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Legal empowerment and horizontal inequalities after conflict

Lars Waldorf*

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Abstract: This article explores whether legal empowerment can address horizontal inequalities in post-conflict settings, and if so, how. It argues that legal empowerment has modest potential to reduce these inequalities but that there are risks of strengthening group identities, reducing social cohesion, and, in the worst case, triggering conflict. It uses a case study to examine how two legal empowerment programmes in Liberia navigated this tension between equity and peace.

Keywords: horizontal inequalities, legal empowerment, Liberia, peacebuilding, post-conflict, social cohesion

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* Centre for Applied Human Rights, University of York, UK, lars.waldorf@york.ac.uk.

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Information and requests: publications@wider.unu.edu

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Katajanokanlaituri 6 B, 00160 Helsinki, Finland

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1 Introduction

The inclusion of access to justice in the Sustainable Development Goals is likely to give further impetus to programming for legal empowerment of the poor, particularly in post-conflict states where a sizeable percentage of the world's poor reside. To date, legal empowerment has focused mainly on vertical inequality between rich and poor. Yet, in many post-conflict environments, the more salient concern is horizontal inequalities between different ethnic groups as these can lead to new or renewed conflict.¹ Can legal empowerment address horizontal inequalities in post-conflict settings, and, if so, how? The article argues that legal empowerment has some limited potential to reduce horizontal inequalities, but that this needs to be done in a conflict-sensitive manner to avoid reinforcing group identities, raising inter-group tensions, reducing social cohesion, and, in the worst case, triggering conflict.

This article starts with a brief overview of legal empowerment. It then examines the contextual drivers of effective legal empowerment in post-conflict contexts. Next, the article looks at whether and how legal empowerment can reduce horizontal inequalities while mitigating the risks of doing harm. It subsequently compares how two different legal empowerment programmes in Liberia did (and did not) address horizontal inequalities. The article concludes with some thoughts on further research as well as policy implications.

2 Legal empowerment

2.1 Legal empowerment in theory

Legal empowerment suffers from conceptual schizophrenia. The report of the Commission on Legal Empowerment of the Poor (CLEP 2008) was a mash-up of Hernando de Soto's neoliberal prescriptions and Amartya Sen's capabilities approach, though the former dominated.² As a result, the CLEP's report failed to settle the definition of legal empowerment or to articulate a clear theory of change.³ Putting the conceptual debates aside, this article adopts the United Nations (UN) Secretary-General's definition. That definition is the most authoritative, having been endorsed by the UN General Assembly. It has also been operationalized by the UN Development Programme and other development actors.

According to the UN Secretary-General, 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' (2009: para. 3; emphasis added). As that language made clear, legal empowerment is systemic: it connects the top-down/supply side (the state's protection of the poor) and bottom-up/demand side (the poor's use of law).⁴ The Secretary-General went beyond the CLEP's market-driven emphasis on property, labour, and business rights to include education,

¹ This article uses the term 'post-conflict' as crude shorthand for attempted transitions away from conflict that are marked by peace agreements or military victories. Many supposedly post-conflict states experience ongoing violence or exist in a limbo of 'no peace, no war' (Richards 2013).

² For critiques of the Commission's neoliberalism, see e.g. Otto (2009).

³ Domingo and O'Neil list six different definitions of legal empowerment that post-date the Commission's report (2014: Annex 1; see Asian Development Bank 2009: 9–10).

⁴ The Commission (2008: 309) also stressed that legal empowerment is both top-down and bottom-up.

health, and housing rights that are just as essential, if not more so, for empowering the poor (UNSG 2009: paras 7, 34, 41, 46, 53).⁵

Legal empowerment has four components: rights enhancement; rights awareness; rights enablement; and rights enforcement (USAID 2007: 11–27; see Asian Development Bank 2009: 40–49). Rights enhancement involves more inclusive law-making processes and pro-poor law reform. Rights awareness is often accomplished through legal literacy campaigns. Rights enablement typically consists of legal aid in the form of pro bono lawyers, community paralegals, and university law clinics. Rights enforcement includes state courts, ombudsmen, national human rights institutions, alternative dispute resolution, and customary justice. Hence, legal empowerment is more than access to justice.

Legal empowerment is part of a larger trend in development to enhance voice and accountability for the poor and marginalized (see Carothers and Brechenmacher 2014). As such, it is closely allied to social accountability (Grandvoinnet et al. 2015: 25–27; Maru 2010), which enables ordinary citizens to hold both state and non-state service providers accountable through activities like citizen juries, participatory budgeting, public expenditure tracking, and social audits. Social accountability seeks to reduce the ‘fear factor’ that constrains voice and to increase the capacity of accountability mechanisms to provide meaningful redress (Fox 2015: 35). It further endeavours to reduce perceptions of injustice, increase trust, and facilitate collective action (Grandvoinnet et al. 2015: 194–97). Despite the overlap, there are three key differences between legal empowerment and social accountability. First, legal empowerment involves explicit use of the law. Second, it goes beyond service delivery. Finally, legal empowerment puts less emphasis on collective action. That said, both legal empowerment and social accountability are fundamentally concerned with strengthening the social contract between the state and the poor, particularly where normal channels of political accountability are insufficiently responsive.

