims of human rights violations can both function as legal empowerment initiatives and support other legal empowerment initiatives and reforms.
- Community-level transitional justice forums also can function as legal empowerment.
- By requiring powerful figures to account for their role in past human rights violations, transitional justice mechanisms may inspire ordinary people to stand up to their leaders and the state more generally.

### 2.1 Truth commissions can draw the attention of policymakers, donors and the public to problems that legal empowerment can address

Countries from Argentina to South Africa to East Timor have created truth commissions to examine recently ended dictatorships or periods of mass violence.<sup>18</sup> Their activities and reports usually attract intense attention from national policymakers, the media, the public, international organizations and foreign donors. A truth commission can highlight problems that legal empowerment often addresses – such as the subordination of particular groups – and link them to the previous regime or spate of mass violence.

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<sup>17</sup> Uganda's Land Rights Information Centers are an intermediate case. They were created by national and international NGOs, but the ordinary Ugandans they serve play central roles in the centers' operations, for example by working as paralegals. See R Aciro-Lakor, 'Land Rights Information Centers in Uganda' in L Cotula and P Mathieu (eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (2008) 72-74.

<sup>18</sup> These bodies go by various names, such as "Truth and Reconciliation Commission" (Chile, South Africa and Sierra Leone, among others), "Commission for Historical Clarification" (Guatemala) and "National Commission on the Disappearance of Persons" (Argentina).

National and international stakeholders may respond by giving these issues greater attention and resources, some of which may flow to legal empowerment reforms and initiatives.

Truth commissions have various means for raising the profile of particular problems. Commissioners may speak to the press about their research priorities or preliminary findings. A public hearing dedicated to a single issue signals that the commission sees it as central to understanding the atrocities under investigation. For example, Sierra Leone's Truth and Reconciliation Commission (TRC) devoted one session to the impact of the country's civil war on women and another to the role of corruption in the conflict. Dramatic witness testimony can attract media coverage of these hearings.

Nearly every truth commission issues a final report summarizing its analysis of the causes and consequences of the atrocities within its mandate. The report of Guatemala's Commission for Historical Clarification opens with the statement that throughout the country's history, the government directed violence "against the excluded, the poor and above all, the Mayan people".<sup>19</sup> The Commission emphasized that "exclusion", "social injustice" and "inequality", all primary targets of legal empowerment, were central dynamics in the 34-year civil war.<sup>20</sup> Peru's Truth and Reconciliation Commission called attention to the "seriousness of ethno-cultural inequalities that still prevail in the country" between the Spanish-speaking and indigenous populations.<sup>21</sup> The most important consequences of the conflict, the Commission said, included "worsened poverty and deepened inequality [and] aggravated forms of discrimination and exclusion".<sup>22</sup> The Sierra Leone TRC found that the exclusion of rural young people from traditional power structures led many to join a brutal rebellion.<sup>23</sup>

Legal empowerment advocates should not assume that a truth commission will concentrate on the disempowerment of particular groups, even when it was central to the nature of the regime or violence being examined. South Africa's famed Truth and Reconciliation Commission is a striking example. Apartheid was one of the most comprehensive systems of subordination devised in modern times. An extensive, dense web of laws tightly restricted the freedom of non-white South Africans in nearly every area of political, economic and social life. Yet the Commission's multi-volume final report has been widely criticized for focusing on individual incidents of physical brutality, such as torture, and for "deal[ing] with the institutionalized racism of the apartheid system primarily as background ... . [R]ace and how it played out through the institutionalized racism of the apartheid system is almost invisible in the report."<sup>24</sup> The same criticism was leveled at the Commission's hearings and public statements.

Legal empowerment advocates should try to ensure that each truth commission devotes sufficient attention to marginalization and discrimination. They can then build on the commission's work to generate support for legal empowerment reforms and initiatives that address these problems. Ideally, advocates should begin as soon as a truth commission is proposed, by lobbying for its mandate to include examining specific kinds

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<sup>19</sup> Commission for Historical Clarification, *Guatemala: Memory of Silence, Report of the Commission for Historical Clarification: Conclusions and Recommendations* (1998) Conclusions, para. 3, available at <<http://shr.aaas.org/guatemala/ceh/report/english/toc.html>> at 6 November 2009.

<sup>20</sup> *Ibid* Conclusions, pt. I, paras 3, 5, 8.

<sup>21</sup> Truth and Reconciliation Commission (TRC) of Peru, *Final Report* (2003) General Conclusions, para. 6, available at <<http://www.cverdad.org.pe/ingles/ifinal/conclusiones.php>> at 29 June 2009.

<sup>22</sup> *Ibid* para. 153.

<sup>23</sup> Truth and Reconciliation Commission (TRC) of Sierra Leone, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (2004) vol. 3B, ch. 5, para. 20; *ibid* vol. 2, ch. 2, para. 141.

<sup>24</sup> A R Chapman and H van der Merwe, 'Conclusion: Did the TRC Deliver?' in A Chapman and H van der Merwe (eds) *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (2008) 241, 249. The authors continue: "There is little in the way of a comprehensive, in-depth analytical effort to characterize apartheid as a system rather than as an idea or an ideology ... . [T]he commission failed to link the structural dynamics of the apartheid system to the [individual] abuses" on which it focused. See also R Duthie, 'Toward a Development-Sensitive Approach to Transitional Justice' (2009) 2(3) *International Journal of Transitional Justice* 292, 305.

of disadvantage.<sup>25</sup> Once the commission begins work, advocates can educate its members and staff about those problems and their relationship to the atrocities that the commission is studying. They may make written submissions, testify in public or communicate informally with commissioners and staff. They can also propose dedicated hearings and identify expert witnesses who can testify at them. Finally, advocates can help disadvantaged people themselves engage the commission, for example by arranging for them to meet commissioners or give statements to commission staff.

## **2.2 Truth commissions can recommend specific legal empowerment reforms or initiatives**

Nearly every truth commission issues recommendations as well as findings. These identify steps that the state and other actors should take toward goals such as preventing a return to dictatorship or violence, addressing victims' needs and healing social divisions created by past conflict.

Some truth commissions recommend that the government institute specific legal empowerment reforms. The Sierra Leone TRC urged the repeal of a constitutional provision permitting discrimination against women in customary law.<sup>26</sup> It also called on the formal judiciary to more closely supervise the traditional "local courts", which handle disputes in most of the country and are frequently criticized as arbitrary and abusive.<sup>27</sup> The truth commission in East Timor recommended that the government revise laws to comply with the International Convention on the Elimination of All Forms of Discrimination Against Women and enact new laws against domestic violence.<sup>28</sup>

In addition to recommending reforms like these, truth commissions can support initiatives for legal empowerment. The Sierra Leone TRC criticized the lack of access to justice for ordinary Sierra Leoneans.<sup>29</sup> It urged Fourah Bay College to require all law students to participate in its Human Rights Clinic, the only university law clinic in Sierra Leone, and called on other universities to create their own clinics.<sup>30</sup> The commission also recommended that courts simplify their rules and allow indigent petitioners to request relief through informal communications, such as letters.<sup>31</sup> The East Timor truth commission proposed court sessions outside the main cities, translation services for litigants who did not speak any of the country's official languages and paralegals to supplement the meager number of defense lawyers.<sup>32</sup>

The disadvantaged and their supporters should educate truth commissioners and their staff about how legal empowerment can address problems within the commission's mandate. They should also suggest specific reforms and initiatives that the commission can recommend in its report. If the commission takes these suggestions, then advocates and disadvantaged people can use its endorsement to build support for those legal empowerment efforts.

