The Use of Legal Empowerment Approaches to Improve Access to Health Services

Workshop Summary

22 February 2022

I. Introduction

This report documents the global online workshop's main insights, discussion points, and findings on *"The Use of Legal Empowerment Approaches to Improve Access to Health Services"*. The International Development Research Centre (IDRC) and the Institute of Development Studies (IDS) representatives organised this event in order to share an understanding of the opportunities and challenges of using legal empowerment to improve access to quality health services for the most marginalised.

The workshop was held on February 22nd and practitioners, policymakers, researchers, funders, and civil society actors working at the intersection of legal empowerment and access to health services were invited. Representatives of IDS presented a scoping paper on *"Legal Empowerment Approaches to Improve Access to Quality Health Services."* Participants were then encouraged to discuss the research and practice gaps raised by the paper and their own experiences.

II. Background

Across different countries, policymakers and practitioners are grappling with improving the design and delivery of quality healthcare. Better health is key to attaining principle three of the Sustainable Development Goals "ensure healthy lives and promote well-being for all at all ages." However, existing evidence shows that the availability, acceptability, accessibility, and quality of health care service remains a challenge for marginalised populations in underserved sub-national regions. In particular, women, girls, refugees and displaced people, as well as minorities and the poor, face barriers to accessing and receiving healthcare due to a number of reasons. Barriers include lack of knowledge about their rights, lack of agency to claim and exercise these rights, discriminatory behavior by providers, and capacity limitations in the health sector. These constraints are particularly acute in the current context of the COVID-19 pandemic.

Legal empowerment approaches such as legal literacy, community-based paralegals, and the use of the right to information laws comprise a promising set of strategies to address these challenges. Legal empowerment practices provide a pathway to "bridge the gap between rights on paper and people's daily realities." Against this background, IDRC commissioned IDS to undertake a scoping review on the use of legal empowerment

approaches in improving health service availability, acceptability, accessibility, and quality for the disadvantaged.

III. Workshop Objectives

The global workshop *"The Use of Legal Empowerment Approaches to Improve Access to Health Services"* pursued the following objectives:

- Share findings and reflections from the scoping review
- Create a shared understanding about the opportunities and challenges on the use of legal empowerment as an approach to strengthening quality and access to health services and health programming
- Start a conversation about how different stakeholders can:
    - Collectively identify and prioritise research gaps and approaches to fill the gaps
    - Leverage the potential of legal empowerment strategies to reach populations that are underserved by existing health services through actions such as support for scale-up, capacity building, and creating links among organisations working in legal empowerment and those working in health

IV. Background Paper

The workshop began with a brief presentation of the background paper *"Legal Empowerment Approaches to Improve Access to* Quality Health Services". The scoping review, commissioned by the IDRC, was developed by Dr. Anuradha Joshi, Senior Fellow at IDS; Dr. Marta Schaaf, independent consultant; and Dr. Dina Zayed, independent consultant. The objective of the scoping review was to describe the range of legal empowerment approaches used, who is using them, and how well they are working.

Legal empowerment was defined as a strategy that "provides remedy to individuals who have experienced challenges in accessing health services and includes activities to promote collective action". The literature review found that legal empowerment mechanisms can address various challenges related to equitable access to quality health care.

The key findings presented by the authors were:

- There are two broad approaches to legal empowerment: those that target particularly marginalised groups and those that serve specific geographic communities
- The practice of legal empowerment is generally focused on issues that communities themselves can assess

- The evidence regarding whether participants are empowered through legal empowerment processes is limited

The perceived legitimacy of individuals making claims and the organisations supporting them is key to their success. The paper detailed some key constraining and enabling factors for legal empowerment in health. The constraints described were: inconsistency in paralegals capacity; lack of formalised paralegals; inaccessibility or infeasibility of formal judicial processes; unclear entitlements; social hierarchies; the resistance from community leaders; and poor state capacity to respond. The enabling group of factors identified were as follows: paralegals coming from the communities they serve; the closeness of legal empowerment personnel to governmental and non-governmental sectors; legal empowerment activities undertaken as part of a broader ecology of efforts; ability to respond to emergent community needs; the possibility of judicial recourse.

