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## Introduction: legal empowerment in transitions

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Despite the growing attention to and burgeoning literature on legal empowerment, there has been surprisingly little focus on how it might promote greater social justice during political transitions from authoritarianism and from conflict. Such transitions can provide opportunities for challenging structural inequalities and for promoting legal mobilisation. This introductory article provides an overview of legal empowerment before examining its links to peacebuilding and transitional justice.

**Keywords:** legal empowerment; access to justice; peacebuilding; rule of law; transitional justice

### Introduction

Over the past ten years, there has been a remarkable surge of interest in legal empowerment, with endorsement by the United Nations (UN), funding from the World Bank, advocacy by the Open Society Foundations, and programming by numerous non-governmental organisations (NGOs). Legal empowerment thinking has spurred the creation of new organisations, such as Timap for Justice, the Commission on the Legal Empowerment of the Poor, and Namati. These developments have prompted a stream of policy recommendations, practice guides and programme evaluations. There is also a growing academic and practitioner literature on legal empowerment, including valuable studies issued by the International Development Law Organization and Namati.<sup>1</sup>

Somewhat surprisingly, the efficacy and impact of legal empowerment during political transitions remains under-researched – even though the most influential legal empowerment programmes were initiated in post-apartheid South Africa and post-conflict Sierra Leone.<sup>2</sup> So far, much of the attention to the role of law in political transitions has focused on state-centric justice sector reforms and transitional justice mechanisms.<sup>3</sup> Yet, such transitions may provide opportunities for challenging the structural inequalities that are among the causes and consequences of conflict,<sup>4</sup> as well as providing more space for civil society actors and social movements to engage in legal mobilisation.<sup>5</sup>

This special issue is particularly timely given the ongoing campaign to make justice and legal empowerment part of the post-2015 sustainable development goals.<sup>6</sup> Civil society advocacy spearheaded by Namati is partly responsible for the inclusion of access to justice in the Outcome Document of the Open Working Group on Sustainable Development.<sup>7</sup> Relatedly, the UN Special Rapporteur on Transitional Justice has issued successive

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reports linking transitional justice to rule of law and development programming in an effort to influence the post-2015 debate.<sup>8</sup>

This article does three things. First, it provides an overview of legal empowerment. Second, the article examines how legal empowerment might be linked to transitions through peacebuilding and transitional justice. Finally, it briefly introduces the articles in this special issue on ‘Legal Empowerment in Transitions’.

### **Understanding legal empowerment**

There are multiple and often competing definitions of legal empowerment.<sup>9</sup> The Asian Development Bank, which was among the first to use the term, more recently acknowledged, ‘There is insufficient consistency, precision, and clarity about what it means, even among non-government organization providers of legal empowerment services.’<sup>10</sup> The most well-known, if contested, formulation was provided by the Commission on the Legal Empowerment of the Poor (CLEP) in 2008. The CLEP defined legal empowerment as ‘a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors’.<sup>11</sup> For the CLEP, legal empowerment has ‘four pillars’: access to justice and the rule of law, which are ‘the fundamental and enabling framework’ for three, key livelihood rights – property rights, labour rights, and business rights.<sup>12</sup> The commission emphasised that legal empowerment is a process that serves two end goals – protection and opportunity: ‘protecting poor people from injustice – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets’.<sup>13</sup>

While the commission’s report has been critiqued,<sup>14</sup> its definition of legal empowerment has been generally embraced.<sup>15</sup> Most importantly, the UN Secretary General adopted the CLEP definition almost verbatim in his 2009 legal empowerment report: legal empowerment is ‘the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors’.<sup>16</sup> The UN General Assembly has tacitly endorsed that definition, arguably giving it the status of soft law.<sup>17</sup>

Despite all the differing formulations, there is broad consensus on the key features of legal empowerment. First, it takes a bottom-up approach, focusing on the needs of the poor and marginalised. Second, legal empowerment is a form of rights-based development and so emphasises rights, participation, and accountability. Third, it adopts a pragmatic approach to legal pluralism, working with formal, customary, and religious law. Finally, legal empowerment engages civil society more than state institutions.<sup>18</sup> Overall, legal empowerment can complement, rather than substitute for, top-down justice sector reforms.

### ***What is the legal in legal empowerment?***

Legal empowerment contains an inherent, normative assumption that law is empowering rather than disempowering.<sup>19</sup> Recognising that law often can be formalistic, technocratic and depoliticising, several legal empowerment advocates downplay the law.<sup>20</sup> Others see law as central to legal empowerment.<sup>21</sup> The CLEP views law as fundamental, contending that the poor lack power, assets and work precisely because they are excluded from the law.<sup>22</sup> It also grounds legal empowerment (and poverty reduction more generally) in international human rights law.<sup>23</sup>

The standard tools of legal empowerment are predominantly, though not exclusively, legal.<sup>24</sup> They can be grouped into four, broad categories: legal awareness-raising (e.g. street law), legal service provision (e.g. law school clinics), dispute resolution (e.g. mediation) and law reform initiatives (e.g. public interest litigation).<sup>25</sup> This repertoire will be familiar to any public interest lawyer in the United States or United Kingdom. What is distinctive about legal empowerment interventions in the Global South is the heavier reliance on paralegals to do awareness-raising, legal assistance and mediation.<sup>26</sup> This is a response to smaller (and weaker) professional bars, the capacity deficits of state justice institutions, and the salience of customary and religious dispute resolution mechanisms. Vivek Maru, who co-founded Timap for Justice in Sierra Leone, described the key attributes of its paralegal programme as:

(1) the creative and diverse set of methods our paralegals employ, in part to make up for absent and dysfunctional state institutions; (2) the strategic use of our paralegals' association with the law, including legal knowledge and a connection to the capacity to litigate; (3) our alternative, community-and-justice centered conception of professional duty; (4) our attempt to move beyond the conventional notion of service toward addressing community-level problems and cultivating agency among the people with whom we work; and (5) our synthetic orientation toward Sierra Leone's dualist legal structure.<sup>27</sup>

These community-based paralegals are doing something akin to 'cause lawyering': they see their professional obligation as directed towards the cause (legal empowerment) and the community more than individual clients.<sup>28</sup>

Legal empowerment interventions can be stand-alone or coupled with other interventions. Not surprisingly, the Asian Development Bank and the World Bank have integrated legal empowerment initiatives into larger development projects.<sup>29</sup> There are several potential advantages to such integration. First, legal empowerment may help project beneficiaries actually claim and access the services, resources and opportunities promised by those development projects. In other words, legal empowerment can help ensure transparency and accountability, which are the hallmarks of rights-based development. Second, national governments, local officials and community elites are less likely to oppose or obstruct legal empowerment initiatives that come bundled (or perhaps 'sugar-coated') with larger development projects. Finally, integration provides legal empowerment initiatives with a more secure funding stream. The obvious downside to integration is sustainability: the legal empowerment initiative is likely to end when the development project finishes.<sup>30</sup>

### ***What is the empowerment in legal empowerment?***

Empowerment has become one of the most popular concepts in development theory and practice. For the CLEP, 'Empowerment of the poor in the end means social transformation – not only a more just distribution of wealth and income, but a more expansive sharing of power that enables disadvantaged people to begin bringing about significant change through their own actions.'<sup>31</sup> The commission left it to individual legal empowerment programmes to translate this vague formulation into something that could actually be measured and monitored.<sup>32</sup>

The CLEP did cite an influential 2006 World Bank study of empowerment. There, Ruth Alsop and her colleagues defined empowerment as 'the process of enhancing an individual's or group's capacity to make purposive choices and to transform those choices into desired actions and outcomes'.<sup>33</sup> That capacity is largely shaped by personal agency and institutional opportunity structures.<sup>34</sup> Obviously, law (both formal and informal) functions

as a crucial opportunity structure. Subsequent studies have made efforts to set out objective and subjective measures of legal empowerment.<sup>35</sup>

### *What is the evidence for legal empowerment?*

There is a growing, but still quite limited, evidence base for legal empowerment.<sup>36</sup> Writing in 2009, one scholar contended that ‘Just as the top-down approaches to justice sector reform are built on limited evidence of success ... empirical evidence to convince policy-makers that legal empowerment works is admittedly equally thin on the ground.’<sup>37</sup> In an effort to remedy that, Stephen Golub and Namati have mapped the evidence of legal empowerment’s impact and encouraged further evaluations by providers and scholars.<sup>38</sup>

There are four difficulties with measuring legal empowerment’s impact. The first is the variable definition of legal empowerment.<sup>39</sup> Namati defines legal empowerment expansively to ‘encompass [ ... ] a large amount of the work that might be termed social accountability’.<sup>40</sup> A number of the 199 studies they examine do not appear to have had an overt legal component. Similarly, Stephen Golub counts a development activity as legal empowerment ‘if it includes a rights-specific element, even if that element is not necessarily the most salient part of the project’.<sup>41</sup> The difficulty with these approaches is that legal empowerment becomes just another term for any rights-based development rather than an identifiably legal sub-component of such development. Second, various studies define impact differently. Impact can vary from an individual’s awareness of her rights to institutional change, or from an individual’s acquisition of a legal remedy to development outcomes.<sup>42</sup> Third, there is ‘the extremely wide range of potential issues, types of claimants and ambitions involved’.<sup>43</sup> The final difficulty is the range of different qualitative and quantitative methods employed to measure impact.<sup>44</sup>

Both Namati and the Overseas Development Institute (ODI) produced surveys of legal empowerment’s impact in 2014. The Namati review concludes that:

Substantial evidence exists on the impact of legal empowerment efforts around the globe ... The evidence shows legal empowerment has led to a range of changes: increases in legal knowledge and community participation, the resolution of disputes, improvements in health outcomes, and changes in institutional policy and practice.<sup>45</sup>

Still, it acknowledges that ‘the evidence is thin or lacking’ in places.<sup>46</sup> In particular, the study finds it ‘difficult to determine what works in which contexts based on existing information’.<sup>47</sup> Adopting a narrower definition of legal empowerment, ODI’s study reaches a more mixed conclusion:

at present, the evidence base remains highly uneven, concentrated mostly on particular activities (e.g. legal literacy) and on claim-formation and adjudication, rather than on the implementation and outcomes stages of the dispute resolution and redress process. Indeed, there is almost no systematic, comparative analysis of key factors that shape effective implementation and deliver tangible results.