## **2.3 Reparations programs can function as legal empowerment initiatives**

Many truth commissions recommend that the state provide material reparations to certain victims of past human rights violations. States respond unevenly to these

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<sup>25</sup> For example, legislation creating a truth commission to study a recently ended civil war could instruct the commission specifically to consider "the impact of prejudice against traditionally disadvantaged ethnic groups on the outbreak, nature, severity, impact and duration" of violence.

<sup>26</sup> Sierra Leone TRC, above n 23, vol. 2, ch. 3, para. 342.

<sup>27</sup> Ibid vol. 2, ch. 3, para. 157.

<sup>28</sup> Commission for Reception, Truth and Reconciliation in East Timor (CAVR), *Chega!* (2006) pt. 11, paras. 4.1.5, 4.1.8.

<sup>29</sup> Sierra Leone TRC, above n 23, vol. 2, ch. 2, para. 439.

<sup>30</sup> Ibid vol. 2, ch. 3, para. 168.

<sup>31</sup> Ibid vol. 2, ch. 3, paras. 178, 181.

<sup>32</sup> CAVR, above n 28, pt. 11, para. 5.3.3.

proposals. The governments of Argentina and Chile have paid extensive reparations to victims of their military regimes. South Africa has partially implemented the program its TRC proposed. El Salvador has made no reparations at all. Reparations may take one of several forms, including cash in the form of lump sum payments or recurring pensions; in-kind benefits such as mental health treatment or free education; and infrastructure for particularly hard-hit communities such as school buildings.

Under some circumstances, reparations programs meet the definition of legal empowerment articulated above.<sup>33</sup> They are usually implemented by new statutes or executive orders and thus fulfill the legal element of the definition. Some reparations programs substitute for legal remedies; for example, Argentina's reparations program pre-empts lawsuits against the state for its role in dictatorship-era human rights violations.

Whether a reparations program satisfies the other requirement of this paper's definition of legal empowerment – that it be intended to empower one or more disadvantaged groups – depends on whether one sees the victims it aids as "disadvantaged".<sup>34</sup> In some cases, they clearly are, because the human rights violations targeted or disproportionately affected certain groups that already were disadvantaged in other respects, such as by poverty or ethnic discrimination. For example, most of the 200,000 people massacred in Guatemala, some of whose families are now receiving government reparations, were from historically marginalized indigenous groups.

Other victims may appear privileged, but are disadvantaged by hidden wounds that undermine their control over their own lives. Many victims of the kinds of atrocities commonly covered by reparations programs – such as torture survivors and family members of the disappeared – suffer severe economic, physical and psychological consequences for years or even the rest of their lives.<sup>35</sup> For example, a person who has been forcibly "disappeared" may have been his or her family's primary wage earner, while a torture victim may emerge unable to maintain close relationships due to extreme anxiety and depression. The East Timor truth commission therefore recommended that a reparations program be designed to "empower those who have suffered gross human rights violations to take control over their own lives and to free themselves of both the practical constraints and the psychological and emotional feelings of victimhood."<sup>36</sup>

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<sup>33</sup> See Section 1.3.

<sup>34</sup> This prong of the definition requires that the reform or initiative *aim* to empower, not that it succeeds in practice. It is nonetheless worth noting that material reparations to individuals can have an empowering effect: for example, greater financial resources generally translate into increased influence over one's life conditions, society and government. The impact on particular communities can be more profound: "A judicious combination of individual and collective reparations...[may] help rebalance power at the local level by altering the dynamic between victims and the local power structure." N Roht-Arriaza and K Orlovsky, 'Reparations and Development' in P de Greiff and R Duthie (eds), *Transitional Justice and Development: Making Connections* (2009) 194.

<sup>35</sup> See J O'Connell, 'Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?' (2005) 46(2) *Harvard Journal of International Law* 295, 306-16, available at <<http://www.harvardilj.org/attach.php?id=41>> at 1 November 2009.

<sup>36</sup> CAVR, above n 28, pt. 11, para. 12.6. A further definitional wrinkle stems from the question of whether a reparations program's purpose is to aid victims specifically because they are disadvantaged. If not, then the program would technically fall outside this paper's definition of legal empowerment. (It would resemble the hypothetical law that was intended to empower all citizens, including those who happened to be poor. See above n 10.) This paper generally conceives of individuals or groups as "disadvantaged" in comparison with others at the same time. To the extent that the creation of reparations programs is driven by fact that victims have acute needs in the present — and this is probably a significant factor in many cases — those programs are intended to benefit a disadvantaged group as such and thus fall within this paper's definition of legal empowerment. However, the concept of reparations arises from the principle that those who are unjustly harmed should be restored to their position before the injustice. Reparations programs therefore consider the disadvantage a victim suffers *compared to herself at an earlier time*, i.e., before the human rights violation. One could refine the definition of legal empowerment offered in Section 1.3 to include or exclude efforts that aim to empower people who are disadvantaged in this sense. If one excluded them, then reparations programs would not qualify as legal empowerment if they had been motivated primarily by the victims' individual losses, rather than their post-transition need. It is important to note that the factors leading a government to enact a

Advocates of legal empowerment should consider working to translate both reparations into legal empowerment and legal empowerment into reparation. Thus, where a government is considering making financial or other reparations to victims of past atrocities, advocates can try to shape the program to focus on those most disadvantaged. At the same time, they should determine whether the past atrocities have left victims significantly disadvantaged in comparison with the rest of the population. If so, they should support measures, including reparations programs, to assist them. It may be appropriate to extend existing legal empowerment initiatives to include those victims or create new ones specifically for them.

#### **2.4 Victim organizations can function as legal empowerment initiatives and advocate for additional legal empowerment efforts**

Victims of dictatorships or mass violence often come together for mutual support and to advance shared goals. Those goals often include halting atrocities, pressing for a transition to democracy, securing reparations and ensuring that society does not forget what they suffered. Victim groups constitute an important vehicle for legal empowerment in societies in transition. In addition, they may support other legal empowerment initiatives and reforms.

Many victim groups clearly satisfy the definition of legal empowerment used here. First, as discussed in the previous section, many victims of severe human rights violations merit the label “disadvantaged” and are thus appropriate subjects of legal empowerment. Second, victim groups generally empower their members, for example by using collective action to influence their government on issues important to them. Many groups train their members as activists, transforming the hopeless passivity that some felt after losing a loved one or suffering brutality into vigorous civic engagement. Finally, the empowerment many victim groups provide has a specifically legal element: law is a key part of their strategies. Criminal prosecution of perpetrators, for example, is a top priority for many groups. Some pursue civil lawsuits; South Africa’s Khulumani Support Group is suing IBM, Barclays Bank and six other multinational corporations for facilitating torture and other human rights violations by the apartheid regime. In addition, victim groups generally rely heavily on the language of human rights to explain their suffering to the world and to advance their agendas.

It appears that victims themselves create, lead and staff most victim groups, although comprehensive information on this is hard to find.<sup>37</sup> For instance, the Argentine group Mothers of the Plaza de Mayo was formed by women who frequently crossed paths at various government offices, as each desperately sought information about her disappeared child. Non-victims often assist victim groups, but tend to play supporting roles.

Victim groups can advance legal empowerment in areas unrelated to past atrocities. Some pursue broad political agendas. The Mothers of the Plaza de Mayo, for example, advocate an emphatically left-wing program of social change. Many members had children who apparently were forcibly disappeared for organizing the poor or working for other progressive goals; their mothers honor them by continuing the work for which they died. For example, the group backed the 2008 nationalization of Argentina’s pension system on the ground that it would provide greater security for poor workers.

