

## Tilburg University

### Subjective legal empowerment

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# **Subjective Legal Empowerment**

A measure of legal empowerment  
through the subjective perceptions of  
individuals

ROBERT B. PORTER

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# Subjective Legal Empowerment:

A measure of legal empowerment  
through the subjective perceptions of  
individuals

Proefschrift ter verkrijging van de graad van doctor aan Tilburg  
University op gezag van de rector magnificus, prof. dr. E.H.L. Aarts,  
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door

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Verenigd Koninkrijk

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# Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
<b>2</b>	<b>Literature Review</b>	<b>7</b>
2.1	Evolution of Legal Empowerment . . . . .	7
2.1.1	The Process Approach . . . . .	10
2.1.2	The Outcome Approach . . . . .	11
2.1.3	The Policy Perspective . . . . .	12
2.1.4	A Practical Approach . . . . .	13
2.2	Self-Efficacy . . . . .	15
2.2.1	The Four Contributors to Self-Efficacy . . . . .	15
2.3	Previous Measurement of Legal Empowerment . . . . .	18
2.3.1	Proposed model . . . . .	21
<b>3</b>	<b>Methodology</b>	<b>23</b>
3.1	Assessments of Validity . . . . .	24
3.1.1	Face Validity . . . . .	24
3.1.2	Content Validity . . . . .	25
3.1.3	Concurrent Validity . . . . .	26
3.1.4	Convergent Validity . . . . .	26
3.1.5	Discriminant Validity . . . . .	27
3.1.6	Predictive Validity . . . . .	27
3.2	Assessments of Practicality . . . . .	28
3.3	Contextualisation of the Measure . . . . .	29
3.3.1	Understanding and clarification of the questions/items	29
3.3.2	Adaptation of the tasks . . . . .	30
3.3.3	Simplification/Explication of the questions . . . . .	30
3.3.4	Interviewer Training . . . . .	31
3.4	Choice of Study Sites . . . . .	31
3.4.1	Sampling procedures . . . . .	31
3.5	Summary . . . . .	32
<b>4</b>	<b>Measurement of legal empowerment through the subjective perceptions of individuals</b>	<b>35</b>
4.1	Abstract . . . . .	36
4.2	Introduction . . . . .	37
4.3	SLE theoretical model . . . . .	38
4.3.1	Background to self-efficacy theory . . . . .	39
4.3.2	Relationships within the SLE model . . . . .	42
4.3.3	Challenges to measurement of legal empowerment . . . . .	44



## CONTENTS

4.3.4	Benefits of SLE as a measure of legal empowerment	46
4.3.5	Person-centred: focuses on those who are intended to benefit	47
4.3.6	Challenges to the SLE model	50
4.4	Conclusions	52
<b>5</b>	<b>SLE in Kenyan Slum Communities: Development of the Concept</b>	<b>55</b>
5.1	Abstract	56
5.2	Introduction	57
5.2.1	(Subjective) Legal Empowerment (SLE) and Self-Efficacy	57
5.2.2	Self-Efficacy and Legal Problems	58
5.2.3	Sources of Efficacy Information	60
5.2.4	Task Specificity	62
5.3	Methods	63
5.3.1	Sample	63
5.3.2	The Interview Schedule	64
5.3.3	Analysis	66
5.4	Results	67
5.4.1	Demographics	67
5.4.2	Overall Measures	67
5.4.3	Measures of Task Confidence	70
5.5	Discussion	73
5.5.1	Domain Differentiation	74
5.5.2	Task Differentiation	74
5.5.3	Overall Interpretation	75
5.5.4	Further Work	75
5.6	Conclusion	76
<b>6</b>	<b>I know what to expect: The impact of previous experience on legal empowerment</b>	<b>79</b>
6.1	Abstract	80
6.2	Introduction	81
6.3	Methods	84
6.3.1	The Measure	84
6.3.2	Sample	84
6.4	Results	86
6.5	Discussion	91
6.5.1	Hypothesis 1a	91

## CONTENTS

6.5.2	Hypothesis 1b . . . . .	93
6.5.3	Hypothesis 1c . . . . .	94
6.5.4	Hypothesis 2a . . . . .	95
6.5.5	Hypothesis 2b . . . . .	95
6.5.6	General Discussion . . . . .	96
6.6	Conclusion . . . . .	99
<b>7</b>	<b>Transition and empowerment: Experience of conflicts and legal empowerment in transitioning countries.</b>	<b>101</b>
7.1	Abstract . . . . .	102
7.2	Introduction . . . . .	103
7.2.1	Kenya . . . . .	105
7.2.2	Yemen . . . . .	106
7.3	Methodology . . . . .	107
7.3.1	Kenya . . . . .	108
7.3.2	Yemen . . . . .	109
7.4	Results . . . . .	109
7.5	Discussion . . . . .	117
7.6	Conclusion . . . . .	121
<b>8</b>	<b>Legal Needs and Legal Empowerment: A Study of Internally Displaced People in Azerbaijan</b>	<b>123</b>
8.1	Abstract . . . . .	123
8.2	Introduction . . . . .	124
8.3	Methods . . . . .	126
8.3.1	Sample . . . . .	127
8.4	Results . . . . .	128
8.5	Discussion . . . . .	132
8.5.1	Overall Findings . . . . .	133
8.5.2	City-Specific Findings . . . . .	134
8.6	Conclusions . . . . .	135
<b>9</b>	<b>Conclusions</b>	<b>137</b>
9.1	Summary of Findings . . . . .	137
9.1.1	Introduction . . . . .	137
9.1.2	Literature Review . . . . .	137
9.1.3	Methodology . . . . .	138
9.1.4	Measurement of legal empowerment through the subjective perceptions of individuals . . . . .	138

## CONTENTS

9.1.5	SLE in Kenyan Slum Communities: Development of the Concept . . . . .	139
9.1.6	I know what to expect: The impact of previous experience on legal empowerment . . . . .	139
9.1.7	Transition and empowerment: experience of conflicts and legal empowerment in transitioning countries . . . . .	140
9.1.8	Legal Needs and Legal Empowerment: A Study of Internally Displaced People in Azerbaijan . . . . .	140
9.2	Discussion . . . . .	140
9.2.1	Legal Empowerment is measurable and quantifiable	141
9.2.2	Legal empowerment varies by individual and domain	142
9.2.3	Legal experience can dis-empower . . . . .	144
9.2.4	SLE provides actionable programmatic information	146
9.2.5	SLE provides comparative data . . . . .	147
9.3	Indications/Leads for further research . . . . .	148
9.3.1	Personal Relationships Boost Empowerment . . . . .	148
9.3.2	Relationships with power imbalances produce lower SLE . . . . .	148
9.3.3	'Formal' Problems Produce Lower Empowerment Ratings than 'Informal' Problems . . . . .	151
9.3.4	Socio-Economic Factors and Empowerment . . . . .	151
9.4	Summary . . . . .	152
<b>10</b>	<b>Recommendations</b>	<b>155</b>
10.1	Governments . . . . .	155
10.2	Practitioners . . . . .	155
10.3	Funders . . . . .	156
<b>11</b>	<b>Appendix I: Kituo Cha Sheria Questionnaire (English)</b>	<b>157</b>
<b>12</b>	<b>Appendix II: Rechtswinkel Questionnaire (English)</b>	<b>169</b>
<b>13</b>	<b>Appendix III: PRAXIS Questionnaire (English)</b>	<b>173</b>
<b>14</b>	<b>Appendix IV: Yemen Questionnaire (English)</b>	<b>179</b>
14.1	Extract from full survey detailing SLE questions . . . . .	179
	<b>References</b>	<b>198</b>

# List of Figures

2.1	The Proposed SLE Model . . . . .	22
4.1	The SLE Model . . . . .	41
5.1	The Model of SLE . . . . .	60
5.2	Example SLE domain question set . . . . .	65
5.3	PCA Eigenvalues for domains . . . . .	68
5.4	PCA Eigenvalues for Tasks . . . . .	71
7.1	Likert Scale used in the SLE measure . . . . .	108
7.2	Proportion of all problems represented by each problem domain . . . . .	113
7.3	Gender Differences in Empowerment . . . . .	113
7.4	Empowerment Ratings by Income Level . . . . .	114
7.5	Empowerment ratings by education level and country . . . . .	115
7.6	Combined Empowerment by Education . . . . .	116
7.7	SLE ratings in Different Domains . . . . .	116
7.8	Distribution of Employment Domain Empowerment Responses . . . . .	120
8.1	Gender Split in Samples . . . . .	128
8.2	Years of Education Completed . . . . .	129
8.3	Household Incomes . . . . .	130
8.4	Perceived and Experienced Problem Levels . . . . .	131
8.5	Empowerment in Different Problem Domains . . . . .	132
11.1	Chart A . . . . .	168
11.2	Chart B . . . . .	168
11.3	Chart C . . . . .	168
11.4	Chart D . . . . .	168



# List of Tables

4.1	Components of the SLE Model . . . . .	40
5.1	Eigenvalues for PCA of Domain Ratings . . . . .	69
5.2	Rotated Component Matrix for 2 Components . . . . .	69
5.3	Rotated Component Matrix for 3 Components . . . . .	69
5.4	Eigenvalues for PCA of Task Ratings . . . . .	70
5.5	Rotated 2 Component Matrix for Tasks . . . . .	71
5.6	Rotated 3 Component Matrix for Tasks . . . . .	72
5.7	Results of Kruskal-Wallis test for each Task . . . . .	72
6.1	Problem Areas . . . . .	85
6.2	Overall SLE Ratings between Experience Groups . . . . .	86
6.3	Tukey B homogenous subsets . . . . .	87
6.4	Domain Specific SLE Ratings between Experience Groups . . . . .	88
6.5	Overall SLE Ratings split by Success in Solving Previous Problems . . . . .	89
6.6	Effect of Outcomes of Prior Problems on SLE Ratings . . . . .	89
6.7	Domain Specific SLE Ratings between Similar Experience Groups . . . . .	90
6.8	Step-wise Regressions within Specific Legal Domains . . . . .	92
7.1	Number, gender and age of respondents . . . . .	110
7.2	Income and Education Level of Respondents . . . . .	111



# Introduction

In Bangladesh, women tell the staff of Ain ‘O Shalish Kendra (ASK) about their legal problems.<sup>1</sup> Almost exclusively, they talk about husbands who have vanished from their lives. Having moved to the capital Dhaka in search of a better life with their families, these women have been abandoned by husbands who can no longer afford to support their families. The husbands return to villages and take new wives, to benefit from the (illegal, but nonetheless common) dower payments from the wife’s family.

These women tell of how their lives are a constant struggle. With the help of ASK, they report their husbands to the police. ASK’s lawyers help them file lawsuits, but it doesn’t help. Many of these women have had open cases for more than a decade, and they show no signs of receiving a solution. The luckier ones will receive a judgement in their favour, decreeing that their husbands must pay for the upkeep of their children. But, ask the women, what good will this do them? Enforcement is almost impossible in the rural environments where local leaders have much more power than the police, and where every action requires that they pay money they don’t have.

None of these women have been well served by the justice system. None of them even know anybody who has. However, these are the empowered ones. These are the women who have taken the steps to try and solve their problem, and have pushed it through courts, with the assistance of ASK, in the belief that they can get a solution. Many millions more women, do not have this belief, they no longer believe that the justice system serves them, or that they are able to achieve a solution.

Similar problems are seen in Cambodia, where endemic corruption has reduced trust in formal courts and the police, and where it is believed that disputes are often primarily decided on the basis of power relations, rather than justice. Kenya, where many believe that the system is set up to serve a different ethnic group, or Indonesia, where distance to formal institutions as well as corruption means that individuals feel that the law is neither accessible, nor able to help.

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<sup>1</sup>These anecdotes are taken from direct experience of the author while conducting research trips in the relevant countries for a variety of different projects.



Regrettably, none of these stories are particularly new. Problems like these have been seen in countries around the world, and a great deal of time, effort and money have been invested in trying to prevent them, and enable their victims to achieve solutions to their problems. Each of these efforts works to improve the experiences of individuals when they encounter problems. However assessing where these interventions are successful, and how they can be improved remains a significant challenge.

It is critical that people get solutions to their problems. The ability to achieve a fair solution to problems is the ability to defend your source of income, to be able to protect the land on which you grow your food, to achieve compensation for faulty goods bought, or to receive your inheritance. It is not, when it comes to an individual, an abstract idea, but the ability to protect that which is most important. Individuals also benefit financially from being able to solve their problems, as they can specialize into better income generating activities knowing they are able to solve problems that arise, and this generates greater income for societies and governments.

The first hurdle to gaining a solution to a problem is not those things which are usually thought of, such as money, time, or effort. Rather, the precursor to any attempt to solve a problem, is the belief that a solution is achievable. If an individual does not think that they are able to solve a problem, they are unlikely to expend the money, time or effort which are required. This belief in an ability to solve their problem is at the core of legal empowerment.

The first, and perhaps most obvious, obstacle to gaining access to solutions to the type of problems faced by the women in Bangladesh, is addressed directly by a multitude of access to justice initiatives: reducing the emotional, time and financial costs of accessing justice solutions (Barendrecht et al., 2006; Gramatikov and Verdonschot, 2010; Maru, 2009), as well as improving the knowledge of individuals about their options and providing material assistance taking cases to court (George, 2006; Maru, 2009; Rhode, 2004). This approach of reducing the costs remains the dominant approach to improving access to justice, and with good reason. Without such barrier reductions, access to justice will remain unachievable for a large, and potentially growing, majority of individuals around the world.

However there is another approach that complements the barrier-reduction approach to improving access to justice. Legal empowerment was first introduced as a concept in 2001 (Golub and McQuay, 2001) and swiftly became a popular approach in development circles, and received

a great deal of attention in 2008 with the publication of a report from the High Level Commission on Legal Empowerment of the Poor, entitled 'Making the Law Work for Everyone' (Albright et al., 2008). Legal empowerment gained attention in part due to its focus on individuals rather than the system, an approach that chimed well with the increased attention being given to grass-roots approaches and individual assistance over institution building or reform. However, legal empowerment was quickly adopted as justification for a variety of programmes and interventions that it is difficult to identify as all contributing to a one clear concept or ideal.

This is at the core of the issue that this research addresses. Projects which have been carried out in the name of legal empowerment range from AIDs awareness and treatment centres, to mass litigation on behalf of entire communities, to individual awareness raising in relation to specific legal issues, to the development of simpler court processes and reduced barriers to access to justice. The problem is that these do not seem to have one clear indicator at the base of what they attempt to do. The direct effects appear to be variously increased knowledge of individuals, better living conditions and reduced poverty and simpler court proceedings. Each of these projects may have contributed to legal empowerment but in the absence of a clear measure of legal empowerment, which is applicable across a range of situations and contexts, we cannot begin to understand which of these interventions is the most effective, or how they effect different communities and cultures.

Discovering why individuals decide to take legal action in some situations, and not in others, is of great value to anybody interested in access to justice or behavioural law. The majority of research into legal behaviour examines how institutional factors (such as the number of lawyers (Rhode, 2004), affect the number of individuals who choose to utilise legal remedies. Little work has been given to how individuals view their likelihood of achieving a solution outside of the formal system.

The basic logic behind legal empowerment is that individuals should be empowered to address and resolve their problems, using legal (and sometimes non-legal) means to achieve satisfactory and fair resolutions. Alongside the need for systems or processes which they have the legal, emotional, and economic capability to access, this approach requires that these individuals also possess the necessary belief in their ability to utilise whatever options they perceive to be available to them. This means that they need to believe that they have the ability to complete those tasks that they view as necessary to achieving the goal of solving

the problem. These tasks may be self-identified (they may believe they have to speak in front of a judge for example) as well as outside-imposed (there may be a requirement to complete a particular form), but prior to any action being taken, the individual must believe that they are able to complete these tasks and achieve the end goal. If they do not believe that they are able to complete the tasks perceived for a specific process to solve their problem, they are unlikely to attempt it.

Legal needs research conducted by Pleasance et al (2003) indicated some of the reasons given by individuals for not taking action to solve legal problems, including there being no dispute, action being unnecessary, and damage to ongoing relationships. Also noted were the costs of legal action and the lengthy nature of court processes. Additionally, in common with findings in Genn & Beinart's *Paths to Justice*, (Genn and Beinart, 1999) those who failed to take action were observed to be "negative and powerless".

Although Genn & Beinart's observation that those who declined to take action were 'negative and powerless' was made over a decade ago, there has been little subsequent investigation into the basis on which individuals make the decision to take action or not; what made them powerless? Before such questions can be answered, however, we need a more rigorous measure of the empowerment we wish to address. This research presents a method of measuring an individual's empowerment based on subjective perceptions of their ability to complete certain tasks and achieve a solution to their problem.

From self-efficacy theory in psychology (Bandura, 1977), we know that individuals are influenced in their decisions to act by their subjective belief in their own ability to achieve a solution. Self-efficacy theory explains how an individual's perceptions of their abilities to achieve a certain task impact upon their behaviour, and their subsequent success in achieving their desired aim (Margolis and McCabe, 2006). Self-efficacy theory has been demonstrated in many different areas such as productivity (Taylor et al., 1984), academic achievement (Schunk et al., 2002), and importantly, dispute resolution (Desivilya et al., 2010). These multiple applications of the theory support the concept that the self-beliefs of individuals will impact upon their behaviour and success in achieving aims in legal contexts.

It is not to be thought that subjective self-beliefs exist entirely independent of objective measures. Clearly, an individual's perceived ability to achieve an objective will sometimes be conceived in reference to perceived objective criteria. For instance, an individual who has 75 Euro

and believes that it costs 100 Euro to achieve an aim will be sure to rate themselves as less able to achieve that aim than a person who also has 75 Euro, but believes that it costs only 50 Euro.

Self-efficacy theory has more to contribute to this research in the form of task specificity. Self-efficacy is regarded as a task-specific measure, that is to say that self-efficacy is not conceptualised as a single universal figure that is applied across situations, but that each individual has self-efficacy in relation to different actions dependent on context and actors (Bandura, 1977). When applied to legal behaviour, it means that each factor is not expected to influence all decisions in all legal contexts to the same extent. The degree to which a particular factor impacts on an individual's self-belief in their ability to achieve a solution will depend on the type of conflict as well as other conditions, such as the actors in the conflict, and perhaps the value of the dispute.

Self-efficacy in fact not only predicts whether a person will act, but influences the strategies they will use and the perseverance they will display. It is clear that a variety of strategies, and above all perseverance, are crucial elements for those Bangladeshi women who are still seeking child support. This is why we try and increase the self-efficacy of plaintiffs through legal empowerment initiatives. An empowered individual with a high degree of self-efficacy in relation to their legal problems will not only attempt to solve their problem more often, but will use different strategies and persevere longer than those with lower self-efficacy.

If we wish to know how we can increase the legal empowerment of individuals, we need to develop a measure of legal empowerment that is applicable across the wide range of activities, cultures and contexts where legal empowerment is an issue. It is this gap in the knowledge which subjective legal empowerment can fill. The core question of this research is:

“Can a measure of subjective legal empowerment be used across a wide range of situations and contexts in order to provide information that can be used to improve or focus legal empowerment interventions?”

In order to answer this question, the following sub-questions will be addressed;

- What is the theoretical framework for how a subjective measure of legal empowerment would work?
- Can a subjective measure of legal empowerment discriminate at the level of the type of legal problem?

- Can a subjective measure of legal empowerment discriminate between empowerment in relation to different tasks that need to be completed?
- Can a subjective measure of legal empowerment provide information that is of use to improve and focus interventions?
- What are the advantages and difficulties with the implementation of a subjective measure of legal empowerment?
- What does the development of a measure of subjective legal empowerment mean for policy and practice in the field of legal empowerment?

By the end of this thesis, it is hoped that you will be convinced that not only is a subjective approach to legal empowerment the way to ensure that activities carried out under its banner benefit the individuals intended, but that measurement of SLE can be useful in the evaluation of interventions aimed at changing the legal behaviour and outcomes achieved by vulnerable groups.

# Literature Review

## 2.1 Evolution of Legal Empowerment

How did we get to the position we are in today, where legal empowerment is one of the most dominant approaches to development? To answer this question, we need to look back at the history and evolution of law and development. The law, and particularly the promotion of the Rule of Law has been viewed as one of the key tools to stimulate development and reduce poverty since the 1960s, when USAID and the Ford Foundation began providing aid and assistance in Africa and Latin America (Blair and Hansen, 1994). Although many of these efforts might be considered, with the benefit of hindsight, misguided, they represented the beginning of a consistent effort on the part of the west through the 1960s to 2000 to promote economic and social development in the global south through the promotion of the rule of law.

This makes the rule of law approach the predominant approach through the history of law and development. Rule of law was seen as the key to economic security and development, and consequently significant efforts were expended to ensure that it was present in target countries (Blair and Hansen, 1994; Golub, 2003; Haggard et al., 2008). These efforts were typically focused on those things that were most salient to those implementing these changes, and consequently revolved around “law reform and government institutions, particularly the judiciaries” (Golub, 2003, p. 5). It is difficult, even from the vantage point we have now, to determine the precise benefits or detriments that these changes brought, however it is clear that this approach did not, and has not, brought the wholesale benefits that were sometimes expected from it.

The ‘Rule of law orthodoxy’ (Golub, 2003) focused almost exclusively on top-down approaches to law and development. In its efforts to promote rule of law, major development institutions focused on building “... business-friendly legal systems that presumably spur poverty alleviation. Other development organisations use the role of law orthodoxy’s state-centered approach to promote such additional goals as good governance and public safety” (Golub, 2003, p. 3)

As Golub goes on to note, these are clearly admirable aims, but they fall far short in addressing the legal needs of the most disadvantaged and

lack a good evidential basis on which to expect positive outcomes.