Moreover, the empirical observation of the bigger questions regarding whether and when such legal action contributes to structural or transformative change or results in, for instance, better health outcomes or more equitable land distribution at a more aggregate level, remains under-developed and lacking in evidence.<sup>48</sup>

ODI concludes that ‘it is not possible to reach generalizable conclusions about the transformative, empowering and emancipatory, or indeed pro-poor potential of legal

mobilization'.<sup>49</sup> That's because legal empowerment's impact depends on socio-political context. ODI highlights four key factors: (1) the content and embeddedness of the law; (2) the features of legal pluralism; (3) the degree of structural bias; and (4) the strength of external support (e.g. civil society actors).<sup>50</sup> These factors are more likely to be in flux during political transitions, thereby opening up possibilities for more empowerment.

## **Linking legal empowerment and transitions**

### ***Defining transitions***

The term 'transitions' comes weighted down with frustrated teleologies and disappointed expectations. The late twentieth-century transitions in Eastern Europe, Latin America and South Africa were often conceptualised as short-term, optimistic affairs. Thomas Carothers announced 'the end of the transition paradigm' in 2002 as more and more states failed to transition to democracy.<sup>51</sup> Still, the paradigm persisted. In the meantime, the concept of transition – and its accompanying tool-kit (including transitional justice mechanisms) – was problematically applied to a very different type of transition: that from war to peace. Here again, transitions are often incomplete: many supposedly 'post-conflict' states exist in a limbo of 'no peace, no war'.<sup>52</sup>

Shorn of teleology, the term 'transitions' is still useful for describing periods of *attempted* democratisation or *attempted* peacebuilding. Such periods are usually initiated by extraordinary legal moments: new constitutions or peace agreements.<sup>53</sup> But it is unclear how to determine when a transitional period ends. Is post-Pinochet Chile still in transition or is it 'post-transitional'?<sup>54</sup> While the length of a transition will vary from one country to the next, a possible (if crude) end-limit for 'post-conflict' transitions might be the 10-year mark at which the risk of relapse into civil war dramatically drops off.<sup>55</sup>

Transitions may promote norms, practices and opportunity structures that make legal empowerment easier, such as social justice values, progressive constitutions, inclusive political settlements, ratification and domestic incorporation of human rights treaties, activist civil society, and independent judges.<sup>56</sup> More fundamentally, transitions may reduce power asymmetries.<sup>57</sup> Several scholars have observed how 'social rights have been enforced most readily in new or fragile democracies'.<sup>58</sup> The next section looks at how legal empowerment can be linked to two key features of transitions (particularly post-conflict transitions): peacebuilding and transitional justice.

### ***Peacebuilding and legal empowerment***<sup>59</sup>

Since 2000, the international community has pushed a liberal peacebuilding agenda that combines liberal democracy and economic neoliberalism in post-conflict states.<sup>60</sup> Over time, liberal peacebuilding morphed into state-building, which entails strengthening the authority, legitimacy and capacity of state institutions to fulfill core state functions, such as security and justice.<sup>61</sup> A prominent feature of liberal peacebuilding as state-building is rule of law reform.<sup>62</sup> The rule of law is seen as essential to democratic accountability, economic predictability and institutional solidity.<sup>63</sup>

Rule of law reform, which typically involves re-writing constitutions, revising laws and building justice sector capacity, has generally produced disappointing results in post-conflict settings. A 2005 World Bank review concluded that 'less overall progress has been made in judicial reform and strengthening than in almost any other area of policy or institutional reform'.<sup>64</sup> There are several reasons for this, but three are most relevant here.<sup>65</sup> First, there has been a 'breathtakingly mechanistic approach to rule-of-law development

– a country achieves the rule of law by reshaping its key institutions to match those of countries that are considered to have the rule of law'.<sup>66</sup> It has become abundantly clear that Western institutions are not easily transplanted to post-conflict states that lack liberal, democratic traditions. Second, and relatedly, rule of law reforms focus on formal law and state institutions, whereas most people in the Global South come into contact with law through customary law and non-state mechanisms.<sup>67</sup> As Laura Grenfell rightly notes, 'the rule of law is shorthand for the rule of state law'.<sup>68</sup> Third, development actors conceptualise these reforms as apolitical and technocratic tools while state elites see them for what they really are: potential constraints on their exercise of power.<sup>69</sup>

Legal empowerment was originally conceived as a challenge to the rule of law orthodoxy – and hence to liberal peacebuilding. For one thing, it emphasised non-state law and non-state actors. For another, it sought to use law to redistribute socio-economic power. In this way, legal empowerment was initially closer to hybrid or post-liberal peacebuilding, which focuses on local agency, norms and practices.<sup>70</sup> However, the CLEP's formulation of legal empowerment re-purposed it for liberal peacebuilding. First, '[its] recommendations remain very top-down, state-centered and orthodox in nature'.<sup>71</sup> Second, it recommends formalising property rights in keeping with Hernando de Soto's neoliberal prescriptions.<sup>72</sup> Finally, the commission emphasises state law: 'Make the formal judicial system ... more accessible by recognizing and integrating customary and informal legal procedures with which the poor are already familiar.'<sup>73</sup> In the commission's view, legal empowerment is all about 'enabl[ing] more poor people to make the [economic and legal] transition from the informal sector to the formal, while at the same time integrating useful norms and practices from informal or customary systems'.<sup>74</sup>

Interestingly, the commission's appropriation of legal empowerment for liberal peacebuilding did not take hold. Many legal empowerment projects are more bottom-up and more comfortable with the informal sector and informal law. The United Nations Development Programme (UNDP), which hosted the commission, recently criticised 'formalization' and recommended engaging informal norms and mechanisms.<sup>75</sup> Thus, legal empowerment may promote more hybrid peacebuilding after all.