Practitioners of legal empowerment can both bolster victim groups and draw support from them. They should consider helping victims organize themselves and develop

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reparations program may diverge from the principles it cites to justify the program. For example, a government could be moved to create a reparations program by victims’ current needs, yet portray it as redress for the harm they had unjustly suffered from the predecessor regime’s human rights violations.

<sup>37</sup> This is one of the characteristics of especially promising legal empowerment efforts identified at the end of Section 1.3 above.

advocacy skills. If a group is receptive, then practitioners can suggest connections between the group's priorities and wider empowerment goals. Some victim groups may also be willing to deploy moral authority or political connections to support legal empowerment initiatives or reforms unrelated to their own core goals.

## **2.5 Community-level transitional justice forums can function as legal empowerment initiatives**

Community-level transitional justice forums are among the most innovative recent developments in transitional justice. They build on traditional dispute resolution processes to provide a mechanism for helping perpetrators and victims of atrocities live together after war and other periods of mass violence.<sup>38</sup> Subsection 1 explains how community-level forums can empower the disadvantaged. A case study of East Timor's Community Reconciliation Process (CRP) in Subsection 2 provides an example of their mechanics, value and risks. Subsection 3 suggests how development practitioners and affected people should interact with community-level transitional justice forums.

### *2.5.1 Potential for empowerment*

Community-level forums may have two kinds of empowering effects. First, ordinary people are given a greater role in some community-level forums than they are allowed to play in the day-to-day governance of their communities. This experience may give them confidence and inspire them to press for greater popular participation in local decision-making structures. This process partly fits the definition of legal empowerment provided here: the forums are legal mechanisms, in a broad sense, and provide knowledge and inspiration that help those excluded from decision-making to gain a greater role. If those who design and run the forums intend them to have this general empowering effect, then the forums fully qualify as legal empowerment as this paper defines it.

Second, the forums can effect legal empowerment by alleviating some of the long-term effects of atrocities on victims and perpetrators.<sup>39</sup> Victims and alleged perpetrators are disadvantaged by recent violence, rather than long-standing exclusionary social norms and structures. For example, after the cataclysmic violence surrounding East Timor's 1999 independence referendum, independence opponents lived in the same villages as independence supporters whom they had assaulted and whose houses they had burned. Many feared vigilante violence, felt ostracized or believed they were suspected of crimes they had not committed. At the same time, victims felt anger, terror and a longing to know more, for example about where massacred loved ones were buried. Some wanted vengeance. Communities in other countries emerging from conflict, such as Sierra Leone and Mozambique, have experienced similar tensions.

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<sup>38</sup> The forums may arise spontaneously in individual communities, as in Sierra Leone, or be created systematically by the state as a transitional justice program, as in East Timor. This Section focuses on state-created forums, because they are designed and implemented through a more-or-less centralized policy process that legal empowerment advocates may be able to influence.

Rwanda's gacaca courts resemble these community-level forums and have been touted by some observers as models of "restorative justice". However, fundamental aspects of the courts' design and implementation reflect the government's tight control of the population and undermine their potential to empower victims, perpetrators or their communities. The ruling Rwandan Patriotic Front has excluded mass atrocities perpetrated by its own forces from the gacaca courts' jurisdiction. The available evidence suggests that these courts have brought little comfort to victims or reconciliation to communities. Indeed, the government has failed to protect victims who testify and some have been killed. Rather than clearing the country's backlog of 100,000 genocide-related cases, the gacaca courts have generated allegations against 600,000 more potential defendants. See B Ingelaere, 'The gacaca courts in Rwanda' in L Huyse and M Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict* (2008) 42. The gacaca courts are so unpopular in many places that the government has resorted to threats to compel members of the community to attend the proceedings. Ibid 49.

<sup>39</sup> Addressing these problems is their main purpose, so they satisfy the requirement that the empowering impact be intended. See Section 1.3 above (defining legal empowerment).

These conditions undermine the capacity of victims and both actual and suspected perpetrators to function on a day-to-day basis. Community-level transitional justice forums attempt to bring together victims and alleged perpetrators, help them reconcile and begin to heal their debilitating psychological wounds. (As the next subsection shows, however, they can also do harm.)

### *2.5.2 The Community Reconciliation Process*

The CRP was created by East Timor's truth commission primarily to help reconcile alleged perpetrators and victims of violence that occurred during the 1974–99 Indonesian occupation, including around the independence referendum.<sup>40</sup> It conducted 217 community-level hearings involving 1,403 applicants.<sup>41</sup>

The program was open to people who had committed acts such as theft, minor assault, arson and crop destruction, but not perpetrators of the most serious crimes, such as murder and sexual assault. Participation was voluntary. Perpetrators could receive immunity from criminal prosecution and civil liability if they gave a full account of their wrongful acts and the surrounding circumstances, identified others involved, renounced the use of violence for political ends and performed acts of reconciliation set by a community panel.

The CRP blended elements of formal criminal law and procedure with features of traditional dispute resolution processes. The process centered on hearings before panels of respected local people. The entire community was encouraged to attend. Lawyers and paralegals played no role. The applicant described what he or she had and had not done, then was questioned by panelists, victims and other members of the community. Communities varied the hearing format, often providing a role for traditional leaders and incorporating rituals such as chewing betel nut or sacrificing a chicken or pig.

The panel consulted with victims and the wider assembly, then prescribed acts of reconciliation tailored to the applicant. Panels tended to require acts such as community service, small material reparations and public apologies. The applicant could accept or reject the proposal. If he or she accepted it and completed the acts, then the local district court entered an order granting legal immunity.

The CRP seems to have had mixed success in empowering perpetrators and victims by alleviating the psychological burdens caused by violence. A leading Timorese NGO interviewed 46 victims and perpetrators who had participated in the CRP.<sup>42</sup> Most of the perpetrators felt relieved. They no longer feared that their children would be punished for their acts. Many felt they had cleared their names and were more accepted by their communities.

Victims apparently benefitted less. Some of those interviewed by the NGO reported that the CRP had reconciled them with perpetrators. Others did not, because they believed applicants had held back information about their own or others' crimes. The truth commission itself conceded that victims should have had a greater role in setting the required acts of reconciliation for each applicant.<sup>43</sup> Finally, some victims reported that community pressure had led them to say publicly that the CRP had reconciled them with a perpetrator, when they in fact remained angry and unresolved.

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<sup>40</sup> This account of the CRP relies on CAVR, above n 28, pt. 9, and Judicial Systems Monitoring Program, *Unfulfilled Expectations: Community Views on CAVR's Community Reconciliation Process* (2004) 11-12, available at [http://www.jsmp.minihub.org/Reports/Other%20Reports/CAVR\\_%20LIA/cavr\\_evaluation\(e\).pdf](http://www.jsmp.minihub.org/Reports/Other%20Reports/CAVR_%20LIA/cavr_evaluation(e).pdf) at 8 November 2009.

<sup>41</sup> CAVR, above n 28, pt. 9, table 3.

<sup>42</sup> See *ibid.*

<sup>43</sup> CAVR, above n 28, pt. 9, para. 133.



