

Namati's Submission to the UN Special Rapporteur on the Independence of Judges and Lawyers

I. Introduction

The world faces many challenges, from rising inequality to the climate crisis. At their heart, these challenges are justice problems, fueled by oppression and abuses of power. Fairer laws, inclusive governance, and meaningful access to legal remedies - in other words, equal access to justice - can help resolve many global challenges. Yet, an estimated 5.1 people around the world lack access to justice.¹ Many are unaware of the laws that are meant to protect them. Others cannot access the justice system due to distance, cost, language, or discrimination. Those who gain access must often contend with endemic corruption or dysfunction.

The Sustainable Development Agenda's Goal 16 commits to providing equal access to justice for all by 2030. It also recognizes justice as an important thread that runs through the entire agenda. Key to the achievement of the agenda are legal empowerment efforts being undertaken by grassroots actors around the world. Evidence shows that legal empowerment helps to improve people's livelihoods, reduce inequality, confront environmental destruction, and increase citizen engagement.²

If we are to make sustained progress towards equal access to justice for all, governments, courts, the legal profession, and civil society must all work together to invest in legal empowerment at the grassroots.³

II. Legal Empowerment and the Provision of Justice Services

What is Legal Empowerment?

Justice challenges are complex and interrelated. Some can be resolved through formal justice institutions – including courts and police – but many require engagement with a broader range of legal, social, administrative, and political processes. Recognizing this, grassroots groups are working directly with

¹ World Justice Project. (2019). *Measuring the Justice Gap*.

<https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring-justice-gap>.

² Namati, *The Case to Fund and Protect Grassroots Justice Defenders* (2019).

³ Namati advances social and environmental justice by building a movement of people who know, use, and shape the law. We convene the Grassroots Justice Network (formerly known as the Legal Empowerment Network), the largest community of grassroots justice defenders in the world. The Network brings together more than 12,000 individuals, representing more than 3,300 organizations across 175 countries, all working to advance justice for all. This submission draws from Namati and the Network's decade of experience working with grassroots justice groups around the world.

communities to help them understand, use, and shape the law in creative and holistic ways – a process known as legal empowerment.

Legal empowerment is a community-led, bottom-up approach. In contrast to conventional legal aid approaches, which often treat people as victims requiring a service, legal empowerment is about building people’s knowledge and power to solve injustices themselves. Legal empowerment shifts from “I will solve this problem for you,” to “We will solve it together, and in the process we will grow.”⁴ Through the process of legal empowerment, those most impacted by injustice gain the capacity to exercise their rights and take part in the decisions that affect their lives.

The Role of Grassroots Justice Defenders

At the forefront of legal empowerment efforts are **grassroots justice defenders**, including community paralegals, human rights activists, community organizers, and community-facing lawyers. Whatever their titles, these defenders are knowledgeable in law and policy. Many are skilled in negotiation, community organizing, and advocacy. They deploy these skills to raise awareness of rights, laws, and policies; help people navigate legal and administrative processes in pursuit of remedies; and support communities’ engagement in law and policy reform.

The methods of grassroots justice defenders are diverse and pragmatic. They hold legal awareness sessions, conduct mediations, or mobilize communities to take action to stop collective injustices. They also engage a variety of institutions and actors, such as customary mechanisms, administrative agencies, or health clinics.