There are inevitable risks to any social accountability or legal empowerment programme (Grandvoinnet et al. 2015: 212–13). One is that marginalized individuals are reluctant to meaningfully participate. Another is elite capture, whether by local or national elites. An additional risk is cooption or repression by the state. A final risk is that the programme may lead to greater competition and conflict, especially if it is perceived as favouring particular groups.

2.2 Legal empowerment in practice

The CLEP (2008: 333) recognized that legal empowerment ‘must usually be [implemented] under inauspicious conditions’. It adopted a political economy approach: best fit over best practice, function over form, locally driven over externally imposed, and political pragmatism over normative ambition (2008: 275–353). The CLEP (2008: 303) also set out a range of policy initiatives to fit varying contexts of political competition and institutional strength – from community-based empowerment in failing states to national-level reforms in strong democracies.

The dominant model of legal empowerment ‘under inauspicious conditions’ is the community paralegal programme. This is partly because states like Sierra Leone lack the collective assets and political opportunity structures – that is, well-funded public interest law organizations and a ‘reasonably accessible and functional judicial system’ (Gauri and Brinks 2008: 16–17; see Gloppen

⁵ The UN Development Programme (2009: 9, n.3), which hosted the Commission, subsequently criticized it for focusing on specific livelihood rights at the expense of a broader, rights-based approach.

2008) – for legal empowerment to take the form of impact litigation around socioeconomic rights. It is also partly due to transnational advocacy networks that have disseminated this model.

When the Open Society Foundation helped found Timap for Justice in 2003, it borrowed the notion of paralegal services from South Africa but adapted it to the Sierra Leone context. Timap became highly influential as its co-founder, Vivek Maru, moved first to the World Bank’s Justice Reform Group and then started Namati, an international non-governmental organization (NGO) for legal empowerment. Both Open Society and Namati have pushed the community paralegal model through how-to manuals, training, capacity-building, and networking. They have built alliances (creating a transnational advocacy network, the Global Legal Empowerment Network) and carried out advocacy (particularly around the Sustainable Development Goals and the Kampala Declaration on Community Paralegals). They also have encouraged research and development on these paralegal programs (see Maru and Gauri 2017). The successful diffusion of the community paralegal model raises some concerns. There is a risk that it may become a one-size-fits-all, technocratic template for legal empowerment. There is also a related risk that it frames legal empowerment too narrowly as demand-side access to justice (rights awareness and enablement) and thereby diminishes some of the transformative potential of legal empowerment.⁶

Community paralegals perform a range of legal roles: education, accompaniment, mediation, mobilization, advocacy, and, more rarely, litigation support (Maru and Gauri 2017: 9–12). They also help their clients navigate among plural legal orders. Yet most spend the bulk of their time helping to mediate interpersonal disputes over land, labour, and family using customary dispute resolution mechanisms (see Dale 2009: 1, 5; Sandefur and Siddiqi 2013: 25). In that role, they often insert formal law considerations (including human rights norms) into customary justice, thereby ‘enlarging the shadow of the law’ (Berenschot and Rinaldi 2011: ii).

There is some evidence that community paralegals have a positive impact on settlement outcomes, litigant satisfaction and livelihoods, and intra-community relations (Dale 2009; Barendrecht et al. 2015; Maru and Gauri 2017; Sandefur and Siddiqi 2013). However, these community paralegal programmes are less successful at empowering the poor more broadly because their caseloads mostly consist of low-level interpersonal disputes that are resolved on a case-by-case basis. As Maru (2010: 89) observed:

I have found that the dockets of generalist justice service providers often include disproportionate numbers of intra-community conflicts – such as child support claims and land disputes – with fewer cases involving failures of state institutions and public services. I suspect that these proportions ... are a sign that communities have not conceived of state failures as injustices capable of remedy, and that legal empowerment organizations have not adequately demonstrated their effectiveness in addressing state failure.

This lack of attention to the state and other duty-bearers stems from four factors. First, as Berenschot and Rinaldi (2011: 37) explain, ‘by choosing to train villagers to work as paralegals *within* their community, the programs diminish the chance of addressing problems involving state or corporate accountability’. Second, community paralegals mostly focus on the immediate needs of their clients and their communities rather than the larger, long-term interests of the poor and marginalized. Third, paralegals can be (understandably) hesitant to confront powerful individuals within their own communities as well as state officials. One evaluation of Timap revealed that, for some clients, ‘Timap seemed afraid to confront power structures or would likely perform less

⁶ For an early critique of paralegal programmes along these lines, see Englund (2005: 123–44).

effectively in cases where local authorities were involved' (Dale 2009: 22). Finally, it is difficult for community paralegal programs to build bottom-up demand for legal reform because 'for both clients and paralegals avoiding the legal system is more practical than trying to fix it' (Berenschot and Rinaldi 2011: 68).

These points echo Fox's (2015: 352) argument that social accountability programmes which take a tactical, or exclusively demand-side, approach rest on two 'unrealistic assumptions': 'that people who have been denied voice and lack power will necessarily perceive vocal participation as having more benefits than costs'; and 'that even if locally bounded voices do call for accountability, their collective action will have sufficient clout to influence public sector performance – in the absence of external allies with both perceived and actual leverage'. Instead, Fox argues that strategic approaches, which 'manage to scale up voice and collective action beyond the local arena, while bolstering the capacity of the state to respond to voice ... are more promising' (2015: 352). Indeed, the poor and marginalized need external allies in civil society, the state, and international community if they are to successfully challenge existing power relations and resource distributions. That is a key lesson from the experience of social accountability (McGee and Gaventa 2011: 23–24) and justice claiming (Uhlen et al. 2017: 183–84) in the Global South.

