

# Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication

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Legal Empowerment of the Poor (LEP), which has recently been launched as a new conceptual and operational tool for poverty eradication, has attracted considerable attention in the face of claims that poverty persists partly because the poor do not enjoy legal rights or the power to exercise those rights. This essay provides a brief overview of the conceptual foundations of the LEP approach as reflected primarily in the main report of the Commission of Legal Empowerment of the Poor (CLEP). It thereafter critically examines the LEP's potential of promoting pro-poor governance and strengthening the protection and promotion of basic socio-economic and political rights of the poor. It argues that it is not only crucial to strengthen the theoretical underpinnings of the concept by recognizing the links between legal and political empowerment, but to also closely link the LEP with the general development experience so far.

## INTRODUCTION<sup>1</sup>

Reducing, and subsequently eradicating, world poverty has long been a goal for many national and international agencies and actors. And yet, successful efforts in this area have been few and far between. Indeed, while recent evidence points to success in some regions (e.g., East Asia), poverty is rapidly rising in many other parts of the world. Thus, the resilience of poverty represents a major threat to human survival and well-being. We have, in the past couple of decades, also witnessed the steady development of new ideas, concepts and approaches aimed at strengthening existing ('conventional' or 'traditional') development interventions

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<sup>1</sup> This essay builds partly on my 'Rights, Legal Empowerment and Poverty: An Overview of the Issues', in D. Banik (ed.), *Rights and Legal Empowerment in Eradicating Poverty*, 2008.

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which appear incapable of keeping pace with rising world poverty. Indeed, there is a feeling that business as usual in the development field will not do; rather, there is an urgent need to infuse not just new ideas at the conceptual level but also ideas that can be operationalized to combat poverty at regional and local levels.

'Legal Empowerment of the Poor' (hereafter LEP) is one such approach that in recent years has attracted considerable attention in the face of strong claims that poverty persists partly because the poor do not enjoy legal rights or the power to exercise those rights. It is argued, for example, that the goal of empowering the poor requires more than simply a transfer of resources; it entails the creation of sound legal and political frameworks which specifically address the needs of poor and vulnerable groups in the population and hold political and administrative leaders to account for policy failures. Indeed, according to recent (though unsubstantiated) claims, over four billion people currently live without legal protection. Consequently, the urgency of combating global poverty has resulted in a renewed focus on local complexities and nuances of land rights, the role and status of certain unique and flexible traditions of collective rights among indigenous groups and the capacity of the formal judicial system to live alongside customary law, promote socio-economic equity and prevent elite capture.<sup>2</sup>

The LEP approach gathered momentum particularly with the establishment of the Commission of Legal Empowerment of the Poor (hereafter CLEP) in 2005, a move actively supported by a group of developed and developing countries. Until then, the relationship between law and development in the international development discourse was traditionally very narrowly focused on law, lawyers and state institutions. By comparison, 'legal empowerment' was launched as a broad concept that goes beyond the confines of the purely formal legal system and entails identifying and providing the poor with legal and institutional tools. In this sense, legal empowerment relates to a rule of law that is just and enforceable, allowing nations to reduce poverty quickly and more effectively.<sup>3</sup> It is also claimed that the LEP approach

'provides a useful organising framework to navigate through the complex landscape which has resulted from the fusion of the two tectonic plates driving development today: governance and poverty reduction.'<sup>4</sup>

The purpose of this essay is to provide a brief overview of the conceptual foundations of the LEP approach – with a major focus on the work of the CLEP (as

<sup>2</sup> Banik, 'Rights, Legal Empowerment and Poverty'.

<sup>3</sup> M. Albright and H. de Soto, 'Giving the Poor Their Rights: How Legal Empowerment Can Help Break the Cycle of Despair', *Time*, 16 July 2007.

<sup>4</sup> A. Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank*, 2006, p. 4.

reflected in its main report, submitted in June 2008) – and thereafter to critically examine its operational potential in promoting pro-poor governance and consequently strengthening the protection and promotion of basic socio-economic and political rights of the poor.