Legal Empowerment and Structural Change

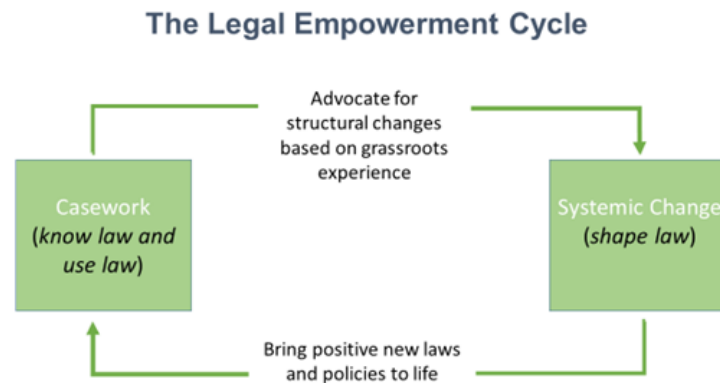
Legal empowerment efforts play a key role in challenging the structural inequalities and power asymmetries that allow injustice to persist. Often, this involves organizing and building community power to demand change. Indeed, the history of legal empowerment is rooted in collective struggles for freedom, democracy, and human rights. In the 1950s, for instance, community paralegals working with community leaders and the NGO Black Sash in South Africa helped non-white people defend themselves against repressive apartheid-era laws. Over time, as these countries began to democratize, paralegals spent more time helping citizens hold their governments accountable to their new commitments – a process of deepening democracy that continues today.⁵ This work can look very different in more stable democracies, those that are emerging, or experiencing the erosion of the rule of law.

The process by which ordinary people are equipped to know, use, and shape the law is embodied by the ‘legal empowerment cycle’, pictured below. It begins with grassroots justice defenders helping

⁴ Maru, V. & Gauri, V. (2018). Paralegals in Comparative Perspective What Have We Learned across These Six Countries?. In V. Maru & V. Gauri (Eds.), *Community Paralegals and the Pursuit of Justice*. (p. 5). Cambridge University Press.

⁵ *Ibid*, p. 15.

individuals and communities find concrete solutions to specific injustices - securing the safety of a woman facing domestic violence, for example. In the aggregate, this grassroots casework generates a map of how systems are working in practice, and where improvements are needed. Justice defenders, alongside the communities they serve, draw on this data to inform advocacy aimed at improving laws, policies and systems, leading to stronger protection of rights. Justice defenders then work with communities to bring these improved laws to life.



Box 1: The Legal Empowerment Cycle in Action

In **Sierra Leone**, communities and paralegals working with **Namati** have taken on over 500 land or environmental injustices, including unfair lease agreements, unlawful pollution, and heedless destruction by mining companies. Connecting across those struggles, they began to envision a better system of land and environmental governance. In 2017, they shared this vision at a community forum with officials across political parties. Seventeen political parties pledged to support the vision, including the eventual winners of subsequent national elections.

In 2019, the Sierra Leone Ministry of Lands committed to action on land reform. Two leaders of Namati Sierra Leone were invited to draft the new legislation, drawing on their knowledge of community needs. To generate pressure on lawmakers, Namati helped mobilize communities to participate in nationwide consultations held on the draft bills. In addition, over two hundred people affected by environmental harm sent an open letter about the bills to President Bio, which was covered widely in the national press.

In 2022, the bills were passed by Parliament and signed by the President. These [new laws](#) are now two of the world's most progressive laws on land, climate, and environmental justice. They grant communities the right to free, prior, and informed consent over development on their land; ban industrial development in old-growth forests; and empower local land use committees, which must be at least 30% women. Namati paralegals are now tasked with ensuring that communities are aware of their expanded rights, and that companies and regulatory authorities adhere to these laws.

Legal Empowerment and the Enforcement of Judicial Rulings and Orders

All too often, laws and positive judicial rulings remain unenforced. Legal empowerment efforts play an important role in implementing laws and judicial decisions, ensuring that communities actually benefit. By helping communities to understand and use laws and rulings or mobilizing communities to hold government actors accountable for implementing them, grassroots justice defenders transform laws on the books into reality.

Box 2: Working Together to Protect Rights

In **Argentina**, the **Asociación Civil por la Igualdad y la Justicia (ACIJ)** plays a critical role in implementing a key Supreme Court decision. ACIJ has been working for more than decade in Villa Inflamable, one of the most polluted settlements in the Matanza Riachuelo River Basin. In 2008, a groundbreaking Supreme Court ruling declared that the residents had rights to a healthy environment, mandated the cleanup and redevelopment of the river basin, and recognized communities' rights to participate in decision-making. A subsequent 2012 ruling required the local government to develop a plan guaranteeing residents' participation in decision-making and access to information. Since then, ACIJ has opened a Community Legal Action Center in the settlement to ensure residents are able to realize these rights and access basic services as they await relocation. The Center provides legal support to residents, and also hosts meetings with officials, activists and community members. Moving forward, ACIJ will work with the local government to put in place effective models for the redevelopment and provision of public services to the community.⁶