It is too early to assess whether the CRP empowered groups traditionally sidelined from local decision-making in East Timor, such as women, by inspiring them to demand a greater role in community governance. Women played a more visible role in the CRP than in traditional dispute resolution processes. The hearings were chaired by truth commissioners, some of whom were women. When communities selected panel members, CRP staff pressed them to include women. As it turned out, however, community leaders dominated the panels and victims deferred to the panel or the village chief when it came to determining acts of reconciliation for an applicant.<sup>44</sup>

### *2.5.3 Role of the disadvantaged and their supporters*

The disadvantaged and their supporters may be able to shape community-level transitional justice forums like the CRP to make them more inclusive than other local judicial and political processes. The East Timor truth commission spent ten months designing the CRP and consulted widely. Government bodies that are considering creating community-level transitional justice forums can be pressured to design them in ways that maximize their empowering potential. Officials may welcome information on possible models, including similar forums from other countries. Legal empowerment advocates should support community-level forums that do, in practice, empower groups usually excluded from local decision-making. They can urge the public to participate and may be able to provide needed logistical or technical support. Publicizing the forum as an example of participatory justice and democratic decision-making can spur ordinary people to press for change in regular decision-making structures.

Development practitioners need to tread carefully in engaging community-level transitional justice forums, however. Traditional authority figures may dominate the forums as much as they do other decision-making structures. Furthermore, evidence is mixed on the value of these processes for both perpetrators and victims. Restorative justice mechanisms, including community-level transitional justice forums, stress social harmony over retribution and may neglect the needs of victims. Some, including the CRP and the South African TRC, have been criticized for pressuring victims to forgive perpetrators, or at least to acquiesce in absolving them. Forcing forgiveness betrays victims, many of whom have spent years longing for society to comprehend the impact of what was done to them, condemn it and acknowledge the legitimacy of their feelings and wishes. Practitioners with expertise in legal empowerment may be able to help community-level transitional justice forums avoid these dangers.

## **2.6 By securing accountability for specific violations of human rights, transitional justice initiatives may inspire citizens to stand up to leaders and the state**

Many countries emerging from dictatorship or a period of mass atrocities have suffered under despots for generations. Ordinary citizens have never seen them held responsible for their actions, even when they cause shocking injustice and suffering. For example, Sierra Leone's politicians and generals have treated the country largely as a personal fiefdom since independence, diverting diamonds and other wealth for their personal use and driving the country into a brutal war.

Some analysts argue that transitional justice can erode this culture of impunity and inspire citizens to demand better from their leaders. They point out that some transitional justice mechanisms – such as war crimes courts, truth commissions and vetting procedures that remove human rights violators from official positions – require leaders to explain their actions and may inflict punishment, from humiliation to execution. If citizens understand these dramas to mean that the powerful can be held

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<sup>44</sup> The Judicial Systems Monitoring Program report, which makes this observation, does not clarify whether village chiefs were generally members of the panels or expressed their views as members of the public.

accountable, then they may begin to stand up to despotism, at least in small ways. Where other conditions, such as opportunities for association and expression, are favorable, transitional justice may contribute in this way to a gradual shift toward popular sovereignty in political culture and practice.<sup>45</sup>

When a transitional justice program requires powerful people to answer for their actions, advocates of legal empowerment can help it inspire the population by publicizing the fact that it has held leaders accountable. Advocates also may be able to help a court or truth commission explain its work to the population.

### 3. Legal empowerment during transitions

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Transitions from dictatorship and periods of mass violence provide additional opportunities to advance legal empowerment reforms and initiatives, beyond those offered by transitional justice initiatives in particular. As noted above, transitions typically generate dramatic changes in politics, law, social relations and economic conditions. Some of these changes involve the intentional use of law to assist particular disadvantaged groups. Others make it easier, temporarily or permanently, to secure legal empowerment reforms or to create or expand legal empowerment programs.

This Part describes four such changes:

- Empowering certain disadvantaged groups may be a primary purpose of the transition.
- Peace treaties or other transition agreements can mandate legal empowerment, in the form of specific reforms or initiatives.
- After a transition, international organizations and donors may provide increased aid and attention, which can be tapped for legal empowerment.
- The omnipresence, during some transitions, of acute needs and dramatic efforts to address them may make international and local actors more comfortable with the far-reaching change that some legal empowerment efforts seek.

#### 3.1 Empowerment of disadvantaged groups may be a primary purpose of the transition

In some transitions, the empowerment of particular disadvantaged groups is a primary goal. In a few cases, it may be synonymous with the transition itself: the shift from apartheid to democracy in South Africa was *defined* by the empowerment of the non-white majority. That transition may be the ultimate example of empowerment that takes a legal form. The comprehensive subjugation of non-white South Africans was enforced by an elaborate system of discriminatory laws. Those laws, and thus in a sense the apartheid system itself, were abolished by the 1993 Interim Constitution, the 1996 final Constitution and numerous statutes. While non-whites continue to suffer disproportionately from poverty and other legacies of apartheid, their influence over their own lives, their society and their government was dramatically enhanced by those liberating legal instruments.

The South African case is not unique. Kosovar Albanians sought autonomy in the late 1990s to end the years of discrimination they had suffered under the government of

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<sup>45</sup> This impact has not been demonstrated by compelling evidence in any particular case, but may nonetheless exist. Several factors make it difficult to assess. Any shift in political culture could take decades, yet most transitions in societies pervaded by impunity have occurred relatively recently. Even such a shift were apparent, it would be difficult to determine its causes.

Serbia. The long political transition lasted from 1999, when an international civil administration took over the territory, to 2008, when Kosovar Albanians declared independence from Serbia. This transformation of Kosovo's international legal status was undertaken with the primary purpose of empowering a previously disadvantaged ethnic group.<sup>46</sup>

### 3.2 Peace treaties and other transition agreements can mandate additional empowering reforms or initiatives

Many transitions to democracy are negotiated between an authoritarian government and its domestic opponents and many wars also end in negotiations rather than victory by one side. Transition pacts and peace treaties, which are legal instruments, often include provisions requiring certain reforms or initiatives to address the needs of specific disadvantaged groups.

Some clauses in these agreements address broad social injustices. The fall of Nepal's monarchy led quickly to a settlement of the country's long-running civil war. In the 2006 Comprehensive Peace Accord (CPA), Maoist guerrillas and the main civilian political parties agreed to pursue policies to "en[d] discrimination based on class, caste, language, gender, culture, religion and region", in particular against women, Dalits and several ethnic minorities.<sup>47</sup> The negotiations over South Africa's transition to democracy were memorialized in the 1993 Interim Constitution. It forbade discrimination based on race and ethnicity, of course – but also added gender, sexual orientation, disability and several other protected statuses. (The previous, apartheid-era constitution had contained no anti-discrimination clause at all.)

Transition agreements can also address specific areas of disadvantage. Peace negotiators in Guatemala filled an entire agreement with specific measures that the government would take to redress the oppression of indigenous Mayans. In the area of access to justice, these included creating "legal offices for the defense of indigenous rights and ... popular law offices to provide free legal assistance for persons of limited economic means," as well as training judges and court translators in indigenous languages.<sup>48</sup> Because El Salvador's elite controls a hugely disproportionate share of agricultural land, rebels pressed for a peace treaty that obligated the government to provide "technical assistance to help increase the productivity of peasant farmers and smallholders."<sup>49</sup> The parties to the Nepal CPA agreed to "provide land and other economic protection to landless squatters."<sup>50</sup>

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<sup>46</sup> These cases suggest that law may sometimes be merely the form taken by an empowering process that is in fact driven by other factors, such as battlefield success or long-term shifts in public attitudes. Where law is not a significant part of the strategy for certain change, the change could not constitute "legal empowerment" as that term is defined in Section 1.3 above. The movements for democracy in South Africa and independence for Kosovo did not rely primarily on law, but the proponents of both made significant use of it. For example, apartheid opponents secured legal restrictions on the operation of U.S. and European businesses in South Africa, while Kosovars had to argue that international law permitted them to secede from Serbia. See Peterson Institute for International Economics, Case 62-2 (UN v South Africa) and Case 85-1 (US, Commonwealth v South Africa), *Case Studies in Sanctions and Terrorism*, available at <<http://www.iie.com/research/topics/sanctions/southafrica.cfm>> at 8 November 2009; C J Borgen, 'Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition' (2008) 12(2) *ASIL Insights* <<http://www.asil.org/insights080229.cfm>> at 8 November 2009.