As a final reflection on the presentation of the scoping paper, the presenters highlighted the need to start from the problem one is trying to solve, rather than settling on legal empowerment as a strategy before considering whether it is the right strategy for the problem. They also noted the limited evidence regarding whether and when legal empowerment efforts are used to address private sector providers.

The presentation triggered debate and reflections on the knowledge gaps. It was followed by a roundtable moderated by Dr. John Dusabe-Richards, Director, Global Health, IDRC with a panel of three key experts who have been involved from different perspectives in legal empowerment work:

- Atieno Odhiambo, Director, Legal Empowerment Fund, The Fund for Global Human Rights
- Faustina Pereira, Senior Fellow, Center for Peace and Justice, BRAC University
- Salma Anas Ibrahim, Director and Head of the Family Health Department, Federal Ministry of Health of Nigeria

The panellists were asked to respond to a key question:

1. Having seen the report and heard the presentation, please share with us one aspect/finding that resonated most with your experiences in combining legal empowerment and health approaches? And what is one aspect/finding that surprised you?

In addition, one team member was dedicated to capturing key reflections on the Jamboard (a visual tool for capturing and organising discussion).

V. The following section develops the key discussion points from the questions that followed the presentation and the roundtable, as well as the open discussion on research and practice gaps.

Key Insights and Discussion Points

A wide range of issues were raised during the workshop. Rather than present them in verbatim, we have grouped the discussion around several key themes that emerged.

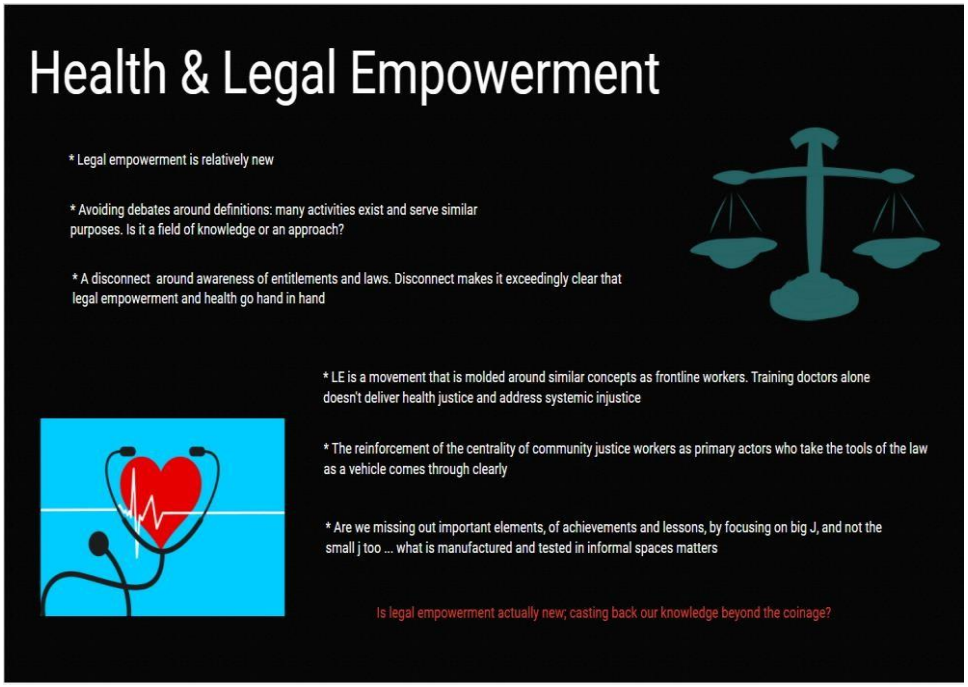

Fig 1. Jamboard on definition and framing

- **Framework and Definitions around the Legal Empowerment Approach**

There was some discussion around how the legal empowerment approach has emerged recently and been framed in current debates. Several participants noted that although the concept and framing might be new, the work underpinning the concept has been ongoing since the 1960s. This is one of the limitations of the review.

Panellists and participants noted that there are many ***practices and groups that could be categorised in the legal empowerment approach but do not use an explicit legal empowerment framing***. In other words, some programs and actors share legal empowerment principles and goals but do not self-identify under this perspective. The discussion highlighted the importance of documenting the work of groups that do not define their work as legal empowerment. The conversation also highlighted the need to consider the presence of ***new actors*** in the legal empowerment field. While the background paper emphasised the rooting of the work in the communities, others emphasised the role of paralegals, health workers, lawyers and frontline state workers, such as Communit Health Workers.