The rule of law approach is wide-ranging, but has at its center the promotion of economic growth and investment through the creation of stable and favourable legal institutions and liberal markets (Golub, 2003). To a certain extent it is based on a classic ‘trickle-down’ effect, whereby if large institutions and organisations are working to promote big-business and investment, this benefit will ‘drip-down’ to the disadvantaged through increases in employment, and governmental investment in skills and education (Aghion and Bolton, 1997)(Aghion & Bolton, 1997). Unfortunately, as Golub (2001; 2003), Stephens (2009), Otto (2009), and the Commission on Legal Empowerment of the Poor (2008) note, this trickle-down effect does not appear to have significantly improved the lives of the most disadvantaged.

Golub identified the following key features of the rule of law orthodoxy:

- A focus on state institutions, particularly judiciaries
- The institutional focus is largely determined by the legal profession
- Tendancy to define the legal system’s problems and cures in terms of institutions and processes in which lawyers are central
- Civil society engagement, where it occurs, is usually used to determine how reform of these systems should occur, and/or using the organisations engaged as advocates for the reforms
- Reliance on foreign expertise and models

(adapted from Golub, 2003, p.8-9)

Golub goes on to highlight how these approaches are compromised by a range of factors including a lack of evidence of efficacy, the ingrained nature of institutionalization, the centrality of the judiciary, and judicial reform as an end in itself (Golub, 2003). Golub (and others since such as Assies (2009), Carothers (2006), and Tamanaha (2009) assert that together these assumptions on which the basis of the rule of law approach is founded make the approach at best unreliable, and at worst totally ineffective.

Legal empowerment (by any of the many definitions we will look at below) is targeted squarely at the lack of focus on the most disadvantaged displayed in the features identified by Golub. Arising in response to the increasing evidence that these rule of law approaches were not creating

the fair, accessible legal systems that had been anticipated, and that the most disadvantaged were little, if any, better off as a result (Blair and Hansen, 1994; Carothers, 2006), legal empowerment seeks to focus on those it seeks to aid, the poor and disadvantaged (Albright et al., 2008; Golub and McQuay, 2001). This is not, as Golub (2003) notes, an abrupt break with all aid and development work that had gone before. Aid organisations had increasingly begun to consult with communities and individuals they sought to assist, but the activities undertaken were all too often implemented from the top-down, with no direct assistance provided to the disadvantaged populations.

In contrast, legal empowerment begins by looking at the problem as it is faced by disadvantaged populations, and developing programmes from there. Golub identifies a set of characteristics of legal empowerment approaches as:

- An emphasis on strengthening the roles, capacities, and power of the disadvantaged and civil society
- The selection of issues and strategies flowing from the evolving needs and preferences of the poor
- Attention to administrative agencies, local governments, informal justice systems, etc.
- Civil society partnership with the state where there is genuine openness to reform on the part of governments, agencies or state personnel, and pressure on the state where that presents an effective alternative for the disadvantaged
- Great attention to domestic ideas and initiatives, or experience from other developing countries, rather than western imports.

(adapted from Golub, 2003, p.25-26)

These characteristics of the approach are in marked contrast to those identified as characteristics of the rule of law approach, and reflect the ‘grass-roots’ nature of development of legal empowerment, and the focus on creating practical improvements for disadvantaged populations. These characteristics demonstrate how legal empowerment addresses or avoids many of the problems encountered by the rule of law approaches, however one of the criticisms aimed at the rule of law is also applicable to legal empowerment approaches, namely the lack of concrete evidence. Golub (2003; 2010) and others (Assies, 2009; Banik, 2009; Goodwin and



Maru, 2014; Khair, 2009) address this concern to some extent by listing the positive outcomes from projects which are characterised as legal empowerment projects, but there is little systematic evidence of the impact of these interventions.

Legal empowerment is used extensively by scholars and practitioners alike to describe a wide range of activities, from legal information strategies to development of traditional forms of dispute resolution, to minority groups winning legal victories through public interest litigation (Golub, 2010; Goodwin and Maru, 2014). Projects aiming at improving legal empowerment to some extent receive tens of millions of dollars every year in grants and government subsidies (Cohen et al., 2011). Clearly, we are interested in increasing legal empowerment, and as a society we are committed to improving legal empowerment throughout the world. The difficulty we face is that without an adequate definition, we cannot determine if interventions are working.

Despite the increased interest and use of legal empowerment, as a term it has defied concrete definition for years. First used over 10 years ago in a report for the Asian Development Bank in 2001 (Golub and McQuay, 2001), almost every book, paper, or article addressing legal empowerment directly since, has begun by highlighting the lack of consensus on a definition. Golub, has also acknowledged this conflict (Golub, 2010), and although he provides a broad definition, no agreement has emerged on exactly what legal empowerment means. Instead, two broad perspectives have emerged, legal empowerment as a process, and legal empowerment as an outcome, while others have characterised it as a policy approach, which lack any significant outputs or objectives.

### 2.1.1 The Process Approach

The process approach has been adopted by both Golub (Golub and McQuay, 2001; Golub, 2003, 2010), and the Commission for Legal Empowerment of the Poor (CLEP) headed by Hernando de Soto and Madeliene Albright (Albright et al., 2008). This approach sees legal empowerment as a process of enacting rights. As Golub and McQuay defined it in 2001:

“the use of law to increase the control that disadvantaged populations exercise over their lives” (Golub and McQuay, 2001, p. 7)

and further in 2003

“the use of legal service and related development activities to increase disadvantaged populations’ control over their lives” (Golub, 2003, p.25).

This definition is clearly based around the process of empowerment. The phrase ‘the use of the law’ clearly indicates a process whereby the law is put into action (by an undefined agent) to increase the control of individuals over their lives. Here also, the definition includes the word ‘exercise’, indicating an action, rather than a passive state. It is also worth noting that this definition contains two elements of action, firstly that of the unnamed agent using the law (although there is an implication that this is the disadvantaged individual) and secondly the exercise of control by disadvantaged populations over their lives. The definition provided by Golub clearly aims at enabling individuals to take actions themselves, rather than being recipients of traditional ‘aid’.

These elements are clearly mirrored in the definition provided the CLEP at the start of their report:

“the process through which the poor become protected and are enabled to use the law to advance their rights and their interests, vis-à-vis the state and in the market.”(Albright et al., 2008).

Here, we can see that the process is even more heavily emphasised, and again there is a difference identified between the agent that improves the process, and the (in this case poor) individuals who, as a result of this intervention, act to ‘advance their rights and their interests’.

It is also notable that both of these definitions (perhaps unsurprisingly) specify the use of the law to bring about the changes.

The process approach overall, however, focuses on their being adequate opportunity and possibility for the individuals in question to use the law to improve their lives. There is also an element included whereby the individuals are ‘enabled’ to use these opportunities and possibilities, but the focus of the definition is the action, while the outcome is presumed to flow from these actions.

### 2.1.2 The Outcome Approach

The perspective of legal empowerment as an outcome has been promoted by Palacio (2006) as the key to legal empowerment. As she says in her report to the world bank:

“Ultimately, if legal empowerment is to mean anything for the poor, it has to provide them with security and mobility to enable them to climb the economic ladder.” (Palacio, 2006, p. 6)

Here we can see the approach to legal empowerment as an outcome, a situation in which individuals are able to better their position. The process through which this is achieved is not specified, and is implicitly

regarded as less important. The thing of value is that individuals are able to improve their situation. It is likely a by-product of the fact that the report was produced for the World Bank that legal empowerment is here defined in specific reference to economic development, but the situational outcome, where individuals are able to exercise economic (and legal) rights remains at the core of the definition.

### 2.1.3 The Policy Perspective

A further, more abstract, definition of legal empowerment is used by a variety of organizations. This is legal empowerment defined as an approach, strategy, or policy. Here, neither outcomes nor actions are really addressed. Instead, the term legal empowerment is used to encapsulate the policy choices.

“Legal empowerment of the poor is a rights-based strategy for improving governance and alleviating poverty” (The Carnegie Foundation in Jonsson, 2010, p.3)

“Legal Empowerment promotes safety, security and access to justice and helps poor people solve problems and overcome administrative barriers” (Palacio, 2006, p. 15)

“Legal Empowerment of the poor expands the rule of law to the benefit of all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people or other minorities” (HLCLEP in Palacio, 2006, p. 15)

“Legal Empowerment as a concept is put forward as an alternative that could displace the dominant concepts in the development discourse of the ‘Rule of Law’ and the ‘Rule of Law Orthodoxy’” (Hayat and Ahmed, 2008, p. 3)

As can be seen from these various definitions, the use of the term legal empowerment in this perspective does not connote any particular activities, outputs or objectives, beyond ill-defined concepts such as ‘benefit’, ‘improvement’, and ‘help’. Here legal empowerment is being used in its most abstract form as an umbrella term which could contain almost limitless activities with equally limitless objectives and recipients.

One aspect that does stand out is in the definition provided by the High Level Commission on Legal Empowerment of the Poor (HLCLEP), which explicitly expands the reach of legal empowerment beyond the ‘poor’, ‘vulnerable’, ‘disadvantaged’ or members of minorities. In the HLCLEP definition, legal empowerment is a concept that applies to everybody, regardless of gender, socio-economic status, or ethnic origin.

### 2.1.4 A Practical Approach

The outcome, process and policy perspectives all have advantages. The process approach encapsulates the requirement that those who are legally empowered have the opportunity to use the law or legal processes, rather than being passive recipients of it. The outcome approach, on the other hand, directly addresses the need for individuals to be legally empowered in terms of being able to use those opportunities to improve their lives. The policy approach, on the other hand, provides a wider view of what legal empowerment should encompass, and how these objectives can be obtained on a larger scale.

Are these multiple definitions of legal empowerment under different perspectives really a problem? In principle, there is another way to look at legal empowerment. This way is to ignore the definitions and stated objectives provided by those who write about legal empowerment, and to look at the activities that are carried out under the auspices of legal empowerment. It is when we do this, that we see the difficulty inherent in not having a concrete definition. Legal empowerment has been used as a banner under which an astonishingly wide array of activities has been carried out.

In 2014, Namati, an organization dedicated to the improvement of legal empowerment worldwide published a review of legal empowerment practice documented through their research and database (Goodwin and Maru, 2014). This working paper demonstrates the breadth of activities that are carried out under the legal empowerment banner, and the different outcomes that are classified as ‘legal empowerment’. Additionally, and perhaps more importantly, it adroitly demonstrates the lack of coherence that has characterized the legal empowerment agenda since its beginning.

Through an analysis of 199 studies on six continents, Goodwin & Maru draw a picture of the activities and outcomes that are labelled as legal empowerment. While the vast majority of impacts are positive (even where they are acknowledged to be unintentional), the overarching impression is of a collection of activities that are dedicated to helping individuals in different situations, but with no clear definition of what that help should be, how it should be applied, or what the outcome should be.

The definitions of legal empowerment reflect the practice on the ground, and are doubtless mutually reinforcing. They cover a wide variety of different activities, and the desired outcome of these activities

is not specified. Should these activities provide resources for individuals to utilise formal court procedures? Should they increase an individual's knowledge of the law and what his or her rights are? Should they promote fairer outcomes, regardless of the means through which they are achieved? Should they promote economic engagement and commitment to development? The activities that are classified under legal empowerment currently promote a variety of different outcomes, and there appears to be no 'red thread' running through all of the initiatives. This is what is missing from the legal empowerment agenda. If we are to put millions of dollars into legal empowerment initiatives each year, should we not know what we are trying to achieve?

This thesis begins to describe a potential solution to the problem of measuring legal empowerment. Starting from the subjective experiences of individuals, it generates a measure which can be applied across borders to measure the impact of legal empowerment initiatives. In doing so, it generates a definition of legal empowerment which is based on this approach. This definition is called Subjective Legal Empowerment (SLE) (Gramatikov and Porter, 2011). Given the wide range of activities already claimed under the banner of legal empowerment, a different approach is taken. Rather than legal empowerment being perceived as a process or outcome, it is conceptualised subjectively, from the perspective of individuals 'on the ground'. Through the chapters of this thesis, you will be guided through the creation of a measure of legal empowerment based on the subjective beliefs of individuals regarding their chances of achieving a solution to a legal problem, and the creation and testing of the model of SLE devised based primarily on the psychological theory of self-efficacy, as well as the theory of locus of control, and the capabilities approach.

Subjective legal empowerment is a beginning to an answer to the question 'what is legal empowerment?' SLE conceptualises legal empowerment as an individuals belief in their ability to achieve a solution to a legal problem. It is distinct from the objective reality of the world (a belief that financial costs of access to courts are extremely low will likely increase subjective legal empowerment, regardless of whether the actual costs of access to courts are extremely high or not), and instead takes as the point of departure an individuals' perceptions.

## 2.2 Self-Efficacy

Throughout this thesis, the theory of self-efficacy will be repeatedly referred to, as one of the theoretical foundations for the usefulness of the concept of SLE. Self-efficacy was first put forward by Albert Bandura in 1977 (Bandura, 1977), as a part explanation of why people decide to take action or not. The theory of self-efficacy can be relatively simply stated, that individuals judge their likelihood of success at a task based on prior experience of attempting the task (enactive mastery), seeing others attempt the task (vicarious mastery), how they feel while they attempt the task (affective state), and reports from others on their likelihood, or otherwise, of completing the task (verbal persuasion) (Bandura and Adams, 1977; Bandura and Schunk, 1981; Bandura, 1977, 1982; Feltz, 1982). In addition, their judgement of likelihood of success at the task will have an impact on whether they attempt the task at all (Bandura, 1982, 1995; Compeau and Higgins, 1995; Gist, 1987; Strecher et al., 1986), the length of time that they will persevere at the task in the face of adversity (Bandura and Locke, 2003; Bandura, 1982, 1995; Strecher et al., 1986), and also the selection of strategies to achieve the task (Locke et al., 1984; Taylor et al., 1984). In the next sections, we will look closer at how self-efficacy operates, and how this can relate to legal situations.

### 2.2.1 The Four Contributors to Self-Efficacy

As noted above, there are four distinct sources from which individuals derive information about their self-efficacy for a task. Each of these operate in a distinct way, and each can be expected to impact upon self-efficacy in relation to legal tasks in a different way. Here we will look at each of these sources of information, and examine how each of them might impact upon a measure of legal self-efficacy.

#### **Enactive Mastery**

‘Enactive mastery’ is a term meaning experience of carrying out the task in question. This is the most powerful source of information in relation to self-efficacy, in that it has the greatest impact on self-efficacy levels. If an individual has prior experience of successfully completing the task in a variety of different contexts, then s/he is likely to have a high level of self-efficacy for that task. Equally, if they have experience of repeatedly

failing at the task, then they are likely to have low self-efficacy (Bandura and Adams, 1977).

In particular, repeated successful attempts at a task will reduce the impact of future unsuccessful attempts. In fact, Bandura found that occasional negative experiences can promote self-motivated persistence at the task, as individuals find that even the most difficult obstacles may be overcome with persistence and sustained effort. Indeed individuals who overcome a fear through enactive mastery, experience a 'spill-over' of increased self-efficacy ratings in similar situations (Bandura et al., 1969).

In relation to tasks related to legal problems, enactive mastery is likely to be just as powerful. However, it is clear that legal problems are relatively rare in comparison to many other events (self-efficacy is commonly examined in the context of actions or tasks that an individual is likely to have experience of). It may also be true that each legal problem is effectively a different task, in that each problem is so unique that efficacy must be established anew each time. However, the commonly held belief that the majority of individuals who experience a legal problem are 'one-shotters' (that they only experience a legal problem once in their life) is based primarily around the court procedures. In this context, it probably holds true, as court procedures are relatively rare events in life, and any individual is probably unlikely to undertake two very similar procedures in court.

However, the majority of disputes in the world are solved not through formal courts or institutions, but through community based approaches, ranging from simply talking to the other party, to seeking adjudication from individuals who have some form of social authority.

### **Vicarious Experience**

The second most effective source of information for creating concepts of self-efficacy, is from vicarious experience. This means from watching or hearing about other individuals who have attempted to complete the task in question.

The efficacy of vicarious experience is modified by a range of variables, most important being the level of identification between the individual forming a self-efficacy opinion (the observer), and the individual they observe (the subject).

The more the observer identifies with the subject, the greater the impact the observed attempt will have on the observer's self-efficacy in

relation to that task. Accordingly, if the observer observes a successful attempt at the task, by an individual with whom they strongly identify (perhaps they recognize them as being from the same background, having the same education, having similar obstacles, or any of a range of factors), their self-efficacy ratings for that activity will increase.

Vicarious experience is, however, a less 'powerful' source of information than enactive mastery. Thus, if the observer has a level of self-efficacy which is based on multiple experiences of enactive mastery, then observing an individual, even one with whom they strongly identify, attempting the task, will have only a very small impact on their self-efficacy rating.

In the context of legal self efficacy however, it seems likely that vicarious experience will provide the primary source of self-efficacy information, due to a lack of enactive mastery. In the anticipated absence of enactive mastery experiences for individuals, information that is gained from witnessing other individuals complete tasks will be the primary source of information used in creating concepts of self-efficacy.

### **Affective State**

Affective state refers to the emotional state induced by attempts to complete the task at hand and/or similar tasks in the past. The effect of affective state of any given individual is difficult to assess. This is due to the interpretive element that is ingrained in the method by which it affects individuals, and the effect of past experience in a much wider range of situations than the particular task presented (Bandura, 1982). In addition, there is an attributional effect, dependent on where the individual attributes the source of the emotional state.

### **Verbal Persuasion**

The fourth source of information for the creation of self-efficacy ratings is verbal persuasion. This refers to information given to an actor concerning their ability to complete the task. This is a common (perhaps the most common in the context of legal empowerment) but ineffective way of trying to alter an individual's self-efficacy. This is due to the temporary nature of the effect that verbal persuasion typically has. Verbal persuasion may be effective in the short term (when such persuasion is typically exercised), but is easily overcome by information gathered from any of the other three sources (Bandura, 1982).



When verbal persuasion is encountered it is also subject to moderating variables, such as the perceived authority or expertise of the source and the level of trust given to the source of information. Information or persuasion from sources that are not trusted nor seen as an authority, has a smaller impact on self-efficacy ratings than information from sources that are trusted.

### 2.3 Previous Measurement of Legal Empowerment

This thesis does not contain the first attempts to measure legal empowerment, there have been limited attempts in the past. The most significant of these was in 2009 when Masser recommended a “narrowly defined, subject-centric approach to measurement of legal empowerment” (Masser, 2009, abstract) was responding to the challenge of measurement that the World Bank had encountered in trying to implement the recommendations in the CLEP final report. He examined the current methods and methodologies available and in finding these lacking, proposed his own methodology. He recognised that a subject-centric approach was of the only practical way to look for the proposed benefits of legal empowerment activities, and developed a framework for measurement that created a model of each subject’s actions within specific geographic, subject-focused, goal-oriented domains. Importantly, he identified that the domain should have a goal end-point. As he says, “One of the key facets of domain is the preferred outcome – an unavoidably normative term that describes the desired end-state.” (Masser, 2009, p.11).

To this extent, the measurement that Masser proposes is not so different from the concept of subjective legal empowerment. It is based within specific domains (although defined in more process-oriented terms), and recognises that the objective of legal empowerment activities must be the achievement of a more positively defined end-state of the individual. However, Masser proposes a method of process-modelling which “...operates by emulating an idealized member of the subject demographic” (Masser, 2009, p.12). The outcome of this process is a flow-chart of the domain, depicting all possible steps that might be taken following all (or most) possible choices with in the domain. Masser states clearly that the analysis should include both formal and informal options, as well as preferred and non-preferred outcomes.

In these aspects, the proposed measurement methodology of Masser is quite different from the model of SLE presented here. The outcome is a set of interacting pathways that demonstrate the possible methods of attempting to solve a problem, and the outcomes that are achievable at the end of each. Masser provides a hypothetical ‘very simple’ example as a figure, which still contains 17 different decision points and outcomes. If we consider this same ‘very simple’ example, but in a situation where there are perhaps multiple ways of achieving a solution (e.g. formal and informal routes), the potential is for the process-map to become very complicated even for a small focused intervention. Add to this that it would be required to carry out the process both before and during (or after) the intervention being assessed, and this puts the practicality of applying this method in the real world into question.

Aside from these practical challenges, the outputs from this methodology are a clear map of the possible options for individuals, and the numbers who take each option, with some reasoning behind it. However, it only takes account of those who attempt the task, thus removing the majority of any population, and only enables the analysis of improvements to the system. In this aspect, Masser’s methodology, like the rule of law approach, is still very much tied to the institutions in which individuals are expected to take part. Although it has moved a step closer to the individual by viewing these institutions from the perspective and experiences of the disadvantaged, it is based (perhaps unsurprisingly given their common provenance from the World Bank) within the process approach advocated by Golub (2003; 2010) and the CLEP (Albright et al., 2008).

What this approach and methodology lacks is the embodiment of empowerment in an individual. While a process map may show different possible paths and options available to an (idealised) individual, it fails to demonstrate whether an individual is empowered enough to take them, further yet whether they are now more likely to take them than they were previously. The results of the approach put forward by Masser would undoubtedly be interesting and programmatically useful, but they fall short of providing a measure of empowerment. Instead they provide a description of the system and bottle-necks as it stands, remaining a step away from the individuals whose actions, thoughts, beliefs and perceptions legal empowerment aims to change.

What is needed then if we are to measure legal empowerment, as opposed to access to justice, or any other related concepts, is a measure that roots empowerment within the individual in question. It is here

that the value of a measure of legal empowerment based on self-efficacy becomes apparent. Legal empowerment as the ability of individuals to use the law to solve their legal problems relies not just on the objective existence of that capability, but on the subjective ability of individuals to achieve it. Ultimately, what legal empowerment hopes to create is action on the part of individuals to solve their problems. Self-efficacy has been demonstrated to be a better predictor of future behaviour than previous behaviour, and has also been shown to affect the strategies used and perseverance in achieving the goal. These are precisely the actions that we wish to encourage in relation to the law through legal empowerment. The next logical step is therefore to create a measure of legal empowerment based on self-efficacy theory.