## THE CLEP REPORT

While the establishment of the CLEP in 2005 provided a real boost to the legal empowerment movement, the process of forming the Commission, however, proved highly controversial. This was primarily due to its original mandate which largely – and somewhat uncritically – embraced the ideas of the Peruvian economist Hernando de Soto who argues that what really separates the developed from the developing world, is the existence (or lack of) legally enforceable transactions on property rights.<sup>5</sup> And the appointment of de Soto as co-chair (along with Madeleine Albright) created quite a stir in many civil society circles, not least in Norway, where he was seen to epitomize neo-liberal approaches, at odds with the ideals of most Norwegian NGOs. In its main report, the CLEP radically moved away from an understanding of legal empowerment narrowly focused on formalizing property rights as a basis for the security and welfare of the poor to a broader one that views empowerment as a global social contract involving a so-called ‘bundle of rights’. In the following sections I will specifically discuss some of the key findings and recommendations of the final CLEP report which outlines an agenda connecting legal empowerment with the eradication of world poverty.

The starting point for the CLEP has been the fact that ‘four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.’<sup>6</sup> The main CLEP report (hereafter Report) goes on to note that even citizenship itself often does not guarantee that modest resources will be protected. Accordingly, ‘it is not the absence of assets or lack of work that holds them back, but the fact that the assets and work are insecure, unprotected, and far less productive than they might be.’<sup>7</sup> These, however, appear to be sweeping and largely unsubstantiated claims. Indeed, development research over the past few decades has consistently highlighted a wide range of interrelated factors that cause poverty, including low growth of income, inequality, social exclusion and entitlement failures, inadequate social services, high population growth, environmental degradation, economic inefficiency, social and political instability and vulnerability to debt, disease and natural disasters. By simply focusing on the insecurity and legally un-protected aspects of work and assets, the Report ignores these other – and more important – causes of poverty.

<sup>5</sup> H. de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, 2001.

<sup>6</sup> CLEP, *Making the Law Work for Everyone*, p. 1.

The Report argues that wealth creation in rich countries is made possible by the existence of a comprehensive set of legal protections and norms that govern a large set of activities relating to businesses, labour contracts, intellectual property, etc. In contrast, similar types of legal protective mechanisms do not exist in many poor countries and where they do, the poor are often not in a position to access them. Thus, it is claimed that the LEP as a development strategy differs from conventional development approaches by emphasizing the 'legal underpinnings of entrepreneurship, employment, and market interaction' and with its focus on what transpires in the informal economy, particularly at local levels.<sup>8</sup> The Report identifies five central features that distinguish LEP from related approaches: bottom-up and pro-poor (in design and implementation), affordable (measures and procedures), realistic (understanding of formal and informal systems including how local institutions actually function), liberating (removal of economic and institutional barriers), and risk aware (monitoring and assessment of potential but unintentional harm may occur to certain groups of the poor).<sup>9</sup> In this scheme of things, access to justice and rule of rule provides the overarching umbrella for development activity.

Law and its foundations are crucial on two counts. First, law provides the 'platform' on which important socio-economic and political institutions exist, 'and to be legitimate, power itself must submit to the law.'<sup>10</sup> Second, laws cannot be considered as legitimate or 'revered as a foundation of justice' if they create barriers for the wellbeing of the poor.<sup>11</sup> Hence, rights are enjoyed and guaranteed only when the law 'works for everyone' and 'defines and enforces the rights and obligations of all.' This in turn creates opportunities for the poor, cushioned in an atmosphere of certainty and predictability.<sup>12</sup> Thus, the CLEP's definition of legal empowerment is '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>13</sup> This applies not just in relation to the state but also the market.<sup>14</sup> The two central conditions for LEP are 'identity' and 'voice' and the Report notes:

'The poor need (proof of) a recognised identity that corresponds to their civic and economic agency as citizens, asset holders, workers, and businessmen/women.

<sup>7</sup> Ibid., pp. 1-2.

<sup>8</sup> Ibid., p. 2.

<sup>9</sup> Ibid., p. 77.

<sup>10</sup> Ibid., p. 3.

<sup>11</sup> Ibid., p. 4.

<sup>12</sup> Ibid., p. 2.

<sup>13</sup> *Idem.*

<sup>14</sup> Ibid., p. 26.