As a result, the discussion opened questions around the necessity of broadening the framework, fostering the critical participation of more actors, interviewing those working on the ground, documenting new cases and practices, and reviewing experiences that are not defined as legal empowerment by the literature.

- **The Role of Health Frontline Workers**

Many participants highlighted specifically the ***crucial role of health workers as responsible for linking legal empowerment and health***. They identified ***overlapping interests and activities of community health workers and community-based paralegals*** in practice as front-line health defenders. Both groups liaise between communities and state structures, and raise the importance of investment in communities' health care. Furthermore, the discussion stressed the role of health networks as common ground, and potential fields of cooperation between these actors in Nigeria, India, Sierra Leone, and Kenya. And yet in the literature and perhaps in practice, the lessons that emerge from these parallels are not explored or exploited.

The ***rights of health care providers*** were signaled as a gap to be further explored. While the background paper focused on the rights of health service users, some practitioners raised the question about the rights of health care workers. Are legal empowerment programs addressing their priorities? Many participants agreed that the COVID-19 pandemic brought this issue to the spotlight when health workers were asked to work more than the agreed hours or with inadequate equipment. The Accountability Research Center (https://accountabilityresearch.org/health-worker-protest-proposals/) has done some work in this area.

The potential ***trade-off between formalising and not formalising community paralegals*** was raised as an issue of concern (which also was an issue in the scoping review). Meeting participants highlighted that there have been similar conversations regarding the formalisation of community health workers. On the one hand, formalisation may provide some security and legitimacy, but on the other hand, it risks co-optation by the state, as the state places limits on the way they work. There might be arguments, therefore, for having different types of paralegals, some that are accredited by the state and others that are embedded in communities, more like volunteers. Similar categorisations exist for community health workers.

- **Legal Accountability of Private Healthcare Providers**

The background paper and workshop conversation highlighted that the biggest gap was the lack of the use of legal empowerment to ensure accountability of the private sector. In many countries, private healthcare provision far exceeds the public health system, and yet the review did not find any legal empowerment programs addressing the private sector.

Panelists raised the following questions:

  - The tension between an individualistic client-based approach in the private sector that constrained accountability claims, and the need for aggregation of issues commonly faced by users of private health care

- The need for collective action from coalitions and movements as important actors for pursuing private providers' accountability
- The potential role of semi-legal instruments (i.e., patient rights charters) as mechanisms to leverage private hospital accountability
- The iterative cyclical process of strengthening between social mobilisation, claiming accountability and advocacy for changes in legal entitlements
- The necessity of expanding the nature of existing rights and entitlements
- The role of the COVID-19 pandemic as a driver of pressure, enabling the agenda for private hospitals accountability and the emergence of new legal instruments

Considering the interest in the topic and the limitations of existing evidence, supporting further documentation and research on the private sector issue is a valuable next step.

- **Legal Empowerment to improve implementation of law**

From the public sector perspective, some participants reinforced the role of legal empowerment as an instrument for improving law enforcement and policy outcomes. As explained in the presentation, legal empowerment was introduced as a mechanism to reduce the gap between the legal framework and the quality of healthcare achieved. Participants noted that in many cases the law was acceptable, but the executive and law makers hesitated when it came to implementation—e.g., setting aside money for building health facilities, but then doing nothing.

Nevertheless, it was felt that a focus on implementation did not tackle the issue of laws that led to health rights abuses, and where advocacy for changes in the law were needed. Furthermore, advocacy processes required a different set of skills and actors. What would be needed in these cases is for legal empowerment programs to document the kinds of abuses and health rights violations that were happening due to poor laws, and to then take on the task of law reform.

The academics reinforced the need for documenting advocacy mechanisms that lead to changes in the law. The case of the Maternal Mortality law in Nigeria that combined law creation, a solid health insurance system and paralegal program implementation is an example of how law changes could work collectively to improve health, as the health insurance could pay the bills thus preventing women from being detained due to their inability to pay hospital bills.

