

Explicit and Implicit Legal Empowerment, and How It Constrains Corruption

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I. Introduction

In 2019 I received a research grant from the Knowledge Platform Security and Rule of Law (KPSRL) unit, a Netherlands Ministry of Foreign Affairs-funded policy institute.[†] Through this grant, in 2019 and 2020 I conducted a literature review and related research on whether and how legal empowerment (basically, helping people to know, use and shape the law) constrains corruption. (Golub 2020a)

Here is the core finding: Legal empowerment constrains corruption under many circumstances in many countries. It is far from a panacea, and tends to most impact petty or bureaucratic corruption rather than grand or systemic manifestations (though there are positive exceptions to this rule). But it very arguably has a better track record than most efforts that focus on building up state institutions in the interest of improving governance or combating corruption.

The new paper I present here, on explicit and implicit legal empowerment, summarizes and builds on portions of the KPSRL and related research I have conducted. It by no means details all of the relevant instances of legal empowerment constraining corruption. It instead describes selected examples.

One matter that became clearer as I pursued my research is that it would be useful for this evolving field to distinguish between explicit and implicit versions of legal empowerment. I accordingly do so in the discussion below.

II. Examples of Explicit Legal Empowerment Constraining Corruption

A substantial part of my KPSRL-supported research focused on ways in which legal empowerment *explicitly* constrains corruption. That is, the research largely addressed regards in which lawyers, paralegals, laws, regulations, rights or legal institutions are explicitly employed to help people know, use or shape the law. I found numerous instances of this. For example:

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[†] All opinions and any errors are the author's own responsibility and should not be attributed to KPSRL.

Prisoners' rights in Africa. Noting how the poor in particular suffer from legal systems that are corrupt, ineffective or unreachable, Carmona and Donald (2015) describe how many thousands of eligible and suitable prisoners have been released thanks to the efforts of solicitors in Nigeria and paralegals in Sierra Leone. They report similar impact in Uganda and Kenya.

Health care paralegals in Guatemala. As part of a broader analysis of NGOs countering otherwise unaccountable behavior by health services providers, Joshi (2017) discusses the work of the Centro de Estudios para la Equidad y Gobernanza en los Sistemas de Salud (CEGSS) in Guatemala. The NGO deploys a network of “community health defenders” (de facto paralegals) to work with indigenous communities to ameliorate inadequate and corruption-prone health care services. It trains them to “lead collective deliberation” with their partner communities and to “prepare detailed documentation of the cases.” (p. 164) CEGSS helps take these cases to various government authorities that handle matters pertaining to discrimination, the rights of indigenous women, human rights violations in general and (via the ombudsman’s office) service delivery complaints.

Maternal health in India. A study (Schaaf 2018) of a program addressing maternal health in the Indian state of Uttar Pradesh determined that even a limited degree of activity could yield anti-corruption results. More specifically, the research found that educating women about their relevant rights, including how to lodge a complaint, reduced graft on the part of health services personnel. The women previously had been informally and illegally charged for what should have been free services. The program reduced such activity.

Pastoralist land use rights in Cameroon. Blasius et al. (2017) document how paralegals in parts of Cameroon have helped pastoralists successfully assert their land use rights in the face of corrupt authorities and otherwise unjust systems. Their work has also “enabled conflicts to be more quickly and efficiently resolved than they would otherwise have been.” (18) In addition, pastoralists there have combined litigation with protests in order to combat land-grabbing.

Empowering citizens for accountability in Africa. Drawing on relevant literature and field research involving four case studies in Kenya and southern Africa, Feruglio (2017) demonstrates how legal empowerment approaches help increase accountability for NGOs’ partner populations comprising farm workers, sex workers, the urban poor and other marginalized populations. Though much of the analysis focuses on accountability generally rather than anti-corruption impact specifically, it nevertheless suggests impact in that latter regard.

Law reform in Tunisia. Yerkes and Muasher (2017) describe the how a civil society coalition helped bring about crucial reforms to a highly controversial draft Law on Administrative Reconciliation, that, “in its original form, would have removed all financial cases from the jurisdiction of the Truth and Dignity Body (IVD) and provided anonymity as well as amnesty to both public and private individuals accused of financial crimes under the Ben Ali regime (as long as they returned their stolen funds and paid a fine).” (p. 19) Civil society mobilization helped bring about substantial reforms in the law as eventually adopted. Furthermore, this particular campaign was part of a broader pattern, in which “Civil society has played a crucial role in informing the official anticorruption process. Several anticorruption laws were drafted in

consultation with domestic civil society groups and international organizations such as the UNDP.” (p. 24)

III. Examples of Implicit Legal Empowerment Constraining Corruption

My KPSRL research concentrated on explicit legal empowerment because a number of previous papers, including one by me, (Golub, 2020b) have substantially addressed *implicit* legal empowerment. By implicit legal empowerment, I mean the many respects in which social accountability, local budget monitoring and other broad types of development work help people to use their rights or the law even if – unlike explicit legal empowerment – rights or law are not overtly invoked.

