



## Input from the International Development Law Organization (IDLO) to the UN Special Rapporteur on the independence of judges and lawyers: Thematic report on legal empowerment

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### Introduction

The **International Development Law Organization (IDLO)** welcomes the Special Rapporteur’s call for input to the forthcoming thematic report on legal empowerment. As the only the only global intergovernmental organisation exclusively devoted to promoting the rule of law to advance peace and sustainable development, IDLO champions legal empowerment across its policy advocacy and programme interventions. Legal empowerment is an essential means of delivering people-centred justice, interlinked with and mutually dependent on efforts to make laws and institutions work for people and promote more inclusive governance arrangements.

**Justice becomes an everyday reality only when people are empowered to seek and realise it.** The practical ability of justice seekers to assert their rights, find redress for grievances, resolve disputes, and demand access to critical public services—as well as the civic space in which to mobilise and advocate for fulfilment of basic rights—is fundamental to a functioning social contract. This is especially the case for people and communities experiencing poverty, inequality, and insecurity, who are most in need of access to the protection of the law. For the rule of law to act as an effective enabler of people-centred justice and sustainable development, all people must be able to realise their rights in practice, irrespective of identity, socioeconomic background, or citizenship status.

IDLO understands legal empowerment as a ‘bottom-up’ approach that supports justice seekers to acquire **the knowledge, tools, and space to engage with laws and institutions that affect their everyday lives**, from formal and informal justice actors to local governments and service providers.<sup>1</sup> The means of legal empowerment include, among others, legal education and awareness-raising, provision of legal aid and paralegal services, support to civil society organisations (CSOs) and human rights defenders, and protection of civic space for organising and collective action.

Legal empowerment occurs when marginalised and excluded people use the law, legal systems, and justice mechanisms to **improve or transform their social, political, or economic circumstances**. Legal empowerment approaches are explicitly interested in the agency of justice seekers and understanding how they can use the law to advance their interests.<sup>2</sup> Legal empowerment can improve the lives of the most marginalised and excluded people by advancing the realisation of rights and achieving redress for rights violations; contesting unjust power relations or resource allocation practices;

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<sup>1</sup> IDLO (2021), *Strategic Plan 2021-24*, available at: <https://www.idlo.int/about-idlo/strategic-plan/2021-2024>

<sup>2</sup> Golub. S. (ed.) (2010), *Legal Empowerment: Practitioners’ Perspectives*, available at: [https://www.idlo.int/sites/default/files/pdfs/publications/Legal\\_Empowerment\\_Practitioners\\_Perspectives\\_Book.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/Legal_Empowerment_Practitioners_Perspectives_Book.pdf)

enabling justice seekers to demand accountability from duty-bearers through legal action; and contributing to longer-term changes in legal, regulatory, and policy frameworks.

### Key recommendations

IDLO has provided a set of four **key recommendations** summarising responses to selected questions posted by the Special Rapporteur. Responses build on the experience and insight accumulated by IDLO and its partners through policy advocacy, research, and programme implementation activities across a broad spectrum of country contexts.

IDLO advocates for legal empowerment as **central to achieving justice all in line with SDG 16**, and proposes to:

1. **Combine legal empowerment interventions with social accountability mechanisms** that strengthen the responsiveness and accountability of service providers and duty-bearers
2. **Ensure no one is left behind by focusing on legal empowerment of the most marginalised and excluded constituencies**, including women and girls and stateless people, among others
3. **Empower people and communities along diverse pathways to justice**, enabling justice seekers to resolve their problems using systems they regard as relevant and legitimate
4. **Recognise and advance legal empowerment as a critical means of tackling the climate crisis**, equipping people with the tools to defend land and resource rights and protect biodiversity

### Responses to CFI questions

*Examples of legal empowerment modalities and innovations at the community, local, national, and international level*

IDLO has delivered notable results through efforts to **combine legal empowerment interventions with social accountability** (that is, strategies that employ information and participation to boost demand for fairer, more responsive public service provision). While these approaches have evolved independently, they share common aims and substantively overlap: both promote human rights and social justice and provide knowledge and skills to people and communities through grassroots legal education and collective mobilisation. They also contribute to strengthening inclusive decision-making and power-sharing between marginalised and excluded constituencies and duty-bearers.