- **Building Capacities**

The reflections on the importance of legal empowerment training that the paper raised were further developed during the discussion. An observation was made that in tandem with training of paralegals, there needs to be training on how to handle strategic litigation

cases, with the emphasis that legal empowerment was only one part of an ecosystem of strategic approaches. Some participants emphasised the need for building capacities not only with paralegals and the community beneficiaries but also among public officials. One participant noted there was a need to train paralegals and lawyers to 'be compassionate.' Language was also identified as an essential barrier that should be considered in community outreach.

Other participants signalled the advantages of the cyclical training process through counselling and mobilisation for community members. The case of the mobilisation of COVID-19 widows in India constitutes an example of the synergies and iteration between social mobilisation and legal empowerment.

- **Legal Empowerment connecting Awareness of Entitlements and Laws**

The workshop conversation supported the paper's contributions around the benefits of legal empowerment as a mechanism for improving rights awareness as in many cases the laws are there, but people are not demanding their rights. One panellist highlighted the case of a hospital detaining women who had given birth because they could not pay the service charges, despite this practice being banned by law in 2016. When challenged by the hospitals, the High Court found in favour of patients. Despite a clear precedent, and the court orders, even in 2020 new mothers who could not pay were still being detained. The discussion illustrated that communities do not seem to be aware of the illegality of this practice. Workshop participants stated that legal empowerment practices are helpful in these contexts.

In addition, participants emphasised the need to bring health workers on their side. As one participant put it, if health workers saw community paralegals as embroiling them in litigation, they would be uncooperative, but if they saw legal empowerment as a strategy to 'empower people to support you in your work,' they would become allies in the effort to improve services. The strategy would be to focus on partnerships, rather than be confrontational where possible.

- **Individual Legal Empowerment or Collective Change?**

The workshop conversation brought a distinction between individualistic and collective approaches. While individualistic approaches focus on individual legal support, collective approaches are connected to collective mobilisation and training around common issues.

This distinction raised the question of how legal empowerment practices develop from individual cases to considerable systemic changes. Some implied that more effective and responsive regulation and empowerment could be found throughout collective experiences. Academics referred once again to the evidence and documentation limitations. The following reflections could guide further research on this gap:

- The identification of individual and collective mechanisms among different contexts. Focus on communities facing more significant structural problems to understand collective approaches.
- The variations among the problem definition. Is the problem an absence of regulatory frameworks or a deficit of insurance policies? Is the problem related to lack of enforcement or entitlements? Is it a question of poor laws or unsatisfactory implementation?
- The categorisation of enabling and constraining factors for individual and collective approaches.
- The need for impact evaluations to measure the effects of individual and collective empowerment.
- The importance of analysing the power dynamics and relationships between different actors to explain systemic change. Some practices of communitarian meetings that congregate a diversity of actors (the state, health providers, frontline workers, communities) were exposed.
- The understanding of community engagement as a key for change. Many participants emphasised the significance of raising awareness and mobilisation among the marginalised citizens as a condition to introduce systemic change.
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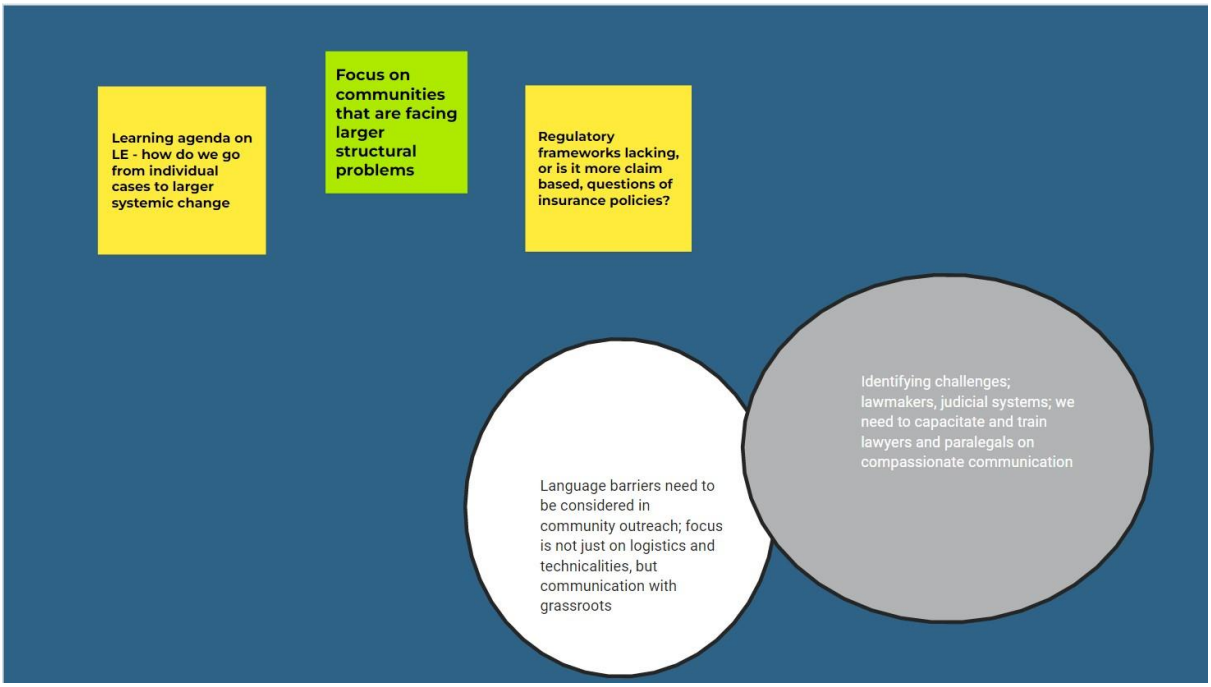
- *Fig 1. Jamboard on key issues from workshop*