To my mind, such work constitutes legal empowerment because of the rights or legal components involved, implicit though they may be. But really, this is just a question of nomenclature. Regardless of whether these efforts are called legal empowerment, social accountability, civic engagement or any other term, their impact highlights the value of supporting civil society to combat corruption and otherwise hold governments accountable. In fact, as illustrated by one example below from Nigeria, implicit legal empowerment (the use of public information to monitor public services) can flow into explicit legal empowerment (the use of public interest litigation).

Examples of such legal empowerment, including the pages quoted from my previous paper, (Golub, 2020b) include:[‡]

Health services in Uganda. In Uganda, a two-study sequence of a 2009 randomised controlled trial and 2012 follow-up research suggests powerful LE impact on both health service delivery and health outcomes. The LE interventions included enabling Ugandans to monitor and engage with health facility personnel and providing information to the public about the facilities’ operations. Both studies ascertained benefits flowing from these interventions, with the informational component proving crucial. The 2009 research found a reduction in mortality of 33% for children under five years old, a 15% reduction in medicines going missing from the facilities, and a 13% reduction in staff absenteeism. The 2012 follow-up, which sought to determine the long-term effects of the initial intervention, found that the reductions had been largely sustained: there was a 23% reduction in mortality for children under five and 27% for children under two, as well as a 12% reduction in medicines going missing. (pp. 10-11)

Social safety nets in India. Through the Citizens Against Corruption programme in the Indian state of Bangalore, the UK Department for International Development funded 15 projects by civil society organisations. These consisted mainly of grassroots community actions designed to constrain corruption affecting social safety net benefits. An evaluation of the programme found significant impact: almost all of the grantee organisations were helping partner populations receive rations, job cards, and other benefits without having to pay bribes. One project also reported the recovery of US\$250,000 in lost wages. (p. 12)

[‡] Page numbers provided for quotations here are from my paper (Golub, 2020b). Citations and references from the original sources can be found in that paper.

Social accountability in Indonesia. In a report detailing social accountability initiatives in Asia, Sirker and Cosic discuss the work of numerous organisations involved with budget transparency, public services improvement, and monitoring of auditing agencies. These include, in Indonesia, the Forum for Budget Transparency (Forum Indonesia untuk Transparansi Anggaran, or FITRA), a national NGO. FITRA's members include academics, development practitioners, NGO activists, journalists, and government officials who conduct budgetary analysis and/or advocacy work to increase people's awareness of their rights regarding government budgetary processes and the delivery of public services...FITRA has pressured local governments to adopt regulations that promote budget transparency, and it has stimulated public discussion of topics that were otherwise considered too technical in nature...FITRA has exposed cases of corruption, often through the news media. This has sometimes led to follow-up actions by government. Examples include the initiation of judicial proceedings for embezzlement against 20 local councilors in Kendari, Southeast Sulawesi Province. The NGO also exposed misuse of the National Election Commission's 2002–2004 budget and presented evidence against the governor of Southwest Sulawesi Province regarding corrupt activity linked to a fraudulent electricity project. (p. 15)

Public information, public services and public interest litigation in Nigeria. The Socio-Economic Rights and Accountability Program (SERAP), a Nigerian NGO, works with members of the public to make use of Nigeria's Freedom of Information Act. Few Nigerians have any awareness of this law or its value. Accordingly, a particular focus of SERAP is to assist partner populations in accessing public information about health, education, and water services provided by local and state authorities. With respect to corruption, SERAP also helps people file complaints with anti-corruption institutions and assists in launching litigation against public agencies. As analysed by Ekhaton, SERAP has been especially effective in carrying out public interest litigation at the national level. This includes victories in several landmark environmental cases. (pp. 13-14)

IV. Conclusion

This paper has detailed examples of the numerous ways in which both explicit and implicit legal empowerment constrains corruption. While legal empowerment certainly cannot completely overcome a problem that plagues most societies around the world, it can make a difference in many people's lives. It accordingly merits increased financial and political support from aid agencies, other funders, policymakers and the general public, both globally and in specific nations.

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