Jørgensen, Torpman & Svanberg (in varying combinations) (Jørgensen and Svanberg, 2009; Jørgensen and Torpman, 2006; Torpman and Jørgensen, 2005) began to do this by looking at the measurement of legal empowerment from a very different perspective; the knowledge and use of law of business professionals. Although this may seem a long way from the traditional environments of legal empowerment, Jørgensen, Torpman and Svanberg took a subjective approach looking at perceived ability, and they used self-efficacy concepts in the development of their approach to what they called varyingly ‘legal effectiveness’ and ‘legal self-efficacy’.

On the surface, this is extremely close to the approach taken in this thesis to SLE. However, once under the surface, the similarities quickly fade away. Jørgensen & Torpman (2006) were interested in the assessment of actual compared to perceived knowledge of the legal system. While they refer repeatedly to the self-efficacy literature of Bandura (1977), they do not reflect the vast majority of self-efficacy measures in their assessment. In terms of question content and design, they prefer to focus on non-task-specific questions, and indeed fail to directly measure perceived ability to use the law, contrary to Bandura’s (2005) recommendation. In addition, the Jørgensen, Torpman & Svanberg measure is applicable only with legal or business professionals. Consequently, the result is a measure that claims to be of legal self-efficacy, but is in the most part a measure of accuracy of legal knowledge and confidence.

Nonetheless, Jørgensen and Svanberg (2009) found that subjective perceptions of knowledge correlated with self-reported behaviour, while objective measures did not, highlighting the potential for a measure of legal empowerment based on self-efficacy measures. This represents a first, flawed, attempt to measure the legal empowerment of a group

using subjective perceptions.

That this limited literature represents current attempts to measure legal empowerment provides the impetus for this research. There is a need for a measure of legal empowerment that reflects the approach's focus on individual experience, yet is applicable in a wide range of contexts and in relation to a wide range of problems. This research is an attempt to fill this gap.

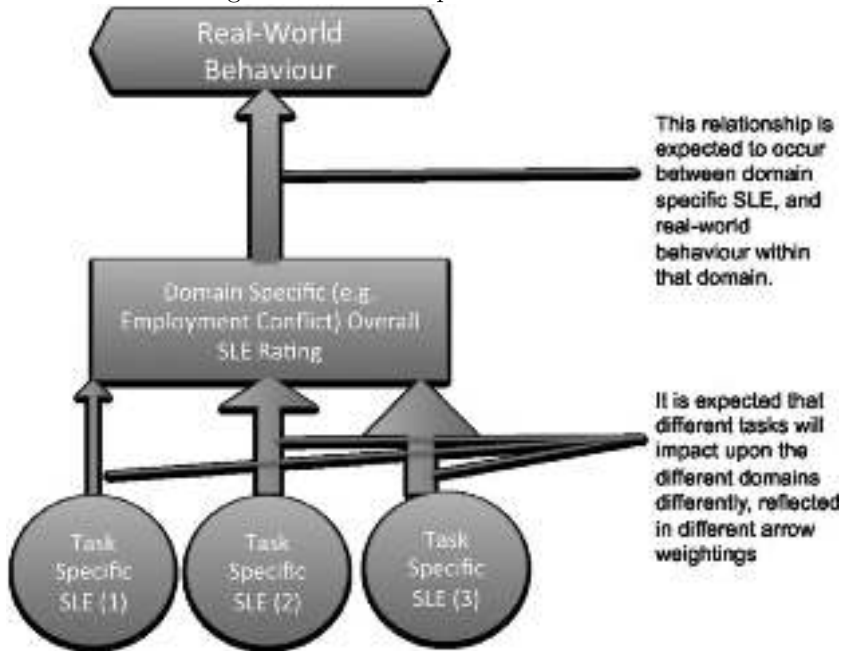
### 2.3.1 Proposed model

The model in Figure 2.1 was created and tested through the course of this research. It represents the theoretical basis on which the measurement of legal empowerment through self-efficacy measures is based.

Below are some hypotheses that are attached to the testing of this model.

- That self-efficacy in relation to ability to solve legal problems is a practical application of legal empowerment.
  
- That the measurement of subjective perceptions of ability to solve legal problems can be operationalized into a practical, applicable measure
  - That domain-specific overall SLE is measurable and varies according to the domain in which it is measured
  - That task-specific SLE measures will vary according to the task in question and domain in which they are being measured
  
- That perceived ability to solve a legal problem will positively correlate with future behaviour (in terms of pursuing a solution to legal problems) in similar situations.
  
- That experiences of legal processes will impact upon an individual's perceived ability to solve legal problems in the future

Figure 2.1: The Proposed SLE Model



# Methodology

Methodology is a key area in the development of a measure of any description. In this thesis, the aim was to develop a measurement of legal empowerment, using the subjective perceptions of individuals. This was based on the theory of self-efficacy from Albert Bandura, which is discussed in Chapter 2. It is worth noting however, that the theory of self-efficacy has many different implementations in a variety of different settings, that enabled the basis of the measure to be established. Indeed, in 2005, Bandura himself wrote a paper illustrating how to create a measure of self-efficacy (Bandura, 2005). As can be seen in Chapter 4, this was used in the initial development of the measure.

Alongside the advantage of having a solid base from which to create a measure of legal empowerment, however, is the difficulty that legal empowerment is a concept that does not yet have a measure against which the quality or usefulness of the newly developed measure can be assessed. This is, clearly, not a unique situation. Every new concept that is measured has to have a first measure that acts as a baseline and can be used to spur development and improvement. The challenge is twofold, firstly to determine whether the measure is providing a measurement of legal empowerment, or some other concept, and secondly to determine the usefulness of the measure.

The first of these problems is, unfortunately, nearly impossible to overcome. Without a clear definition of what legal empowerment means in the real world (see Chapter 2 for more on the ambiguity surrounding the definition of legal empowerment), it becomes apparent that along with a measure of legal empowerment, SLE to a certain extent provides a definition as well, that is to say, that ‘individuals’ perceptions of their ability to solve legal problems’ becomes our defacto definition of legal empowerment. This is a circular argument, as we are simply defining legal empowerment in the terms that we are measuring.

However, there is progress we can make if we look to determine the validity of the measure. There are a number of types of validity that can be assessed in a measure to examine whether it is performing as it is expected to. The validity types defined in *The Research Methods Knowledge Base 3rd Edition* (Trochim and Donnelly, 2007) are face validity, content validity, concurrent validity, convergent validity discriminant va-

lidity, and predictive validity. Each of these types of validity provides information about whether the measure is achieving its desired aim, and contribute to whether it is measuring what it claims to. We will look at how each of these validity types is addressed in this thesis as described below.

It is also worth highlighting a contextual factor that is often seen as challenging to legal empowerment; legal pluralism (Tamanaha, 2011). In many of the locations in which data was collected in the course of this thesis, legal pluralism is a very real and present situation. Individuals frequently have two or more systems which they can utilize to seek a solution. One of these is normally the formal state-run system, while in addition there are often religious or cultural systems that run independently of the formal system. In fact, it is often these alternative forums that are strengthened in an effort to improve legal empowerment, for instance through the use of paralegals (Goodwin and Maru, 2014).

Subjective legal empowerment ‘circumvents’ legal pluralism through its methodological approach. The basic question that individuals are asked is how likely they think they are to get a solution to their problems. This basic question does not mandate, or require to be identified, the legal system they would envisage utilizing (see Chapter 4 p.37). Accordingly, it is anticipated that the respondents will think of the system in which they would try to solve the problem, formal or informal. Through this mechanism, SLE assesses an individual’s empowerment in relation to the system that they would select in a legally pluralistic situation, or the only option where there is only one system for solving disputes. This has further implications for understanding and interpreting the results, and as discussed in Chapter 4, modifications may be appropriate in order to specify a particular legal system where that is of interest, however in this thesis all of the data was collected without specifying the legal system in which the problem may be solved.

## 3.1 Assessments of Validity

### 3.1.1 Face Validity

Face validity is the most straightforward validity type. This is the ‘surface reading’ of the measure, and seeks the answer to the question ‘Does the measure look like it is measuring what it claims to?’. In the case of SLE this can be modified to asking ‘Does it appear to be measuring

legal empowerment?’ In the discussion regarding the definition of legal empowerment in Chapter 2, we found that the ‘theme’ or idea that was most prevalent in the different definitions was that that individuals should be empowered to address and resolve their problems, using legal (and sometimes non-legal) means to achieve satisfactory and fair resolutions. Thus, face validity of the SLE measure comes to whether it appears to ask about individual’s empowerment to address and resolve their problems.

The highest-level questions in all of the SLE measures used in this thesis are “How likely do you think you would be to achieve a solution to a problem of type X?”. There seems to be little room for doubt given this wording that SLE does indeed pass the face validity test. This is further supported in Chapters 5, 6, 7 and 8, where SLE is utilized by organizations on the ground. In these cases, organisations with the clear objective of measuring legal empowerment, go through a process of refining the measure to their contexts, and in each case the highest level question remains virtually unchanged. This represents the opinions of a wide range of professionals working specifically in legal empowerment and providing evidence that they regard the measure as, at the very least, appearing to ask about and measure legal empowerment.

### 3.1.2 Content Validity

This validity type requires a clear and stable definition of the concept that is to be measured. This is one of the primary difficulties in legal empowerment, and makes the assessment of construct validity very difficult. It is hard to determine what elements should be present in a measure of legal empowerment, based on the multitude of definitional and practical vaguaries in the manner in which the construct is used. It is useful, therefore, to borrow from self-efficacy theory, which has been utilized in a wide range of circumstances to a great deal of effect. In these situations, operationalization of complex constructs is achieved by breaking down the objective into a sub-tasks, which need to be completed to achieve the end state (Compeau and Higgins, 1995; Linde et al., 2004; Vecchione and Caprara, 2009).

In Chapter 5 the overall legal empowerment task of achieving a solution to a problem is broken down into several different tasks which may be required to achieve this end goal. In this way, the practice of breaking down the complex construct of legal empowerment into more practical blocks is replicated, enhancing the content validity of the measure.



### 3.1.3 Concurrent Validity

Concurrent validity describes the ability of a measure to distinguish between groups that it should theoretically be able to distinguish. A classic example might be a test for schizophrenia being able to distinguish between those diagnosed with schizophrenia and those diagnosed with an anxiety disorder. The more similar the groups that can be distinguished between, the stronger the concurrent validity, and hence the measure, becomes.

In the case of SLE, generating theoretical groups who should be distinguishable based on legal empowerment is challenging. However, in Chapters 5, 7 and 8, the capability of SLE to distinguish between those with differing levels of education and income are looked at. Differences in these socio-economic levels might be theorized to result in differing levels of legal empowerment. Indeed, much work which is claimed to improve legal empowerment (for example community education activities, economic development initiatives and others) is based on precisely this assumption. Although the results are, to a certain extent, mixed, there is a demonstration that differences in these aspects affects SLE ratings.

More powerfully in relation to concurrent validity, however, is the study presented in Chapter 6, where the ability of an SLE measure to distinguish between those who have prior experience of the legal system, and those who do not, is examined. This is a nearly perfect example of two groups who we would theoretically expect to have differing levels of legal empowerment, through their experience of attempting to solve a previous legal problem. This expectation is underpinned by a large volume of previous research into self-efficacy (see Chapter 2), as well as our current theoretical understanding of legal empowerment.

Further concurrent validity evidence is presented in Chapters 4-8 where the ability of SLE measures to discriminate between very similar groups is presented, for example the ability to discriminate between geographic regions, genders and other attributes. Although there is a weaker theoretical basis for expecting these groups to be divergent, the ability of SLE to assess these differences provides support to the concurrent validity of the measure.

### 3.1.4 Convergent Validity

Convergent validity is the extent to which a measure correlates to other measures which claim to measure the same construct. In the case of

SLE, there are no other equivalent measures that could be directly used to demonstrate such a convergent validity. Consequently, in this thesis there is no attempt to demonstrate the convergent validity of the SLE measure.

There is potential, however, for some convergent validity to be demonstrated in the future using measures that do not purport to measure legal empowerment directly, but other similar measures. These might include measures of capability, legal knowledge and understanding, or perhaps more generalized self-efficacy measures. However, these tasks are not undertaken in the current study due to time and resource constraints.

### 3.1.5 Discriminant Validity

This form of validity captures the idea that a measure should be different from operationalisations of concepts which are similar, but theoretically distinct from it. For example, gathering evidence that a measure of schizophrenia has a low correlation with measures of manic depression. In the case of legal empowerment, it is perhaps more challenging to find similar but theoretically distinct concepts. This is partly due to the interlinked nature of empowerment issues. Where medical approaches might focus on disorders which are expected to be theoretically and practically entirely independent from one another, social sciences are almost always looking at phenomena which are interlinked with their surroundings and other phenomena. This does not reduce the importance of discriminant validity, but rather illustrates the difficulties inherent in generating evidence for it.

It would be desirable to examine the discriminant validity of SLE in relation to other empowerment areas (for instance civil engagement), but due to the complexity and time and resource constraints, this was not attempted in this study.

### 3.1.6 Predictive Validity

The final measure of validity is the ability of a measure to predict something it should theoretically be able to predict. In the case of the SLE measure of legal empowerment, it should theoretically be able to predict whether an individual will pursue a solution to a problem, how long they will persevere, and the range of tactics they might use in their approach (see Chapter 2).

Predictive validity is the most challenging validity to demonstrate. In part, because it requires a longitudinal study design, where individuals have their empowerment measured at a point in time, before being followed through a number of years to examine their behaviour in response to future events. This means it is also necessary to collect a large volume of data relating to behaviours and experiences which are relevant to the study area. Not only is this time and resource intensive, but it requires a significant level of commitment from respondents, and usually a large sample size to counteract drop-out effects.

In the early stages of this study, SLE measures were included in the Civil and Social Justice Panel Survey (CSJPS). This is, as the name suggests, a panel survey carried out in England and Wales on a regular basis to look at a wide range of issues related to civil and social justice, including legal experience and behaviours. The datasets produced have generated a wide array of findings, and contributed significantly to legal understanding worldwide, as well as in the UK. Unfortunately, in March 2013 the Legal Services Research Centre (LSRC) which ran the survey was disbanded due to budget cuts. This meant that this opportunity to establish the predictive validity of SLE was lost.

## **3.2 Assessments of Practicality**

It is when we progress to the second challenge that we are able to make more headway. Clearly, the usefulness of the measure in relation to legal empowerment initiatives is of vital importance. This is a measure that is designed with the real-world in mind and with real-world application at its heart. The evidence for the practicality of the SLE measure proposed in this thesis is distributed consistently throughout Chapters 4-8.

This practicality approach is applied in two distinct ways in the papers presented in this thesis. Firstly, in Chapter 4, we look at the theoretical advantages and challenges of the SLE measure, with a particular focus on the usefulness of the measure for project appraisal and evaluation. This is the grounding for the practicality of the SLE measure, and demonstrates the multiple ways in which the SLE measure is expected to be of use in its real-world application.

Chapters 5-8 demonstrate some of these practical advantages in action. Here we read about the implementation of the measure in a diverse range of cultural and contextual environments. In each case, the practicality of the measure is assessed through its implementation, and the

practical utility of the data it produces is demonstrated through the differentiation of groups, and the highlighting of areas of strength or weakness of organisations or processes.

Both of these views on the practicality of the SLE measure shed light on the utility and applicability of the measure in a variety of different environments and contexts. It is through these practical applications that the utility of the measure is truly demonstrated, and the benefits that may be accrued through its use can be seen.

### **3.3 Contextualisation of the Measure**

Prior to application of the SLE measure in Chapters 5-8, there is a process of contextualisation that is conducted. This contextualisation is of vital importance to ensure that the measure gathers data that is both accurate and sensitive to the differing contextual settings in which the measure is being implemented.

There are two main stages to the contextualisation process. Firstly, there is a process of literal translation. This was, with the sole exception of the measure designed for the Tilburg Rechtswinkel (Chapter 6), carried out by the local partner organisations. For the Tilburg Rechtswinkel, both Dutch and Turkish versions were created by colleagues at the University of Tilburg.

Following literal translation, however, there is a much more important process of refinement, based on understanding and cultural context. This process was carried out in the local organization in each case, and followed a step-by-step process as detailed below:

#### **3.3.1 Understanding and clarification of the questions/items**

This involved the primary researcher sitting down with a number of representatives from the organization and working through the measure item by item. In each case, the meaning of the question was discussed, to ensure that the substance of the question was captured by the literal translation, or if not, to discuss and decide upon alternative wording. This was typically a relatively fast step, taking not more than a couple of hours, and usually resulting in a small number of very small changes.

### 3.3.2 Adaptation of the tasks

Where the more detailed version of the SLE measure was being implemented, the next step was to go through the tasks in relation to each legal domain, and ensure that they were applicable and appropriate in the local context. This often meant adding alternative paths that might be taken (e.g. ‘Contacting the village chief’), or broadening questions slightly, to take into account the wider range of possibilities that respondents might use (e.g. changing ‘Getting in contact with a lawyer’ to ‘Getting in contact with a lawyer, paralegal or other legal help’).

These adaptations are of vital importance for two reasons. Firstly, to ensure that the options available to respondents in the real world were replicated in the measure. This adds to the credibility of the measure to respondents, and ensures that they are able to accurately and honestly answer all items on the measure. Secondly, these adaptations ensured that the data received from the measure was of practical use to the local organization. Without this step, bottlenecks that existed might not have been highlighted, or options that were freely and easily used may have been neglected. Appropriate modification of the tasks was therefore a key element of the contextualization of the measure. This step typically resulted in the addition and/or modification of one or two tasks.

### 3.3.3 Simplification/Explication of the questions

Following the process of ensuring that the meaning of the questions were accurately captured in the translation, attention was then turned to ensuring that the questions could be adequately understood and answered by the desired respondents. This process would begin by going through the measure with individuals from the partner organization who worked directly with the intended respondents to gather their opinion of likely comprehension of the questions. This process often highlighted inappropriate language or jargon which was familiar to those experienced or trained in law, but would be unfamiliar and confusing to respondents.

In many cases, there was an additional concern regarding the literacy of respondents. In these cases interviewers were used to provide support to the respondents, and ensure that accurate responses were gathered.

### 3.3.4 Interviewer Training

This was the final step in each location (with the exception of the Chapter 6, where no interviewers were used) and involved a researcher working with the interviewers over one or two days to develop their understanding of the measure and the aims and objectives of the questions. The opportunity was also taken to reinforce elements of interview technique, such as neutrality, and giving the respondents time to think and respond. This process ensured that accurate data was gathered through the interviewers, and supported a robust data-collection technique.

## 3.4 Choice of Study Sites

This thesis is composed of several papers, each of which refers to one or more data-collection sites. The selection of these sites was made essentially through convenience criteria. The model of subjective legal empowerment put forward in this thesis is universal in application. It is expected to provide meaningful results no matter who it is applied to.

However legal empowerment, as has been intimated previously, is most often applied in the contexts of aid and development. It is accordingly these environments in which the greatest demand for such a measure lies. The study sites in Azerbaijan, Kenya, and the Netherlands were selected through the opportunity to work in partnership with a local legal organization to carry out work to establish the efficacy of the SLE measure, as well as gather other information that was of interest to these organisations. The data gathered in Yemen was collected in partnership with HiiL: Innovating Justice, who were conducting a survey looking at access to justice.

### 3.4.1 Sampling procedures

In each location, a sampling procedure was developed that was most appropriate to the environment and the resources available. Both Kenya and Yemen used a random step-sampling procedure, where households were selected by taking every Nth house, and asking to speak to the person (over 18) whose birthday was most recent. This enables a relatively random sample to be collected. In Kenya, there were no quotas attached to the recruitment of individuals, resulting in a more truly random sample, but reducing the representative nature of that sample to

the population. In Yemen, a quota system was introduced in order to ensure greater representation of the wider population. This consisted of ensuring a 50:50 gender split and an urban/rural split that reflected census data. Data collection in Yemen was further hampered by the civil unrest that was ongoing at the time of data collection. This meant that only three provinces were deemed safe enough to conduct data collection: Sana'a, Taiz and Aden. These regions represent nearly 8m of the 30m population of Yemen.

In the Netherlands, the opportunity was available to invite every attendee at the Tilburg Rechtswinkel over an 18 month period to take part in the study. This does not necessarily consist of a representative sample, but as is discussed in Chapter 5, there is no strong reason to expect a skew in any one direction.

The sample in Azerbaijan was gathered through snowball sampling from a smaller number of individuals who were known to the partner organization. This produces a sample which cannot be guaranteed to be representative of the wider population, and introduces significant bias' based on the individuals who are initially contacted. Although this is not an ideal sampling method, it was used to counteract the fact that internally displaced individuals are very difficult to identify, and there was insufficient time and resources to proceed through more random means.

Overall, in each of these circumstances, the sampling method was selected to generate a number of responses that would allow the analysis required within the resources available in each case, while achieving as high a degree of random selection as possible. The ideal random selection standards were not met in any of these cases, as is almost always the case, due to the constraints associated with working with NGOs with small resources, and to working in the challenging environments presented.

### 3.5 Summary

The methodology to developing the SLE measure of legal empowerment has focused on theoretical validity, and practical applicability. Although it was not possible to gather evidence in relation of all validity types, evidence was gathered in relation to many. Further, significant evidence was gathered relating to the practicality of the SLE measure through application, as well as a theoretical study of its utility to evaluation and project appraisal professionals. The clear methodology for adaptation of

the measure to different contexts and cultures also supports the robust nature of the measure, and the data collection carried out.