<sup>47</sup> *Comprehensive Peace Accord Concluded between the Government of Nepal and The Communist Party of Nepal (Maoist)* (2006) art. 3.5, available at <[http://www.peace.gov.np/admin/doc/CPA\\_eng-ver-corrected.pdf](http://www.peace.gov.np/admin/doc/CPA_eng-ver-corrected.pdf)> at 8 November 2009.

<sup>48</sup> Government of Guatemala, Unidad Revolucionaria Nacional Guatemalteca, and United Nations, *Agreement on Identity and Rights of Indigenous Peoples* (1995) arts. II(A)(2)(d), III(A)(2)(e), available at <[http://www.usip.org/files/file/resources/collections/peace\\_agreements/guat\\_950331.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/guat_950331.pdf)> at 8 November 2009.

<sup>49</sup> Government of El Salvador and Farabundo Martí National Liberation Front, *Peace Agreement* (1992) ch. 5, art. 6(C), available at <<http://www.usip.org/resources/peace-agreements-el-salvador>> at 8 November 2009.

<sup>50</sup> *Comprehensive Peace Accord*, above n 47, art. 3.10.

Like many progressive laws, the provisions of these transition agreements have been implemented inconsistently.<sup>51</sup> However, the legitimacy that stems from their inclusion in foundational legal documents may sometimes help the disadvantaged and their allies translate them into change on the ground. The disadvantaged and their supporters should consider trying to influence transition negotiators to mandate legal empowerment reforms and initiatives in the agreements they reach.

### **3.3 After a transition, international organizations and donors may provide a country with additional resources, which can be used for legal empowerment**

Societies in transition sometimes receive a flood of money, human resources and political attention from international actors. Legal empowerment advocates may be able to harness these to support reforms or initiatives. Of course, legal empowerment cannot succeed without firm local support and often must be initiated by local citizens or officials themselves. Foreign resources are sometimes essential, though: money for social change programs is usually scarce and foreigners may fill in when qualified local people are spread thin. On occasion, a foreign government, international agency or international NGO may be able to provide political support for an important legal empowerment reform, as well as money or personnel for a legal reform initiative.<sup>52</sup>

The determinants of aid flows are complex, but countries tend to secure significantly more aid per capita immediately after the end of a conflict. Researchers from the World Bank and Harvard University examined low-income countries with weak institutions and found that those emerging from conflict received, on average, 30 per cent more aid per capita than those that had long enjoyed peace.<sup>53</sup> Bilateral donors and international institutions that substantially increase their financial investment in a country may also send personnel and devote high-level attention to supporting its recovery. For example, the United Kingdom has provided all three to Sierra Leone since former Prime Minister Tony Blair made the country's reconstruction a centerpiece of his "ethical foreign policy" early in this decade.

Anecdotal evidence suggests that international aid and attention may increase after a transition from dictatorship, as well as after conflict. Foundations such as the Open Society Institute and the Ford Foundation spend millions of dollars each year on consolidating democracy after transitions. The United States Agency for International Development (USAID) increased its aid to Ukraine by 44 percent after the 2004 Orange Revolution in order to "solidify democratic gains and build on them to improve the economic and social well-being" of the population.<sup>54</sup>

These new resources can support legal empowerment. The Office of the United Nations High Commissioner for Refugees (UNHCR) created a network of legal aid organizations in

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<sup>51</sup> See Arbour, above n 8, 22; A de Bremond, 'The Politics of Peace and Resettlement through El Salvador's Land Transfer Programme: Caught between the State and the Market' (2007) 28(8) *Third World Quarterly* 1537.

<sup>52</sup> For example, the government of Guyana enacted a law to combat human trafficking under pressure from the United States Government. Of course, outside pressure can be inappropriate, if it infringes on national sovereignty, or counterproductive, if it provokes a backlash against reform.

<sup>53</sup> See V Levin and D Dollar, *The Forgotten States: Aid Volumes and Volatility in Difficult Partnership Countries (1992–2002)*, Summary Paper for the Development Assistance Committee, Organisation for Economic Cooperation and Development (DAC-OECD) Learning and Advisory Process on Difficult Partnerships (2005) 14–15, available at <<http://siteresources.worldbank.org/INTLICUSSPANISH/Resources/34687926.pdf>> at 8 November 2009.

<sup>54</sup> USAID, *2007 Budget: Ukraine* <<http://www.usaid.gov/policy/budget/cbj2007/ee/ua.html>> at 10 August 2009. The pattern is not universal: USAID assistance to Georgia actually fell 17 percent in the first year of Mikhail Saakashvili's presidency, even though the Agency later described its goals as supporting democratic reform and economic development under his administration. USAID, *2006 Georgia Program Profile 2*, 4 <[http://www.usaid.gov/policy/budget/cbj2006/ee/pdf/ge\\_complete05.pdf](http://www.usaid.gov/policy/budget/cbj2006/ee/pdf/ge_complete05.pdf)> at 10 August 2009.

Bosnia just after the civil war ended.<sup>55</sup> After Guatemala's civil war, the World Bank identified a "new consensus" between civil society and the government that "judicial reform is essential to post-conflict reconstruction, social stability and economic growth."<sup>56</sup> The Bank responded by funding an access to justice program in regions not reached by the formal court system.<sup>57</sup>

### **3.4 Legal or political flux may create temporary opportunities to introduce or entrench progressive reforms and initiatives**

Policymakers, international actors and the public may be more open during transitions than during normal periods to extensive social change, including through legal empowerment, because enormous needs and dramatic actions to address them are commonplace. Transitions generally leave law and politics in flux for several months or years. During this time, government, the economy and aspects of society are often reformed to suit new democratic norms and peacetime conditions. At the same time, novel or drastic programs address severe problems created by the just-ended war or dictatorship, such as mass displacement, destroyed infrastructure and individual psychological trauma. Juxtaposed with these reforms and programs, many legal empowerment efforts may seem less radical than they would seem in ordinary times. Therefore, actors who would normally be skeptical of far-reaching legal empowerment may see it as appropriate.

For example, in the first years after South Africa's 1994 transition to democratic rule, many South Africans referred to themselves as "transforming" their country into "the new South Africa." They reversed an uncountable number of public policies and social norms and hoped to rapidly lift millions out of poverty. Some of the legal empowerment reforms that South African advocates secured while Parliament was drafting a new constitution, between 1994 and 1996, might have been more difficult a few years later, after this euphoria had subsided.

Climates of radical change may especially facilitate one-off reforms, like the enactment of new laws, but longer term initiatives, too, may become more feasible. Groups that would have blocked certain programs may lose influence, making the programs viable. Once established, they may be difficult to eliminate even if conservative forces regain their previous strength. The disadvantaged and their advocates also may be able to change public attitudes over the course of transitional periods, in ways that are difficult to roll back later. For example, women may become accustomed to greater freedom in public spaces or generally more assertive of their rights.