### *Transitional justice and legal empowerment*<sup>76</sup>

Transitional justice has expanded rapidly in the past 20 years. Initially associated with trials and truth commissions, it now 'comprises the full range of processes and measures associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.<sup>77</sup> These measures include administrative reparations programmes, memorials and local justice processes. Transitional justice has become a key instrument of liberal peacebuilding and state-building.<sup>78</sup> It often involves creating new state institutions, such as temporary truth commissions, and reforming existing institutions, such as vetting the justice and security sectors.

Transitional justice is closely, though problematically, linked to the rule of law.<sup>79</sup> Tellingly, the UN Secretary General's 2004 report was titled 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies'. Not surprisingly, then, the same critiques made against the rule of law orthodoxy are applied to transitional justice: it is charged with being overly state-centric and top-down.<sup>80</sup> In this view, transitional justice mechanisms privilege the ambitions of state actors and legal elites over the needs of local communities and individual victims.<sup>81</sup> A related criticism is that transitional justice emphasises corrective justice at the expense of distributive justice.<sup>82</sup>

Remarkably, the UN Secretary General's 2011 report on transitional justice and the rule of law makes no reference to legal empowerment – even though it emphasises access to justice programming and calls for transitional justice to address socio-economic rights.<sup>83</sup> Similarly, the UN Special Rapporteur on Transitional Justice has issued successive reports linking transitional justice to development and the rule of law without mentioning legal empowerment.<sup>84</sup> This points to the continuing 'disconnect between human rights programs including transitional justice and parallel programming in broader rule of law'.<sup>85</sup> But it also shows that for all the UN's emphasis on holism, transitional justice and legal empowerment still inhabit separate policy silos: justice on the one hand and rights-based development on the other.<sup>86</sup>

There are good reasons, however, to link transitional justice with legal empowerment. First, they share key ambitions, notably increased accountability, conflict prevention and improved civic trust. Second, there is increasing convergence in their methods as transitional justice becomes more participatory and more bottom-up. Third, both transitional justice and legal empowerment 'contribute[ ... ] to the socialization of a rights culture'.<sup>87</sup> Fourth, transitional justice can help create favourable conditions or opportunity structures for legal empowerment (e.g. rights consciousness, organisational capacity, vetted judiciaries, etc.).<sup>88</sup> Finally, transitional justice actors are now paying greater attention to what victims want. Victims are often among the poorest and most marginalised in their societies. Surveys in Nepal, Kenya, Democratic Republic of Congo and elsewhere show that many victims prioritise socio-economic needs.<sup>89</sup> One survey in Tunisia showed that a large percentage of victims want legal assistance to help attain their basic needs.<sup>90</sup>

The problem, of course, is that transitional justice mechanisms are not currently designed or positioned to address such needs. There are enormous practical difficulties with reshaping transitional justice to accomplish this. First, existing mechanisms are already over-stretched, under-funded and frankly under-performing. Second, there is a danger of raising already over-inflated expectations of what transitional justice can accomplish. Third, transitional justice practitioners do not have the skill sets for doing development work. Finally, and relatedly, it is not clear what value-added transitional justice brings to addressing the socio-economic needs of victims of mass violence.<sup>91</sup>

Rather than expanding transitional justice or replacing it with transformative justice,<sup>92</sup> another solution is to link transitional justice to rights-based development through legal empowerment. The issue then becomes how to link transitional justice and legal empowerment.<sup>93</sup> As Jamie O'Connell proposes, the easiest way is through truth commissions. Truth commissions can make findings about obstacles to access to justice and, as those in Sierra Leone and East Timor did, make recommendations for legal empowerment initiatives.<sup>94</sup> They can also raise legal awareness through their hearings and outreach. Another promising, if under-explored, way to link them is through reparations programmes, which may enable victims to gain or regain their status as agents and equal citizens.<sup>95</sup> While reparations are primarily corrective, they may have distributive or redistributive effects. For example, Morocco's community reparations programmes were designed to remedy the deliberate under-development of particular regions of that country.<sup>96</sup>

There are several ways to make the link between reparations and legal empowerment. First, victims can be provided with awareness, education and assistance on how to claim their rights to reparations. Second, victims can be empowered to use right to information laws to track how reparations are determined and distributed, thereby reducing the potential for discrimination and corruption. This will be particularly useful for community reparations programmes. Finally, rehabilitation measures can go beyond the medical and psycho-social rehabilitation to the legal. For example, widows of the disappeared may be

legally rehabilitated by helping them obtain the death certificates needed to inherit their husbands' land, houses and other property.

## **Conclusion**

This article has provided an overview of legal empowerment, sketching some of the issues around definition, measurement, implementation and outcomes. It has also pointed to ways that legal empowerment may assist peacebuilding and transitional justice efforts during transitions from authoritarianism and/or conflict. Through the articles that follow, this special issue aims to contribute to both theory and evidence around applying legal empowerment to transitional contexts.