# Measurement of legal empowerment through the subjective perceptions of individuals



Porter, R. B. (2014). Measurement of Legal Empowerment through the Subjective Perceptions of Individuals. *Impact Assessment and Project Appraisal*, 32(3), 213–221. doi:10.1080/14615517.2014.927556  
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## 4.1 Abstract

Legal empowerment is a central pillar of the law and development agenda and as such is the focus of many interventions. However, there are many challenges in relation to measurement for impact assessment and project appraisal. In particular the comparison of activities aimed at improving legal empowerment is difficult due to a lack of a measure that is applicable to different activities. This paper presents a model of subjective legal empowerment (SLE). SLE allows measurement of legal empowerment that is comparable across different groups, interventions and experience levels. A literature review and theoretical exploration look at the challenges to measurement of legal empowerment followed by an examination of the strengths and weaknesses of the SLE model. SLE is found to be a measure that can overcome many of the difficulties inherent in comparison to different legal empowerment interventions, with different groups, in different contexts.

Keywords: legal empowerment; self-efficacy; subjective legal empowerment; development; access to justice

## 4.2 Introduction

This paper presents a model for the measurement of legal empowerment, a concept that is of importance to impact assessment and project appraisal due to the focus on legal empowerment as an outcome variable of specific development projects (Golub, 2010) following the reports of The Asian Development Bank (The Asian Development Bank, 2008) and the Commission on Legal Empowerment of the Poor (CLEP) (Albright et al., 2008), through the use of subjective legal empowerment (SLE) (Gramatikov and Porter, 2011).

It is intended for academics, regulators, consultants, funders and project managers who work with legal empowerment and/or legal aid projects. Accordingly, this examination of the theory, benefits and challenges to SLE as a measure of legal empowerment provides a basis on which improvement of the assessment of legal empowerment projects can be built. Deeper understanding of the structure of SLE will enable the appropriate use of the measure, as well as the development of tools of increasing sophistication and complexity to address specific contexts encountered in project appraisal and assessment. This subjective approach to legal empowerment is new to the impact assessment literature, which has paid little attention to the measurement of legal empowerment, and where it has, it is through objective measures such as number of cases initiated or successfully concluded (Banik, 2009).

In this paper, the term ‘legal empowerment’ is used to indicate empowerment in relation to a legal problem, rather than empowerment to use specifically legal mechanisms. This is a practical approach, where the empowerment of an individual to address the problem is examined, rather than the empowerment of an individual to use pre-ordained ‘legal’ mechanisms. It also avoids confusion over what is, and is not, a legal mechanism. Informal village courts are common in much of the world, yet are not formally ‘legal’ nor binding in state courts; however, they are practical methods of solving disputes that millions of people use on a regular basis (Barendrecht et al., 2012).

The concept of legal empowerment is not short of definitions. Researchers and practitioners have provided a range of definitions that reflect different aspects of interpretations of legal empowerment. There are two primary approaches. The first is to view legal empowerment as a process (a method to achieve an end), put forward by The Asian Development Bank (2008), Golub (2009) and the CLEP (Albright et al.,

2008). The second is to view legal empowerment as an outcome. This was put forward by Palacio for the World Bank (2006) and taken even further by Bruce et al. (2007). The process approach focuses on there being adequate opportunity and possibility for the individuals in question to use the law to improve their lives, while the outcome approach looks for legal empowerment to provide ‘. . . security and mobility for the poor and disadvantaged to enable them to climb the economic ladder’ (Palacio, 2006, p. 8). SLE utilises an outcome style definition of legal empowerment, based on empowerment as the belief of an individual in their ability to achieve an aim (Gramatikov and Porter, 2011).

As a central theme of efforts to reduce inequalities among disadvantaged groups and the poor (Albright et al., 2008), legal empowerment has been the focus of interventions from governments, international funding bodies such as the World Bank and Asian Development Bank (Palacio, 2006; The Asian Development Bank, 2008) and national or regional NGOs operating through grants. Legal empowerment is expected to improve the economic and social situation for poor and disadvantaged groups (Golub, 2010).

Interventions have focused on activities that are assumed to impact upon legal empowerment (such as the provision of legal information, legal aid clinics, human rights awareness campaigns); however, there has been no consistent impact assessment of these interventions in part because there has been no one measure of legal empowerment that fits the diverse range of activities. The lack of definitional certainty and lack of clear outcome variable has meant that no consistent, rigorous, assessment of legal empowerment has been conducted (Banik, 2009; Bruce et al., 2007; Maru, 2010).

### 4.3 SLE theoretical model

The SLE model is an application of self-efficacy theory to the ability to gain solutions to legal problems. The challenges and benefits of such a measure are discussed below, in this section the ‘hierarchy’ of the SLE model is explained, with actual behaviour being the ultimate ‘output’ variable, domain-specific SLE being in the middle and task-specific self-efficacy measures as the most detailed ‘input’ variable. Figure 4.1 shows the hierarchy of the ‘layers’ of SLE, while Table 4.1 provides some information about each of these ‘layers’.

### 4.3.1 Background to self-efficacy theory

The SLE model is an application of self-efficacy theory. Accordingly, it is important for effective implementation in impact assessment that there is a clear understanding of how self-efficacy works. Self-efficacy theory was first put forward in the late 1970s and early 1980s (Bandura and Adams, 1977; Bandura and Schunk, 1981; Bandura, 1977; Bandura et al., 1982). It is derived from social cognitive theory, and was devised to explain differences in behaviour. Self-efficacy theory has been hugely influential since the 1980s and has been demonstrated to have predictive validity for behaviour in a wide range of disciplines such as computer use (Compeau and Higgins, 1995), productivity (Taylor et al., 1984), academic achievement (Schunk et al., 2002) and, importantly, dispute resolution (Desivilya et al., 2010).

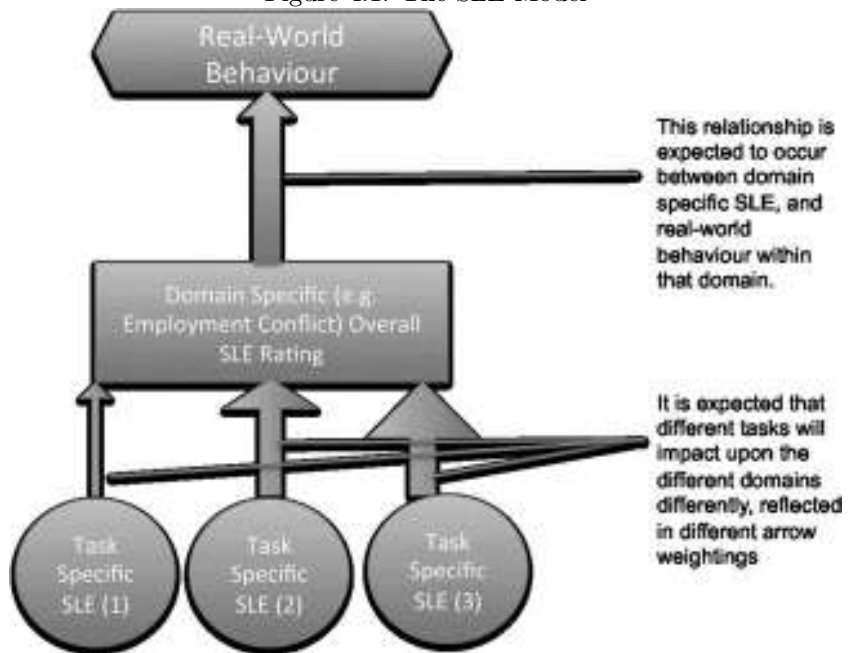
The theory of self-efficacy can be relatively simply stated: that individuals judge their likelihood of success at a task based on prior experience of attempting the task (enactive mastery), seeing others attempt the task (vicarious mastery), how they feel when they attempt the task (affective state) and reports from others on their likelihood, or otherwise, or completing the task (verbal persuasion) (Bandura et al., 1982; Bandura and Schunk, 1981; Bandura, 1977, 1982). In addition, and crucially for the practical implications of the theory, individuals' judgements of likelihood of success will have an impact on whether they attempt the task at all (Compeau and Higgins, 1995; Gist, 1987; Strecher et al., 1986), the length of time that they will persevere at the task in the face of adversity (Bandura and Locke, 2003; Strecher et al., 1986), as well as the selection of strategies to achieve the task (Locke et al., 1984; Taylor et al., 1984).

As noted above, there are four distinct sources from which individuals derive information about their self-efficacy for a task. Each of these operates in a distinct way, and each can be expected to impact upon self-efficacy in relation to legal tasks in a different way. Enactive mastery (personal experience of attempting the task) is the most powerful source of information (Bandura and Adams, 1977). Successful attempts will increase self-efficacy in relation to that task, while failures will reduce it. The effects of enactive mastery are moderated by attributional effects similar to the idea of locus of control (Rotter, 1954), which determine the effect of the experience on self-efficacy. Although enactive mastery is likely to be less common in relation to court proceedings (American Bar Association, 1994; Galanter, 1974), most problems with a potentially le-

Model Component	Description
Actual Behaviour	This is the highest order measure that is applicable in the model of how SLE behaves. This is how individuals actually behave, in real life, when confronted by legal problems. This can be examined at either a 'global' level (i.e. action vs. no action), or in a domain specific manner (i.e. what action was taken when confronted with a particular problem type). If SLE is to be useful in impact assessment, actual behaviour should be predicted from lower order items
Domain Specific SLE	This is the SLE rating based on a specific problem type (e.g. family problems, employment problems, etc.). The measure looks at the likelihood of obtaining a solution to a particular problem type, and the fairness of that measure. This level is the most important SLE measure for assessment of activities aimed at improving legal empowerment.
Task Specific Self-efficacy	This is the lowest order measure of the model of SLE. These efficacy ratings are made in relation to concrete tasks that may or must be completed in order to gain a solution to a problem. These task ratings are of great use to project appraisal and improvement as they provide guidance on the specific elements that respondents find difficult.

Table 4.1: Components of the SLE Model

Figure 4.1: The SLE Model



gal solution are not necessarily solved by formal systems (Barendrecht et al., 2012), and experiences with these systems may be more common. In addition, the task of solving a legal problem can be viewed as a ‘compound’ task, consisting of many simpler and more common tasks. If this perspective is taken, then there are clearly many more instances where enactive mastery might be used to influence self-efficacy judgements.

Vicarious experience (seeing others attempt the task) is the second most powerful source of information (Bandura, 1982). The effects of this information are moderated by the level of identification with the actor, and the similarity between the task attempted by the actor and the task faced by the observer. While it is unlikely that an observer will ever witness an actor solving (or attempting to solve) a dispute that is exactly the same as the one he/she encounters. There are likely to be very similar problems witnessed (for example divorce, inheritance conflicts and so on) which, while not being identical, retain enough similarities for the observer’s self-efficacy in relation to these conflicts to be influenced.



Affective state refers to the emotional state induced by attempts to complete the task at hand and/or similar tasks in the past. The effect of affective state of any given individual is difficult to assess due to the interpretive method by which it affects individuals. In addition, there is an attributional effect, dependent on where the individual attributes the source of the emotional state.

The fourth source of information for the creation of self-efficacy ratings is verbal persuasion. This refers to information given to an actor concerning their ability to complete the task. This is a common (perhaps the most common in the context of legal empowerment) but ineffective way of trying to alter an individual's self-efficacy. This is due to the temporary nature of the effect that verbal persuasion typically has. Verbal persuasion may be effective in the short term (when such persuasion is typically exercised), but is easily overcome by information gathered from any of the other three sources.

### 4.3.2 Relationships within the SLE model

This section examines the relationships between the different sections of the SLE model and their importance in relation to impact assessment and project appraisal.

#### **Relationship: actual behaviour and domain-specific SLE**

For the measure of SLE to be meaningful to impact assessment, it is important that there is a link between the measures of SLE within legal domains, and actual behaviour when these issues are confronted. As mentioned above, there is evidence indicating that self-efficacy measures are in fact better predictors of behaviour than previous behaviour (Bandura et al., 1980; Bandura and Schunk, 1981; Bandura, 1982). Due to their basis in self-efficacy ratings, it is expected that domain-specific SLE ratings will be highly predictive of actual behaviour.

Indeed, while self-efficacy measures were first composed in relation to very simple tasks (for example lifting a certain weight) (Bandura, 1977), and proved to be extremely accurate predictors of future behaviour, there is a collection of evidence that self-efficacy measures are predictive of behaviour in relation to increasingly complex tasks (Compeau and Higgins, 1995; Schunk et al., 2002; Stajkovic and Luthans, 1998). To address complex tasks, multi-dimensional self-efficacy measures are needed (Lent et al., 1987) which, while they have lower correlations be-

tween the measure and performance, do not eliminate the relationship itself. Thus, it is expected that there will be a positive relationship between domain-specific SLE ratings and real-world behaviour.

**Relationship: between domain-specific SLE ratings**

It is clear that domain-specific SLE ratings should be distinct from one another. From self-efficacy theory it is expected that SLE ratings will be generated on a domain specific level (Bandura et al., 1982; Bandura, 1977) and that individuals do indeed perceive their likelihood of achieving a solution to these problems differently depending on the content of those problems. This is supported by the first application of SLE by Gramatikov and Porter (2011), where it was found that different domains produce different SLE ratings. This is important to the validity of SLE as a tool for impact assessment of activities aimed at particular problem types.

**Relationship: domain-specific SLE ratings and task-specific self-efficacy ratings**

The relationship between domain-specific SLE ratings and task-specific SLE ratings is relatively clear. It is expected that domain-specific SLE ratings will be related to the tasks outlined within that domain. If this is not the case, there is a strong argument that the tasks which are outlined within that domain may be inaccurate, and not reflect the real expectations of the respondents in relation to tasks needed to solve a legal problem. However, despite a positive relationship being expected, there are different ways in which the relationship could operate. The most simple of these would be an aggregation of the scores on self-efficacy ratings, to create an overall legal empowerment measure. However, this seems an oversimplification, as it is likely that some tasks will be considered more ‘important’ than others. This leads to the second possible relationship, where the self-efficacy ratings are ‘weighted’ according to the importance of the task that they are related to. For instance, talking to the other party may be very important, while ability to explain yourself to a lawyer may be less important. The third relationship could be characterised as ‘critical tasks’. By this, it is meant that some tasks could be viewed as ‘critical’ to the objective of gaining a solution to the problem. Accordingly, they would provide an upper limit to the SLE ratings, as the likelihood of achieving a solution to the problem cannot be greater

than the likelihood of completing these ‘critical’ tasks. The details of this relationship are likely to become clear through the application and analysis of SLE measures, and will provide valuable information for the assessment of the most effective activities to improve legal empowerment within particular domains.

### **Relationship: between task-specific self-efficacy ratings**

There is little or no relationship expected between task-specific self-efficacy ratings. Within domains, each of the self-efficacy ratings refers to a distinct task, which needs to be completed. Each of these tasks should be sufficiently different that they contribute unique information to the measure, and tasks which add no new information should be discarded. Care needs to be taken, however, to be aware that different tasks may have different impacts in different domains. Thus, simply because a task does not add information in one domain does not mean that it should be removed from all domains.

In relation to the same tasks measured between domains, the same logic applies as to the relationship between domain-specific SLE ratings. Task-specific self-efficacy ratings should be distinct from one another; if there is no distinction, there is little benefit in generating these task-specific self-efficacy ratings at the domain level. Given the high level of task specificity demonstrated in self-efficacy measures (Bandura and Adams, 1977; Bandura, 2005; Lee and Bobko, 1994; Strecher et al., 1986), it is expected that the different domains will cause the self-efficacy ratings for similar/identical tasks within these domains to differ significantly. For project appraisal in particular, these differences between task ratings provide vital information on the best approaches to creating an impact on a particular domain.

### **4.3.3 Challenges to measurement of legal empowerment**

This section looks at the current difficulties faced in impact assessment in relation to the measurement of legal empowerment. The first of these challenges is that measurement of legal empowerment has traditionally taken place in the contexts of conflict resolution programmes such as legal-aid provision, court processes or community dispute resolution design (Barendrecht et al., 2015; Buscaglia and Stephan, 2005). This leads

to a sampling bias. If legal empowerment is only examined in individuals who are in, or have just completed, conflict resolution processes (see Cotula and Mathieu, 2008; De Langen and Barendrecht, 2009; Maru, 2009), two biases are incorporated. The first of these is that the individuals being assessed are only those who have problems. The second is that this is actually a sub-section of those individuals who have problems, namely, those who have some experience of solving or attempting to solve their problem.

Although individuals with legal problems are indeed a legitimate target group of legal empowerment, the onus of legal empowerment is on raising the empowerment of everybody, so that everybody believes that they can solve their legal problems (Albright et al., 2008; Maru, 2010). Asking only those who have problems does not provide any information about the community as a whole.

A second concern that flows from the selection of this sub-section of the general population is that these are individuals who have a legal problem and have attempted to solve it. This is a very problematic bias in the assessment of legal empowerment as they represent a group who have self-selected for precisely what is to be measured (Hoffman et al., 2005). These individuals are those with a sufficiently high level of legal empowerment (empowerment in relation to the legal problem) that they are stimulated to try to solve their legal problem, access information and/or support, and consider this a worthwhile pursuit. The true 'average' level of legal empowerment is almost certain to be below the level indicated by these individuals, as the process selects only those who have displayed characteristics of high legal empowerment.

For impact assessment and project appraisal, it means that looking only at those who have a legal problem, or only at those who come into contact with the activity being assessed, is not sufficient. Gathering information on the general population is necessary. However, general population surveys are expensive, and time consuming to conduct, and most individuals do not have an in-depth knowledge of legal processes and procedures (Balmer et al., 2010; Denvir et al., 2013). Thus, traditional examinations of knowledge or legal experience are not applicable.

Aside from the practical problems, there are also theoretical challenges in identifying the precise concept to measure. All definitions of legal empowerment have in common that they are focused on improving the mobility or end state of 'disadvantaged populations', 'the poor' or 'individuals' (Golub, 2010; Palacio, 2006). In essence, they are all focused on the 'silent majority' of individuals, and the basis of empow-

erment is in enabling these individuals to achieve a goal. In order to complete a task, two conditions must be present, first, the individual must be objectively able to complete the task, and second, they must make an attempt to complete the task (Bandura, 1986). In the context of legal empowerment, the first of these conditions is analogous to access to justice. There must be access to justice in order for individuals to have any opportunity to solve their legal problem (Rhode, 2004).

The second condition, that of making an attempt to complete the task, is more complicated, and requires knowledge of why people act. Certainly the presence or absence of access to justice will have a large effect, but just as important is the perceived ability of the individual to complete the task (Lent et al., 1986; Rachman, 1978; Ruback et al., 2006). It is this second element that has been broadly ignored in attempts to evaluate legal empowerment activities.

This approach to using the perceptions or experiences of individuals to evaluate the success or otherwise of various interventions is common throughout evaluative measurement from post-purchase consumer satisfaction surveys (Maxham, 2001), to measurement of satisfaction with surgery (Myles et al., 2000) to measuring the quality of paths to justice (Gramatikov, 2007). The extension of the use of subjective evaluations of legal empowerment is a logical next step, and provides the unified measure of legal empowerment that is required for the assessment of the impact of a wide range of legal empowerment-focused interventions that are currently employed. This is of significant benefit to the development agenda, as the consistent assessment of different interventions on a common scale allows the differentiation between mechanisms to improve legal empowerment that would otherwise be incomparable.

#### **4.3.4 Benefits of SLE as a measure of legal empowerment**

##### **Link to behaviour**

One of the most significant advantages of using SLE in impact assessment of legal empowerment activities is in its link to behaviour. Self-efficacy has been shown to have a significant link to behaviour in a variety of situations (Bandura and Adams, 1977; Bandura and Schunk, 1981; Bandura, 1977). Indeed, it has been shown that self-efficacy ratings are better predictors of future performance than past performance (Bandura et al., 1980; Bandura and Adams, 1977; Bandura, 1977; Chambliss and Mur-

ray, 1979). In the context of legal empowerment, this link to behaviour is crucial. If SLE measures reflect the probability of an individual acting to solve a legal problem, then the essence of legal empowerment has been grasped. While SLE ratings cannot speak of the objective capability of individuals to solve their legal problems, they can establish a likelihood of acting if these conditions arose.

In addition, there is a strong link with behaviour not just in terms of beginning or attempting a process, but also in the attainment of results. Indeed, the effect of self-efficacy on strategy and approach when attempting a task leads to higher attainment of results (Bandura et al., 1982; Locke et al., 1984; Schunk, 1981). This is another important aspect for legal empowerment, where it is important that individuals not only attempt to find solutions to their problems, but that they are also successful in doing so.

#### **4.3.5 Person-centred: focuses on those who are intended to benefit**

One of the strongest criticisms of the CLEP revolved around the perceived ‘top-down’ methodology employed (Assies, 2009; Stephens, 2009). The almost exclusive presence of heads of state or ministers was contrasted with the lack of representation of the poor at the commission. Despite widening its remit, this criticism is one that has stuck with the CLEP to this day and is accused of being at odds with its emphasis on identity and voice (Assies, 2009). It is therefore important when carrying out impact assessment in relation to legal empowerment activities that the populations who are expected to benefit should be involved. The focus of SLE on the experiences and expectations of the target group of legal empowerment initiatives, normally the poor and/or marginalised, provides a more robust impact assessment.

In addition, SLE can easily be applied to selected groups of individuals (the target group, and possibly control groups also) who will then provide data specific to that group of individuals. This information is highly relevant to the evaluation of any bottom-up development approach, as it represents the real beliefs or capabilities of those who are intended to benefit from legal empowerment activities.