Some community paralegal programmes have employed more strategic approaches. A specialized programme in Mozambique that focused on land and natural resource governance adopted a 'twin-track' approach:

while paralegals have an important role in raising awareness of rights and providing basic legal support, real progress towards a more equitable form of development requires a better and more open response from local land governance structures, or more precisely, those who work in them. The resulting 'twin-track' methodology can create a stronger sense of 'social accountability' amongst local government and land sector officers, even in institutional structures that traditionally fail to respond to local needs. (Tanner et al. 2015: 2–3)⁷

The need for twin-track approaches underscores that legal empowerment is a lengthy and incremental process. For example, the programme with Mozambique's land paralegals took 20 years (Tanner and Bicchieri 2014: 110).

2.3 Legal empowerment after conflict

Legal empowerment has been increasingly engaged in post-conflict contexts, from Sierra Leone to Myanmar. The CLEP (2008: 302) recognized that these contexts – with their weak justice institutions and pressing land disputes – pose intense challenges for implementing legal empowerment policy and programmes. Indeed, it is very difficult to do legal empowerment (or other development programmes for that matter) where the very terms of the social contract are unclear; states lack authority, capacity, and legitimacy; civil society lacks independence and capacity; the rule of law is weak; and citizens lack trust (see Grandvoinet et al. 2015: 14–16). Nevertheless, post-conflict contexts may promote norms and opportunity structures – such as social justice values, progressive constitutions, inclusive political settlements, ratification and domestic incorporation of human rights treaties, activist civil society, and independent judges – that enable

⁷ There is increasing recognition among development scholars, policy makers, and practitioners that programmes need to empower not just the poor but also the frontline state officials who lack knowledge, skills, and resources (Cima 2013: 27; see McGee and Gaventa 2011: 23–24).

legal empowerment (Domingo and O’Neil 2014: 43–45).⁸ Transitions may also alter power asymmetries (Domingo and O’Neil 2014: 58) in ways that align with empowering the poor. Whether the opportunities outweigh the challenges depends, of course, on the specific context.

Still, we cannot expect legal empowerment programmes to be as effective in a weakly-institutionalized state devastated by civil war (like Sierra Leone) as in a state with stronger institutions that experienced post-election violence (like Kenya). There are several contextual drivers of effectiveness for legal empowerment programming in post-conflict environments. Some are generic to any development or peacebuilding program in these settings: the conflict characteristics, conflict termination, security situation, political settlement, institutional strength, social cohesion, and international support. Other factors are more relevant to post-conflict accountability, whether social accountability initiatives (Grandvoinnet, Aslam and Raha 2015) or transitional justice mechanisms (Duthie forthcoming): the nature of the social contract, capacity of ‘virtuous’ civil society, and strength of the rule of law. A final set of factors specific to legal empowerment are the content of the law, features of legal pluralism, structural bias in formal and informal justice mechanisms, and external support for legal empowerment in civil society and the donor community (Domingo and O’Neil 2014: 58).

2.4 Legal empowerment’s evidence base

As yet, there is a very limited evidence base for legal empowerment.⁹ This partly stems from the fact that legal empowerment programming is still relatively new. Also, there is considerable variation in how legal empowerment is defined, implemented, measured, and evaluated (see Gramatikov and Porter 2010). In addition, legal empowerment is likely to function quite differently in different contexts (in post-conflict versus non-conflict environments, for example).¹⁰ Finally, Goodwin and Maru (2014: 17) found it ‘difficult to determine what works in which contexts based on existing information’.¹¹

All that said, Domingo and O’Neil (2014: 59) surveyed the legal empowerment literature and found little evidence ‘regarding whether and when [it] contributes to structural or transformative change or results in, for instance, better health outcomes or more equitable land distribution at a more aggregate level’.¹² This partly reflects the fact that too many community paralegal programmes have adopted tactical approaches, limited to rights awareness and enablement (Domingo and O’Neil 2014: 59; see Fox 2015).

⁸ Some scholars have observed how ‘social rights have been enforced most readily in new or fragile democracies’ (Gargarella et al. 2006: 256).

⁹ There is a more developed evidence base for social accountability programmes, though that is still ‘thin’ when it comes to impact on state–society and intra-society relations (Grandvoinnet et al. 2015: 197, 220), particularly in post-conflict contexts.

¹⁰ Maru and Gauri (2017: 22–23) briefly noted that community paralegal programmes have functioned differently in authoritarian, post-authoritarian, and post-conflict contexts.

¹¹ Similarly, Domingo and O’Neil (2014: 59) observed that ‘there is almost no systematic, comparative analysis of key factors that shape effective implementation and deliver tangible results’.

¹² Golub (2012) and Goodwin and Maru (2014) offer more positive appraisals of legal empowerment’s impact. However, the latter define legal empowerment expansively to encompass a wide range of successful social accountability programmes, including some that involved no explicit use of law (Goodwin and Maru 2014: 9, n.7).