By coupling legal empowerment with social accountability tools like community scorecards and social audits, it is possible to **ensure that the rising demand of people and communities for justice services and other public goods is paired with increased capacity of service providers and policymakers** to use rights-based local engagement and feedback processes.<sup>3</sup> Combined with social accountability mechanisms that improve the responsiveness of duty-bearers, empowered people and communities are not only better able to claim their rights, seek redress for grievances, and resolve disputes, but also better equipped to participate in decision-making processes at all levels, bolstering confidence in the social contract writ large. Evidence also suggests that a combination of the two approaches can help combat corruption: social accountability programmes can expose and

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<sup>3</sup> IDLO (2020), *Legal empowerment, social accountability, and HIV prevention for young women and girls: Lessons from Tanzania and Uganda*, available at: <https://www.idlo.int/publications/legal-empowerment-social-accountability-and-hiv-prevention-young-women-and-girls>

publicise corruption, while legal empowerment provides people with ways to pursue redress.<sup>4</sup> (though accompaniment may be necessary to ensure that they remain free from adverse consequences resulting from their demands).

In **Tanzania** and **Uganda**, IDLO implemented an innovative project aimed at reducing new HIV infections among adolescent girls and young women by boosting demand for quality HIV prevention services and increasing the capacity of service providers and policymakers to use rights-based social accountability mechanisms.<sup>5</sup> Legal empowerment strategies deployed by the project included capacity building on basic HIV-related rights, conducting legal aid clinics, and provision of pro bono legal aid services for young survivors of sexual- and gender-based violence; to improve legal education at the community level, the project conducted awareness-raising through radio talk shows and other media. These actions were matched with social accountability measures including the introduction of feedback mechanisms such as community scorecards.

*Shortcomings of existing judicial and other legal systems that illustrate the value of a legal empowerment approach, such as systemic discrimination, exclusion, and harms implemented within legal systems*

Equality and social inclusion constitute the normative core of access to justice. To accelerate progress on **the 2030 Agenda commitment to leave no one behind**, IDLO dedicates special attention to the empowerment of the most marginalised and excluded constituencies, including women and girls, youth, indigenous peoples, and refugees and migrants, among others. These constituencies require specific support to realise their rights as enshrined in core international human rights instruments, and participate to with dignity as equal members of society.

Due to conservative and patriarchal structures and social norms that exclude women from access to power and subordinate them in institutions such as justice systems, **women and girls** are at particular disadvantage when seeking to realise their rights under the rule of law. Some women face multiple and intersecting prejudices and exclusions related to class, ethnicity, or other identities. While justice systems are central mechanisms through which to seek redress and protection, and to challenge and extend their rights, women around the world face significant discrimination, injustice, and insecurity across these systems. Exclusion from access to justice and the benefits of the rule of law reinforce pre-existing gendered inequalities: entrenched socio-economic disparities, coupled with lack of representation and voice in decision-making processes, limit the opportunities women have to ensure their needs are adequately addressed. For these reasons, legal empowerment of women and girls should be a first-order priority.