In their article, 'Beyond legal empowerment', Magdalena Sepúlveda Carmona and Kate Donald argue that the existing legal empowerment 'tool-kit' does not challenge asymmetries of power sufficiently. They propose complementing legal empowerment with a wider human rights approach and canvas a range of 'promising practices'. While Arnaud Kurze, Christopher Lamont and Simon Robins start from a similar critique of legal empowerment in 'Contested spaces of transitional justice', they propose a radically different solution: a participatory, needs-based approach. In sharp contrast to this Introduction, they also question the utility of linking legal empowerment to transitional justice. These authors draw on case studies from Nepal, Tunisia and Bosnia to support their arguments.

The next article shifts the focus from transitional justice to peacebuilding. Janet E. Lord and Michael Ashley Stein's article, 'Peace-Building and the Reintegration of Ex-Combatants with Disabilities,' examines the gaps in knowledge and evidence around reintegrating ex-combatants with disabilities. They argue that legal empowerment should be part of the reintegration process and linked to the Convention on the Rights of Persons with Disabilities.

The last two articles look at legal empowerment from the perspective of individuals and providers, respectively, in post-conflict contexts. Robert Porter's article, 'Transition and empowerment', measures subjective legal empowerment – that is, an individual's self-belief that she can solve problems of a legal nature – through population surveys in Kenya and Yemen. He finds that respondents in both countries feel significantly more empowered about family and neighbour problems than about employment problems. Finally, Martin Jones explains in his practice note, 'Legal empowerment and refugees on the Nile', why refugee legal aid providers in Egypt have been reluctant to embrace legal empowerment principles. Jones points to two key reasons: a tension between incremental and revolutionary change and ambiguities concerning the precise group to be empowered. This last article reminds us that if we want to better understand legal empowerment programming we need to look at cases where such programming is not adopted or does not produce the expected results.

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### Notes on contributor

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### Notes

1. See, for example, Stephen Golub, ed., *Legal Empowerment: Practitioners' Perspectives* (Rome: IDLO, 2010); Rachael Knight and others, *Protecting Community Land and Resources: Evidence from Liberia, Mozambique and Uganda* (Washington, DC: Namati and IDLO, 2012); Janine Ubink, ed., *Customary Justice: Perspectives on Legal Empowerment* (Rome: IDLO, 2011).
2. A few authors have addressed the links between transitions and legal empowerment. See especially Jamie O'Connell, 'Empowering the Disadvantaged after Dictatorship and Conflict: Legal Empowerment, Transitions, and Transitional Justice', in *Legal Empowerment: Practitioners' Perspectives*, ed. Stephen Golub (Rome: IDLO, 2010), 113–35. See also Dan Manning, 'Supporting Stability and Justice: A Case Study of NGO Legal Services in Post-Conflict Bosnia-Herzegovina', in *Legal Empowerment: Practitioners' Perspectives*, ed. Stephen Golub (Rome: IDLO, 2010), 137–55; Pilar Domingo, *Report on Development, Fragility, and Human Rights* (London: ODI, 2012).
3. For a good overview, see Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, 'Promoting the Rule of Law: From Liberal to Institutional Peacebuilding', in *Peacebuilding and Rule of Law in Africa: Just Peace?* ed. Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman (London: Routledge, 2011), 1–20.
4. See, for example, Pablo de Greiff and Roger Duthie, eds, *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council and the International Center for Transitional Justice, 2009); Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice', *International Journal of Transitional Justice* 8, no. 3 (2014): 339–61. Jelke Boesten and Polly Wilding, 'Transformative Gender Justice: Setting an Agenda,' *Women's Studies International Forum* (2014), <http://dx.doi.org/10.1016/j.wsif.2014.11.001>.
5. See, for example, Pilar Domingo, 'Novel Appropriations of the Rule of Law in the Pursuit of Political and Social Change in Latin America', in *Cultures of Legality: Judicialization and Political Activism in Latin America*, ed. Javier A. Couso, Alexander Huneus and Rachel Sieder (Cambridge: Cambridge University Press, 2010), 254–78; Tshepo Madlingozi, 'Post-Apartheid Social Movements and Legal Mobilization', in *Socio-Economic Rights in South Africa: Symbols or Substance?* ed. Malcolm Langford et al. (Cambridge: Cambridge University Press, 2013); Roberto Gargarella, Pilar Domingo, and Theunis Roux, eds, *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* (Aldershot: Ashgate, 2006), 92–130.
6. See 'Justice 2015', <http://www.namati.org/justice2015/>.
7. Open Working Group on Sustainable Development, 'Outcome Document' (2014), 18–19, [http://sustainabledevelopment.un.org/content/documents/4518SDGs\\_FINAL\\_Proposal%20of%20OWG\\_19%20July%20at%201320hrsver3.pdf](http://sustainabledevelopment.un.org/content/documents/4518SDGs_FINAL_Proposal%20of%20OWG_19%20July%20at%201320hrsver3.pdf). For an analysis, see Abigail Moy, 'Taking Stock of the Justice 2015 Campaign' (25 August 2014), <http://www.namati.org/entry/taking-stock-of-the-justice-2015-campaign/>.
8. See Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. No. A/67/368, 13 September 2012; Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. No. A/68/345, 23 August 2013.
9. Stephen Golub provided an influential definition in 2003: 'the use of legal services and related development activities to increase disadvantaged populations' control over their lives'. Stephen Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', Carnegie Endowment for International Peace (2003), 3. Golub has since refined his definition. Stephen