VI. Moving Forward

The participants' generous engagement in the workshop conversation enabled the identification of priorities to further research on the legal empowerment and health field. The reflections on knowledge and practice gaps helped to identify the following next steps to take this work forward to continue the conversation:

- Defining a new research agenda taking into account the insights and the main gaps signalled on this event, bearing in mind existing initiatives (e.g. by Namati, and COPASAH among others).
- Staying engaged within this group of stakeholders and creating an informal network.
- Analysing possible funding lines to overcome the challenges of developing legal empowerment practices and improving health systems in practice.
- Develop and define IDRCs own investment in this area of work.



- *Fig 1. Jamboard on key questions and gaps*

Annexe 1: Workshop Agenda

13:00-13:10 **Welcome and opening remarks (IDRC)**

13:10-13:20 **Brief introductions to participants (All)**

13:20-13:40 **Presentation of background paper (IDS team)**

13:40-13:50 **Brief Q&A (All)**

13:50-14:20 **Roundtable Discussion**

- Atieno Odhiambo, Director, Legal Empowerment Fund, Fund for Global Human Rights
- Faustina Pereira, Senior Fellow, Center for Peace and Justice, BRAC University
- Salma Anas Ibrahim, Director and Head of the Family Health Department, Federal Ministry of Health of Nigeria