Without a voice for poor people, a legal empowerment process cannot exist. Crucially this voice needs to be based on information and education on the one hand, and organization and representation on the other.<sup>15</sup>

However, once again, these conditions are dealt with in a cavalier fashion with the result that the conceptual foundations of the approach remain weak and unconvincing. The CLEP has been particularly concerned with emphasizing that the LEP approach does not substitute existing approaches of development; rather it complements existing efforts in the fields of trade, education, public services and infrastructure, mitigation and adaptation to climate change, etc. – and helps multiply the impact of such initiatives ‘by creating conditions for success’.<sup>16</sup> Towards this goal, the Report highlights the relationship and linkages between LEP and democracy on the one hand and LEP and human rights on the other. Nonetheless, the linkages are neither explained nor examined in detail. This is particularly of concern as these concepts and their relationship with each other can be construed and interpreted in numerous ways.

In relation to democracy, the CLEP disagrees with those who believe that democratization is not necessarily a good thing to push for when the rule of law in a society is imperfect. Rather, the Report argues that it is important to ‘synchronize’ democracy and legal empowerment instead of ‘sequencing’ the relationship. It therefore goes on to note that ‘If the poor are to be legally empowered, they must have effective, legally protected rights’ including those relating to voting, due process and the freedom of expression. While national governments must ensure that such rights are ‘consistently’ and ‘equitably’ guaranteed, the role of international organizations is seen primarily as supporting ‘the construction of democratic institutions’.<sup>17</sup> These statements, unfortunately, do not offer any new insights, as the democracy-growth-poverty discourse has now largely established that there is no consistent connection between democracy and economic growth on the one hand and democracy and poverty reduction on the other. Indeed, empirical evidence shows that democracies are neither among the best nor among the worst in reducing poverty; conversely non-democracies show enormous variety in this field, having exhibited some of the most impressive results in eradicating poverty without adhering to a legal or rule of law approach (e.g., in Southeast Asia) while at the same time failing miserably in Sub-Saharan Africa.<sup>18</sup> Thus, non-democratic coun-

<sup>15</sup> *Idem.*

<sup>16</sup> *Ibid.*, p. 5.

<sup>17</sup> *Ibid.*, p. 4.

<sup>18</sup> A. Varshney, ‘Democracy and Poverty’, paper for the Conference on World Development Report 2000, The World Bank, 1999; D. Banik, ‘Democracy, Development and Poverty: Past Experiences and Future Prospects’, in *idem* (ed.), *Poverty, Politics and Development: Interdisciplinary Perspectives*, 2006.

tries will not simply become democratic just to empower the poor and to please the CLEP. It is therefore important to address the nature and types of strategies that would be important in societies that are currently non-democratic and will probably remain so for a considerable amount of time in the future. At the same time there is a need for nuanced strategies aimed at dysfunctional democracies, in addition to the prescription that they should strive towards becoming better democracies.

Similarly, in terms of the linkages between LEP and human rights, it is claimed that since legal empowerment provides the foundation for implementing crucial reforms at various levels in a country, the state must respect, protect and fulfill human rights. Indeed, the Report makes numerous references to human rights and how the LEP approach is closely linked with human rights-based development. The following quote provides an illustrative example:

‘Legal empowerment is anchored in the basic principles of human rights articulated in the Universal Declaration of Human Rights – and the subsequent global and regional international human rights conventions – beginning with Article 1: “All human beings are born free and equal in dignity and rights”. The implications of this simple statement could not be more profound. Indeed, out of familiar and established principles, comes a radical agenda of legal empowerment, not a technical fix, but an agenda for fundamental reform.’<sup>19</sup>

Yet, despite numerous references to human rights principles and approaches, it is unclear how legal empowerment and human rights are linked conceptually. This in turn strengthens the impression that the LEP approach lacks conceptual rigour. Moreover, given the increasing popularity of human rights-based approaches to development and poverty reduction (hereafter HRBA) – particularly among UN agencies and certain bilateral donor countries – there is already some confusion regarding how and to what extent this and the LEP approach relate to, and perhaps, complement each other. For example, it has been claimed that linking human rights to development actually forces development practitioners to confront the tough questions of their work: matters of power and politics, exclusion and discrimination, structure and policy.<sup>20</sup> And as Sengupta (2005, para. 23) puts it,

‘if poverty is considered as a violation of human rights, it could mobilise public action which itself may significantly contribute to the adoption of appropriate policies, especially by Governments in democratic countries.’<sup>21</sup>

<sup>19</sup> CLEP, *Making the Law Work for Everyone*, p. 33.