The Community Empowerment Program (CEP) in East Timor illustrates the potential and limits of situations in which resistance to radical initiatives has temporarily diminished. The CEP challenged the power of local traditional leaders across East Timor for several years beginning in early 2000. If officials of the World Bank and the United Nations (UN) in East Timor had not become inured to extraordinary needs and policy responses in late 1999, they might never have created the program.<sup>58</sup> At that time, staff of the two

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<sup>55</sup> See Dan Manning, *Supporting Stability and Justice: A Case Study of NGO Legal Services in Post-conflict Bosnia-Herzegovina*, International Development Law Organization Legal Empowerment Working Paper No. 1 (2009) 3-4.

<sup>56</sup> World Bank, *Project Profiles: Improving Access to Justice in Guatemala: Judicial Reform Project* <<http://www.worldbank.org/gt>> at 10 August 2009.

<sup>57</sup> *Ibid.* The program included 177 justices of the peace, who served a para-judicial function, and 25 mediation centers that provided services in indigenous languages.

<sup>58</sup> Except where otherwise sourced, this discussion and analysis of the CEP relies on T Hohe, 'Local Governance after Conflict: Community Empowerment in East Timor' (2004) 1(3) *Journal of Peacebuilding and Development* 45 and S Ospina and T Hohe, *Traditional Power Structures and Local Governance in East Timor: A Case Study of the Community Empowerment Project*, Graduate Institute of Development Studies (2002), available at <[http://www.graduateinstitute.ch/webdav/site/developpement/shared/developpement/362/itineraires%20IUED/IUED\\_EC5\\_Ospina\\_Timor.pdf](http://www.graduateinstitute.ch/webdav/site/developpement/shared/developpement/362/itineraires%20IUED/IUED_EC5_Ospina_Timor.pdf)> at 10 August 2009. Ospina and Hohe were independent anthropologists contracted to evaluate the CEP for the World Bank.

organizations concluded that local authority had collapsed as a result of the cataclysmic violence around the August 1999 independence referendum.<sup>59</sup> This sweeping conclusion was erroneous<sup>60</sup> – but Bank and UN staff members seem to have reached it because nearly every other component of government and the economy had been eviscerated. For example, Indonesian-backed militias had destroyed over 90 percent of the territory's physical infrastructure.

The CEP created new, elected councils in each hamlet and empowered them to decide which local projects would receive World Bank development aid. It aimed to promote democratic governance at the local level, reduce power inequalities, efficiently allocate resources and expand local support for development projects. Under CEP rules, none of the council members could be traditional leaders and half had to be women. It turned out that many of those elected were young. CEP councils thus included many people who were marginalized from their communities' traditional decision-making structures.

Outside of an emergency situation, large international institutions would be unlikely to leap to the conclusion that entire level of government had evaporated, or to presume that they could rebuild it on the basis of novel egalitarian principles. In East Timor in early 2000, however, creating brand-new organs of local government in a few months was no more radical than other actions being taken by East Timorese leaders and internationals. For example, the UN Security Council had taken the nearly unprecedented step of giving a single UN official unlimited authority over East Timor – effectively creating a viceroy answerable only to the Secretary General and the Security Council. At the same time, UN lawyers were hastily assembling a judicial system.

In practice, the CEP councils did not supplant existing power structures during their approximately six years in operation.<sup>61</sup> Traditional leaders had retained the loyalty of the population throughout the violence. The members of the community who were already prominent – village chiefs, teachers and church representatives – tended to dominate communities' discussions of how to use the development aid. In some cases, the CEP councils simply ratified decisions made by these traditional authorities.

Nonetheless, the CEP may have sown seeds of empowerment among the rest of the citizenry, including women and youth. The anthropologists who evaluated it for the World Bank concluded that it had not changed local socio-political dynamics, but that it had created a system “that gives new people the framework and support to establish themselves in a new power position.”<sup>62</sup> The format of the CEP at least introduced the practice of democracy to ordinary citizens throughout East Timor in a concrete form and enabled some of them to engage in it. For some East Timorese, even the image of women and young people making important decisions for the community may have been new. The evaluators reported that citizens thought carefully about what qualities the council members should have before electing them.<sup>63</sup> In some villages, a range of community members participated in the debates over allocation of aid. Even if leaders ultimately decided which projects to fund, the CEP format may have required them to explain those decisions to their constituents.

The CEP illustrates how a transitional environment in which policymakers, international actors and the public are focused on acute needs and accustomed to extraordinary responses can create space for initiatives that might seem too radical during ordinary times. At the same time, it highlights the difficulty of transforming existing power

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<sup>59</sup> Hohe, above n 58, 48.

<sup>60</sup> Ibid.

<sup>61</sup> See World Bank, *Timor-Leste: Project Performance Assessment Report* (2006), para. 3.31 <[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/08/10/000310607\\_20060810115713/Rendered/PDF/36590.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/08/10/000310607_20060810115713/Rendered/PDF/36590.pdf)> at 10 August 2009 (stating that the councils were no longer functioning).

<sup>62</sup> Ospina and Hohe, above n 58, 114.

<sup>63</sup> See *ibid* 82-85.

structures through rapid, top-down efforts. Timap for Justice, profiled in the next Part, takes a very different approach.

#### 4. Preventing the recurrence of atrocities: a contribution of legal empowerment to transitional justice

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Ensuring that atrocities do not recur is one of the highest priorities of societies emerging from a period of conflict or dictatorship. Where violence was caused or sustained in part by exclusion, discrimination or disempowerment, legal empowerment reforms and initiatives can help prevent it from breaking out again.<sup>64</sup> Section 1 below describes how exclusion can contribute to atrocities, using Sierra Leone as a primary example. Section 2 analyzes how Timap for Justice, a Sierra Leonean paralegal organization, promotes both fair outcomes in individual cases and long-term social change.

##### 4.1 Exclusion and atrocities

Disadvantage can make violence more likely and more brutal.<sup>65</sup> In Sierra Leone and Peru, for example, members of groups marginalized from political and social life were receptive to rebel leaders' calls to arms. Some were willing to commit shocking atrocities against government officials and others who embodied the status quo. In Peru, the truth commission found that the Shining Path movement "'exploited fractures and rifts in Peruvian society' by recruiting marginalized and frustrated members of poor communities living without the 'irreducible ethical minimum' of living conditions."<sup>66</sup> "[T]housands of youth ... were seduced by a proposal that set out the profound problems of the country and proclaimed that ... 'rebellion is justified.'"<sup>67</sup> Sierra Leone's TRC joined many analysts in concluding that the exploitation of rural youth by traditional chiefs helped trigger and sustain a decade-long conflict marked by horrific violence against civilians, especially authority figures such as the chiefs.<sup>68</sup>

The sociopolitical dynamics of rural society in Sierra Leone played a central role in the conflict and have changed little since it ended in 2002.<sup>69</sup> The country has never had a strong central state that fairly governed and consistently delivered services to the rural population. Its war began and was fought almost entirely outside the major cities. The "vast majority of combatants across factions were uneducated and poor"<sup>70</sup> and most were young. The British colonial regime and post-independence governments have ruled indirectly, through traditional leaders. Indirect rule transferred the chiefs' allegiance from the people they ruled – who traditionally had been able to curb abuses of power – to the

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<sup>64</sup> Legal empowerment may support transitional justice in other ways as well. A legal empowerment project may be a valuable component of a reparations package if it is directed at victims. A legal aid organization may help reconcile opposing groups if it promotes solutions that people on both sides consider fair.