### **Large-scale impacts measurable**

Most organisations that carry out legal empowerment activities (usually governments, or international organisations such as the United Nations Development Programme and World Bank) have an expectation that their impacts will be relatively wide ranging. For instance, a legal empowerment activity involving providing information about legal processes to a society is expected to have an impact on a range of situations (for instance divorce, inheritance, land issues, employment and so on).

In addition, these impacts are often not immediately apparent. For instance such activity may make an individual more likely to use a legal process to solve an inheritance issue, but until the individual encounters such an issue, this greater proclivity to use the law will remain unseen. In addition, these impacts are likely to be small. It is unlikely that an individual would move from a stance of ‘I would never use the law to solve my problem’ to ‘I would always use the law to solve that problem’ as a result of one intervention. However, each intervention aims to move the individual a small distance along the continuum from ‘I would never do that’ to ‘I would always do that’.

Accordingly, it is important that small differences in likelihood of attempting some action are measurable. This is one of the areas where SLE is well positioned to provide answers. It is precisely this increased likelihood of taking action and increased belief of an individual in their ability to solve a legal problem that SLE is well positioned to identify.

### **Measurable in those with no prior legal experience of legal institutions**

As indicated earlier, one of the challenges facing an evaluation of legal empowerment interventions based on formal legal structures is that questions relating to the evaluation are almost always meaningful only to those who have experienced the intervention, or at least the formal structure, themselves. Even general trends, such as an increased average level of legal empowerment of these individuals, or a trend towards greater number of users of formal legal services, are hard to generalise to the population as a whole. It is not possible to tell, for example, whether this increase in legal empowerment is exclusively within this sub-group of already-empowered individuals, leaving a segment of the population entirely untouched, or whether it is a general trend across all segments of the population. Similarly, an increase in the number of users is diffi-

cult to interpret, as they may reflect an increase in the number of people so empowered, or a lowering of the ‘threshold’ legal empowerment for contact with formal systems, or perhaps just an increase in the number of people within the particular population grouping overall, rather than an increase in the proportion of legally empowered individuals.

Together, these caveats demonstrate a significant inability of ‘user-only’ based evaluations to provide information about the effects of any intervention on general legal empowerment. The corresponding strength of SLE for impact assessment is clear to see. Applicable to any individual, SLE enables population-wide legal empowerment to be measured, or for control groups to be used in a control-trial scenario.

### **Group analysis possible**

Often, examinations of legal empowerment interventions are interested in how a particular sub-group of respondents has been affected. Some projects are particularly interested in improving legal empowerment amongst women, while other projects focus on internally displaced people, those from a particular region, or members of a particular group. Here SLE again benefits from its base in the theory of self-efficacy. Self-efficacy has been identified at a group, as well as individual level. This means that there is some pieces of evidence to indicate that self-efficacy can be linked to a group identity (Bandura, 1995; Earley, 1994).

Aside from supporting the approach taken by many organisations in targeting their work on a particular subsection of the population, this concept of group self-efficacy has important implications for project appraisal. Examining whether different (self-)identified groups have different levels of legal empowerment, and looking at how they respond to different interventions can provide a great deal of information about the efficacy of the intervention/activities being assessed.

### **Specific feedback for improvements**

As with the ability of SLE to provide group-based analysis, the task-specific feedback it provides can be of great use in the project appraisal of legal empowerment projects. Rather than simply providing an overall level of legal empowerment, demonstrating that person (or group) A has a higher level of legal empowerment than person (or group) B, SLE provides greater detail regarding the specific tasks that are perceived as being obstacles. This information can be invaluable in the development



and targeting of specific interventions for specific groups.

### 4.3.6 Challenges to the SLE model

#### **SLE is perception based**

The most striking characteristic of SLE is that it is based on personal perceptions. While this is one of its core strengths, it also leaves it open to the charge that it does not reflect ‘reality’ but rather a collection of ‘opinion’. This is, of course, absolutely true. However, as has been discussed previously, the entire concept of legal empowerment is based on the idea of individuals using legal services, or otherwise finding solutions to their legal problems. With a concept so firmly entrenched in the beliefs and actions of individuals, the assessment of their opinions and, particularly, where those opinions are predictive of future behaviour are the core of the assessment of the concept itself.

#### **Subjective measures are prone to variation**

Because SLE is based on perceptions, another challenge arises, in that the responses gathered from individuals are likely to be highly variable across time, and dependent on a wide range of different contextual factors. For instance whether an individual is asked about their likelihood of receiving a fair solution when they are in a good mood, when they are in a hurry, if they have recently had a legal problem or an almost infinite number of other possible variables.

Another similar source of variation is individual differences. That is to say, differences in attitude, opinion or approach of different individuals. This might be reflected, for instance, in two individuals who have exactly the same ‘true level’ of SLE reporting that level differently, as they have different expectations of the scale. For instance, one individual might view the lowest point as being a total absence of any service or access, while the highest point represents an ideal scenario. The other individual may view the lowest point as being very poor service or access, while the highest point represents the best that could be realistically expected. These differences in perception would result in the same ‘level’ being reported as a different rating on the scale. Similar differences may exist in specific understanding of the questions, or in beliefs about the expectations of the researcher.

These are valid and real concerns, and challenges that are faced by

any subjective measure. However, there are things that can be, and are, done to mitigate the impact of these challenges. The most effective manner of addressing all of these variations at once is to collect a large sample size. A large sample size (of, say, 1–2000 respondents) ensures that individual differences and differences in particular circumstances are ‘balanced out’ across the sample. In addition, taking samples in different time periods can also eliminate the effects of day-to-day variations. This ‘balancing act’ is also applicable to the individual differences. For each person who is rated above the true value on any scale, there is a person who will rate equally below the true value.

### **No focus on particular legal mechanisms**

A criticism that might be leveled at SLE from a practical perspective for project appraisal and impact assessment is that it fails to focus on any given legal (or non-legal) mechanism, and that accordingly, it is impossible to establish what processes or methods the respondents were thinking of in their responses. This is a valid criticism, and may limit the applicability of SLE in some specific circumstances. However, there are two possible approaches to this challenge.

First, while it is indeed impossible to be sure what kind of process the respondents are thinking of, the questions lead them to consider the most likely source of a solution. If an intervention is interested in improving the legal empowerment of individuals (and accordingly, the impact assessment or project appraisal is interested in whether this has been achieved), then it would be expected that the first obstacle to overcome is that the avenue that is being invested in would be the avenue that would be chosen by individuals freely. If this initial hurdle of procedure choice is not overcome, then it would be reasonable to assert that the intervention is benefiting at best the group of individuals who use this procedure, and at worst nobody. Accordingly, the general level of legal empowerment in a community is unlikely to be changed significantly, and the impact assessment would want to demonstrate this.

A second approach to this problem can be through a very simple modification of either the measure itself or of the procedure of application. The measure itself can be modified without reducing its accuracy, by simply asking the same questions but in specific relation to a particular process (e.g. the formal court system). It should be noted, however, that this alteration does make a significant change to the theory of the impact assessment. No longer is the assessment looking at the overall

legal empowerment of the respondents, rather it is looking at the specific empowerment to use a certain process. This has significant implications, particularly where the measure is used to measure empowerment to use a non-preferred system (perhaps an unpopular dispute resolution process), where other systems are present. Any highlighted improvement (or worsening) of empowerment produced by such a measure does not (necessarily) represent an improvement or worsening of the overall legal empowerment of the individual, only their empowerment in relation to that process.

## 4.4 Conclusions

This paper has presented a model of a measurement methodology for impact assessment of legal empowerment activities based around subjective evaluations on self-efficacy-based measures. The advantages and challenges to such an approach have been described and discussed. The advantages of such a measure to the impact assessment community include the strong link between self-efficacy measures and behaviour, the focus on beneficiaries of legal empowerment interventions, the ability to measure large-scale impacts, the inclusion of individuals who are not or have not been involved with legal processes, the ability to conduct analysis at group levels with meaningful comparisons and the ability to gain specific feedback relating to areas for potential improvement.

These advantages do not come without challenges; however, it has been outlined how these can be overcome or minimised by using the correct approach to methods. It has been shown that the criticism of SLE measures reflecting mere opinion, and therefore being non-replicable, is flawed by the strong attitudinal aspect of behaviour, as well as the strong link between self-efficacy measures and behaviour. The other challenges presented include the variation in individual responses that can be expected and the lack of a focus on a particular legal mechanism.

The potential benefits of SLE to impact assessment are significantly greater than the challenges that are brought along with it. In particular the use of SLE provides a method by which the common impact upon legal empowerment of the variety of activities undertaken can be assessed. This enables the impact of different interventions to be compared in a systematic and rigorous manner, and provides vital information to organisations about which activities are most effective in improving legal empowerment. It is imperative that the monitoring and evaluation com-

munity adopt and develop standard and comparable measures in relation to legal empowerment.

The presented SLE measure can be used in a range of contexts, and can provide meaningful data to support impact assessment and appraisal of legal empowerment projects.



# SLE in Kenyan Slum Communities: Development of the Concept



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## 5.1 Abstract

A pilot measure of subjective legal empowerment (SLE) based on self-efficacy theory was implemented in two slum areas of Nairobi (Kibera and Kamukunji) to examine the structure of SLE measured, and the discrimination between measures. The measure examined five types of legal problem (domains) in these communities both globally and through investigation of seven tasks that might be needed to solve the problem. Principal component analysis indicates that both the five domains and the seven tasks are accessing different constructs. Respondents clearly distinguished between different problem domains, as well as between tasks both within and between domains. These results support the model of SLE and highlight the need for further investigation of the constructs underlying such SLE evaluations.

Keywords: legal empowerment; access to justice; development; subjective legal empowerment; Kenya

## 5.2 Introduction

### 5.2.1 (Subjective) Legal Empowerment (SLE) and Self-Efficacy

The term legal empowerment was coined in 2001 by the Asian Development Bank (Golub and McQuay, 2001), and was cemented as a central pillar of the development agenda by the Commission for Legal Empowerment for the Poor (2008). Since then, many initiatives have focused on improving legal empowerment with varying levels of success (Banik, 2009; Golub, 2010). One of the key challenges as outlined by Khair (2009), (2010) and Golub and McQuay (2001) is the measurement of impact in these initiatives.

SLE is a proposed approach to measuring legal empowerment through the eyes of individuals (Gramatikov and Porter, 2011). It is based on the general principle that legal empowerment benefits individuals who have problems that might be solved by legal means. These individuals should be benefitted by any intervention that is aimed at improving legal empowerment, and SLE therefore conceptualises legal empowerment as the perceived ability of an individual to achieve a solution to a legal problem.

This conception as the perceived ability to achieve a solution means that what is being examined is the ‘confidence’ (or self-efficacy) of an individual that they have the skills, abilities, knowledge and resources to achieve a solution. Thus, this does not necessarily reflect an objective reality. However, as detailed below, there are significant links between this self-efficacy measure and behaviour and achievement.

SLE is based primarily on self-efficacy theory. Self-efficacy ratings are, in turn, based on four primary sources of information (in descending order of importance): enactive mastery, vicarious experience, verbal persuasion and affective state. Each of these sources of information is used when individuals form a self-efficacy rating, and together they form an individual’s ‘confidence’ in their ability to achieve a given task.

Self-efficacy is one of the more studied modern psychological theories. Devised by Bandura (Bandura, 1977; Bandura and Adams, 1977; Bandura, 1982, 1997), self-efficacy is a theory of behaviour that states that individuals form an assessment of their ability to achieve an objective (Bandura and Locke, 2003; Bandura, 1977, 1982, 1997). This assessment is then highly predictive of their behaviour in similar situations. In fact,



self-efficacy ratings have been demonstrated to have greater predictive power than previous experience in a range of settings, from quitting smoking (Pechacek and Danaher, 1979) and weight control (Forster and Jeffrey, 1986; Linde et al., 2004), to academic achievement of children (Margolis and McCabe, 2006; Schunk et al., 2002) and faculty research productivity (Taylor et al., 1984). Self-efficacy has also been found to affect strategies used to address challenges (Locke et al., 1984), and has been demonstrated to be distinct from outcome expectations, although self-efficacy and outcome expectations may be positively related (Bandura, 1986).

### 5.2.2 Self-Efficacy and Legal Problems

From legal needs and action investigations, we know that most people do not turn to court for the majority of their legal problems. Merry and Silbey (1984) highlight that most disputants prefer to handle interpersonal problems by themselves, through talk or avoidance, and believe that going to court is only good for serious problems (such as crime and traffic accidents). This is borne out by legal needs studies that indicate that fewer than 1 in 10 legal problems ever reaches court or another official institution (Barendrecht et al., 2012), with individual reports indicating that only 5 per cent of successfully resolved problems involve official institutions (Buck et al., 2008; Pleasence et al., 2007, 2003). This tendency is further increased when you move from individualist to collectivist cultures (Jacob, 1969), while Giles and Lancaster (2012) note that rural areas with subsistence agriculture have lower litigation rates than urbanized areas, indicating that most problems are solved through interpersonal contact, or with a third party.

As Buck et al demonstrate (Buck et al., 2004), the first step in solving a conflict is to gather information or advice. However, there are several steps of conflict resolution that must be completed, regardless of the forum, in order for conflicts to be resolved (Barendrecht, 2009), and each of these steps can be converted into corresponding tasks. In addition, tasks can be added in relation to finding a forum in which to solve the problem, or accessing a lawyer.

Research has been conducted into the strategies used in trying to solve legal problems. However, this has often been primarily concerned with information-seeking activities (Patel et al., 2008), and thus often excludes the path to justice navigated, although these are clarified by Genn in the United Kingdom (Genn and Beinart, 1999; Genn and Pater-

son, 2001), Gramatikov in Bulgaria (Gramatikov, 2004) and Michelson in China (Michelson, 2008), or is concerned with courtroom strategies by individual lawyers, or corporations who fight dozens of cases a year, to convince judges of a case's merit (LoPucki and Weyrauch, 2000). As mentioned earlier, self-efficacy ratings are linked to strategy selection (Locke et al., 1984) and therefore SLE measures should also give information about which respondents are likely to use a greater number or different strategies in their attempts to solve their legal problems.

For the development of a measure of SLE, then, it is important both that an 'overall' level of SLE is assessed (within a domain such as employment disputes) (Gramatikov and Porter, 2011) and that individual tasks are identified that contribute to this overall level of SLE (again within domains) (see Figure 5.1). These tasks should access different information, and should explain variance within the overall SLE measure.

Torpman and Jörgensen (Jörgensen and Svanberg, 2009; Jörgensen and Torpman, 2006; Torpman and Jörgensen, 2005) began the development of a measure of legal self-efficacy. However, their research focuses on the knowledge and use of the law by businesses, and their perceptions of the law as an effective and functioning system. Their research investigates perceived and actual knowledge of the law, as well as perceived ability to communicate with legal terminology, in specific business environments (legal agreements). Consequently, while interesting and informative, the research does not provide information readily transferable to the environment of the layperson. In addition, the focus on formal business law presumes the use of formal legal institutions as the sole mode of conflict resolution. As we have seen, courts do not handle the majority of conflicts (Merry and Silbey, 1984), and therefore conclusions drawn in such an environment are far from transferrable to the general population.

There is a difference between the approach used by Jörgensen and Svanberg and SLE in that they were particularly interested in the assessment of knowledge of the legal system and perceived knowledge of the legal system. SLE, in contrast, avoids knowledge assessment and the pitfalls that are present in such an activity (Denvir et al., 2013; Felstiner et al., 1980), as well as prevents the conflation of lack of knowledge with disempowerment. As Denvir et al (2012) highlight, knowledge is not in and of itself sufficient to solve problems (although it is linked to better outcomes in self-represented situations), and does not lend itself to particular strategies for problem solving. Rather, SLE focuses on the perceived ability of individuals to solve a problem, regardless of the



Figure 5.1: The Model of SLE

manner of resolution or knowledge.

In addition, it should be noted that the measure used by Jørgensen and Svanberg (2009; 2006) does not reflect the vast majority of self-efficacy measures. Contrary to Bandura's (2005) recommendation, there is little task specificity in the questions asked ('I am confident in using legal terminology' and 'I know the legal system very well', (Jørgensen and Svanberg, 2009), 10-point scales are used, as opposed to the preferred 0–100 confidence scale, and indeed they fail to directly measure 'perceived ability to use the law', instead preferring to use the proxy measures of 'confidence communicating with legal terminology' and 'perception of own legal proficiency', a measure that the article fails to clarify the source of.

However, Jørgensen and Svanberg (2009) did find that subjective estimations of legal knowledge correlated with actual behaviour (measured through self-reported activity in the past, in this case in relation to enforcement of a legal contract in instances of conflict), while objective measures of legal knowledge did not. They accurately state that this supports the hypothesis that subjective evaluations of legal self-efficacy influence legal behaviour.

### 5.2.3 Sources of Efficacy Information

Enactive mastery is the most influential source of information for self-efficacy ratings (Bandura, 1977). This refers to an individual's personal

experiences of completing, or attempting to complete, the specified task. This information has the greatest impact on personal self-efficacy beliefs, as previous experience shapes our expectations. However, this information may be modified by perceived locus of control (Judge and Bono, 2001). In this situation, perceived locus of control refers to the attribution by an individual of the cause of the success or failure of an attempt at the task. If the locus of control is perceived to be internal (located within the individual, that is to say the outcome was determined by the individual or their actions), then the information gathered will be especially influential on self-efficacy ratings. On the other hand, if the locus of control is perceived to be external (that is, the outcome of the attempt is dependent on things outside of the control of the individual), then the success or failure of the attempt will have a much lower impact upon the individual's self-efficacy rating for that task.

Vicarious experience impacts upon self-efficacy ratings in much the same way as enactive mastery (including variations in impact due to variations in perceived locus of control). However, it refers to information gathered through watching someone else attempt the task. In this case, the impact of the information gathered on the observer's self-efficacy rating is also dependent on the level of identification with the actor being observed. Identification refers to the degree to which the observer feels that the actor is similar to them. Having similar demographic characteristics and background is likely to increase identification between the observer and the actor (Gist and Mitchell, 1992).

Verbal persuasion is one of the weaker sources of information for self-efficacy ratings (Bandura, 1977). "Persuasion through suggestion, exhortation or self-instruction is easily utilised, but... whatever mastery expectations are induced by suggestion can be readily extinguished by disconfirming experiences" (Bandura, 1977, p.198).

Accordingly, information gathered this way will tend to have little long-term effect, unless it is the only source of information provided. The factors that affect the impact of persuasive information include the credibility and expertness of the source, consensus among multiple sources, and familiarity of the source with task demands (Gist, 1987).

Physiological states are also suggested by Bandura (Bandura, 1982) as a source of information for the assessment of self-efficacy. The paper postulated that self-efficacy and physiological states are related, while the use of physiological arousal as a source of information for self-efficacy ratings has been demonstrated in middle school mathematics students (Usher and Pajares, 2009).

Each of these sources of information can be considered in the light of a legal problem. Enactive mastery would reflect previous attempts to solve legal problems while vicarious experience would reflect experiences of others in attempting to solve such problems. Verbal persuasion would be gained from a variety of sources, including but probably not limited to consultations with lawyers or other advisors, informal persuasion from others and information gathered through Internet searches. Finally, psychological states may be interpreted in a variety of ways, dependent on personal characteristics of the individual and situational characteristics.

Self-efficacy measures have been developed in a wide range of settings. As previously indicated, measures have been implemented in relation to academic achievement (Margolis and McCabe, 2006), professional attainment (Taylor et al., 1984) and smoking cessation (Pechacek and Danaher, 1979), as well as weight loss (Forster and Jeffrey, 1986) and phobias (Bandura, 1982). Development of such measures proved to be challenging, and in 2005, Bandura published a guide for the creation of self-efficacy scales (Bandura, 2005). These guidelines advise that domain specification and conceptual analysis of the concept is an important step in creating effective scales. Bandura also recommends the creation of gradations of the challenge, and providing response scales capable of capturing the anticipated variation.

#### 5.2.4 Task Specificity

One of the key characteristics of self-efficacy ratings is their task specificity (Bandura and Adams, 1977; Strecher et al., 1986). This refers to the fact that efficacy ratings are made in relation to specific tasks, and that in order to regulate behaviour effectively, actors must have an accurate knowledge of the task they are trying to perform (Bandura, 1997; Stajkovic and Luthans, 1998). Gaining a solution to a legal problem is a complex task. However, self-efficacy has been demonstrated to be a significant predictor of performance at low, medium and high levels of task complexity (Stajkovic and Luthans, 1998), although correlations between self-efficacy and behaviour decrease as task complexity increases. To address complex tasks, multi-dimensional self-efficacy measures are needed (Lent et al., 1987), which, while they have lower correlations between the measure and performance, do not eliminate the relationship itself.

The creation of a self-efficacy rating for solving legal problems must be similarly task-specific. SLE (and its relationship to strategy and

outcome) is expected to vary by the type of legal problem encountered (Gramatikov and Porter, 2011). However, even within the more limited domain of, say, family problems, the global task of achieving a solution to the problem is still a complex one, consisting of many different tasks.

The creation of such a subjective measure of legal empowerment is not designed to denigrate the objective (Bandura, 1977; Gramatikov and Porter, 2011) or its importance in affecting behaviour. Rather, external inputs have been the focus of legal empowerment initiatives, and likely have a huge impact on behaviour (Banik, 2009). SLE is an additional tool to establish the efficacy of legal empowerment interventions, and is not a replacement for objective measures wholesale.

In this article, a measure of SLE is presented that utilises both an ‘overall’ measure of domain-specific SLE and seven confidence ratings for tasks within each of these domains. It is hypothesised that overall SLE ratings access different constructs, and that the seven task confidence ratings access difference constructs. Furthermore, it is hypothesised that each of the tasks will be given a domain-specific rating (that is, that ratings of confidence for each task will be different within each domain) and that confidence ratings will be independent of one another within the domains.