<sup>20</sup> P. Uvin, *Human Rights and Development*, 2004.

<sup>21</sup> A. Sengupta, ‘Human Rights and Extreme Poverty’, Report of the UN Independent Expert on the Question of Human Rights and Extreme Poverty, Economic and Social Council, 2005 (E/CN.4/2005/49).

One way of strengthening the linkages to the human rights discourse would perhaps be to view the LEP approach as a sub-set of the broader HRBA discourse. Thus, Sengupta examines the legal empowerment process from the human rights perspective and argues that in order to effect real change, it is important to define LEP in terms of the recognition of basic human rights and ensure that the poor actually have the opportunity to exercise these rights.<sup>22</sup> Viewing legal empowerment as an integral part of the human rights discourse allows for the use of existing international human rights instruments that have been largely accepted by the international community. This includes the idea that the obligation to fulfill the rights of the poor transcends national boundaries and extends to all countries that have ratified the human rights treaties and conventions. Aware that this may be overly optimistic if applied to all categories of right-deprivation, Sengupta proposes the identification of certain basic rights – for example related to an understanding of extreme poverty, where there is a strong likelihood for achieving consensus – and then identifying specific obligations for societal actors (including national governments and corporate actors) for the designing and implementation of feasible anti-poverty programmes that are technically capable of delivering LEP rights. And the obligation of the international community, in Sengupta's view, will be to assist national actors in facilitating the implementation of such policies.

However, despite its growing popularity in some circles, an excessive amount of attention on the HRBA is currently directed at the rhetorical level rather than on the practical implementation of development policies.<sup>23</sup> Given the limited global support for the prioritization of socio-economic rights in general – and continued doubts of their justiciability in relation to available resources – tying the LEP agenda to the human rights agenda may not necessarily make it more politically feasible. There is therefore a huge risk that something similar awaits the LEP if its theoretical underpinnings and its operational capability are not further strengthened, particularly *vis-à-vis* related approaches such as the HRBA or those that focus on the notion of 'human development'.

### *The core pillars of Legal Empowerment*

The Report argues that the main goal of the LEP approach is

<sup>22</sup> A. Sengupta, 'The Political Economy of Legal Empowerment of the Poor', in D. Banik (ed.), *Rights and Legal Empowerment in Eradicating Poverty*, 2008.

<sup>23</sup> A. Eide, 'Human Rights-Based Development in the Age of Economic Globalization: Background and Prospects', in B.A. Andreassen and S. Marks (eds.), *Development as a Human Right: Legal, Political, and Economic Dimensions*, 2006

‘expanding protection and opportunity for all: 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>24</sup>

And through its extensive deliberations, the CLEP arrived at a framework consisting of the following four pillars which promote legal empowerment through their synergies and reliance on each other: ‘access to justice and rule of law’, ‘property rights’, ‘labour rights’ and ‘business rights’. In this framework, access to justice and the rule of law are considered the ‘fundamental and enabling framework’ that supports the realization of the remaining three pillars since ‘the core bundle of rights cannot be fully effective unless there is a realistic option of enforcing them.’<sup>25</sup>

In terms of the first pillar – access to justice and the rule of law – the Report highlights several concrete provisions for reform and implementation. These include ensuring the right to legal identity (e.g., registration at birth), repealing or modifying discriminatory laws, strengthening the work of civil society organizations, supporting alternative dispute resolution mechanisms, supporting paralegals, improving the workings of the police force, creating accessible judicial and land administration systems that recognize and integrate customary and informal legal procedures and focusing on the legal empowerment of specific groups such as women, refugees, indigenous populations and internally displaced persons.<sup>26</sup>