In **Brazil**, grassroots justice defenders help implement judicial orders that protect women from violence. In May 2020 in Canoas, **Themis** developed a formal partnership between their community paralegals, known as "popular legal promoters" (PLPs), and the Special Court of Domestic and Family Violence. The initiative supports women who have been granted Emergency Protective Measures (MPUs), which protect victims by removing the abuser from the home or requiring that they stay a minimum distance from the victim. Per the agreement, courts provide Themis with a list of women who had been granted MPUs. Themis' PLPs contact the victims to offer support and guidance, advise on services and resources, and monitor their safety. By directly monitoring compliance with MPUs, the PLPs help ensure victims' safety, while supporting the enforcement of court orders. This collaboration had the added benefit of strengthening relations with the formal justice system.⁷

⁶ See ACIJ. (2015, March 13). *La lucha por los derechos en la Villa Inflamable*. <https://acij.org.ar/la-lucha-por-los-derechos-en-la-villa-inflamable/>.

⁷ Namati. (2021). *Gender Justice During and Beyond the COVID-19 Crisis: Institutional Responses to Gender-based Violence and the Role of Legal Empowerment Groups*. <https://namati.org/wp-content/uploads/2021/06/Gender-Justice-COVID19-EN.pdf>, p. 49.

The Role of Lawyers

In countries where lawyers are too few, too expensive, too specialized, or too far away to serve the millions in need of assistance, a partnership between community-oriented lawyers and a broader frontline of grassroots justice defenders helps to resolve the imbalance between the supply of, and demand for, legal services.

Box 3: Filling the Justice Gap

In **Ontario, Canada**, grassroots justice defenders are formally recognized as part of the legal aid system, partnering with licensed attorneys to expand the reach of justice. Community Legal Clinics (CLC) provide legal services to low-income or disadvantaged communities in housing, social assistance, health, employment, and education matters. They employ **community legal workers (CLWs)** – the functional equivalent of community paralegals – who provide clients with legal information and advice, referrals, and representation, and also engage in public outreach, legal education, and advocacy. CLCs and CLWs receive funding from the provincial government according to law. Some CLWs choose to become licensed under the Law Society of Ontario’s formal licensing regime. However, even CLWs without a license are authorized to work, so long as they do so under the supervision of a lawyer and have professional insurance.⁸

Lawyers are also effective allies when deeply entrenched justice problems cannot be solved locally. Connections to lawyers can help defenders engage higher levels of authority, like courts, parliaments, or corporations, which can motivate action on particularly tough cases. Lawyers themselves can also adopt a legal empowerment-oriented approach, integrating impacted community members as key leaders driving forward legal actions.

Box 4: Community-led Litigation

In the **Philippines**, the **Legal Rights and Natural Resources Center/Kasama sa Kalikasan/Friends of the Earth** developed a “Community Paralegal Teams” (CPLT) model, a close partnership between public interest law groups and community paralegals. Community members - who together form CLPTs - are trained to gather information and document evidence in support of cases defending their land and natural resource rights. Meanwhile, lawyers for these cases provide funding to CPLTs, monitor their work, and design additional training opportunities for them. Once trained, CPLTs provide legal information to the community, and also engage in advocacy and campaigning. In this way, litigation becomes an opportunity for the participation and leadership of affected community members.

⁸ Namati. (2019). *Ontario, Canada. Community Paralegals: Recognition & Financing*. <https://namati.org/wp-content/uploads/2019/02/Ontario-Canada-Community-Paralegal-Research-Brief-Final-1.pdf>.