14:20-14:50 **Open discussion on knowledge gaps (All)**

14:50-15:00 **Closing remarks (IDRC)**

Annexe 2: List of Participants

Participants	Organisation	Country	Contact
Abdul Karim Habib	Network Movement for Democracy and Human Rights	Sierra Leone	nmdhr1@gmail.com
Abhay Shukla	SATHI (Support for Advocacy and Training to Health Initiatives)	India (member of COPASAH)	abhayshukla1@gmail.com
Adrian Di Giovanni	IDRC	Canada	adigiovanni@idrc.ca
Aimee Ongeso	Namati	Kenya	aimeeongeso@namati.org
Alexandrina Iovita	The Global Fund to Fight AIDS, Tuberculosis and Malaria	Switzerland	alexandrina.iovita@theglobalfund.org
Aminu Magashi Garba	COPASAH Secretariat	Nigeria	aminu.magashi@africahbn.org
Ana Lorena Ruano	University of Bergen	Norway	alruano@gmail.com
Andrew Maki	Just Empower Nigeria	Nigeria	andrew@justempower.org
Atieno Odhiambo	Fund for Global Human Rights	Kenya	aodhiambo@globalhumanrights.org
Ayesha Al Omary	Justice Center for Legal Aid	Jordan	info@jcla-org.com
Caroline Ford	IDRC	Canada	cford@idrc.ca
Chris Sengoga	Health Development Initiative	Rwanda	christopher@hdirwanda.org
Colleen Duggan	IDRC	Canada	cford@idrc.ca
Courtney Tolmie	Results for Development	US	ctolmie@r4d.org
Elena Ateva	White Ribbon Alliance	Global	eateva@whiteribbonalliance.org
Ellie Feinglass	Namati Mocambique	Mozambique	elliefeinglass@namati.org
Erin Andrews	IDRC	Canada	eandrews@idrc.ca
Erin Kitchell	Namati	Global	erinkitchell@namati.org
Fabiano Santos	IDRC	Canada	fsantos@idrc.ca
Fatou Diop Sall	Université Cheikh Anta Diop (UGB)	Senegal	fatdiops@gmail.com
Faustina Pereira	Center for Peace and Justice BRAC University	Bangladesh	faustina.p@bracu.ac.bd
Francesca Feruglio	Independent Consultant	Italy	Francesca.feruglio@gmail.com
Francis Musa	Network Movement for Democracy and Human Rights	Sierra Leone	nmdhr1@gmail.com
Friba Kaiwan		Afghanistan	
Grady Arnott	Center for Reproductive Rights	US/Global	garnott@reprorights.org
Hadeel Abdel Aziz	Justice Centre for Legal Aid (JCLA)	Jordan	habdelaziz@jcla-org.com
Jasminka Frishchikj	ESE	North Macedonia	jasminkafriscik@esem.org.mk
Joanne Csete	Columbia University; health and human rights consultant	Global	jc1188@cumc.columbia.edu
John Dusabe-Richards	IDRC	Canada	jdusabe-richards@idrc.ca
Jonathan Fox	Accountability Research Center	Global	Fox@american.edu
Kundan Mishra	IDRC	Canada/Global	kmishra@idrc.ca

Laura Ferguson	USC	US/Global	laura.ferguson@med.usc.edu
Mar Logrono	ARDD-Legal Aid	Jordan	
Markus Gottsbacher	IDRC	Canada/Global	mgottsbacher@idrc.ca
Marta Schaaf	IDS Consultant	US/Global	
Martha Mutisi	IDRC	Kenya	mmutisi@idrc.ca
Michael Zanchelli	Namati	US	michaelzanchelli@namati.org
Michele Leering	Queen's University	Canada	michele.leering@queensu.ca
Montasser Kamal	IDRC	Canada	mkamal@idrc.ca
Natacha Lecours	IDRC	Canada	nlecours@idrc.ca
Natasha Chhabra	IDRC	Canada	nchhabra@idrc.ca
Ndeye Mareme Sougou	UCAD	Senegal	
Qamar Mahmood	IDRC	Canada	qmahmood@idrc.ca
Rachel Magege	Crisis Resolving Centre	Sierra Leone	rmagege91@gmail.com
Rania Abu-Hamdah	Faculty of Pharmacy, Nursing and Health Professions at Birzeit University	Palestine	rabuhamdah@birzeit.edu
Roselyne Yao	IDRC	Canada	ryao@idrc.ca
Ruhiya Kristine Seward	IDRC	Canada	rseward@idrc.ca
Salma Anas Ibrahim	Federal Ministry of Health	Nigeria	drsalmaanaskolo@yahoo.com
Samuel Oti	IDRC	Kenya	soti@idrc.ca
Samuel Oyeniyi	Federal Ministry of Health	Nigeria	drsamueloyeniyi@gmail.com
Sana Naffa	IDRC	Canada	snaffa@idrc.ca
Sangeeta Tete	Nazdeek	India	sangitete15@gmail.com
Shahariar Sadat	Centre for Peace and Justice, BRAC University	Bangladesh	shahariar.sadat@bracu.ac.bd
Shubhada Deshmukh	Amhi Amchya Arogyasathi	India	shubhadeshmukh1505@gmail.com
Walter Flores	CEGSS	Guatemala/Global	walterflores@gmail.com
Zoran Bikovski	Charitable Association of Roma (KHAM)	Macedonia	Z_bikovski@yahoo.com