The second pillar presupposes that ‘Ownership of property, alone or in association with others, is a human right’ and goes on to highlight the need for ‘imaginative legal thinking’ in areas such as collective, tenure and customary rights in order to prevent discrimination of women and indigenous groups from owning, inheriting and managing property and in protecting the poor from arbitrary evictions.<sup>27</sup> There are also recommendations of assisting the poor ‘to use property as collateral for obtaining credit, such as a business loan or a mortgage’, which in turn ‘encourages compliance by attaching owners to assets, assets to addresses, and addresses to enforcement; that is, making people accountable.’<sup>28</sup>

Labour rights comprise the third pillar. Like property and physical assets, labour – although not a commodity – must be legitimately recognized and accepted since human capital is ‘the greatest asset of the poor’.<sup>29</sup> The Report notes:

<sup>24</sup> CLEP, *Making the Law Work for Everyone*, p. 28.

<sup>25</sup> *Ibid.*, p. 27.

<sup>26</sup> *Ibid.*, pp. 5-6, 31-34.

<sup>27</sup> *Ibid.*, pp. 6, 34-36.

<sup>28</sup> *Ibid.*, p. 7.

<sup>29</sup> *Idem.*

‘The typical and tired pattern of low productivity, low earnings, and high risks must be replaced by the fulfilment of the *Fundamental Principles and Rights at Work* and the *Decent Work Agenda*, and the strategy to provide protection and opportunity to workers in the informal economy, a coalition described as an emerging global social contract.’

Towards this goal, the following measures are proposed: protection and promotion of the right to association in order to give identity and voice to the working poor; creation of employment opportunities; improvement of the regulation and functioning of labour markets; effectively enforcing social protection mechanisms (e.g., medical care, health insurance and pensions) to protect against shocks; implementing a core sets of workers’ rights in the informal sector; ensuring the promotion of gender equality and fulfilling national obligations to ILO standards.<sup>30</sup>

The final pillar – business rights – is not really a basic human right but relates to the ability of small and medium business enterprises to access basic financial services and infrastructural facilities.<sup>31</sup> These include opportunities and protections such as

‘the ability to contract, to make deals, to raise investment capital through shares, bonds, or other means, to contain personal financial risk through asset shielding and limited liability, and to pass ownership from one generation to another.’<sup>32</sup>

Such opportunities must specifically target women and facilitate their access to markets, and in general protect and promote the right to vend and related activities included access to services such as water, sanitation and electricity. Other activities protecting this pillar include encouraging the state to offer facilities related to credit, insurance and pensions.<sup>33</sup>

The CLEP has not only articulated a conceptual home for the linkages between legal empowerment and poverty eradication; it has also identified four important areas under which the LEP agenda described above can be operationalized in programming. However, the basis on which these four core pillars were identified is not clear. Thus, one wonders how the Report and the LEP approach relates to many other rights and legal issues important for poverty reduction – such as education, violence against women and inequality and social exclusion – with strong poverty implications but that do not form part of the CLEP’s four pillars.

The Report importantly highlights the fact that the LEP approach is country and context specific and can be applied at both national and local levels. It does

<sup>30</sup> Ibid., pp. 7-8, 36-38.

<sup>31</sup> Ibid., pp. 38-39.

<sup>32</sup> Ibid., p. 8.

<sup>33</sup> Ibid., pp. 8-9.

not, however, explain why the four pillars were identified in the first place especially if the LEP is meant to be context-specific. The Report goes on to argue that successful implementation will depend on 'broad political coalitions', local knowledge, an emphasis on gender-sensitive methods and a focus on certain groups more vulnerable than others (e.g., indigenous).<sup>34</sup> In addition to national governments, community-based organizations, professional associations, the local business community and the international community – in particular the multilateral institutions – are also envisaged to play a vital role in the implementation process. Thus, the Report suggests that legal empowerment should be adopted as a core theme by the World Bank, UNDP, ILO, FAO and UN-HABITAT, in addition to regional banks and regional UN institutions.<sup>35</sup>

In Chapter 4 of the Report, several reform measures are discussed and categorized under each of the four pillars. Some of these are concrete while others are of a general nature. And in Chapter 5, which is among the most interesting sections of the Report, several implementation strategies are highlighted that relate to the mobilization of stakeholders and allies at local, national and international levels for the purpose of comprehensive reforms. For example, at the national level, the Report highlights a set of important tasks (the sequencing of which are context dependent) that ought to be designed

'based on the principles of adaptation to user needs and availability of resources, user participation, parsimony (the least amount of information and cost required to accomplish the task), and simplicity.'<sup>36</sup>

These include many top-down oriented tasks (somewhat strange given the CLEP's professed interest in bottom-up processes) such as agenda setting, policy formulation and legitimization, constituency building (convincing the poor of the advantages of reform), resource mobilization, the development of organizational capacity and planning action and monitoring progress.