In Haiti, **Bureau des Avocats Internationaux (“BAI”)**’s model uses “community lawyers” who incorporate legal empowerment strategies into their legal casework. Litigation is undertaken in close coordination with communities’ organizing efforts and demands. BAI lawyers work with ‘grassroots coordinators’ who organize rights trainings; help community members actively participate in court (translating where necessary to ensure that community members understand the proceedings); and support advocacy and mobilization efforts (e.g. engaging with media, organizing demonstrations). These strategies help build political pressure on the judiciary to move cases through the courts in a timely manner.⁹

III. Challenges and Recommendations

A. Funding legal empowerment work

Despite important steps taken by some donors and governments, the work of grassroots justice defenders remains chronically underfunded. In response to the Grassroots Justice Network’s 2021 annual survey, 45% of respondents said their funding situation worsened compared to the prior year. In 2021, 78% of Network members said they will either have to make cuts to operate or may not be able to operate due to lack of funds.¹⁰ The launch of the multi-donor [Legal Empowerment Fund](#) (LEF) is a sign of progress, but cannot alone meet overwhelming demand. Their first open call for proposals received applications from 4,800 grassroots justice groups seeking a total of \$233 million in funding - more than twice with the Fund aims to raise over ten years.¹¹

Recommendations:

- Governments and judiciaries should increase domestic investment in civil society legal empowerment efforts. Justice sector funding, including court and legal aid budgets, can be a source of funding. Partnerships with other ministries - labor, land, housing, and gender, for example - can increase funding opportunities. Governments should ensure that any investments do not curtail the independence of legal empowerment groups and involve them in designing funding mechanisms.
- Governments should increase global aid flows to grassroots legal empowerment groups and invest in the Legal Empowerment Fund.

⁹ Jagannath, M., Phillips, N. and Shah, J., *A Right-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 Nw. J. Hum. Rts. 7 (2011). <https://scholarlycommons.law.northwestern.edu/njihr/vol10/iss1/2>.

¹⁰ Legal Empowerment Network, 2021 Annual Member Survey, https://docs.google.com/presentation/d/1gKAosp1pd01SZLDKYpVcCzdttrijo-FtPLiLmdXBCpQ/edit#slide=id.g1090256b993_0_3216.

¹¹ Odhiambo, A. (2022). *What We Learned from the LEF’s First Round of Funding*. Fund for Global Human Rights. <https://globalhumanrights.org/commentary/what-we-learned-lef/>.

B. Closing civic space and repression of justice defenders

Globally, civic space is under threat.¹² Many governments are instituting onerous legal and financial barriers that limit the operation of civil society groups.¹³ Grassroots justice defenders are increasingly harassed, attacked, or even killed, including by governments seeking to silence dissent.¹⁴ In some cases, governments weaponize anti-terror, national security, or defamation laws to silence, criminalize, and detain justice defenders, or to target the organizations they work with.¹⁵ In other cases, SLAPP suits (strategic lawsuits against public participation) use “mounting legal costs or fear of incarceration to intimidate” justice defenders into silence.¹⁶ In 2021, 50% of respondents to the Grassroots Justice Network’s annual survey reported that members of their organizations, or people they serve, have been threatened, arrested, or harassed pursuing justice in the last year.

Recommendations:

- Governments should create an enabling environment for grassroots justice defenders, protect civic space, and support the documentation of rights violations against justice defenders.
- Justice sector actors should fully investigate and prosecute those responsible for attacks on justice defenders.
- Courts should dismiss frivolous lawsuits whose main purpose is to harass justice defenders.

C. Recognizing grassroots justice defenders as part of the justice system

The legal empowerment approach benefits the formal justice system in manifold ways. As illustrated in the case studies above, grassroots justice defenders can expand the reach of legal services, which can be limited by distance, language, cost, or scarcity of lawyers. They also improve the implementation and enforcement of court rulings, laws, and policies.

Despite their contributions, grassroots justice defenders are rarely recognized as legitimate justice actors. They often face significant opposition from bar associations, who mistake them for competition as opposed to potential partners serving complementary communities.¹⁷ In many countries, grassroots justice defenders operate under threat of criminalization for dispensing legal advice. In the United States,

¹² CIVICUS. (2022). *People Power Under Attack: A Report Based on Data from the CIVICUS Monitor*. <https://civusmonitor.contentfiles.net/media/documents/GlobalFindings2022.pdf>.