<sup>65</sup> The causes of conflict are complex and vary by context. Social scientists vigorously debate the relative importance of poverty, weak state institutions, corruption, ethnic tensions, natural resource shortages and other factors. See, for example, E Wayne Nafziger, F Stewart and R Väyrynen (eds), *War, Hunger, and Displacement: The Origins of Humanitarian Emergencies* (2000); P Collier et al, *Breaking the Conflict Trap: Civil War and Development Policy* (2003). The claim made here is modest: that in *some* contexts, disempowerment contributes to the outbreak, continuation and/or brutality of violent conflict.

<sup>66</sup> L J Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development' (2007) 10 *Yale Human Rights and Development Law Journal* 141, 154 (quoting TRC of Peru).

<sup>67</sup> TRC of Peru, above n 21, para. 32; see also *ibid* paras. 22-23.

<sup>68</sup> See TRC of Sierra Leone, above n 23, vol. 2, ch. 2, para. 141 ("[M]any young men joined the [rebel Revolutionary United Front] voluntarily because they were disaffected."); *ibid* vol. 3B, ch. 5, para. 20.

<sup>69</sup> Except where otherwise sourced, the facts about Sierra Leone in this Section are synthesized from JP Chauveau and P Richards, 'West African Insurgencies in Agrarian Perspective: Côte d'Ivoire and Sierra Leone Compared' (2008) 8(4) *Journal of Agrarian Change* 515; P Dale, *Access to Justice in Sierra Leone: A Review of the Literature*, World Bank Justice for the Poor Program (2007) 7-19; R Fanthorpe, 'On the Limits of Liberal Peace: Chiefs and Democratic Decentralization in Post-War Sierra Leone' (2006) 105 *African Affairs* 27; and V Maru, 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide' (2006) 31 *Yale Journal of International Law* 427, 434-40.

<sup>70</sup> M Humphreys and J M Weinstein, *What the Fighters Say: A Survey of Ex-Combatants in Sierra Leone*, Columbia University Center on Globalization and Sustainable Development Working Paper No. 20 (2004) 2.

national government, which allowed the chiefs to exploit their subjects as long as they obeyed the central authorities.

Elders and traditional chiefs dominate rural social, economic and political life. They distribute paid work and even assign marital partners to young men according to their whim. Women have little influence in public life. "Local courts" run by chiefs are the primary forum for dispute resolution for much of the rural population. Customary law officers appointed by the national government have supervisory authority over the local courts, but are stretched too thin to provide meaningful oversight. The formal courts are distant, slow and expensive. Chiefs themselves keep the fines they levy through the local courts, which compromises their impartiality. They rely on the fines as a primary source of income and often set them at levels the parties find crushing. Youths can be forced on pain of imprisonment to work for free for the benefit of the community or of the chiefs personally.

The grievances felt by rural young men include a scarcity of marriage-age women caused by older men taking multiple wives. The most common kind of suit in local courts involves a husband charging a young man with "woman damage" for sleeping with his wife. The husband usually wins a judgment paid in the form of free labor. Taking up arms in the war allowed some youth, male and female, to solve this problem through a form of slavery: many ex-combatants told researchers in 2003 that their commanders had allowed them to force a civilian to serve as their "wife" or "husband".<sup>71</sup>

## 4.2 Timap for Justice

The Sierra Leonean NGO Timap for Justice exemplifies the potential of legal empowerment initiatives to shift deeply entrenched social practices that can fuel violence, such as those just described. How Timap works on a day-to-day basis and why it can influence powerful institutions and individuals are the subjects of Subsection 1. Subsection 2 describes the role of international actors in creating and supporting the organization. Subsection 3 explains the philosophy of social change that, in the author's view, underlies Timap's approach and gives it such promise.

### 4.2.1 Methods and influence

Timap operates 12 advice offices across Sierra Leone, each staffed by paralegals from the local area, plus a combined headquarters and advice office in Freetown. The organization addresses the problems described in the previous section and other injustices, working at three levels.<sup>72</sup> First, paralegals help individual clients resolve particular disputes with other private parties, traditional authorities or organs of the central government such as the police. Second, they tackle problems affecting entire communities, such as widespread domestic violence, at a systemic but still local level. Third, the paralegals help citizens organize to promote change on their own.

The paralegals employ a wide range of techniques. Mediation is one of the most common. They also advise individual clients on the forums available in the customary and formal legal systems, the procedures of each, and applicable legal rights and customary norms. The paralegals often communicate directly with authorities, seeking

<sup>71</sup> Ibid 27. These "bush wives" and husbands generally suffered terribly, in myriad ways. See Human Rights Watch, *"We'll Kill You If You Cry": Sexual Violence in the Sierra Leone Conflict* (2003) 42-45, 50-53.

<sup>72</sup> This case study of Timap is based primarily on Maru, above n 69, supplemented by Lotta Teale, 'An Evaluation of the Way that Paralegals at the Timap Programme in Magburaka, Sierra Leone, Deal with Family Cases', unpublished report funded by Family Law Association of England and Wales (2007), available at <<http://www.timapforjustice.org/news/>> at 10 August 2009. This paper also draws on the author's own experience helping design Timap in 2002 and 2003, when he served as a Yale Law School/Open Society Justice Initiative Resident Fellow, based in Freetown. Maru's invaluable article combines examples of Timap's work on particular cases with analysis of its method and relevance for other countries. It is available at <[http://www.yale.edu/yjil/PDFs/vol\\_31/Maru.pdf](http://www.yale.edu/yjil/PDFs/vol_31/Maru.pdf)>.



information relevant to a client's case, querying dubious decisions or demanding redress to which the client is entitled. In rare cases, Timap's director, an attorney, files a lawsuit in the formal court system. Beyond individual cases, paralegals "engage in community education and dialogue, advocate for change with both traditional and formal authorities, and organize community members to undertake collective action."<sup>73</sup>

Timap often succeeds in resolving unjust situations, such as an unwed father's refusal to support his child or a chief's imposition of unconscionable fines in the local court. The organization does not always succeed, of course, even where the law is on its client's side. In Sierra Leone, as in many countries, outcomes are determined more by relationships and power than by principle, and the formal justice system often fails to enforce even clearly established law.

Timap draws its power from several sources.<sup>74</sup> First, the paralegals advocate for their individual clients and for systemic change with creativity and persistence, often combining numerous techniques over weeks or months. Second, they are experts in formal law and institutions, local culture and power dynamics, and community structures. Timap paralegals combine norms and practices from all of these sources as they work on individual cases and for systemic change. Third, the paralegals gain the respect of ordinary people and officials through a professional demeanor and polish that are rare in Sierra Leone. Fourth, the paralegals are seen as embodying the authority of the law because they know its rules and are unafraid to invoke them. Other aspects of their methods and self-presentation, such as including the label "human rights" on their identity cards, are designed to create this impression.<sup>75</sup> Finally, Timap can suggest – or directly threaten – that it will sue opponents in the formal courts if less confrontational methods fail.

#### *4.2.2 Origins and international support*

Timap began as a collaborative venture of Sierra Leonean human rights activists and the international Open Society Justice Initiative. Programs in other countries had convinced Justice Initiative staff that paralegals offered a lower cost, more accessible model for supporting the poor and other disadvantaged groups as they engaged with formal and traditional dispute resolution systems, ultimately helping them achieve more just outcomes. In 2002, the Justice Initiative's Zaza Namoradze visited Sierra Leone to build relationships with Sierra Leonean human rights activists and study the country's needs. In conversations with him, the activists highlighted discrimination against women, youth and the poor in local courts and other traditional forums. They also noted the inaccessibility of the formal justice system to most of the population, in part because nearly all of the country's lawyers worked in the capital.