Finally, a major recommendation of the Report is to establish a 'Global Legal Empowerment Compact' in order to codify core rights and identify a framework for their implementation. Thus, global, regional and sub-regional political organizations should be encouraged to initiate a dialogue based on the CLEP's recommendations. The result of such dialogue would then be, *inter alia*, to develop knowledge on what works (where, when, why and how), binding policy documents with statistical indicators, standards and a common framework for national

<sup>34</sup> Ibid., p. 9.

<sup>35</sup> Ibid., p. 10.

<sup>36</sup> Ibid., p. 82.

implementation.<sup>37</sup> A global compact for legal empowerment will not only create ‘mechanisms for tracking progress at every level’ but also function as ‘a clearing-house for recording, storing, and disseminating experiences and lessons learned related to legal empowerment.’ These in turn will encourage greater public-private partnerships for ‘a global initiative to promote grass-roots knowledge and innovation.’<sup>38</sup> I will address the feasibility of forming such a global compact in the concluding sections of this essay.

## THE SUSTAINABILITY AND IMPACT OF LEGAL EMPOWERMENT IN FIGHTING POVERTY

The CLEP must be credited for placing legal empowerment on the global map; indeed, legal empowerment as a conceptual and operational instrument in poverty reduction has now acquired some momentum and support from international institutions like the UNDP (the World Bank currently appears hesitant to embrace the idea), in addition to a few industrialized countries (mainly in Scandinavia) with good intentions of assisting in the fight against poverty through development aid. In the remaining part of this essay I will discuss a few issues – related to both theoretical as well as operational criteria – which I believe must be urgently addressed if the LEP agenda is to make a sustainable impact in future development strategies.

In the past couple of decades, ‘empowerment’ has become an increasingly popular concept in development and has been recognized by influential development agencies and actors as an important tool for giving identity and voice to the poor. Some define empowerment as the restoration of a sense of one’s own value and ability to tackle various problems. Others argue that understanding power relations is crucial to an understanding of empowerment. Kabeer for instance refers to the ‘expansion in people’s ability to make strategic life choices in a context where this ability was previously denied to them.’<sup>39</sup> The addition of ‘legal’ to the term ‘empowerment’ provides an important alternative to one-sided approaches that narrowly focus on implementing rule of law reforms in developing countries, assuming that such reforms will result in economic development and democratization. Golub, an early pioneer and now an influential architect of the legal empowerment approach, classifies such attempts under the umbrella of top-down ‘rule of law orthodoxy’ paradigm and argues that for several years the discourse

<sup>37</sup> Ibid., p. 84.

<sup>38</sup> Ibid., p. 10.

<sup>39</sup> N. Kabeer, ‘Reflections on the Measurement of Women’s Empowerment’, in *Discussing Women’s Empowerment: Theory and Practice*, Sida Studies, 3, 2002, pp. 17-58, p. 19.

on law and development has focused largely on law, lawyers and state institutions rather than on the legal needs of the poor.<sup>40</sup>

In contrast, the LEP entails the 'use of legal services and related development activities to increase disadvantaged populations' control over their lives' and addresses the fact that in most poor countries, 'laws benefiting the poor exist on paper but not in practice unless the poor or their allies push for the laws' enforcement.<sup>41</sup> Consequently, the legal empowerment approach differs from 'rule of law orthodoxy' on four sets of issues. First, lawyers view the poor as partners instead of simply providing advice. Second, the poor are encouraged to directly influence public policy and priorities in order to avoid a top-down process involving governments and donors. Third, there is an emphasis on using non-judicial strategies that are often far better at addressing the concerns of the poor. Finally, the use of law is integrated into a broader package of development-related activities.<sup>42</sup>

There are indeed many benefits of legal approaches, among them the following: the distinct character and normative force of law (in contrast to moral and political approaches); the equal manner in which legal standards are applicable to all actors; the ability to authoritatively advocate, publicize and practically apply human rights protections and standards; the potential use of codified international legal standards to criticize government action or inaction; the ability of legal approaches to view the state as the primary duty bearer in development.<sup>43</sup> At the same time, the very same approaches also have important limitations. For example, legal approaches do not pay adequate attention to moral disputes that characterize the implementation of human rights principles. They also underestimate the ability of political actors to ignore, bypass or selectively implement judicial recommendations and verdicts.