## 5.3 Methods

### 5.3.1 Sample

The sample consists of 303 respondents from two slums (Kibera and Kamukunji) in the vicinity of the Kenyan capital Nairobi. Respondents were reached by convenience sampling throughout the two areas. All interviews were conducted in Swahili between 1 June and 3 July 2012. Data was collected in collaboration with Kituo Cha Sheria (KCS), a local legal aid office, as part of an evaluation of a pilot legal aid scheme. The data collected through these interviews was also used by KCS to tailor the services that they provided to the communities involved. The data presented in this article was collected only through numerical responses and therefore translation was not required.

Structured face-to-face interviews were carried out by 10 interviewers. Interviews were conducted in a private area, and no other people were permitted in the room while the interview was being conducted. Interviews were carried out by students of one of the University of Nairobi,

Kenya School of Law or Kenyatta University. All interviewers had previously received training in interview techniques, as well as in the interview schedule itself. Each interview took approximately 20 min to complete.

The interview schedule was piloted with 10 individuals to check for clarity and consistency, to ensure that there were no missing options and to familiarise the interviewers with the schedule. The test data was then collected over a period of 3 weeks by 10 interviewers, and reported back through KCS.

### 5.3.2 The Interview Schedule

There were three sections in the interview schedule. The first section collected demographic information such as age, gender and education. The second section contained questions about each of five ‘domains’ (types of potential dispute identified through examination of legal needs studies (Genn and Beinart, 1999; Gramatikov and Verdonschot, 2010; Pleasence et al., 2003), specifically employment, tenancy, land, neighbour and family). Within each of these domains, respondents were asked to rate how likely they were to obtain a solution and how far they think the solution would be on a 5-point scale. They were then asked to indicate whether they thought they would be able to carry out each of seven tasks related to solving the dispute (yes/no), and if so, how confident they were that they could complete each task (0 ‘I definitely cannot do this’ to 100 ‘I can definitely do this’). Items on which respondents indicated that they could not carry out the task were coded with a ‘0’ for the confidence measure, and vice versa. These measures and practices are as recommended by Bandura (2005). The following questions were formulated in relation to each of the problem domains investigated. The questions given as an example in Figure 5.2 are taken from the ‘Employment’ domain.

For the first question, a 5-point scale was presented with 1 marked as ‘Very Unlikely’ through to 5 marked as ‘Very Likely’. The second question had a similar 5-point scale from ‘Very Unfair’ to ‘Very Fair’. Questions for confidence were presented with a scale from 0 to 100, with 0 marked as ‘I definitely cannot do this’, 50 as ‘I can probably do this’ and 100 as ‘I can definitely do this’.

The third section asked questions related to the activities of KCS; however, these were not entered into the analysis for this article.

Imagine that you had a conflict with an employer. For instance, about working conditions, pay, or being made unemployed.

How likely is it that you would get a solution to the problem?

If you did receive a solution, how fair do you think it would be? \*

If you had such a conflict with an employer, do you think you could complete the following, and if so, how confident are you? \*

Task	Could Complete?	Confidence
a) Getting information about your labor rights and the law concerning employment	Yes/No	_____
b) Collecting appropriate documentation or evidence to support your claim.	Yes/No	_____
c) Talking to your employer about the problem	Yes/No	_____
d) Getting help to reach a solution with your employer	Yes/No	_____
e) Finding a 3 <sup>rd</sup> party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against your employer	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against your employer	Yes/No	_____

Figure 5.2: Example SLE domain question set



### 5.3.3 Analysis

#### Principal component analysis (PCA)

In order to determine whether the different SLE measures were accessing the same, or different, constructs, PCA with Varimax rotation was carried out. It is important at this point to briefly discuss the use of principal component analysis. PCA is a process by which the variation in a set of data is described by as few ‘components’ as possible. This produces a number of principle components that describe as much of the variation in the data as possible. These components are then often ‘rotated’, so that the correlation between the components is minimised. This produces a model that explains as much of the variation in the data as possible, using as few components as possible.

PCA is used in the formation of questionnaires, to determine whether the questions being asked are sufficiently distinguished to warrant inclusion. Where PCA analyses all of the variance displayed, factor analysis examines only the shared variance. PCA generates mathematical abstractions of the data, which demonstrate the most parsimonious way of accounting for the variance, and these should not be attributed directly to real-world phenomena. Accordingly, PCA is used here to demonstrate that the variance displayed in response to different domains and tasks indicates that there are several underlying constructs. Further factor analysis of the data will shed more light on the substance of the constructs themselves, but this is not the focus here.

A second PCA with Varimax rotation was conducted on the task confidence ratings. This was to determine that the tasks were accessing more than one construct. This also produced inconclusive results between a two- and three-component model, and both models were fitted and compared.

#### Within-subjects ANOVA

Following the PCA, a within-subjects ANOVA with pairwise comparisons was conducted on the five overall SLE measures to establish that responses to each of the different domain questions were significantly different from one another.

### Kruskal–Wallis Test

The task ratings were found to be inappropriate for a MANOVA due to inequality of variances, and therefore a Kruskal–Wallis test was conducted to test for pairwise differences between the task ratings in each of the domains. Differences support the hypothesis that tasks are rated independently dependent on the problem domain.

## 5.4 Results

### 5.4.1 Demographics

Respondents were split evenly between the two regions, with 50 per cent (152) coming from Kibera and 50 per cent (151) coming from Kamukunji. There were slightly more males (52 percent, 157) than females (48 per cent, 144), and just under half had previously experienced a legal problem (46 per cent, 140 respondents). Fourteen per cent of respondents had completed tertiary education, 46 per cent secondary, 37 per cent primary and just 2 per cent had completed no schooling. Respondents ranged in age from 18 to 66 years, with a mean of 34 years (SD 8.75).

There was a mean of 4.31 (SD 2.52) people per household, with a range from 1 to 17 individuals, and they had lived in their current location an average of 12.2 years (range 1–42 years, SD 9.04).

Respondents' income and expenditure followed very similar distributions, although respondents overall reported slightly higher expenditure than income.

### 5.4.2 Overall Measures

Following demographics, the first questions in relation to each of the conflict domains asked how likely the respondent was to achieve a solution. To investigate whether responses on each of these domains are distinct, as is theoretically predicted by the task specificity of self-efficacy, a PCA was carried out. Figure 5.3 shows the eigenvalue scree plot produced, which demonstrates the eigenvalues of the components extracted. An eigenvalue of 1 indicates that the component accounts for the same variance as a single variable would be expected to by chance. Table 5.1 shows the variance explained and Table 5.2 shows the rotated component matrix.

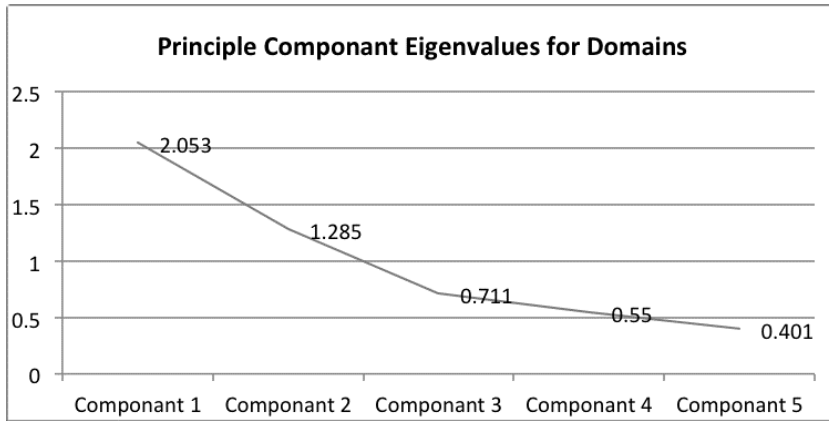


Figure 5.3: PCA Eigenvalues for domains

As shown in Table 5.2, the automatic extraction produced a two-component model. This is based on the Kaiser method of factor extraction, which involves extracting those factors that have an eigenvalue over 1 (indicating that they account for more variance than a single variable would be expected to by chance). However, there are other methods of interpreting factor analysis results that may produce different findings (Bryant and Yarnold, 1995). An alternative to the Kaiser method is to look for the ‘elbow’ in the eigenvalue scree plot to determine where the factors simply represent chance findings. Closer examination of the scree plot produced indicates that three components might be an alternative interpretation. However, more generally, there is very little ‘elbow’ in the scree plot. Indeed, it quite closely resembles a straight line.

Table 5.3 shows the rotated component matrix when a three-factor model is specified. As can be seen, introducing the third factor produces very high weightings ( $> 0.9$ ) for the Neighbour domain on Component 2 and for the Family domain on Component 3. Meanwhile, the weightings for Employment, Tenancy and Land domains remain relatively unchanged.

Once the PCA had demonstrated that multiple constructs were present, a within-subjects ANOVA was carried out to examine differences in the scores given on each domain. This test produced a significant result of  $p < 0.001$  ( $F = 48.527$ ,  $DF = 4$ ). Further pairwise comparisons were then conducted, and this produced 8 significant results from 10 comparisons.<sup>3</sup>

Component	Initial Eigenvalues			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	2.053	41.065	41.065	2.000	39.993	39.993
2	1.285	25.696	66.761	1.338	26.768	66.761
3	.711	14.211	80.872			
4	.550	11.008	91.980			
5	.401	8.020	100.000			

Table 5.1: Eigenvalues for PCA of Domain Ratings

	Component	
	1	2
Employment	.828	
Tenancy	.722	
Land	.852	
Neighbour		.837
Family		.754

Table 5.2: Rotated Component Matrix for 2 Components

	Component		
	1	2	3
Employment	.771		
Tenancy	.786		
Land	.845		
Neighbour		.923	
Family			.938

Table 5.3: Rotated Component Matrix for 3 Components

Component	Initial Eigenvalues			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	3.152	45.035	45.035	1.969	28.129	28.129
2	1.712	24.454	69.489	1.966	28.088	56.217
3	.897	12.821	82.310			
4	.584	8.342	90.652			
5	.303	4.334	94.986			
6	.243	3.475	98.460			
7	.108	1.540	100.000			

Table 5.4: Eigenvalues for PCA of Task Ratings

### 5.4.3 Measures of Task Confidence

To look for differences in constructs that the task confidence ratings were accessing, a principal component analysis was conducted on the seven tasks examined. Table 5.4 shows the total variance explained, and Figure 5.4 shows the eigenvalue scree plot. As with the eigenvalue scree plot for the domains, the Kaiser method extracts two components. However, the scree plot is also similar to that shown for the domains, in that the elbow, to the extent that it can be seen to have one, appears to occur more distinctly at three tasks, rather than two.

Table 5.5 shows the rotated component matrix for the two-component model, while Table 5.6 shows the rotated component matrix for the three-component model. As can be seen, the introduction of a third factor has resulted in just one dual weighting (confidence in talking to the other party), and has produced higher correlations for all the measures. Following this analysis, it was investigated whether these tasks were rated differently in the different domains.

A MANOVA was due to be conducted to examine whether different tasks were given different ratings in each domain. However, a MANOVA was inappropriate as the data violated principles of equality of variance and covariance. Accordingly, the non-parametric Kruskal-Wallis test was used. The domain was entered as the independent grouping variable, and the seven different tasks as the dependent variables. This analysis produced significant results within each of the seven tasks as shown in

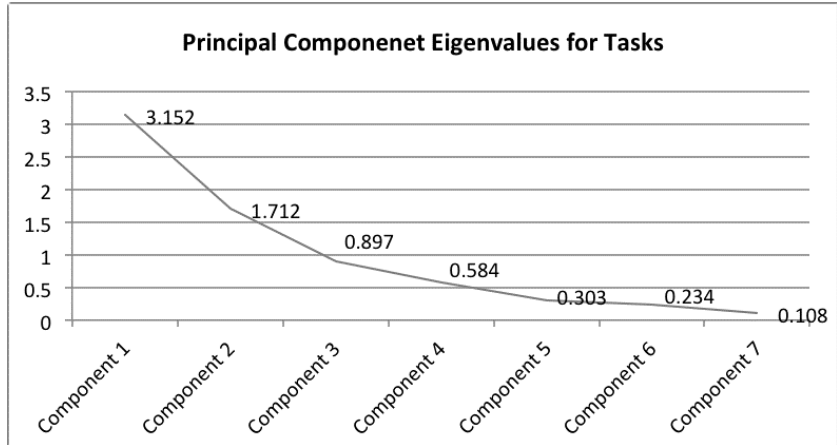


Figure 5.4: PCA Eigenvalues for Tasks

Task	Component	
	1	2
Confidence getting Information	.637	.490
Confidence getting Evidence	.663	.417
Confidence talking to the other party		.821
Confidence Getting Help to solve the problem		.838
Confidence Finding a 3rd party		.717
Confidence starting a court procedure	.915	
Confidence getting a lawyer	.919	

Table 5.5: Rotated 2 Component Matrix for Tasks

Task	Component		
	1	2	3
Confidence getting Information			.858
Confidence getting Evidence			.872
Confidence talking to the other party		.661	.455
Confidence Getting Help to solve the problem		.889	
Confidence Finding a 3rd party		.820	
Confidence starting a court procedure	.928		
Confidence getting a lawyer	.937		

Table 5.6: Rotated 3 Component Matrix for Tasks

Task	Chi-Square	Df	Asymp. Sig.
Confidence gathering information	46.511	4	.000
Confidence gathering Evidence	50.665	4	.000
Confidence talking to the other party	81.516	4	.000
Confidence Getting help to solve the problem	108.002	4	.000
Confidence involving a 3rd party	98.323	4	.000
Confidence starting a court proceeding	259.113	4	.000
Confidence getting a lawyer	226.409	4	.000

Table 5.7: Results of Kruskal-Wallis test for each Task

Table 5.7.

As shown in Table 5.7, there are significant differences between the domains in the confidence ratings for each task. An examination of the pairwise comparisons from post hoc examination shows that 49 of the 70 pairwise comparisons (each task has 10 pairwise comparisons between the 5 domains) carried out using Wilcoxon Signed-Rank Tests are significantly different.

Together with the PCA, these findings support the hypothesis that confidence in completing a task is rated differently dependent on the domain of the problem being addressed, but that across domains, the tasks are accessing the same self-efficacy concepts.

## 5.5 Discussion

Before a detailed discussion of the results from this study, we must consider the sample more closely. The sample is from an extremely deprived area of the world, the slums of Nairobi. Despite the hard work of organisations such as KCS, legal aid is scarce, and legal information/ advice can be expensive. Accordingly, given their inability to turn to professionals when they encounter problems, our sample is perhaps more than elsewhere reliant on themselves to solve their problems. Consequently, SLE may be of even greater importance in this environment.

A corollary of this is that the sample are all within a relatively narrow socio-economic range. This may create limits to their ability to carry out certain actions, and cause the actual results contained in the questionnaire to be highly specific to their situation. Indeed, vicarious experience of others within their social networks and verbal persuasion may well produce limits to their perceived ability to achieve many of the tasks. However, the sample is a large one, and for the purposes of this article, and the furtherance of the model of SLE, this highly specific sample is not a significant problem. What this article seeks to demonstrate is the viability of a measure that requires individuals to differentiate between different domains, and different tasks both across and within those domains. There is no theoretical reason why this ability to differentiate should differ between groups of individuals, and accordingly the conclusions drawn in this article promote the generality of the results to a wider demographic. It should be noted, however, that further replication of these results in different and wider groups of individuals will be a necessary contribution to the theory of SLE.



### 5.5.1 Domain Differentiation

The first analysis conducted, to determine whether the domains accessed different concepts of SLE, was a PCA. From the results of this we can see that there is support for the hypothesis that the overall SLE ratings are independent and reflect different conceptual ideas. The three-factor PCA carried out after examination of the scree plot appears to provide the best explanation for this data. It should be noted that this is a preliminary analysis based on a small number of variables. Clearly, a five-factor model would never be predicted using five dependent variables. Therefore, these results should be interpreted simply as clear support for the hypothesis that the overall measures of SLE are accessing independent concepts.

Further support for the general differentiation of domains comes from the within-subjects ANOVA conducted on the five overall domain ratings. The highly significant result ( $p < 0.001$ ), taken with significant differences in 8 of 10 pairwise comparisons (after Bonferroni adjustments), indicates that each of these domains does indeed have a rating independent of the other domains.

Taken with the PCA analysis, this is supportive of the idea that SLE ratings in each of the domains are rated independently, as predicted by self-efficacy theory. Taken together, it is suggested that these results indicate that the overall SLE measures are accessing different concepts. The remarkably consistent line in the eigenvalue scree plot (Figure 5.3), together with the highly significant ANOVA, suggests that the SLE measures are accessing different concepts, but that the PCA lacks sufficient power to clearly identify these different concepts.

### 5.5.2 Task Differentiation

A second PCA was conducted on the seven task confidence ratings. This clearly highlighted a three-factor model, where all but one of the tasks loads upon only one of the three principal components. The Kruskal–Wallis tests (and the post hoc pairwise comparisons) that followed the PCA support the hypothesis that confidence in ability to complete each of the tasks is evaluated differently in each domain, and that within each domain the tasks are rated differently.

It is clear from looking at the PCA in conjunction with the Kruskal–Wallis test that the tasks are accessing (at least three) different concepts (shown in the PCA), which have a different degree of impact in each of the differ-

ent domains (shown by the significant differences in the Kruskal–Wallis test). This is very supportive of the model of SLE proposed.

### 5.5.3 Overall Interpretation

The similarity in the outputs of the two PCAs is striking, with both analyses indicating that the measures used (both overall SLE ratings and task-based measures) are accessing different constructs. Indeed, these analyses indicate that a three-factor model may be the best way to approach both sets of data. Although we must be cautious in reading too much into these analyses, it is obviously possible that the three factors identified through both these PCAs reflect the same underlying constructs. However, given the different nature of the different questions asked (high-level ‘overall’ efficacy of the measures of SLE versus the task-based efficacy measures), coincidence cannot be ruled out.

It is also clear that this is the beginning of the development of a scale. The PCAs indicate that there may be redundancy in the seven tasks that are currently suggested, and there is also the possibility that there are further factors that would be uncovered by additional tasks not presently included in the model. It is also important to work towards clarity over whether ability to solve legal problems in these domains does, as one interpretation of these results suggests, reflect the task specificity of SLE.

There is also the possibility of direct influence of the presence or absence of specific services in relation to these seven tasks. For example, the presence or absence of a specific legal information office dealing with particular issues would be expected to have a large impact on certain tasks.

### 5.5.4 Further Work

In addition to replication of these findings, and further examination of the critical tasks and domains of law mentioned earlier, there are also other areas in which further research could improve our understanding of SLE. The most obvious avenue of research is to examine what the substantive, ‘real-world’ factors are that are captured through these measures. Such work will involve factor analyses, linked to theory, in order to begin to attribute meaning to the different constructs uncovered.

In addition, the exact phrasing of the tasks used in SLE measures need to be further developed. The current tasks are clearly differentiated

by the respondents both within and between domains. However, this is not to say that these represent the best predictors of overall SLE or behaviour in the event of such a problem arising. Accordingly, the inclusion or exclusion, and specific phrasing, of the tasks examined here is still a matter for further investigation.

However, caution must be exercised in drawing too many conclusions from one sample. Implementations with different populations may provide different prediction patterns, and may support the inclusion, adjustment or removal of different tasks. Only through collecting a wider range of data in a wider range of populations and environments can more general conclusions about the value or otherwise of specific sections of the measure be drawn. In more general terms, the impact of prior experience is likely to be of significant import in terms of SLE, and it is expected that the success or failure of previous attempts to solve legal problems will impact significantly upon SLE ratings in particular domains.

## 5.6 Conclusion

PCA of the five domain-specific SLE measures and the seven task-specific measures both produced a three-factor model. This indicates that the domain-specific SLE measures, and the tasks that have been selected in relation to these domains, are based on the same underlying constructs.

In addition, ANOVA and Kruskal–Wallis test results indicate that respondents were able to make clear distinctions between their likelihood of achieving a solution or completing tasks in the five different problem domains presented. This provides strong evidence that the structure of the measure can provide valuable information regarding an SLE.

This has clear implications for the study of development and legal empowerment in a variety of settings. The examination of subjective measures can not only provide clear information regarding the levels of legal empowerment that are present in a community, but further the particular tasks that are preventing its improvement.

The development of a measure of SLE that is reliable and valid can provide extremely valuable information to a range of actors. From state-level interventions in legislation or policy to village-level legal aid or information services, development organisations and actors currently struggle to identify clear links between their actions and the legal empowerment of the communities they serve. Objective measures, while

remaining extremely important and useful, often fail to provide meaningful data at the level at which many organisations and interventions work. A reliable measure of SLE provides a way of measuring improvement due to interventions.

In addition, objective measures fail to grasp the ‘essence’ of legal empowerment – the feeling of empowerment in individuals. A measure of SLE is a way of providing information on the mindset of respondents in relation to legal challenges. This can help the field of development both in theory and practice by providing evidence of what interventions are effective, where efforts need to be focused, and how these interventions interact with those they are aimed at helping.

Further research is clearly required in the ‘fine tuning’ of the tasks, as well as the potential addition or removal of items in each specific domain. Replication of these findings and further investigation of the ‘real-world’ factors represented and the predictive power of SLE in relation to future behaviour are key issues for future research.