In **Uganda**, IDLO supports empowerment strategies of women and girls under the Community Justice Programme, with activities including legal counselling and court representation of women in conflict with the law; provision of referral and training of paralegals to aid community legal assistance for sexual and gender-based violence survivors; and legal awareness campaigns

<sup>4</sup> Golub, S. (2020), *Using legal empowerment to curb corruption and advance accountability*, available at:

<https://www.u4.no/publications/using-legal-empowerment-to-curb-corruption-and-advance-accountability.pdf>

<sup>5</sup> IDLO (2020), *Legal empowerment, social accountability, and HIV prevention for young women and girls: Lessons from Tanzania and Uganda*, available at: <https://www.idlo.int/publications/legal-empowerment-social-accountability-and-hiv-prevention-young-women-and-girls>

encouraging women and girls to claim the rights through dialogues, TV and radio stalk-shows, and other media. The programme also supports social accountability measures including capacity building for justice actors in application of alternatives to custodial punishment of women in conflict with the law; training of judicial officers on gender-responsive adjudication of all cases; and development of tools to equip duty-bearers to perform their duties in a gender-sensitive manner.

**People without legal nationality** constitute another constituency at particular risk of marginalisation and exclusion. When the world’s estimated 10 million stateless people seek to access justice, they face multiple forms of exclusion due to their lack of legal standing, procedural obstacles, and fear of engaging with institutions that might or sanction them based on their statelessness—in addition to the everyday barriers encountered by the general population.<sup>6</sup> Stateless people are often unable to claim their rights within the justice system or challenge their fundamental lack of legal status, and remain dependent on support from civil society and international bodies charged with their welfare. Denial of access to justice also negatively affects the ability of stateless people to obtain basic services, or remedy deprivation of service delivery; and to assert their right to participate in democratic governance. Legal empowerment can facilitate stateless people to demand fulfilment of their rights, seek remedy for violations, and resolve disputes with duty-bearers.

In **Uganda**, IDLO’s Community Justice Programme supports local partners like World Voices Uganda to provide legal aid to South Sudanese refugees in Kyegegwa district, many of whom lack legal identity. Trained Community Legal Volunteers provide legal education and support refugees, including those at risk of statelessness, to secure documents including movement permits and identity cards, as well as access services and resolve disputes. Community Legal Volunteers also worked to link CIJ providers, such as the *bataka* courts, to the statutory justice system in ways that improved access to justice for people experiencing displacement and statelessness.

#### *Other topics relevant to the Rapporteur’s work on legal empowerment*

As acknowledged in the sixth report of Special Rapporteur Diego García-Sayán, **customary, traditional, indigenous, community-based, and other forms of informal justice provision** are often more accessible than domestic state systems, because of their cultural relevance, perceived legitimacy, availability, and proximity; and many national regulatory frameworks recognise the competence of the associated justice providers.<sup>7</sup> The Special Rapporteur further noted that states are responsible for ensuring that the decisions of these customary and informal justice (CIJ) systems are consistent with international and regional human rights standards, and that CIJ providers enjoy the same independence in the performance of their functions as regular judges.

Legal empowerment of people and communities necessitates **working with the pathways to justice already in use by those most at risk of being left behind**. The vast majority of people assert their rights, seek redress, and resolve everyday disputes using a wide array of CIJ systems; given the high

<sup>6</sup> IDLO and UNHCR (2022), *Addressing statelessness through the rule of law*, available at: <https://www.idlo.int/publications/addressing-statelessness-through-rule-law>

<sup>7</sup> UN General Assembly (2022), A/77/160, “Judicial independence in the context of the 2030 Agenda for Sustainable Development - Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán,” available at: <https://www.ohchr.org/en/documents/thematic-reports/a77160-judicial-independence-context-2030-agenda-sustainable-development>

levels of use and acceptance enjoyed by CIJ systems in their communities, all stakeholders should capitalise on the public legitimacy of these systems and integrate them into broader efforts to achieve justice for all consonant with SDG 16. Strengthening the legal empowerment of communities that use CIJ systems, and by extension improving the ability of those systems to operate responsively and accountably, is likely to advance access to justice and the rule of law more broadly. Legal empowerment interventions targeting users of CIJ systems may require specific adaptations, including support for case recording and data collection, and building on complementarities and synergies with formal justice actors to improve coordination and service delivery.<sup>8</sup> Enhancing justice outcomes for women and other marginalised populations, who tend to experience systematic and disproportionate exclusion in CIJ systems, must be at the heart of any engagement.