3 Legal empowerment and horizontal inequalities after conflict

There are several rationales for 'legal empowerment to tackle horizontal inequalities in the wake of conflict: equity, social cohesion, and conflict prevention. Horizontal inequalities are *perceived* inequalities 'between culturally defined groups' and they can have one or more dimensions: political, economic, social or cultural status (Stewart 2008: 3).¹³ These dimensions can be mutually reinforcing or cross-cutting. Although horizontal inequalities intersect with other inequalities (such as class, gender, disability) (Arauco et al. 2014), they are more stubbornly entrenched (Lenhardt and Samman 2015: 31). There is strong evidence that mutually reinforcing horizontal inequalities make conflict more likely (Fjelde and Østby 2014; Stewart 2008), especially where a disfavoured group's elites suffer political inequalities and can then mobilize group members around broadly shared socioeconomic inequalities (Stewart 2010: 142; Stewart et al. 2008a: 289). As Addison and Murshed (2005: 4) observed, ethnicity 'is often a superior basis for collective action in contemporary conflicts in poorer countries than other social divisions'. This is particularly true where patronage relationships run largely along ethnic lines.

3.1 Tackling horizontal inequalities

There are three, broad policy approaches to reducing horizontal inequalities: (1) targeted approaches that directly benefit the disfavoured group, such as ethnic quotas; (2) universal approaches that indirectly benefit the disfavoured group, such as anti-discrimination laws; and (3) integrationist approaches to break down group boundaries, such as the provision of multi-ethnic schooling (Stewart et al. 2008b: 303–4).¹⁴ While targeted approaches are likely to have greater impact, they reinforce group identities, causing tensions and weakening social cohesion. Hence, universal approaches are often a better fit for reducing horizontal inequalities and increasing social cohesion in post-conflict contexts (Langer et al. 2012: 25; see Easterly et al. 2006: 117). That said, Arauco et al. (2014: x) contend that universal approaches are apt to be less successful in Asia and Latin America, where group exclusion and discrimination is 'often more socially and historically embedded'.¹⁵

Legal empowerment is a more universal approach to reducing horizontal inequalities (Stewart et al. 2008b: 311). Indeed, Stewart lists 'policies to help disadvantaged groups to realize their legal rights, e.g. via legal aid' (2010: 153) or human rights ombudsmen (Stewart et al. 2007: 16) as examples of universal approaches. Legal empowerment can reduce social horizontal inequality by providing an ethnic group with equal access to justice. It can lessen economic horizontal inequality by protecting community lands of particular ethnic groups. It can decrease cultural horizontal inequality through recognizing and enhancing a group's customary law.

Although legal empowerment has potential to reduce horizontal inequalities, not much attention has been paid to such inequalities.¹⁶ There are several reasons for this. First, legal empowerment has mainly emphasized poverty reduction – that is, vertical inequality. Second, it largely treats the poor as a uniform group. Where it has addressed intersecting inequalities, it has mainly focused on

¹³ Brinkman et al. (2013: 4) would add a fifth dimension: 'inequalities in access to security and justice'.

¹⁴ These approaches can be combined in practice: for example, an anti-discrimination law (a universal approach) can be selectively enforced (a targeted approach).

¹⁵ According to Arauco et al. (2014: ix, 21–27), a successful reduction of intersecting inequalities requires an inclusive political settlement in combination with a progressive social movement.

¹⁶ One notable exception is in relation to indigenous peoples, particularly around land tenure systems and intellectual property (Commission on Legal Empowerment of the Poor 2008: 78–79, 90–91, 145–46, 216–17). For critical accounts of legal empowerment in relation to indigenous rights, see Brett (2011) and Brinks (2016).

gender. Third, legal empowerment focuses mostly on individual rather than collective rights. Fourth, it partly draws on human development thinking, which stresses individual capabilities while largely ignoring group capabilities (Stewart 2005). Fifth, efforts to evaluate legal empowerment have tended to use individuals as the unit of measure (see Gramatikov and Porter 2010). Finally, legal empowerment has mostly engaged with interpersonal than inter-group disputes.

The ability of legal empowerment programmes to actually reduce horizontal inequalities depends of course on both context and implementation. The context is far more ‘inauspicious’ where political, social, economic, and cultural inequalities are mutually reinforcing; the inequalities are deeply embedded in the political settlement, socioeconomic structure, cultural norms, and plural legal systems; and the inequalities were among the causes of conflict. How legal empowerment is implemented in such contexts may negatively impact on social cohesion – and hence increase the chances of violent conflict (Langer et al. 2015). Langer et al. (2015: 5) define social cohesion as ‘essentially a matter of how individuals *perceive* others and the state’. It comprises three measurable and independent components: inequality (both vertical and horizontal), trust (both across groups and in state institutions), and identity (national versus group) (2016: 6, 22; see Marc 2013).

Even if a legal empowerment programme reduces social or economic horizontal inequalities, the resulting benefits to social cohesion might be more than offset by negative impacts on political horizontal inequality, trust, and national identity. This may happen in several ways. First, legal empowerment efforts to reduce economic and social horizontal inequalities may actually increase political horizontal inequalities. This is because newly equalized treatment of a marginalized group is often perceived as unfair treatment by the privileged group.¹⁷ Second, by encouraging the poor to see the state as the responsible duty bearer and to challenge its failures, legal empowerment may convert passive lack of interest regarding state institutions into active mistrust. Third, and relatedly, legal empowerment may promote legal and political conflict between marginalized groups and the state over service delivery failures and violations of socioeconomic rights. Finally, legal empowerment’s use of customary law and informal mechanisms may increase the lack of trust in state law and formal institutions while reinforcing a group’s identification with its version of customary law.