- Golub, 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and a Few Steps Back for Development Policy and Practice', *Hague Journal on the Rule of Law* 1, no. 1 (2009): 105.
10. Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups: Final Report* (2009), 9–10.
  11. The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Vol. 1 (New York: UNDP, 2008), 3.
  12. *Ibid.*, 27.
  13. *Ibid.*, 28. By contrast, others see legal empowerment as both a process and a goal. See, for example, Golub, 'Beyond Rule of Law Orthodoxy', 26–7.
  14. See, for example, Dan Banik, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication', *Hague Journal on the Rule of Law* 1, no. 1 (2009): 117–31; Matthew Stephens, 'The Commission on the Legal Empowerment of the Poor: An Opportunity Missed', *Hague Journal on the Rule of Law* 1, no. 1 (2009): 132–55.
  15. Golub, 'The Commission on Legal Empowerment of the Poor', 105.
  16. UN Secretary General, *Legal Empowerment of the Poor and Eradication of Poverty*, A/64/133 (2009), para. 3.
  17. United Nations General Assembly, *Legal Empowerment of the Poor and Eradication of Poverty*, UN Doc. A/C.2/64/L.4/Rev.2 (3 December 2009), paras 1, 5–7.
  18. See, for example, UN Secretary General, *Legal Empowerment*, paras 4, 24, 68; Commission on Legal Empowerment of the Poor, *Making the Law Work*, 20, 29, 63, 77; Stephen Golub, 'What is Legal Empowerment? An Introduction', in Golub, *Practitioners' Perspectives*, 12–14.
  19. Of course, law is sometimes explicitly exclusionary and disempowering. Furthermore, there are socio-political contexts where 'legal mobilization *does not* empower'. Pilar Domingo and Tam O'Neil, *The Politics of Legal Empowerment: Legal Mobilisation Strategies and Implications for Development* (London: ODI, 2014), 58. For opposing perspectives on whether human rights advocates and legal aid lawyers empower the African poor, compare Harri Englund, *Prisoners of Freedom: Human Rights and the African Poor* (Berkeley: University of California Press, 2006), with Lucie E. White and Jeremy Perelman, eds, *Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty* (Stanford, CA: Stanford University Press, 2011).
  20. Golub, 'The Commission on Legal Empowerment of the Poor', 108; Banik, 'Legal Empowerment', 130.
  21. Caroline Sage, Nicholas Menzies, and Michael Woolcock, 'Taking the Rules of the Game Seriously: Mainstreaming Justice in Development – The World Bank's Justice for the Poor Program', The World Bank Justice & Development Working Paper Series No. 7 (2009), 4.
  22. Commission on Legal Empowerment of the Poor, *Making the Law Work*, 1–2. Banik strongly contests that assertion. Banik, 'Legal Empowerment', 119.
  23. Commission on Legal Empowerment of the Poor, *Making the Law Work*, 4. This linkage to human rights law creates tensions. See Lars Waldorf, 'Legal Empowerment and Liberal-Local Peace-Building', in *International Law and Post-Conflict Reconstruction Policy*, ed. Matt Saul and James Sweeney (Abingdon: Routledge, 2015), 229–50.
  24. On combining legal tools with social accountability tools, see Vivek Maru, 'Allies Unknown: Social Accountability and Legal Empowerment', *Health and Human Rights* 12, no. 1 (2010): 83–93.
  25. For a detailed overview, see Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*, 40–9. See Commission on Legal Empowerment of the Poor, *Making the Law Work*, 60; Golub, 'Beyond Rule of Law Orthodoxy', 26.
  26. For descriptions of two influential paralegal programmes, see Jackie Dugard and Katherine Drage, "'To Whom Do the People Take Their Issues?': The Contribution of Community-Based Paralegals to Access to Justice in South Africa', The World Bank Justice & Development Working Paper Series No. 21 (2013); Vivek Maru, 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', *The Yale Journal of International Law* 31 (2006): 427–76. For an assessment of a newer, mobile programme, see Bilal Siddiqi, *Law Without Lawyers: Assessing a Community-Based Mobile Paralegal Program in Liberia* (Rome: International Development Law Organization, 2012).
  27. Maru, 'Between Law and Society', 429–30.