¹³ *Ibid.* at 35-39.

¹⁴ CIVICUS, *supra* note 14, at 9.

¹⁵ *Ibid.* at 34-35. See also https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf, p. 10.

¹⁶ Namati, *supra* note 10, at 14.

¹⁷ Namati. (2022). *The Role of Legal Empowerment Groups in Addressing Gender-Based Violence in Sub-Saharan Africa During the Pandemic*. <https://namati.org/wp-content/uploads/2022/05/THE-ROLE-OF-LEGAL-EMPOWERMENT-GROUPS-IN-ADDRESSING-GBV-IN-SSA-Report.pdf>, p. 51.

for instance, broad “unauthorized practice of law” rules prohibit anyone who is not a licensed attorney from providing even basic legal advice.¹⁸

Recognizing grassroots justice defenders increases their effectiveness and credibility, making local actors more likely to collaborate and more responsive to their advocacy. Recognition can take many forms, ranging from informal arrangements with local government to partnerships with the judiciary or legal profession. Regardless of the form of recognition, it is important to note that, like the judiciary itself, legal empowerment efforts should be insulated from political influence and government control. Independence allows legal empowerment groups to put the needs of vulnerable people first and, when necessary, hold institutions accountable or advocate for reforms.

Recommendation:

- Courts and the legal profession should seek appropriate ways to recognize, partner with, or otherwise support legal empowerment efforts, while taking measures to ensure the independence of grassroots justice defenders.

¹⁸ In some states, there is a movement underway to reform such laws and give non-lawyers the authority to provide certain types of legal aid. See National Center for Access to Justice. *Legal Empowerment*. <https://ncai.org/tools-for-justice/legal-empowerment>.

ANNEX

Relevant Resources

Please find below a selection of resources from across Namati, the Grassroots Justice Network, and partners, many of which we drew from for the above submission. We would be glad to share more resources and case studies upon request.

- **Books:**
 - [Community Paralegals and the Pursuit of Justice](#), edited by Vivek Maru and Varun Gauri (2018)
- **Reports and Journal Articles:**
 - Laura Goodwin and Vivek Maru, [What do we know about legal empowerment? Mapping the Evidence](#), Hague Journal on the Rule of Law (2017)
 - Namati, [Legal empowerment experiences from Latin America](#) (2018)
 - Namati, [The Case to Fund and Protect Grassroots Justice Defenders](#) (2019)
 - Namati and the Pathfinders for Peaceful, Just, and Inclusive Societies. [Grassroots Justice in a Pandemic: Ensuring a Just Response and Recovery](#) (2020)
 - Task Force on Justice, [Justice for all Final Report](#) (2018)
 - Grassroots Justice Network and Themis, [Gender Justice During and Beyond the COVID-19 Crisis: Institutional Responses to Gender-based Violence and the Role of Legal Empowerment Groups](#) (2021)
 - FIDA Uganda, ICJ-Kenya, and the Grassroots Justice Network, [The Role of Legal Empowerment Groups in Addressing Gender-Based Violence in Sub-Saharan Africa During the Pandemic](#) (2022)
- **Videos**
 - [Namati's YouTube](#) account, including:
 - [People Rising: Ivy City](#)
 - [People Rising: Beside the Water](#)
 - [Lifting a Curse](#)
 - [The Road to Securing Land Rights in Kenya](#)
 - Network member/Partner videos
 - TEDx Talk by Denise Dora, Member of the Network Advisory Council and co-founder of THEMIS - Gender, Justice and Human Rights (Brazil): [Promotoras legais populares: construindo a justiça coletivamente](#)
 - Silicon Valley De-Bug, [Transforming the Courts Through Family and Community Participation: The ACJP Model](#)
 - [Land Rights in Myanmar](#): The story of paralegal Daw Dae Na, and some of the work done by MyJustice partner Than Lwin Thitsar, filmed in September 2019.
 - [Citizenship Documentary by the Heralding Development Organization](#)