3.2 Managing trade-offs

There is a risk that well-intentioned efforts to tackle horizontal inequalities may reinforce group identities, heighten tensions, reduce social cohesion, and possibly contribute to renewed conflict. Yet, there is also a risk that not addressing horizontal inequalities will help perpetuate them, thereby undermining long-term prospects for an inclusive and sustainable peace. Neither option is guaranteed to ‘do no harm’. Predicting which option will do less harm depends on various context-specific factors as well as conflict-sensitive forecasting. In post-conflict environments, policy makers inevitably have to make difficult trade-offs: ‘What is best for maximizing poverty reduction and human development may not be best for the politics of peace and recovery’ (Addison et al. 2015: 1). Indeed, it may be that expediency and peace need to take priority over equity and needs, at least in the short to medium term (see Addison et al. 2015; Del Castillo 2016: 57).

While such trade-offs are unavoidable, there are ways to manage them and mitigate attendant risks (Brown and Langer 2016). First, the form of legal empowerment can be adapted to the specific

¹⁷ As Christensen and Hansen (2011: 154) noted: ‘In justice terms, if you try to achieve a fair and equal treatment for the less powerful, you will automatically decrease the level of impunity for the powerful.’

context. For example, high-profile legal advocacy on horizontal inequalities (such as impact litigation in state courts or filing a complaint with a UN or regional human rights body) is more confrontational and threatening to powerful groups than targeting legal aid at disadvantaged ethnic groups. Another example is that a more neoliberal version of legal empowerment – one that focuses on formalizing individual land rights – may cause more problems where there is a history of conflict over land. Second, legal empowerment actors can make their approaches more or less targeted. They can adopt a universal approach to the poor that has a targeted effect if the ethnic group is disproportionately represented among the poor. They can target their services at particular geographic regions where more of the population comes from marginalized ethnic groups. They can focus on less conflict-sensitive inequalities (say gender and disability) that intersect with ethnicity. They can focus on legal issues (like inheritance rights for conflict widows) that are more prevalent among particular ethnic groups. Third, legal empowerment programming can be sequenced. It can start with interpersonal and intra-group disputes within ethnically homogeneous communities, then later move to interpersonal and intra-group disputes within ethnically heterogeneous communities, and only later still move to inter-group disputes. Also, it can hold off addressing horizontal inequalities until after mediation mechanisms and social cohesion have been strengthened.

4 Legal empowerment in Liberia

Liberia was selected as a case study for several reasons. First, it presents an opportunity to examine how legal empowerment has been implemented in different forms in a post-conflict context. Indeed, Liberia has become something of a test lab for field experiments on legal empowerment programmes. Second, it allows for a comparison of two legal empowerment programmes while holding the country-level contextual drivers of effectiveness constant. Third, Liberia is an example of a country where there is a pressing need to address the mutually reinforcing horizontal inequalities that contributed to the civil war but where efforts to do so may risk worsening the situation.

4.1 Background

Liberia's 14-year civil war devastated the infrastructure, economy, and social fabric. More than a quarter of a million people were killed and hundreds of thousands displaced. The war ended with a peace agreement in 2003. The UN deployed what was then its largest peacekeeping mission (some 15,000 troops) to assure security and stability. Elections brought President Ellen Johnson Sirleaf to power in 2006. The resulting political settlement has been fairly exclusionary – reliant on personal rule, patrimonial networks, and corruption – but 'relatively stable' (Robinson and Valters 2015: 25–26; see Menocal and Sigrist 2011). Liberia has largely followed the liberal peacebuilding model promoted by the UN (Moran 2006; Paczynska 2016). This has produced notable accomplishments: free and fair elections, economic growth led by high levels of foreign direct investment, strengthened state institutions, and increased security (Robinson and Valters 2015). Civil society, despite weak capacity and donor dependency, has become increasingly assertive in terms of policy formulation and implementation, as well as more critical of corruption (Search for Common Ground in Liberia et al. 2014: 13). However, Liberia has been much less successful in reducing the horizontal inequalities that contributed to the civil war in the first place.

Liberia's Truth and Reconciliation Commission (TRC) acknowledged that the war was partly caused by high levels of horizontal inequalities between the dominant Americo-Liberians and the native Liberians, as well as among the native Liberian tribes (Republic of Liberia 2009: 16). The government has been slow to tackle these inequalities because of their political sensitivity and because they benefit powerful elites. Although the 2008 Poverty Reduction Strategy Plan (PRSP)

recognized the role that horizontal inequalities played in the war, it fell ‘short of addressing HI [horizontal inequalities] in several important ways’:

First, the document interestingly does not refer to cultural identity groups in addressing exclusion and inequalities. The document singles out the need for special attention to children and youth, ex-combatants, women and the ‘vulnerable’ – rather than to the historically marginalised non-Americo-Liberians, certain ethnic groups or the rural hinterland.

Second, the operational programmes are defined in highly aggregated terms and do not target particular beneficiary groups. For example, agricultural investments could significantly correct HI if they were directed towards increasing support for small-scale farmers. This could serve as an important starting point for building food security, reversing the neglect of rural, African indigenous populations and stimulating pro-poor growth.

... Finally, the PRSP does not raise the issue of the distributional impact of growth by identity group. (Fukuda-Parr 2012: 94–95)

The Agenda for Transformation (Republic of Liberia 2012: 44, 48), which followed on from the PRSP, barely acknowledged ethnic divisions and horizontal inequalities, while focusing on marginalized women, youth, and children.