For example, I have elsewhere examined interventionist role of the Indian judiciary on the right to food and the manner in which numerous verdicts and recommendations on the issue have been repeatedly ignored by successive governments at the regional level in India.<sup>44</sup> Starting from the late 1980s, and based on Public Interest Litigation from civil society, Indian courts have con-

<sup>40</sup> S. Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Working Paper No. 41, Rule of Law Series (Washington DC: Carnegie Endowment for International Peace), 2003.

<sup>41</sup> CLEP, *Making the Law Work for Everyone*, p. 3.

<sup>42</sup> *Ibid.*, p. 4.

<sup>43</sup> S. Meckled-Garcia, and B. Cali, 'Lost in Translation: The Human Rights Ideal and International Human Rights Law', in S. Meckled-Garcia and B. Cali (eds.), *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law*, 2006; B.A. Andreassen, 'Beyond Legalism: Institutional and Social Perspectives on Human Rights-Based Poverty Alleviation', paper presented at the workshop on Human Rights and Legal Empowerment of the Poor: Theory and Practice, Oslo, 2-4 October 2008.

<sup>44</sup> D. Banik, *Starvation and India's Democracy*, 2007.

ducted several investigations and repeatedly confirmed the occurrence of starvation-related deaths in many parts of the country. And subsequent judgments issued made it clear that unless the nature of government response was radically altered, the spectre of starvation deaths would not only continue to haunt the country but further escalate beyond control. The ensuing investigative reports and court rulings helped to focus considerable media attention on certain starvation-hit areas of India and put several state governments on the defensive. In this sense such judicial actions not only had symbolic value but also managed to firmly place the issue of starvation deaths on the regional and national political agenda. However, successive governments and senior administrators in India have paid little attention to court rulings, repeatedly questioning the credibility of the empirical evidence and the impartiality of the investigating agencies. There was therefore very little political and administrative commitment to implement judicial recommendations.

My general conclusion therefore is that in order for judicial interventions to have a major impact, the actions and recommendations of the courts must be taken seriously by the political and administrative leadership. There must be stricter sanctions (e.g., jail) for non-compliance. State governments in India are habitual violators of court orders; not just the controversial ones but also orders relating to routine state offences related to the discrimination of certain groups and individuals. Politicians have simply dismissed legal and quasi-legal findings, and the courts, in turn, have neither had the capacity nor the power to enforce their directives and extract accountability from those in responsible positions. In any case, the courts do not intervene on their own unless petitions are filed by concerned individuals or civil society organizations. Such experiences therefore cast doubts over the actual impact of a LEP approach (as articulated by the CLEP) in eradicating poverty. It appears that the CLEP has relied heavily on convincing governments (i.e., politicians) of the merits of the Report's recommendations which, in turn, will result in the formulation and implementation of ambitious legal empowerment programmes. And such programmes will consequently involve consultations with the poor and support from civil society. In this crucial sense, the CLEP's recommendations remain very top-down, state-centered and orthodox in nature. And if in fact politicians are indifferent or resistant to the rule of law and to enforcing judicial decisions, etc., what does this say about the prospects for getting them to really implement legal empowerment? Both in principle and in the development experience, legal empowerment is much more a matter of civil society and bottom-up initiatives that include but are not means confined to the CLEP's four pillars. And based on the lessons of the right to food campaign in India, it appears that the CLEP's assumptions and conclusions are not in conformity with the results of prior research and experience that has been generated in this field.