In **Somalia** and **Somaliland**, IDLO has supported establishment of 19 Alternative Dispute Resolution (ADR) Centres through operational assistance, technical advice, and capacity development. ADR Centres enable Somali justice seekers to assert their rights, seek redress for grievances, or settle disputes through the services of a mediator working within Somali formal law, but also through the traditional *Xeer* dispute resolution system or under Islamic *shari'ah* law. Somalis resolve more than 80% of their everyday justice problems through CIJ mechanisms, which are often better placed to address problems quickly and cheaply, but are not always responsive to the rights of women and other vulnerable groups as guaranteed in Somalia's Provisional Constitution. The ADR Centres help to address that non-responsiveness through provision of paralegal support and accompaniment for the most vulnerable justice seekers, especially women and members of minority clans.

Legal empowerment is essential to **addressing the greatest challenge to sustainable development of the 21<sup>st</sup> century: climate change**. Climate change is a transversal issue with disproportionate effects on marginalised and excluded people and communities, disrupting livelihoods, increasing migration and displacement, exacerbating dispossession and conflict, and undermining state capacity to sustain peace and promote development. Those who are most vulnerable to climate change are often those least able to access justice or make their voices heard in governance processes. Hence, addressing issues of justice, human rights, fairness, and equity must be at the core of transformative climate action—an approach IDLO advances within the rubric of 'climate justice'.<sup>9</sup>

**Legal empowerment of the most climate-vulnerable people and communities** can contribute to upholding land and environmental rights, protecting biodiversity, and achieving climate justice.<sup>10</sup> Targeted legal empowerment of women and girls, small-holder farmers and pastoralists, youth, indigenous peoples, and climate migrants can provide these constituencies with the tools to realise their rights under conditions of growing scarcity and biodiversity loss. CSOs, especially those led by or representing women, youth, and other climate-vulnerable constituencies, can play a catalytic and central role in advocating for and providing climate-vulnerable people and communities with important channels and platforms to voice their interests<sup>11</sup>; as such, protection of civic space for these

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<sup>8</sup> IDLO (2022), *Community paralegals and customary and informal justice*, available at:

<https://www.idlo.int/publications/community-paralegals-and-customary-and-informal-justice>

<sup>9</sup> IDLO (2022), 'DG Statement to Plenary Session of Stockholm +50', available at: <https://www.idlo.int/news/policy-statements/idlo-director-general-jan-beagles-statement-plenary-session-stockholm50>

<sup>10</sup> IDLO (2021), *Climate justice: A rule of law approach for transformative climate action*, available at: <https://www.idlo.int/publications/climate-justice-rule-law-approach-transformative-climate-action>

<sup>11</sup> IDLO (2022), *Climate justice for women and girls: A rule of law approach to feminist climate action*, available at: <https://www.idlo.int/publications/climate-justice-women-and-girls-rule-law-approach-feminist-climate-action>

movements should be prioritised, especially in light of growing violence against environmental human rights defenders. Finally, equitable access to both formal justice and CIJ mechanisms will help reduce the potentially cascading risks of land disputes, conflicts between farmers and pastoralists, and the disruptive effects of large-scale land concessions.<sup>12</sup>

In **Indonesia**, people living in rural peatland villages have faced eviction from their land due to lack of tenure security and conflict with private sector investors granted access to communal lands by authorities. IDLO worked with local partners to empower indigenous people and other excluded groups by training community members in four districts to become paralegals and offer legal support to protect and improve people's access to forests and peatlands. The peatland paralegals empowered local villagers to claim their rights, develop and enact regulations to secure land tenure, and resolve disputes with large companies. Heads of villages were trained in formulating better draft regulations for community-based forest and peatland management.

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<sup>12</sup> IDLO (2022), *Rule of law responses to climate insecurity*, available at: <https://www.idlo.int/publications/rule-law-responses-climate-insecurity>