28. *Ibid.*, 456. On cause lawyering, see generally Stuart Scheingold and Austin Sarat, eds, *Cause Lawyering and the State in a Global Era* (Oxford: Oxford University Press, 2001); Austin Sarat and Stuart Scheingold, eds, *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (Stanford, CA: Stanford University Press, 2005).
29. Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*, 50–1; Sage, Menzies, and Woolcock, ‘Taking the Rules of the Game Seriously’. See also Vivek Maru, ‘Access to Justice and Legal Empowerment: A Review of World Bank Practice’, *Hague Journal on the Rule of Law* 2 (2010): 259–81.
30. Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*, 50–1; Golub, ‘Beyond Rule of Law Orthodoxy’, 40–1; Stephens, ‘The Commission on the Legal Empowerment of the Poor’, 138–9. The activities of integrated legal empowerment initiatives often look less legal and more like voice and accountability efforts. See, for example, Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*, 13–26.
31. Commission on Legal Empowerment of the Poor, *Making the Law Work*, 281.
32. *Ibid.*, 329.
33. Ruth Alsop, Mette Frost Bertelsen, and Jeremy Holland, *Empowerment in Practice: From Analysis to Implementation* (Washington, DC: World Bank, 2006), 1.
34. *Ibid.*, 10–15.
35. Compare for example Martin Gramatikov and Robert B. Porter, ‘Yes, I Can: Subjective Legal Empowerment’, Tisco Working Paper Series on Access to Justice, Dispute Resolution, and Conflict System Design No. 8/2010 (2010) with Domingo and O’Neil, *Politics of Legal Empowerment*, 6, 26–28.
36. For two important programme evaluations, see Asian Development Bank, *Legal Empowerment for Women and Disadvantaged Groups*; and Knight et al., *Protecting Community Land and Resources*. Namati is currently conducting empirical research on the impact of paralegal programmes in five countries.
37. Stephens, ‘The Commission on the Legal Empowerment of the Poor’, 140. For a particularly critical appraisal of legal empowerment’s evidence base, see Benjamin van Rooij, ‘Bringing Justice to the Poor, Bottom-Up Legal Development Cooperation’, *Hague Journal on the Rule of Law* 4 (2012): 304–10.
38. Stephen Golub, ‘Legal Empowerment Evaluation: An Initial Guide to Issues, Methods and Impact’ (March 2012); Laura Goodwin and Vivek Maru, ‘What Do We Know About Legal Empowerment? Mapping the Evidence’, Working Paper (Washington, DC: Namati, 2014).
39. Domingo and O’Neil list eight different formulations of legal empowerment. Domingo and O’Neil, *Politics of Legal Empowerment*, Annex 1.
40. Goodwin and Maru, ‘What Do We Know About Legal Empowerment?’, 9, n.7.
41. Golub, ‘Legal Empowerment Evaluation’, 55.
42. Domingo and O’Neil, *Politics of Legal Empowerment*, 5–8; Golub, ‘Legal Empowerment Evaluation’, 18–27; Goodwin and Maru, ‘What Do We Know About Legal Empowerment?’, 13–14.
43. Domingo and O’Neil, *Politics of Legal Empowerment*, 57.
44. Golub, ‘Legal Empowerment Evaluation’, 29–39; Goodwin and Maru, ‘What Do We Know About Legal Empowerment?’, 13–14.
45. Goodwin and Maru, ‘What Do We Know About Legal Empowerment?’, 50.
46. *Ibid.*
47. *Ibid.*, 20.
48. Domingo and O’Neil, *Politics of Legal Empowerment*, 59.
49. *Ibid.*, 58.
50. *Ibid.*, 58.
51. Thomas Carothers, ‘The End of the Transition Paradigm’, *Journal of Democracy* 13, no. 1 (2002): 1–21.
52. See Paul Richards, ed., *No Peace, No War: An Anthropology of Contemporary Armed Conflicts* (Columbus: Ohio University Press, 2004).
53. See, for example, Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008).
54. See Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: The Pennsylvania State University Press, 2010).

55. See Paul Collier, Anke Hoeffler, and Mans Soderbom, 'Post-Conflict Risks', Working Paper Series #WPS/2006-12, Centre for the Study of African Economics, University of Oxford (2006).
56. Domingo and O'Neil, *Politics of Legal Empowerment*, 43-5.
57. *Ibid.*, 58.
58. Roberto Gargarella, Pilar Domingo, and Theunis Roux, 'Courts, Rights and Social Transformation: Concluding Reflections', in *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?*, ed. Roberto Gargarella, Pilar Domingo, and Theunis Roux (Farnham: Ashgate, 2006), 256.
59. For a fuller account of this relationship, see Waldorf, 'Legal Empowerment and Liberal-Local Peace-Building'.
60. See, for example, Susanna Campbell, David Chandler, and Meera Sabaratnam, eds, *A Liberal Peace? The Problems and Practices of Peacebuilding* (London: Zed Books, 2011).
61. For a useful overview, see Roland Paris and Timothy D. Sisk, eds, *The Dilemmas of State Building: Confronting the Contradictions of Postwar Peace Operations* (Abingdon: Routledge, 2009).
62. See, for example, Pádraig McAuliffe, *Transitional Justice and Rule of Law Reconstruction: A Contentious Relationship* (London: Routledge, 2013), 44-9; Sriram, Martin-Ortega, and Herman, 'Promoting the Rule of Law', 1-19.
63. For an overview, see Robert A. Pulver, 'Rule of Law, Peacekeeping and the United Nations', in *Peacebuilding and Rule of Law in Africa: Just Peace?*, ed. Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman (Abingdon: Routledge, 2011), 60-87. A more critical assessment is provided by Bruce Jones and Camino Kavanagh, *Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda* (New York: Center on International Cooperation, 2011), 54-6.
64. James H. Anderson, David S. Bernstein, and Cheryl W. Gray, *Judicial Systems in Transition Economies: Assessing the Past, Looking to the Future* (Washington, DC: World Bank, 2005), xiv. See McAuliffe, *Transitional Justice and Rule of Law Reconstruction*, 16-22.
65. For overviews, see Erik G. Jensen, 'Justice and the Rule of Law', in *Building States to Build Peace*, ed. Charles T. Call (London: Lynne Rienner, 2008); Jeremy Farrall, 'Impossible Expectations? The UN Security Council's Promotion of the Rule of Law after Conflict', in *The Role of International Law in Rebuilding Societies after Conflict: Great Expectations*, ed. Brett Bowden, Hilary Charlesworth, and Jeremy Farrall (Cambridge: Cambridge University Press, 2009), 134-56.
66. Thomas Carothers, 'The Problem of Knowledge', in *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers (Washington DC: Carnegie Endowment for International Peace, 2006), 21. This approach has been critiqued as 'institutional mono-cropping' or 'isomorphic mimicry'.
67. Stephen Golub, 'A House without a Foundation', in *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers (Washington DC: Carnegie Endowment for International Peace, 2006), 105.
68. Laura Grenfell, *Promoting the Rule of Law in Post-Conflict States* (Cambridge: Cambridge University Press, 2013), 4.
69. Frank Upham, 'Mythmaking in the Rule-of-Law Orthodoxy', in *Promoting the Rule of Law Abroad: In Search of Knowledge*, ed. Thomas Carothers (Washington DC: Carnegie Endowment for International Peace, 2006), 75-6; Balakrishnan Rajagopal, 'Invoking the Rule of Law: International Discourses', in *Civil War and the Rule of Law: Security, Development and Human Rights*, ed. Agnès Hurwitz (Boulder CO: Lynne Rienner Publishers, 2008), 47.
70. Roger Mac Ginty, *International Peacebuilding and Local Resistance: Hybrid Forms of Peace* (Basingstoke: Palgrave Macmillan, 2011); Oliver P. Richmond and Audra Mitchell, eds, *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (Basingstoke: Palgrave Macmillan, 2012).
71. Banik, 'Legal Empowerment', 129.
72. Commission on Legal Empowerment of the Poor, *Making the Law Work*, 1-2, 6-7, 52. As one critic notes, 'What is needed first is not an extension of formality, but rather a complete reconfiguration of the relationship of the poor with the law.' Stephens, 'The Commission on the Legal Empowerment of the Poor', 134.
73. Commission on Legal Empowerment of the Poor, *Making the Law Work*, 5.
74. *Ibid.*, 42.