The Justice Initiative and the activists, working through the National Forum for Human Rights, spent the following year designing Timap, in consultation with other civil society organizations, ordinary citizens around the country, community leaders and local attorneys. Simeon Koroma, a Sierra Leonean, and Justice Initiative Resident Fellow Vivek Maru, an American, founded Timap in 2003 with Justice Initiative seed funding. They began with six offices, each staffed by two or three paralegals from the local area.<sup>76</sup>

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<sup>73</sup> Maru, above n 69, 442.

<sup>74</sup> See *ibid* 464.

<sup>75</sup> On one occasion, a corrupt official demanded a bribe for seed-rice to which a particular village was entitled. When the village leaders returned with a Timap paralegal, the words "human rights" on the paralegal's identity card caused the official to "trembl[e]" and he quickly backed down. *Ibid* 451.

<sup>76</sup> The Justice Initiative is now working with the government of Sierra Leone to explore whether Timap can serve as the model for a national legal services program that features paralegals backed by lawyers.

Timap's success in the field has brought additional recognition and funding. The United States-based Carter Center looked to Timap when it designed a new paralegals program for Liberia after the civil war ended in 2004.<sup>77</sup> In 2006, Timap received a three-year, US\$880,000 grant from the World Bank. The Fund for Global Human Rights and the United States Embassy in Sierra Leone have provided additional support.

#### 4.2.3 Contribution to peace and philosophy of social change

Timap and other legal empowerment initiatives can strengthen the foundation of peace by helping dismantle systems of exclusion and discrimination that can fuel violence.<sup>78</sup> If Sierra Leone is to enjoy a peaceful future, its political and social structures and norms must change profoundly. Yet traditional tools of transitional justice, such as truth commissions and courts, cannot stimulate such a dramatic transformation.<sup>79</sup>

The design and day-to-day operations of Timap reflect a vision of social change that can be applied beyond Sierra Leone.<sup>80</sup> This vision acknowledges that most deep reform comes only slowly, through complex processes that we only partially understand. Powerful interests tenaciously defend the status quo. Most social change occurs at the grassroots level over a long period, through myriad, small-scale shifts in social practices, with little central coordination. Outsiders can help, but local people generally know best what change should occur and how it can be achieved.<sup>81</sup>

Who drives change and how fast are vital questions. Timap undeniably represents an outside intervention in the mostly rural communities in which it works – its attorneys are based in the national capital, and one co-founder and nearly all funding come from abroad. But the organization is responding to demands for fair treatment made by local people themselves, not imposing an outside agenda that lacks grassroots support. Timap's strategy is patient, too: it does not attempt to transform local norms and structures wholesale. Instead, it supports local agents of change, first by hiring some as paralegals and then by helping the paralegals teach and organize their neighbors so the neighbors, in turn, can press for change. Thus, Timap helps local people shift the balance of power within their own communities, gradually transforming social and political norms and structures.

Pragmatism as well as principle relegates outsiders to this secondary role. The paralegals, working in their own areas, understand crucial aspects of local context that the organization's Freetown-based directors and foreign supporters do not. Timap's effectiveness depends on sensitivity to local norms and power dynamics – the paralegals and their clients can push the status quo somewhat, but not so hard that they provoke fierce opposition. Maru comments: "We work hard to cultivate positive relationships with paramount chiefs, and challenging one is a delicate business. An angry paramount chief could shut one of our offices down in one day."<sup>82</sup> Timap places authority in the hands of

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<sup>77</sup> See J Carter, 'Reconstructing the Rule of Law: Post-Conflict Liberia' (2008) 30(3) *Harvard International Review* 14, 17.

<sup>78</sup> They are not, of course, panaceas. Keeping the peace in Sierra Leone so far has required efforts on a wide range of fronts by Sierra Leoneans and foreign supporters, such as job training for demobilized combatants and an enormous UN peacekeeping force. See J O'Connell, 'Here Interest Meets Humanity: How to End the War and Support Reconstruction in Liberia, and the Case for Modest American Leadership' (2004) 17 *Harvard Human Rights Journal* 207, 218-31.

<sup>79</sup> See, for example, Mani, above n 8.

<sup>80</sup> Although the author contributed to this process (see above n 72), this account of the vision underlying Timap's work is his own interpretation and has not been endorsed by the Open Society Justice Initiative or Timap.

<sup>81</sup> This vision shares much with the analysis advanced by anthropologist James C. Scott. See J C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (1998). It contrasts with a top-down approach that aims for quick, dramatic change and has – in combination with other factors – produced failures such as the first U.S. efforts to create democracy in Iraq after 2003 and the collectivization of agriculture in the former Soviet Union.

<sup>82</sup> Maru, above n 69, 444.

the people in the organization who are closest to the problems it addresses: the paralegals have wide latitude in determining when and how to act to promote change, taking into account personalities, relationships, norms, history and other factors specific to each community.

Leaders of countries recovering from conflicts fed by exclusion and discrimination, and the international actors who assist them, often focus on short-term needs, including preventing the immediate recurrence of war and reconstructing physical infrastructure. These activities are important, but the causes of the conflict also require attention. In the long run, initiatives that reflect Timap's philosophy of social change have the potential to help transform social and political norms and structures, and thus contribute to long-term peace.

### **Conclusion: legal empowerment during transitional periods**

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Societies emerging from dictatorships and periods of mass atrocity confront extensive problems that often include fundamental inequities in political, social and economic life. The disadvantaged and those who wish to support them should seize the opportunities to expand legal empowerment during transitional periods that this paper has identified. In particular, international institutions, foreign donors and NGOs working in any country that is approaching or that has just gone through a transition – as well as the country's own government – should strive to ensure that:

- peace treaties and other transition agreements mandate specific legal empowerment initiatives and reforms, such as nationwide legal assistance programs and constitutional provisions outlawing discrimination;
- truth commissions analyze and publicize systemic sources of disadvantage that contributed to or were exacerbated by the atrocities they examine, and recommend specific legal empowerment reforms and initiatives to address those problems;
- the needs of victims from traditionally disadvantaged groups are given special attention in the design and implementation of reparations programs;
- community-level transitional justice forums give prominent roles to those usually marginalized from other local decision-making processes and adequately respond to the needs of victims; and
- legal empowerment initiatives and reforms receive the resources necessary to succeed, including political support, technical assistance and funding.

Practitioners of development and transitional justice, too, should promote legal empowerment during transitions, including by:

- educating local and international actors on the prevalence and causes of systemic disadvantage, its impact and the potential of legal empowerment to address it;
- assessing the potential of each opportunity described in this paper to advance legal empowerment in the society in question, taking into account the cost of pursuing the opportunity and alternative uses of those resources;
- supporting victim organizations and enlisting their support for social change;
- launching bold, but carefully considered, initiatives where a sense of crisis creates unusual openness to them, while discouraging programs based on inadequate understanding of the local context or the dynamics of social change; and

- securing a share of international funding and other resources for legal empowerment initiatives that contribute to recovery and reconstruction.

The fall of a dictator or end of a brutal war may stop much suffering, but in most societies chronic injustices remain. Transitional justice ventures sometimes touch on these profound troubles, but seldom have a significant impact on them. Legal empowerment can play an important role in combating poverty, discrimination and other forms of disadvantage, and thus advancing democracy and equality.