# I know what to expect: The impact of previous experience on legal empowerment



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## 6.1 Abstract

Increasing legal empowerment is a key objective of governments and justice systems worldwide. Consequently, the impact of judicable events on legal empowerment is a question of some significance. Subjective Legal Empowerment (SLE) is a measure of legal empowerment based on individual perceptions. SLE is based on Bandura's theory of self-efficacy. In this study, a sample of over 500 respondents from a Dutch legal assistance clinic were asked about their prior experience of legal conflicts, and completed measures of SLE in relation to a range of legal domains. The results show that previous experience of legal problems results in lowered SLE ratings across a range of different domains, regardless of success/completion of these problems, and that experience within specific legal domains results in significantly lowered empowerment ratings for future problems of that nature. The implications for both the measurement methodology and for the future design of legal procedures are examined.

## 6.2 Introduction

Legal empowerment has become a focus of many governmental and supra-governmental organisations (Albright et al., 2008; American Bar Association, 1994; Asser, 2008; De Langen and Barendrecht, 2009; Finlay and Regan, 2007; United Nations Development Programme, 2005; Van Rooij, 2007). As a result, it is important that we understand what factors affect legal empowerment, and one of the more commonly cited factors is prior experience of the legal system (Albright et al., 2008).

There are many challenges to measuring legal empowerment, including the focus on individuals who have used legal processes (who are almost certainly more ‘empowered’ than those who do not), or who are in legal processes (where assessments are likely to be biased strongly by the particular circumstances of the problem they are experiencing). A strength of SLE as a measure of legal empowerment is that it does not rely on current or previous experience of legal processes. Accordingly, SLE is used here to examine the effect of previous legal experiences on levels of legal empowerment.

The Tilburg Rechtswinkel (TRW) was founded in 1969. It is staffed by volunteer law students and provides free legal assistance to citizens of Tilburg. The assistance that the TRW provide to clients is limited by the nature of the staffing. As it is staffed by volunteer law students, the Rechtswinkel is unable to represent clients in court proceedings. However, this leaves a large range of support that it is able to provide.

Among the services that the TRW provide are clarifying the rights and responsibilities that individuals have in relation to their problem, providing assistance in completing forms, assistance in creating correspondence in relation to the problem, negotiating with the other party on behalf of the individual, and assisting the individual to prepare documents, evidence and statements for court appearances. This assistance can take the place in just one visit, or through a series of meetings and correspondences.

The TRW receives funding for this from a variety of sources, including Tilburg Council and direct donations from the public. In order to gain some insight into the services that are provided, and the impact that they have on service users, TRW teamed up with Tilburg Institute for the Interdisciplinary Study of Civil Law and Conflict Resolution Systems (TISCO) to conduct research into the views and experiences of users of the TRW. In particular, there was an examination of users prior



legal experience, and the extent to which this impacted upon their SLE ratings.

Subjective Legal Empowerment (SLE) is a concept that is being explored as a method of measuring legal empowerment (Gramatikov and Porter, 2011). It uses Bandura's theory of self-efficacy (Bandura and Adams, 1977; Bandura, 1977, 1982, 2005) to build up a picture of an individual or community's perceived ability to solve a legal problem through confidence ratings. Measurement is made at both a domain level (in relation to a particular type of problem, for example an employment problem), and also at a task-specific level (in relation to specific tasks that need to be completed to solve a problem) (Bandura, 1977; Gramatikov and Porter, 2011; Porter, 2014a).

Information regarding individual's self-efficacy ratings is gathered from 4 sources; Prior Experience; Vicarious Experience; Affective State; and Verbal Persuasion. These four information sources combine to form and individual's belief in their ability to complete a task (Bandura, 1982). The ratings given by individuals to their ability to solve the problem (the domain level) and their ability to complete different tasks in pursuit of a solution (the task-specific level) have been demonstrated to be distinct from one another. This means that individuals rate their ability to solve different types of legal problem differently, as well as their ability to complete individual tasks in pursuit of that goal differently, dependent on both the domain concerned, and the task presented (Porter, 2014a).

Of the four sources of information for self-efficacy theory, the most influential of these is enactive mastery (Bandura and Adams, 1977; Bandura, 1982). Having prior experience of attempting to complete a task is the most powerful source of information regarding this task (although self-efficacy ratings are better predictors of actual behaviour than prior behavior (Bandura et al., 1980; Bandura and Schunk, 1981; Bandura, 1982) and so prior experience of legal problems can be expected to impact upon SLE.

While self-efficacy measures were first composed in relation to very simple tasks (for example lifting a certain weight) (Bandura, 1977), and proved to be extremely accurate predictors of future behaviour, there is a collection of evidence that self-efficacy measures are predictive of behaviour in relation to increasingly complex tasks (Compeau and Higgins, 1995; Schunk et al., 2002; Stajkovic and Luthans, 1998). To address complex tasks, multi-dimensional self-efficacy measures are needed (Lent et al., 1987), which, while they have lower correlations between the measure and performance, do not eliminate the relationship itself.

Jørgensen and Torpman (2006) looked at legal behaviour and perceptions of ability in relation to business conflicts among financial managers. Through the work of Jørgensen on this topic (Jørgensen and Svanberg, 2009; Jørgensen and Torpman, 2006; Torpman and Jørgensen, 2005), the theory of self-efficacy is applied to managers who make decisions to either pursue a legal solution to company conflicts, or not. In their research, they find that there is a link between self-efficacy ratings, and anticipated future behaviour (or statements of intent). This is supportive of a model of SLE that uses self-perceptions as a basis for predictions of future behaviour.

Prior experience has also been examined before in the context of legal problems. Gallagher and Wang (2011) found that Chinese citizens could be either 'encouraged' by their legal experiences, or made more despondent. They concluded that these different reactions were attributable to differences in legal and political identity:

“Older, urban disputants employed in the state sector are more prone to feelings of disillusionment, feelings of powerlessness, and inefficacy. Younger, rural disputants employed in the non-state sectors are likelier to have positive evaluations of their legal experience and to embrace the legal system as a potential space for rights protection.” (Gallagher and Wang, 2011, p.205)

In comparison, Buck et al (2004) found that lone parents were more likely to experience legal problems and to seek legal assistance to solve them. However, there was no examination of their perceived likelihood of achieving an outcome to their problems, or whether these individuals were more confident than others. In fact, little work has been done to examine the impact of prior experience on anticipated outcomes. However, self-efficacy theory promotes the idea that prior experience will impact upon confidence of achieving a solution in the future. It is thus of interest to examine how prior experience of legal problems impacts upon SLE for future problems.

Thus a set of hypotheses is created that will be tested in this paper.

- *Hypothesis 1a*: It is expected that there will be a significant difference in SLE ratings between groups with/without experience of trying to solve a legal problem.
- *Hypothesis 1b*: Further, it is anticipated that prior experience will create significantly higher SLE ratings, due to the impact of enactive mastery upon self-efficacy ratings.

- *Hypothesis 1c*: Achieving a solution to a prior problem will create higher SLE ratings.
- *Hypothesis 2a*: It is expected that prior experience of a particular type of problem will create differences in SLE ratings for that type of problem
- *Hypothesis 2b*: It is anticipated that domain-specific prior experience will be a significant predictor of domain-specific SLE ratings for that problem type.

## 6.3 Methods

### 6.3.1 The Measure

The data collection for this study used quantitative methods. The data collection took place through a questionnaire implemented with clients of the Tilburg Rechtswinkel . These questionnaires were collected over 18 months between October 2011 and April 2013. The questionnaire consisted of two sections. Firstly there was a legal history section examining prior experiences with legal problems (defined as a problem that could have a legal solution, regardless of whether legal means were used in its (attempted) resolution). This section looked at what type of problems had been encountered over the last 3 years, how these problems affected the respondents, what action they had taken or attempted to take, and the situation of the problem now.

From this a clear picture of prior legal experience was built. The second section consisted of a measure of SLE which examined 6 problem domains (Gramatikov and Porter, 2011): Employment, Family, Neighbour, Land, Business and Crime.

### 6.3.2 Sample

All individuals who attended the Tilburg Rechtswinkel for services were asked to complete the questionnaire. The questionnaire was offered in both Dutch and English to facilitate completion by a wider number of respondents. It should be noted that a very small number of individuals did not complete the questionnaire due to an inability to read Dutch or English. This data collection produced a sample of 538 respondents. Respondents varied in age from 19 to 85, with a mean of 48.8 (SD=16.80),

Problem Area	No. of respondents	Percentage of total
Social Security	70	14.1
Labour/Employment	110	22.2
Tenancy/Rental	127	25.6
Consumer	187	37.7
Other	2	0.4

Table 6.1: Problem Areas

and a perfectly even gender split. Respondents came to the Rechtswinkel to report a problem in one of 5 areas, with frequencies as shown in Table 6.1. The length of cases in the sample ranged from one day to 40 weeks, with a mean of 10.47 weeks ( $SD=8.46$ ).

Regrettably, due to time and questionnaire length constraints, it was not possible to ask about the socio-economic status of respondents, and this is not information that is routinely collected by the TRW. Ideally such information would also be taken into account when analyzing SLE ratings, however in this case we have only the general anecdotal evidence that individuals who present themselves to the TRW are typically, although by no means exclusively, from poorer socio-economic backgrounds with a disproportionately high number of immigrants presenting for assistance. Some of the impacts of the sampling method are discussed below.

As with all sampling methods, the method selected is prone to some biases. The first, and most obvious, is that these individuals are in fact those who have approached the Rechtswinkel, i.e. those who have attempted to solve their problem. This could be interpreted in two ways, either as indicating a higher than average level of legal empowerment, or a lower than average. If you consider these individuals to be part of the group who seek out help to obtain a remedy to their legal problems, then you may think of them as having higher than average legal empowerment. On the other hand, these are individuals who are approaching a free legal service, staffed by students, with limited ability to represent them formally. From this perspective, they can be considered individuals with lower than average legal empowerment.

Whichever perspective is taken, it would be expected to have a minimal impact upon the objectives of this study. As we are looking at the impact of prior experience, the overall mean being lower or higher than

Experience Group	N	Mean Overall SLE Rating	SD	p-value
No Prior Experience	143	3.495	0.815	.010
Prior Experience	158	3.272	0.674	

Table 6.2: Overall SLE Ratings between Experience Groups

the ‘true’ average of the population should not make a large difference. It may be that there is some impact in terms of these individuals’ success rates in previous cases. If the sample is less legally empowered, it may be that they are less likely to have been successful in their prior attempts to solve their legal problems, and vice versa. This would likely impact upon their future legal empowerment (if they were successful, we would expect their legal empowerment to increase, if they were unsuccessful, to decrease), however the success of prior cases is taken into account in later analyses to account for this bias as far as is possible.

## 6.4 Results

*Hypothesis 1a:* It is expected that there will be a significant difference in SLE ratings

*Hypothesis 1b:* Further, it is anticipated that prior experience will create significantly higher SLE ratings, due to the impact of enactive mastery upon self-efficacy ratings.

The first analysis carried out was to examine whether there were overall differences in SLE depending on whether individuals had experienced a legal problem or not. The results of an independent sample t-test can be seen in Table 6.2. Overall SLE ratings (created by finding the mean SLE rating across all 6 domains) are significantly higher in the ‘No prior experience’ group than it is in the ‘Prior experience’ group. This supports hypotheses 1a, as there is a significant difference between the ratings of these groups. However, the data goes directly opposite to the direction anticipated in hypothesis 1b.

Following this finding, an ANOVA was carried out to determine whether the number of prior legal problems faced had an impact on SLE levels. The results showed a significant difference at the  $p < 0.05$

No. of Problems	N	Subset for alpha = 0.05
3	5	2.93
2	27	3.09
1	124	3.32
0	143	3.50

Table 6.3: Tukey B homogenous subsets

level between the 4 groups (from no experience to 3 previous experiences) ( $F(3,295) = 3.338, p=0.020$ ), with a larger number of problems producing a lower SLE value. Post hoc analysis through a Tukey B test produced only one subset as shown in Table 6.3.

Further analysis was carried out at the domain-specific SLE level, and the results of these can be seen in Table 6.4. This data also supports hypothesis 1a, as there are significant differences between experience groups in three of the domains, but runs counter to hypothesis 1b, as those with prior experience produce lower domain-specific SLE ratings.

*Hypothesis 1c:* Achieving a solution to previous legal experiences will create more positive SLE ratings

Those who had experienced a problem were also asked about the outcome of the problem (is it solved or not), and this was used as a grouping variable in an independent samples t-test to examine for differences in SLE ratings. Table 6.5 shows the results of this analysis.

As can be seen, no significant difference was found. This does not support Hypothesis 1c. However it can be seen that those whose problems were solved gave higher SLE ratings than those whose problems had not been solved. Table 6.6 shows the results of t-tests carried out within each legal domain. As can be seen, although there are no significant differences, in each case those whose previous problems were solved, rated their chances of getting a solution higher than those whose previous problem had not been solved.

*Hypothesis 2a:* It is expected that prior experience of a particular type of problem will create differences in SLE ratings for that type of problem

In order to further examine the effects of experience on SLE, difference in scores were examined at a domain-specific level. As we can see in

<sup>1</sup>Indicates a significant result at the  $p < 0.05$  level

SLE Domain	Prior Experience of Any Legal Problem?				Difference (A-B)	Significance Level
	Yes		No			
	N	Mean (A)	N	Mean (B)		
Employment	175	3.24	157	3.31	-0.072	.580
Family	171	3.57	148	3.93	-0.365	.005* <sup>1</sup>
Neighbour	169	3.38	148	3.62	-0.243	.045*
Land	163	3.02	146	3.29	-0.276	.022*
Business	172	3.24	146	3.42	-0.180	.112
Crime	167	3.14	147	3.35	-0.216	.102

Table 6.4: Domain Specific SLE Ratings between Experience Groups

Prior problem solved?	N	Mean Overall SLE Rating	SD	p-value
Yes	61	3.366	0.514	.165
No	91	3.218	0.714	

Table 6.5: Overall SLE Ratings split by Success in Solving Previous Problems

Legal Domain	Prior problem solved?						Differ-Sig. Level	
	Yes			No				
	Mean	SD	N	Mean	SD	N		
Employment	3.31	1.061	78	3.27	1.247	188	0.042	.796
Family	3.83	0.986	78	3.61	1.299	175	0.222	.180
Neighbour	3.50	0.818	78	3.36	1.226	174	0.144	.346
Land	3.17	0.923	77	3.02	1.177	167	0.145	.342
Business	3.38	0.938	79	3.23	1.139	176	0.152	.299
Crime	3.29	1.106	78	3.07	1.256	173	0.226	.173

Table 6.6: Effect of Outcomes of Prior Problems on SLE Ratings



Legal Domain	Prior problem solved?				Differ- ence	Sig. Level
	Yes		No			
	N	Mean	N	Mean		
Employment	48	2.85	360	3.37	-0.518	.005* <sup>2</sup>
Family	29	3.00	360	3.85	-0.853	.000*
Neighbour	25	2.88	362	3.58	-0.700	.002*
Land	21	2.43	356	3.24	-0.810	.001*
Business	31	3.16	358	3.40	-0.235	.226
Crime	27	2.96	356	3.28	-0.312	.176

Table 6.7: Domain Specific SLE Ratings between Similar Experience Groups

Table 6.7, examining the scores based on whether specific problem types have been experienced supports hypothesis 2a. Here, significant differences are found in domain-specific SLE ratings dependent on prior experience of employment, family, neighbor, and land problems (with prior similar experience groups having lower SLE ratings than those with no prior similar experience), although no significant differences were found dependent on experience of business disputes or crime. It is also noticeable that prior experience of legal problems also appears to operate around the mid-point of 3 (Neither likely nor unlikely to achieve a solution), with those who had experienced a problem having a mean score below this point, and those who did not have experience of legal problems scoring above it.

Analyses were also carried out to see if there were differences between success or failure at solving a domain-specific problem affected the domain-specific SLE ratings. No significant results were produced.

*Hypothesis 2b:* It is anticipated that domain-specific prior experience will be a significant predictor of domain-specific SLE ratings for that problem type.

In order to test hypotheses 2b, a set of step-wise linear regressions were carried out within each domain. In each regression, prior experience of a legal problem, the number of prior problems, and whether the last problem was solved were entered into the regression at the first step to control for the effects they might have on domain specific SLE. Specific experience within the relevant domain was then entered in the

second step. The results of these analyses, with standardized beta values, significance values, and  $r^2$  values for the models, are presented in Table 6.8.

As can be seen, for employment, family, neighbour and land problems, specific prior experience is the only significant predictor of domain-specific SLE entered in the model, while none of the entered variables predict business or crime domain-specific SLE. It is also noticeable that the proportion of variation that is accounted for is low, with family problems having the highest with 5.4% of variation accounted for, and land the lowest, with 1.4% of the variation. However, due to the sub-division of the sample into problem-specific groups, the cell numbers in some regressions become relatively small, reducing the power of the statistic and making Type II errors more likely.

A further regression was carried out with a dependent variable of overall SLE rating, and using the same independent variables (excluding specific prior experience). None of the independent variables significantly predicted overall SLE ratings.

## 6.5 Discussion

The results above present a mixed picture in relation to the hypotheses that were set out at the start of this paper. Overall, it is difficult to make any general conclusions about the effect of prior experience on subjective legal empowerment. There are, however a few points that are worth discussing in greater detail.

### 6.5.1 Hypothesis 1a

The hypotheses that different levels of experience would create differences in SLE ratings is supported by this data and analysis. There is a clear difference between overall SLE ratings for those with prior legal experience, compared to those who had no prior legal experiences.

There is an indication that the overall relationship between experience levels and SLE ratings is a linear one. The ANOVA conducted indicated that there are significant differences between at least two of the groups, and the Tukey B post-hoc test (Table 6.3) indicates that as the level of experience increases (measured in the number of previous problems), the SLE rating decreases. However, there is only one subset

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<sup>2</sup>Indicates a significant result at the  $p < 0.05$  level

Dependent Variable (N)	Statistic	Experienced a problem?	Number of problems experienced	Is problem solved?	Specific prior experience?	R <sup>2</sup>
Employment Specific SLE (228)	$\beta$ Sig.	-.107 .135	-.124 .075	-.026 .705	.147 .037* <sup>2</sup>	.025
Family Specific SLE (218)	$\beta$ Sig.	-.085 .230	-.099 .176	-.103 .131	.158 .030*	.054
Neighbour Specific SLE (216)	$\beta$ Sig.	-.016 .820	-.062 .397	-.059 .395	.148 .041*	.015
Land Specific SLE (209)	$\beta$ Sig.	-.037 .619	-.060 .406	-.053 .453	.150 .038*	.014
Business Specific SLE (217)	$\beta$ Sig.	-.036 .630	-.048 .497	-.068 .333	.037 .603	.010
Crime Specific SLE (215)	$\beta$ Sig.	-.016 .831	.116 .116	-.073 .114	.298 .120	.006

Table 6.8: Step-wise Regressions within Specific Legal Domains

within the groups, so it is not possible to draw strong conclusions about the relationships between the four groups.

Further analysis at a domain-specific level also supports hypotheses 1a, in that there are differences between those who have prior legal experience and those that do not, however this is not consistent across all of the domains, with employment, business and crime domains demonstrating no difference between the two groups.

### 6.5.2 Hypothesis 1b

The results to the tests of hypothesis 1b ran entirely counter to the hypothesis. This means that those with greater experience of legal problems exhibit lower SLE ratings. They become less confident in their ability to solve legal problems. This is true in relation to overall SLE (Table 6.3) and in relation to 3 of the 6 specific domains (Table 6.4).

The perceived wisdom would be that experience would make individuals more confident in their ability to manage legal problems. However, this is clearly not the case, and there are a number of potential explanations for this. Firstly, it is possible that exposure to legal processes (or attempts to solve legal problems by other means) simply highlights the difficulty inherent in solving these problems. If this were the case, we would expect to see an increase in SLE in those who were successful in solving their legal problems (to whom it was highlighted that it was possible), and a decrease in those who were unsuccessful (to whom it was demonstrated that the difficulties were insurmountable). However, as we see in relation to hypothesis 1c, this is not the case.

A second explanation relates to attribution theory. When individuals gain experience of a particular task, the impact this experience has on their self-efficacy is moderated by where they attribute the cause of the outcome (Chambliss and Murray, 1979). At its most basic, attribution for the outcome can be internal (caused by the individual) or external (caused by things outside of ones direct control), and the corresponding effect of the outcome on self-efficacy is correspondingly high (if internal) or low (if external).

Using this theory, we would think that if individuals attributed the cause of the outcome to external actors outside of their control, the effect on their SLE would be minimal. However, this would result in no difference between those with and without experience. Contrary to this, we see in Table 6.2 and Table 6.3 that the SLE of individuals with experience is lower than those without experience. This might be ex-

plained however, by taking into account that an experience highlighting the ‘external’ nature of the process reduces SLE by virtue of the fact that individuals feel they can have no effect on the outcome.

While this might explain the results here, it represents a severe criticism of the legal system as experienced by these individuals. The question asked to obtain SLE ratings is ‘Please indicate how likely you think you would be to get a fair solution if you... [enter variation e.g. had a conflict with your employer]’. If we think about these responses being reduced because individuals find that they have no control over the process or outcome, it leads to the conclusion that individuals feel that the outcomes to legal processes are not only outside of their control, but also to an extent arbitrary.

If we take the case of an individual who feels that they have no control over the legal process, but that it yields consistently fair results, we can see that their response to this SLE question would likely remain consistent (or perhaps even increase) following the affirmation of their finding through practice (‘The outcomes the processes produce are fair, even if I cannot control them. So my chances of a fair outcome are good, even if I cannot control the process.’). However, what we find is that individuals feel that their chances are lower than they thought they were.

If the attribution approach is taken to explain this difference, we find that legal processes are experienced as both outside of an individual’s control, and arbitrary.

### 6.5.3 Hypothesis 1c

Further to the findings in relation to hypothesis 1b, we find in Table 6.5 and Table 6.6 that there are no significant differences in SLE ratings between those who were successful in solving their problem and those who were not. This is true both at an overall SLE level, as well as on domain-specific SLE ratings. However, it can be seen that in all cases, the average SLE ratings were higher for those who successfully solved their problems.

