

THE LEGAL EMPOWERMENT MOVEMENT AND ITS IMPLICATIONS

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Around the world, a global legal empowerment movement is transforming the way in which people access justice. The concept of legal empowerment is rooted in strengthening the ability of communities to: “understand, use and shape the law.”¹ The movement relies on people helping one another to stand up to authority and challenge injustice. At its center are paralegals, barefoot lawyers, and community advocates. Backed up by lawyers, these advocates are having significant impacts.

Legal empowerment advocates employ a range of tools driven by the communities with which they work, including information, organizing, advocacy, and litigation. They take on issues including problems of health care, violations of consumer rights, threats to personal safety, environmental contamination, and challenges to property rights. Legal empowerment advocates tackle individual cases but a key objective of legal empowerment is systemic change.

Informed by expanding evidence of need,² buoyed by regulatory innovation,³ and in response to local activism, civil society organizations and government institutions are embracing the notion that people who are not trained as lawyers can competently help people assess their rights and resolve their legal problems. In South Africa, an independent network of Community Advice Offices is expanding legal awareness and mobilizing collective

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1. See NAMATI, <https://namati.org/> [<https://perma.cc/SSX4-GRDA>] (last visited Apr. 1, 2019).

2. See LEGAL SERVS. CORP., 2017 JUSTICE GAP REPORT (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/X5E9-CZE3>]; Our Work, WORLD JUST. PROJECT, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/special-reports/global-insights-access-justice> [<https://perma.cc/JY8V-SW9P>] (last visited Apr. 1, 2019).

3. For example, see recent changes to legal aid acts and policies in Sierra Leone, Kenya, and Zambia. Sierra Leone, *The Legal Aid Act 2012*, SIERRA LEONE WEB, <http://www.sierra-leone.org/Laws/2012-06.pdf> [<https://perma.cc/G9Q5-5R5U>] (last visited Apr. 1, 2019); REPUBLIC OF KENYA OFFICE OF THE ATTORNEY GEN. & DEP'T OF JUSTICE, NATIONAL ACTION PLAN: LEGAL AID 2017–2022 KENYA, <https://www.statelaw.go.ke/wp-content/uploads/2017/12/NAP-Legal-Aid-2017-2022.pdf> [<https://perma.cc/UV22-42P8>] (last visited Apr. 1, 2019); and Republic of Zambia Ministry of Justice, *Zambia National Legal Aid Policy 2018*, NAMATI, <https://namati.org/resources/zambia-national-legal-aid-policy-2018/> [<https://perma.cc/7CNN-BKYW>] (last visited Apr. 1, 2019).

action to tackle injustices. In Canada, Legal Aid Ontario supports non-lawyers within health clinics and community centers to respond to people with legal needs who might never visit a court. In Ukraine and other countries, “primary legal aid” is now incorporating roles for non-lawyers and civil society organizations to provide information and assistance.⁴

These programs and reforms rest on a presumption that justice cannot be advanced through lawyers alone. Much as strategies for public health have moved towards preventative and systemic models, our approach to law needs to include the delivery of direct legal services, but move beyond it to anticipate, respond to, and resolve threats to the integrity of people’s lives and the well-being of their communities.

There are many important roles for non-lawyers, and examples of such roles already exist within our justice system. In New York, Housing Court Navigators are empowering clients to raise defenses, link to needed social services, and identify systemic problems. In Washington, Limited License Legal Technicians are helping people solve family law disputes without a lawyer. In settings across the United States, medical personnel, social workers, and allied healthcare professionals are screening elderly adults for legal problems, and then taking steps to resolve them. What these and other similar approaches have in common is the recognition that non-lawyers can help people with legal matters and in legal settings.

The involvement of non-lawyers in solving legal matters is happening organically as legal information is increasingly available to more people in more diverse forms. Social workers, homeless outreach workers, mental health caseworkers, medical professionals, and other advocates have a set of skills and knowledge that allows them to do more to help individuals and communities with legal problems than might have been the case in the past. Such legal assistance is a natural extension—into the realm of law—of a set of functions carried out by these same individuals in providing other kinds of assistance. People trained as problem solvers are turning their attention to a set of problems that have a legal dimension.

At present, formally approved roles for non-lawyers are solely defined by the legal profession, raising important questions around the balance between consumer protection and self-interest. Some legal areas are likely more suitable for non-lawyers than others, but which? Questions concerning the scope of engagement, models of supervision, and methods of training all warrant further study. We need to understand how we can assure quality when non-lawyers tackle legal problems without, at the same time, stifling effectiveness through heavy-handed or overly complex regulation.

Experimentation is essential, but it is moving too slowly. While “unauthorized practice of law” (UPL) rules were originally intended to protect consumers from fraudsters who falsely claimed to be lawyers and who were not competent to perform the necessary tasks, the prohibitions in

4. GLOBAL STUDY ON LEGAL AID, UNITED NATIONS DEVELOPMENT PROGRAMME (2016), https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global-study-on-legal-aid_report.pdf.

these laws are keeping justice out of reach for too many. As non-lawyer models continue to proliferate in the United States, possibly ultimately testing the legality of UPL rules themselves, a better course would be to revisit and reconsider the purpose and scope of regulations on unauthorized practice.

We live in a country where injustice is everywhere. People routinely have their legal rights violated, resulting in their unfair ejection from their homes, removal of their children, termination of benefits, and continued violence by their spouses and partners. These are tremendously frequent events, with 71 percent of low-income Americans facing a legal issue in the preceding two years.⁵ Legal representation continues to have a vital role to play, but the specialized, costly, and often atomized services offered by lawyers do not meet the needs where they arise and play out.

As we search for meaningful responses to the access to justice crisis, building significant roles for non-lawyers in our justice system should be a priority. Countries around the world are recognizing and funding roles for independent non-lawyer advocates. Indeed, this is one of the few access to justice reform goals that is concrete, practical, already being realized, and broadly actionable. Strengthening the ability of communities to understand, use, and shape the law is essential for access to justice. It is also an important response to the more fundamental need to confront inequality in our society.

5. 86 percent of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help. See THE JUSTICE GAP, LEGAL SERVS. CORP. (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf>.