Economic growth has disproportionately benefited the Americo-Liberian elite, while land concessions to foreign companies have reduced livelihood security for many non-Americo-Liberians in rural areas. ‘As was the case before the war, the economic policies pursued in post-conflict Liberia have allowed those with access to financial and political resources to marginalize and exploit those with little access to such resources’ (Paczynska 2016: 2–3). By the end of 2012, transnational corporations held mineral, timber, rubber, and palm oil concessions over an estimated 52 per cent of the country (Rights and Resources Group 2013: 8–9). Some community protests against land concessions have been met with government repression (Paczynska 2016: 19). A Land Rights Act was drafted in 2014 but, as of early 2017, was still stymied in the legislature. That Act (2014: articles 32–51) would give communities the right to own their customary lands. In mid-2016, 18 civil society organizations issued an open letter calling on the legislature to pass the Land Rights Act: ‘Failure to recognise the rights of millions of Liberians to their customary lands jeopardises peace and security, and could fuel a slide back into the conflicts that devastated our country for decades’ (Civil Society Organizations Working Group on Land Rights in Liberia 2016). That letter was seemingly ignored and the Act is unlikely to be tabled until 2018.

In 2013, Liberia passed the ten-year mark at which the risk of conflict recurrence dramatically drops off (Collier et al. 2006). Still, a recent population survey gave cause for concern:

Liberians view the peace as tentative, fragile, and volatile. This assessment is not surprising, because the fundamental problems that fueled the violent conflict are still there – corruption in public services, Americo-Liberian dominance over politics and the economy, marginalization of the indigenous populations, limited economic opportunity, and restricted participation in decision making and access to influence for the average person. (Catholic Relief Services et al. 2016: 3)

The same survey found the country ethnically divided, with more than 80 per cent of respondents opposing inter-ethnic marriages within their own families (Catholic Relief Services et al. 2016: 6).

Liberia is also entering a period of uncertainty with elections for a new president in autumn 2017 and the ending of the UN Mission in Liberia (after nearly 15 years) in spring 2018.

4.2 Legal context

By the time the civil war ended, there ‘was an almost unanimous distrust of Liberia’s courts, and a corresponding collapse in the rule of law’ (International Legal Assistance Consortium 2003). Liberal peacebuilding has included standard elements of the rule of law orthodoxy: law reform, judicial training, case management systems, and general capacity-building (Republic of Liberia 2008: 90–92). Despite this, the Rule of Law Index (World Justice Project 2016: 106) ranked Liberia 94th out of 113 countries. The formal justice sector remains weak and corrupt (US State Department 2016: 8–9). It also continues to be widely mistrusted. The Liberian TRC stated that ‘Liberians have had little faith in judicial institutions to protect their interests or fundamental rights’ (Republic of Liberia 2009: 6). A 2010 survey found that a majority of respondents viewed the formal justice system negatively and preferred to use customary mechanisms to resolve disputes (Vinck et al. 2011: 59, 65).¹⁸ Most Liberians – which is to say, most non-Americo-Liberians – use customary justice for both strategic and normative reasons: they see it as more accessible, predictable, and fair, but also more concerned with repairing social relations (Lubkemann et al. 2011: 215–17).¹⁹ Despite efforts to improve the formal justice system’s handling of gender violence (Bacon 2015), women victims prefer the discriminatory customary justice, partly because the formal system can worsen their livelihood options (Divon et al. 2016:16).

While the 2008 PRSP briefly acknowledged the role of customary justice in providing accessible justice, it mostly highlighted violations of human rights norms. It also promised that ‘A national framework will be developed for the exercise of informal and customary justice to ensure that it conforms to human rights standards including gender equality, upholds the rule of law, and complements the formal justice sector’ (Republic of Liberia 2008: 92). The government has since regulated the customary justice system, limiting its jurisdiction and its use of trial by ordeal (Lubkemann et al. 2011: 220–26). The government’s larger goal is to move away from Liberia’s historic dualism, which reinforced divisions between the capital and the hinterland, and between Americo-Liberians and native Liberians (see Republic of Liberia 2009). While mostly well-intentioned, ‘this “progressive” approach is seen by many rural [native] Liberians as yet another in a long historical line of undesired impositions by a Monrovia elite (and its international backers) on the rest of the country’ (Lubkemann et al. 2011: 203). The government’s reforms to customary justice threaten to weaken one of the few effective conflict resolution mechanisms in the country (Lubkemann et al. 2011: 221).

There has been high-level support for improving access to justice. The TRC recommended increased access to justice (Republic of Liberia 2009: 389). The 2008 PRSP linked access to justice and horizontal inequalities: ‘providing more equal access to justice will contribute to eliminating the marginalization of some groups, which helped fuel the conflict’ (Republic of Liberia 2008: 84). The 2012 *Agenda for Transformation* (Republic of Liberia 2012: 39, 51) promised to expand access to justice but made no mention of paralegals. A 2013 conference, co-hosted by the government, resolved to look into formalizing paralegal services (Dereymaeker 2016: 15). The UN Peacebuilding Fund (2016: 11) helped fund a community paralegal programme. Despite such

¹⁸ A different survey found that approximately 40 per cent of respondents stated that both police and courts were corrupt (Blair et al. 2012: 12–13).