75. United Nations Development Programme, *Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences* (2014). Only one country discussed in that report, Tajikistan, can be considered post-conflict.
76. For a fuller account of this relationship, see Lars Waldorf, 'Legal Empowerment: Between Transitional and Transformative Justice', in *From Transitional to Transformative Justice*, ed. Paul Gready and Simon Robins (Forthcoming 2016).
77. United Nations Secretary General, *The Rule of Law and Transitional Justice*, UN Doc. S/2004/616, (2004), para. 8.
78. Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice', *Global Society* 21, no. 4 (2007), 579–91.
79. McAuliffe, *Transitional Justice and Rule of Law Reconstruction*; Ruti G. Teitel, *Transitional Justice* (Cambridge: Cambridge University Press, 2000), 11–26.
80. Kieran McEvoy, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice', in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford: Hart, 2008), 25–8.
81. See, for example, Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (Abingdon: Routledge, 2013).
82. See, for example, Dustin N. Sharp, ed., *Justice and Economic Violence in Transition* (New York: Springer, 2014); Louise Arbour, 'Economic and Social Justice for Economies in Transition', *New York University Journal of International Law and Politics* 40, no. 1 (2007): 1–27.
83. United Nations Secretary General, *The Rule of Law and Transitional Justice*, UN Doc. S/2011/634 (2011).
84. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. No. A/67/368, 13 September 2012; Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. No. A/68/345, 23 August 2013.
85. Domingo, *Report on Fragility, Development and Human Rights*, 20.
86. For a fuller critique of this silo-isation, see Domingo and O'Neil, *Politics of Legal Empowerment*, 42, n. 60.
87. Gargarella, Domingo, and Roux, 'Concluding Reflections', 256.
88. Domingo and O'Neil, *Politics of Legal Empowerment*, 42.
89. See, for example, Simon Robins, *'To Live as Other Kenyans Do': A Study of the Reparative Demands of Kenyan Victims of Human Rights Violations* (New York: International Center of Transitional Justice, 2011); Patrick Vinck and Phuong Pham, 'Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC', *International Journal of Transitional Justice* 2, no. 3 (2008), 404.
90. KADEM, *Accounting for the Past in Tunisia: An Assessment of Accountability and Transitional Justice Expectations and Perceptions across the Country* (Tunis: KADEM, 2013).
91. For a fuller discussion of these concerns, see Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs'. *Social and Legal Studies* 21, no. 2 (2012): 171–86. For a rejoinder, see Evelyne Schmid and Aoife Nolan, "'Do No Harm?'" Exploring the Scope of Economic and Social Rights in Transitional Justice', *International Journal of Transitional Justice* 8, no. 3 (2014): 362–82.
92. Gready and Robins, 'From Transitional to Transformative Justice', 339–61.
93. As the Overseas Development Institute's June 2014 report noted, 'Research connecting experiences of legal accountability in relation to legal empowerment and legal mobilization is mostly poorly developed.' Domingo and O'Neil, *Politics of Legal Empowerment*, 42, n. 63.
94. O'Connell, 'Empowering the Disadvantaged', 119.
95. See Pablo de Greiff, 'Justice and Reparations', in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 451–77.
96. International Center for Transitional Justice, *The Rabat Report* (New York: ICTJ, 2009).