It is therefore important to reiterate that the 'legal' aspect 'extends far beyond the confines of the purely formal legal system' to that of 'political empowerment'.<sup>45</sup> Consequently, it is still valid to question whether empowerment is a means to poverty reduction or an end in itself. Moreover, who is actually to be empowered? And by whom? The dilemmas and uncertainties that dominate globally are aptly summarized by Alsop, et al.:

'As a relational concept, empowerment often means redressing imbalances of power between those who have it and those whom do not. This can imply that empowerment is a zero-sum game – that is, one person or group gains power at the expense of another. Unfortunately, while this does not have to be the case, it is often taken to be so, and actions to empower certain groups or individuals can meet with resistance. Efforts to empower may be undermined at all levels.'<sup>46</sup>

Indeed, several development agencies, including the World Bank, began to increasingly use the term empowerment in the 1990s, but as Moore argues, such actors are 'vague over meaning, and may be using the term partly to advance their own organisational interests.'<sup>47</sup> 'Empowerment' implies 'more political confrontation than international organisations are able to cope with.' Similarly, Albright writes that

'Legal empowerment will only be recognised as a useful approach to poverty reduction if it offers political leaders a viable path for implementing large-scale reforms.'<sup>48</sup>

Simply providing lip service to the LEP agenda will therefore be of little use and the immediate challenge ahead is to ensure that leaders of poor countries feel comfortable with the concept of 'empowerment' and are fully aware of the implications that genuine legal empowerment can bring about. If they feel threatened by such results, the LEP agenda will not succeed in the long-term. At the same time it is important to question whether political leaders are necessarily the main agencies for the promotion of legal empowerment. While they can be major vehicles of social and political change, politicians in many poor countries can also prove to be major obstacles in the field of empowerment. The experience so far also shows that legal empowerment programmes have been most successful when they have targeted communities and specific policies or laws rather than simply

<sup>45</sup> Palacio, *Legal Empowerment of the Poor: An Action Agenda for the World Bank*, p. 8.

<sup>46</sup> R. Alsop, et al., *Empowerment in Practice: From Analysis to Implementation*, 2006, p. 2.

<sup>47</sup> M. Moore, 'Empowerment at Last?' in 13 *Journal of International Development* (2001), pp. 321-329, p. 321.

<sup>48</sup> M. Albright, 'It's Time for Empowerment', *Economist*, 16 November 2006.

focusing on a top-down, politician-led approach. Similarly, multilateral institutions and rich countries in their roles as donors must accept a sense of responsibility for operationalization of the LEP agenda and thereby be prepared to be held to account should this new approach fail to deliver the expected level of results. And this willingness to be held accountable for failed advice and programmes must be clearly communicated to developing countries that are on the verge of embarking on a large set of LEP-influence reforms. Such information will allow leaders to take on the risk of championing a new (and perhaps even unproven) idea. While this is an important issue for many developing country governments, it strangely enough remains under-researched.

## CONCLUSION

The availability of a vast armoury of arguments in favour of a LEP approach amounts to little unless conscientiously applied to various contexts at the national, regional and local levels in developing countries. I have argued that it is crucial to recognize the links between legal and political empowerment. I also believe one of the major challenges ahead is the need not only to closely link the LEP with the general development experience so far, but also to systematically attempt to connect these to other currently accepted approaches, to learn and understand the language and the concepts of 'others'. This in order to bridge the gap between lawyers, human rights advocates and development practitioners (including development economists) so that one is better able to tackle the recurrent questions and doubts relating to the 'value-added' of proposing yet another tool for the eradication of poverty. It also appears clear that the LEP – like approaches that emphasize linking human rights and development – requires better conceptual clarity at national and local levels; indeed, greater efforts are needed at the programmatic level and in the identification and awareness of what it means to be a right holder and a duty-bearer and how one can effectively claim one's rights and carry out one's duties. This also means considering the realistic ability of the poor and their representatives or supporters to hold international agents to account for failing to respect, protect and fulfill human rights principles in the development process.

The CLEP Report has made an important contribution to developing the LEP approach and giving it high visibility on a global scale. It will be interesting to follow the discourse in the years ahead, particularly to see how national governments and civil society organizations together with support from multilateral and bilateral donors (and developed countries in the world that can influence these institutions) work towards ensuring that legal empowerment does not simply end up being yet another buzzword – a passing fad that withers away within a few years of its inception.