¹⁹ Sandefur and Siddiqi (2013: 23) presented a more rational choice explanation: ‘plaintiffs trade off the *rights* afforded them in the formal system in favour of the more efficient legal *remedies* delivered by customary courts’.

support, Liberia did not issue a National Legal Aid Policy until 2016 (see Gertler 2014: 968–72) and legal aid still faces considerable opposition from legal and political elites (see Chapman and Payne 2017: 224–25). For example, the judge who is chair of Liberia’s Independent National Human Rights Commission expressed concerns about using paralegals to provide legal aid to the poor (Barpeen 2016). Liberia contrasts unfavourably with Sierra Leone, which passed a ‘model’ legal aid law in 2012 (Dereymaeker 2016: 19–22).²⁰ This difference may be partly explained by the fact that Liberia’s political settlement is less inclusive and policy-making less consultative than in Sierra Leone (Onoma 2014).

One of the main legal issues that ordinary Liberians face is land disputes. A population survey found land to be the most common category of disputes, with approximately 16 per cent of respondents having experienced such disputes since the end of the war (Vinck et al. 2011: 47). These disputes (most of which involve land-grabbing of house plots) were less likely to be resolved (Vinck et al. 2011: 61). Another study found that ‘Disputes about land were identified by the population as the most prevalent, countrywide source of tension’ (quoted in Knight et al. 2013: 37). In a recent population survey, many respondents identified land disputes as a main conflict trigger (Catholic Relief Services et al. 2016: 3).

Overall, the contextual drivers for effective legal empowerment are mixed. Relatively successful security sector reform and UN peacekeeping have assured security. The political settlement has been stable and state capacity strengthened. There have been improvements to the rule of law and human rights, including a right to information law. Civil society organizations are more assertive. There is ongoing international support from the international community. There are also some negative factors: a weak social contract, deeply entrenched horizontal inequalities, weak social cohesion, and high youth unemployment (Catholic Relief Services et al. 2016; Menocal and Sigrist 2011: 14–16). Perhaps most importantly, many Liberian elites have little interest in programmes, like legal empowerment, that might challenge their corrupt patronage networks.

4.3 Legal empowerment and horizontal inequalities in Liberia: two community paralegal programmes

As in many post-conflict states, legal empowerment in Liberia has largely taken the form of community paralegal programmes. The Catholic Justice and Peace Commission has been running a mobile paralegal service, Community Justice Advisors (CJA), for ‘historically marginalised’ communities in seven, mostly rural counties since 2007. CJA has received support from both the Carter Center and the UN Peacebuilding Fund (Chapman and Payne 2017: 215, 223 and n. 43).²¹ While CJA was modelled on Timap in Sierra Leone, it differs in three ways. CJA paralegals are mobile, with each working across ten communities. CJA has taken a softer approach to legal empowerment, focusing more on awareness-raising and generally avoiding threats of litigation (Graef 2015: 158). Finally, ‘CJAs were prohibited from proactively soliciting cases in order to maintain good relations in their communities’ (Graef 2015: 160).

Most of the cases handled by CJA paralegals are land/property and family disputes, with only 11 per cent involving government abuse and corruption and 4 per cent involving social infrastructure

²⁰ As of late 2016, however, Sierra Leone’s legal aid board had not recognized, let alone funded, community paralegals (Maru and Gauri 2017: 18).

²¹ The Carter Center takes a holistic approach to justice in Liberia. Besides CJA, it also supports capacity building for the formal justice sector, strengthening traditional dispute resolution, and radio programming on legal awareness (Carter Center 2017).

(Chapman and Payne 2013: 19).²² More than 40 per cent of all cases were resolved through facilitated negotiation by paralegals (Chapman and Payne 2017: 217). In a field experiment, Sandefur and Siddiqi (2013: 33) found that paralegal clients rated case outcomes as fairer and relations with opposing parties as better than the control group. They also found greater food security though not ‘any impacts on behavior related to actions taken to protect property rights (land titling and demarcation) or engage in credit market activity (lending and borrowing)’ (Sandefur and Siddiqi 2013). That finding suggests the programme is not empowering clients beyond their specific cases.

In contrast to CJA’s generalist paralegals, Sustainable Development Institute (SDI), a Liberian NGO, helped train a more specialized group of community paralegals to document community land within their home communities.²³ The paralegals were just one strand in a larger strategy to protect community lands in the face of ongoing land concessions (Maru and Yiah 2013: 10–11). SDI also advocated for a land policy permitting formalization of customary rights (Maru 2014: 206; SDI 2015). It signed the unsuccessful open letter urging the legislature to pass the draft Land Rights Act in 2016. For the paralegal project, SDI selected five communities in Rivercess County for paralegal support.²⁴ Community land documentation processes:

which document the perimeter of the community according to customary boundaries, are a low-cost, efficient, and equitable way of protecting communities’ customary land claims. Such efforts protect large numbers of families’ lands at once, as well as the common lands and forests that are often the first to be allocated to investors, claimed by elites, and appropriated for state development projects. Importantly, formal recognition of their customary land claims gives communities critical leverage in negotiations with potential investors. (Knight et al. 2013: 12–13)

Given the unsettled state of land law and the president’s moratorium on land sales, SDI performed a ‘skeletal documentation process’ pursuant to a memorandum of understanding that it negotiated with the Land Commission (Knight et al. 2013: 14).

Land documentation inevitably resurrected old disputes and created new ones. As a result, the paralegals combined legal education and assistance with ‘the *peace-building* work of land conflict resolution’ (Knight et al. 2013: 15). In some communities, the threat of outside investors created a strong enough incentive to resolve disputes, both within the community and with neighbouring communities (Knight et al. 2013: 17, 64). The land documentation process, which created new participatory forms of community governance, also sometimes empowered community members vis-à-vis their traditional leaders (Kaba and Keyser 2015).

There is very little public information about how these two paralegal programmes addressed horizontal inequalities. This is not too surprising given the lack of attention that legal empowerment scholars, policy makers, and practitioners have paid to the issue. However, the lack of data about the ethnicity of paralegals, clients, and communities makes it very hard to evaluate how the programmes impacted horizontal inequalities, if at all. Nonetheless, a few, tentative observations can be made.

²² These statistics suggest, *pace* Maru (2010), that CJA paralegals and clients do not generally view the state as the accountable duty-bearer.

²³ SDI has been supported in these efforts by the International Development Law Organization and Namati.

²⁴ There have been tensions in Rivercess County over land concessions granted to harvest timber.

Given the pattern of horizontal inequalities in Liberia, a universal legal empowerment programme for the poor is in effect targeted at the non-Americo-Liberian majority. The CJA community paralegal programme was further targeted at ‘historically marginalised’ communities so it will have benefited specific ethnic groups in those communities. However, CJA is unlikely to have made much difference to social horizontal inequalities given its generalist case load, its case-by-case approach, its resolutely demand-side focus, and its emphasis on rights awareness and mediation. Overall, CJA points up the innate limitations of a tactical approach to legal empowerment when it comes to horizontal inequalities.

By contrast, SDI’s community land documentation programme had more potential for reducing both social and economic horizontal inequalities. For one thing, it emphasized collective action and community empowerment. For another, it adopted a more strategic approach to legal empowerment. Most importantly, it protected communities of small-scale farmers from dispossession and put them in a better position to negotiate more favourable land agreements – something that can begin to reduce economic horizontal inequalities between native Liberians and the Americo-Liberian elite (see Fukuda-Parr 2012: 94). However, SDI deliberately limited the potential impact of the programme on horizontal inequality by choosing a more ethnically homogeneous county and deliberately selecting more cohesive communities:

Given Liberia’s post-conflict situation and the potential for land documentation work to incite confrontation, SDI determined that it was best to conduct the investigation in a county with a relatively homogenous population and a low-density residential pattern. For these reasons, SDI selected Rivercess County as the study region, as 97% of residents are Bassa, and the county has a population density of 33 people per square mile. SDI hypothesised that these characteristics would assure a fairly unified local population and reduce the potential for identity-based conflict during the community land documentation process, as might occur in more diverse counties. (Knight et al. 2013: 50; see Kaba 2015: 9)

SDI recognized that this may have limited the applicability of the programme’s findings to more ethnically diverse counties with higher population densities ‘but deemed it necessary to begin the work in a context less prone to arousing suspicion, fear, and violent conflict’ (Knight et al. 2013: 50 n. 70).²⁵

5 Conclusion

This article posed the question of whether legal empowerment can address horizontal inequalities in post-conflict settings, and, if so, how. The paucity of evidence from legal empowerment programmes in Liberia and elsewhere makes it very difficult to reach any but the most tentative conclusions. However, this highlights the need for legal empowerment scholars, policy makers, and practitioners to pay greater attention to horizontal inequalities – how they impact and are impacted by legal empowerment programmes – when designing, implementing, and evaluating such programmes.

Legal empowerment has only modest potential to reduce horizontal inequalities, especially social ones. This potential is greater where programmes, including community paralegals, adopt a twin-track approach and mobilize collective action around a threatened collective good (for example,

²⁵ SDI has expanded its paralegal programme to other communities in Liberia but there is no detailed information about this on the SDI website.

customary community land). Post-conflict environments are particularly ‘inauspicious’ environments for legal empowerment, and even more so where horizontal inequalities contributed to conflict in the first place. There, efforts to reduce horizontal inequalities could wind up reinforcing group identities, reducing social cohesion, and, in the worst case, triggering conflict. Hence, in these contexts, legal empowerment practitioners may need to privilege expediency (peace) over need (equity) at least in the short term – as SDI did in Liberia when it targeted its programme at communities that were more (ethnically) cohesive rather than more needy. As the authors of the SDI study concluded: ‘Should a dysfunctional community initiate land documentation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began’ (Knight et al. 2013: 22).

Legal empowerment for community land titling offers more potential to positively reduce horizontal inequalities than other legal empowerment initiatives. In post-conflict contexts, however, it may well create intra- and inter-community disputes that deepen horizontal inequalities and cause inter-group disputes. De Simone (2015: 60) found that, in South Sudan, ‘tenure reform ultimately seems to strengthen a local definition of citizenship understood in ethnic terms and to deepen horizontal inequalities, fostering potential violent competition over communal rights to resources’. What is needed is more comparative analysis of legal empowerment initiatives on community land titling within different regions of a post-conflict state (Liberia as the SDI programmes expand beyond Rivercess County) as well as across post-conflict states where horizontal inequalities played a role in the conflict (Liberia and Uganda) and where they did not (Mozambique).²⁶

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²⁶ IDLO and Namati have worked on community land documentation in Liberia, Mozambique, and Uganda.

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