The fact that the success or otherwise in reaching a solution does not seem to produce significant differences in SLE ratings is surprising. Success would be expected to increase legal empowerment, while failure to solve previous legal problems would be expected to reduce legal empowerment. Again, we can look to attribution theory for an explanation here. For an experience to successfully impact on self-efficacy, it is nec-

essary that the attribution for the outcome is made internally. Here we can perhaps see a reflection of the possible explanation put forward in relation to hypotheses 1b, that individuals do not attribute their success or failure in legal conflicts internally, but rather consider that it lies outside of their control.

The consistently higher SLE ratings within domains for those who had been successful in solving their problem seen in Table 6.6 may indicate that there is some internal attribution of the success, however the lack of significant differences indicate that this may be due to sampling or measurement errors, rather than reflection of a real-world effect.

#### 6.5.4 Hypothesis 2a

This hypothesis was supported by the data for the most part. Of the six domains examined, the presence or absence of domain-specific prior experience produced significantly different domain-specific SLE ratings in 4 domains (Table 6.7). The two domains where no differences were found, were business problems and crime. These two domains also produced no differences in overall SLE dependent on prior experience of any legal problem, and the same reasoning can be used here to suggest that success or failure to achieve a solution in these domains is outside of the control of the individual, and so neither general nor domain-specific prior experience affect SLE in relation to these problems.

The fact that domain-specific prior experience creates a significant difference in domain-specific SLE for employment problems is interesting, especially given the lack of any difference created by general prior experience (Table 6.4). This indicates that employment problems are viewed as a relatively 'specialised' category by respondents. Specific experience of these types of problem causes changes in SLE, while general experience of any legal problem does not. This is distinct from the remaining 3 domains examined (family, neighbour and land problems), where general prior experience of legal problems as well as domain-specific experience creates a difference in domain-specific SLE.

#### 6.5.5 Hypothesis 2b

This hypothesis was broadly supported by the regression analysis carried out. Of the 6 domains examined, domain-specific prior experience was the sole predictor of domain-specific SLE scores in 4 of them (employment, family, neighbor and land problems). In the other two domains

(business problems and crime) none of the entered variables were significant predictors of domain-specific SLE.

This highlights that business and criminal problems appear to have (the absence of) specific characteristics that cause this difference. A possible characteristic is the ‘formal’ or perhaps established nature of these problems. The processes for solving business and criminal problems are typically well known in advance. In the case of criminal problems, reporting to the police and the subsequent investigation and potential prosecution are all carried out in a very structured manner. This is also likely true for business cases, where the procedures for resolving business disputes are often laid out in contracts prior to the problem arising, and where the process is often handled through professional agencies. This characteristic is less apparent for the other four domains. However it would be expected that employment cases would have a similar characteristic, but this is not borne out by the findings.

A second explanation might be in relation to the relative ‘predictability’ of outcomes in these domains. Where an outcome is more predictable, experience of these problems may not cause a difference in SLE ratings, as the likelihood of receiving a fair outcome is simply borne out by the experience, neither increasing nor decreasing SLE ratings.

Whichever interpretation is adopted, it is interesting to note that these regression analyses included the presence or absence of any prior legal experience, the level of prior experience (in terms of numbers of problems encountered), and the success or failure in relation to any problems encountered. None of these variables significantly predicted domain specific SLE at all. Further, a regression using overall SLE produced no significant predictor variables.

This supports the hypotheses set out, but also indicates that general legal experience is not a good predictor of legal empowerment levels regardless of the success or otherwise of that prior experience. However, it appears that domain-specific experience may be a better predictor of legal empowerment levels within that domain. However, the predictive ability of domain-specific experience is still very low, accounting for just 5.4% of variation in SLE levels in the best case, and dropping as low as 1.4%.

### 6.5.6 General Discussion

The conclusions of this paper are of a mixed nature. The effects of prior experience on SLE are clear to see in distinctly different SLE scores

dependent on experience level. However, direct prior experience does not appear to predict a large portion of this difference. Accordingly, we have to assume that while as expected, prior experience of legal problems has an effect on legal empowerment levels, the impact of other sources of information (vicarious experience, verbal persuasion and affective state) is greater than might be expected and indeed likely outweighs the effects of direct experience.

Further, the relationship between prior experience and current levels of legal empowerment was in fact found to be the opposite of the relationship expected. While it was expected that prior experience of legal problems would create a more positive level of legal empowerment, due to both the effects of experience and development of an understanding of the processes involved, in fact it was found that prior experience in all domains actually produced lowered legal empowerment levels. This lowering of legal empowerment was found in general SLE, regardless of the domain in which the prior experience took place, and also in relation to the specific SLE domain in which the problem took place. There is some indication that success in solving the prior legal problem mediates this relationship (with mean scores being non-significantly higher for those whose problems were solved compared to those whose problems were not solved). However, when entered into the regression, whether the problem was solved or not was not a significant predictor of legal empowerment.

This finding is particularly important for those who are concerned with improving legal empowerment levels amongst the general population. This negative effect indicates that individuals who have experience of a prior legal problem judge themselves as less likely to solve a new legal problem should it arise. This probably makes them less likely to attempt to solve their problem.

The cause of the disillusionment that we see here in the reduction of SLE scores for individuals who have prior experience of the legal process is hard to determine. As previously indicated, the TRW provides a range of services, but these do not stretch to the provision of representation in court. It may be that this is a critical element in ensuring that individuals have positive experiences of the legal system. This can of course be seen as a criticism of the legal system itself, in that it forces some individuals into self-representation, but does not (apparently) provide the support required by these individuals to ensure that this is a positive experience.

The TRW is of course in a position that may well be able to improve the experiences of individuals who do proceed with their legal problems.



Given that their ability to provide assistance is somewhat limited, a key development might well be establishing accurate expectations in the mind of the individual. If an individual enters the process with unrealistic expectations, then it is likely that no matter what the outcome, their experience will be regarded as a negative one. Further, providing accurate information to individuals in terms of what will be expected or required of them would be anticipated to be a key influence over how the subsequent process is experienced.

Ensuring that individuals are aware of the time, financial and emotional costs associated with the process, is likely to mitigate negative experiences. Naturally, there is also work to be done by the legal system itself to ensure that individuals do not feel disempowered by legal processes that they experience. Previous research has highlighted the effect of prior experience on the general trust in courts and legal systems (Gallagher and Wang, 2011; Mishler and Rose, 1997; Tyler and Huo, 2002; Tyler, 2001), but this has often been overlooked when it comes to system reform. In terms of process design, research has frequently highlighted the procedural aspects in justice perceptions (Tyler, 1988; Van Den Bos et al., 2001), and it appears that there are three main dimensions where processes in general can be improved to mitigate the reduction in SLE highlighted in this paper. These dimensions are the procedural, informational and interpersonal justice associated with the procedure (Gramatikov et al., 2010). These are of particular concern, as the interpretation of the results highlights the likelihood of processes appearing to be outside the control of the individuals concerned, and to be based on arbitrary factors.

Each of these dimensions can be positively impacted through targeted interventions, or the inclusion of particular procedural elements to ensure that these dimensions are adequately addressed. For instance, procedural justice can be improved by the provision of accurate information on what will happen, why, with whom, and what is expected of the individuals concerned. This improves the individual's understanding of the process, clarifying the reasoning behind what can otherwise seem incomprehensible procedures. Further, interpersonal justice may be well served through the introduction of opportunities for individuals in a conflict to address each other directly, rather than speaking solely through lawyers. More direct communication from the Judge or Arbitrator concerned may also improve this dimension.

There are a wide range of opportunities for procedures to be modified to improve the experiences of the individuals concerned, which dates

back many years and is ongoing, yet is often not adopted in a wide range of cases (Gramatikov et al., 2008; Klaming and Giesen, 2008; Swedloff, 2008; Tyler, 1988). However, what can be said in general is that these dimensions relate particularly to increasing understanding, involvement and comprehension in the process. These dimensions are thus the most important in countering the apparent disillusionment of individuals in legal processes demonstrated here. Improving these aspects would improve the experience of the users in the justice process, especially in relation to their feelings of involvement and control over the process, which tends to produce higher satisfaction levels (Gosling, 2006; Lind et al., 1989; Orth, 2002). Of course, we expect that higher satisfaction with prior experiences will translate into higher empowerment ratings when such a problem is encountered in the future.

## 6.6 Conclusion

Prior legal experience results in lower overall and domain-specific SLE ratings. However, the manner in which this takes place is not clear, as prior experience in isolation is not a good predictor of SLE ratings, despite accounting for a significant portion of variation in SLE ratings.

In this sample, prior experience with legal problems produces lowered legal empowerment ratings. This indicates that the majority of experiences produce negative effects in terms of individual's beliefs in their ability to solve legal problems. Respondents in our sample appear to fall into the same category as those in Gallagher & Wang's study (Gallagher and Wang, 2011) in that they become despondent as a result of their experiences. This finding appears to hold regardless of the number of prior experience and the outcome (successful or unsuccessful) of the prior experiences.

Accordingly, there is clearly much work to be done in improving the experiences of legal processes to individuals, and it is likely that improvements in the involvement of individuals in legal cases (through improvements in process, information and interpersonal justice) would have the largest impact.



**Transition and  
empowerment:  
Experience of conflicts  
and legal empowerment  
in transitioning  
countries.**



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## **7.1 Abstract**

This article presents data from over 3300 respondents from two transition countries: Kenya and Yemen. The data from each of these countries indicate that, in transition, individuals feel less empowerment regarding employment problems than they do regarding family and neighbour problems. It is suggested that this low empowerment in relation to employment problems is due to the inaccessibility of formal dispute resolution mechanisms, and the inability of informal mechanisms to overcome power imbalances. This indicates that, in accordance with recent thinking in the development agenda, there should be a stronger focus on addressing how individuals experience and use low-level dispute mechanisms, as well as top-down organizational change. Implications are discussed, and recommendations for future evaluation of the success of transitions are made.

Keywords: legal empowerment; transition; access to justice; empirical; Kenya; Yemen

## 7.2 Introduction

Interventions in transitions from authoritarianism and conflict have often focused heavily on institutional and legal reforms that involve transitional justice mechanisms (Mihir, 2013; Thoms et al., 2010). While undoubtedly important, this has frequently resulted in a lack of attention to the ‘lower level’ individual problems faced by citizens (such as divorce, contested land titles, breach of contract). These problems can hold back economic development, and possibly increase instability (Robinson, 2006; Dhillon et al., 2006) (although this is not a clear-cut link (Blanco and Grier, 2008; Piazza, 2006)).

In the past several years, there have been calls to adapt the manner in which transitions are handled. Collier et al. (Collier et al., 2003), Porter et al. (Porter et al., 2012), and the Organisation for Economic Co-Operation and Development (OECD) (OECD, 2012) have all advocated focusing more on those who are supposed to benefit from these transitions: ordinary citizens. This involves reforming the processes that are necessary for individuals to lead their lives in peace and productivity.

Legal empowerment is a term that was coined in 2001 by the Asian Development Bank (Golub and McQuay, 2001), and has been used throughout the development and legal agendas as a tool in the reduction of poverty and improvement of access to justice. The concept of legal empowerment focuses on individuals’ abilities to use the law to protect their rights and or further their own interests (Golub, 2010). As such it incorporates a variety of concepts including elements of psychology, access to justice, the efficacy of legal institutions and trust in those institutions.

Legal empowerment was highlighted as one of the core pillars of the development agenda by the Commission for Legal Empowerment of the Poor in 2008 (Albright et al., 2008). Since then, it has become a core objective of many development activities, and its improvement the target of much funding.

There is reason to expect that legal empowerment is different in transition countries than countries with stable legal orders and governments. First, transition means that those formal institutions charged with solving legal problems are usually undergoing (often dramatic) change. The legitimacy of the previous legal order is being challenged and this is likely to impact on individuals’ expectations of these institutions. Second, in countries undergoing a transition, there is often a power-shift between different societal groups. Those who previously held power may now be

experiencing a loss of power, and those who were previously powerless may be gaining in power. This will affect many areas of life, and can be expected to impact upon legal empowerment.

Transitions also add challenges to the already difficult process of measuring legal empowerment (R. B. Porter, 2014a). Many of the objective indices that would normally be used to measure legal empowerment are simply not available (e.g. assessment of laws in relation to access to justice and legal empowerment is often impossible due to their ongoing reworking). Accordingly, in these contexts, it is of even greater importance to look at empowerment from the perspective of those who are expected to benefit, namely citizens.

Subjective legal empowerment (SLE) is a move away from objective measures of empowerment and access to justice, and towards a citizen-focused approach that focuses on strengthening the perception of individuals that they can solve their legal problems (Gramatikov and Porter, 2011). SLE is based on Bandura's theory of self-efficacy (Bandura, 1977; Bandura et al., 1982), which states that the likelihood of an individual acting to complete a task can be predicted by their belief in their ability to successfully complete that task. SLE asks respondents to rate the likelihood of achieving a fair solution if they experience a problem in a range of general 'legal domains' (e.g. family, employment, etc.). These domains are identified as those the respondents are likely to easily recognise, that is, the categories that they are likely to place their legal problems within, rather than strict legal definitions. This facilitates understanding, particularly amongst individuals who have little or no legal experience. The questions are asked regarding hypothetical future problems as this enables them to be applied to individuals who have not or are not experiencing such a problem. Additionally, the questions do not presuppose the manner in which the problem might be solved – they are concerned only with how likely a respondent is to receive a fair solution. Accordingly, this measure of legal empowerment looks equally at empowerment through informal mechanisms as through formal mechanisms. Indeed, in transitioning countries, citizens may well rely more heavily on informal processes.

This article presents some findings from surveys in Kenya and Yemen that measure subjective legal empowerment. These countries are both undergoing transition. While they have very different political and cultural environments, they have experienced similar transitional initiatives. In both countries, the transitions have been very 'top-down' with a heavy emphasis on institutional and legal reform at the state level. Lit-

tle attention has been given to lower-level processes that citizens come into contact with when attempting to assert their rights or solve their conflicts.

### 7.2.1 Kenya

From independence in 1964 to elections in 1992 Kenya was run as a single-party state by the Kenya African National Union (KANU). In the 1980s, KANU came under increasing pressure to democratise, which eventually resulted in multi-party elections in 1992. Those elections were won by KANU, as were subsequent elections in 1997, partly through playing Kenya's ethnic groups off against one another. The 1997 elections were characterised by post-election violence between ethnic groups. Following revelations about President Daniel Arap Moi's involvement in extensive human rights abuses, he was barred from participating in the 2002 elections, which a coalition of opposition parties convincingly won.

However, the new government, led by President Mwai Kibaki, lost much of its credibility through being too closely associated with Moi's allies (Mueller, 2008; Rutten and Owuor, 2009). The 2007 election was contested between Mwai Kibaki for the Party of National Union and Raila Odinga for the Orange Democratic Movement Party of Kenya. The run-up to the election began following the 2005 constitutional referendum, and was considered to be held in a fair and open manner, despite some 'ethno-political polarisation' by both parties (EU-EOM, 2008). The post-election violence is commonly characterised as being based on tribal differences between the Kikuyu (of which Kibaki is a member) and the Luo amongst others (Rutten and Owuor, 2009). However, the violence was a complex phenomenon which involved different dimensions.

During colonial times the Kikuyu were displaced from their homelands and resettled predominantly in Maasi regions. There is a feeling amongst other tribes that the Kikuyu have dominated Kenya since independence, and the alleged electoral manipulations in the 2007 elections by Kibaki inflamed these feelings. Although Kenyan politics had traditionally been divided along tribal lines, many feel that the violence was a result of weak institutions that lack the checks and balances normally associated with democratic rule (Mueller, 2008). In total, the post-election violence claimed the lives of 1500 individuals, left 300,000 people internally displaced, and drove a wedge between neighbours and communities



over 59 days from December 2007 to February 2008 (Roberts, 2012).

Since 2007, the Kenyan state has been trying to find a path back to stability. In 2010, a new constitution was adopted by referendum with the approval of 67% of voters. This constitution separated the three branches of government, outlawed many forms of discrimination, and guaranteed socio-economic rights. Following the post-election violence, a National Dialogue and Reconciliation process was initiated, which led to the creation of the Commission of Inquiry into Post-Election Violence (CIPEV), known as the Waki Commission. The CIPEV in turn established the Special Tribunal for Kenya (Musila, 2009). Following failed attempts to prosecute in that tribunal, the matter was referred to the International Criminal Court (ICC) in March 2010. In 2013, elections were peacefully held, due to a combination of political realignment, an ongoing 'peace narrative', reduction in acceptance of political activity likely to produce instability, democratic reforms to the electoral and political systems, and a new constitution (Cheeseman et al., 2014). The winners, President Uhuru Kenyatta and Deputy Prime Minister William Ruto, are currently being prosecuted by the ICC for crimes against humanity in relation to the post-election violence in 2007.

Kenya is often viewed as one of the success stories of Africa, and more specifically East Africa. It is comparatively developed and stable, with a gross domestic product (GDP) per capita of \$1800; however approximately 45% of the population still live below the international poverty line. The World Justice Project ranks Kenya 86 out of the 99 countries indexed, with particularly low scores relating to corruption, criminal justice and regulatory enforcement (Pratt et al., 2014). These are areas that have particular impact upon individual experiences of justice.

### **7.2.2 Yemen**

Ali Abdullah Saleh was president of North Yemen from 1978 to 1990. Saleh's rule began with the execution of 30 military officers accused of conspiracy against his rule. Following reunification with South Yemen in 1990, Saleh's General People's Congress won 122 of the 301 seats available, and, in 1999, he won 96.2% of the vote. This was followed by an extension of presidential terms from five to seven years, and the introduction of a presidentially appointed counsel with legislative powers. The entire rule of Saleh was characterised by corruption, reduced economic prospects and the concentration of both wealth and power within a ruling elite. Yemen has a very tribal structure, particularly in

the northern and eastern areas, where the tribal confederations of the Hâshid, Bakîl and Madhhaj dominate. This situation was exploited by Saleh, who pitched tribes against one another in order to retain overall power. The tribes retained effective autonomy over those living in the areas they dominated (Gaston and Al-Dawsari, 2013).

Inspired by the Tunisian protests, Yemeni civil society began to demand regime change in 2011. Saleh promised political reform. Following the shooting of unarmed protesters in Sana'a on 18 March 2011, a series of regime defections split the army and led to armed conflicts. Between June and November 2011 a transition was brokered which secured peace. In exchange for domestic immunity for himself and his supporters, Saleh transferred power to his vice president (Alley, 2013).

In February 2012, Abd Rabbuh Mansur al-Hadi won Yemen's first democratic elections (HiiL, 2014). A National Dialogue process, which began in March 2013, was charged with writing a constitution for Yemen and preparing for elections in 2014. However, citizens "increasingly see this process as an empty affair run by a gaggle of reshuffled old-regime elites" (Alley, 2014, p.74). Yemen continues to experience significant levels of violence: there is an ongoing war with al-Qaeda, as well as with an independence movement that seeks to recreate the former state of the People's Democratic Republic of Yemen (South Yemen).

Yemen scores just 26 out of 100 in the Freedom House 2014 rankings, characterising it as 'not free' (Freedom House, 2014). Of the 26 million people who live in Yemen, 42% are under 15, while the country ranks 160th of 186 states on the United Nations Development Programme's Human Development Index 2013 (Malik et al., 2014). Yemen is economically quite healthy due to large oil reserves. However, GDP per capita sits at \$2249 with 17% living below the international poverty line.

### 7.3 Methodology

The measurement of subjective legal empowerment is based on simple Likert scale questions (see Figure 7.1) regarding the perceived likelihood of success in solving a particular type of problem. The measurement of legal empowerment through SLE allows an insight into the efficacy of activities aimed at promoting the protection of rights and empowerment of individuals. If such activities are effective then rights will be well protected and empowerment will be high. SLE ratings will then reflect this through individuals being confident in their ability to have their

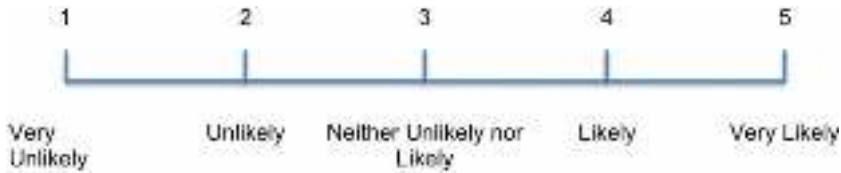


Figure 7.1: Likert Scale used in the SLE measure

rights enforced or protected. SLE is useful as an evaluation tool as it enables the measurement of legal empowerment in populations who have not or are not experiencing legal problems, is comparable across a wide range of situations and has a link to future behaviour (Porter, 2014a). In the data presented in this article, SLE measures were used as the baseline for a project evaluation in Kenya, and as a countrywide measure of legal empowerment in Yemen.

In this article, the overall measure of subjective legal empowerment is collected by asking informants the following question: ‘If you had a [problem domain] problem in the future, how likely is it that you would be able to get a fair solution to the problem?’

In Kenya, more information was gathered relating to SLE to gain a deeper understanding of the barriers respondents perceive (Porter, 2014b)(R. B. Porter, 2014b). In Yemen, only the overall measures were used due to time constraints (HiiL, 2014)(HiiL, 2014). Accordingly, only the overall measure is used in this article so that the Kenya and Yemen data can be compared.

### 7.3.1 Kenya

In Kenya, 303 respondents were surveyed in two slum areas surrounding Nairobi (Kibera and Kamukunji) in June 2012. Surveys were conducted in respondents’ languages. The fieldwork was done in conjunction with Kitua Cha Sheria, a non-governmental organization that works to promote human rights and access to justice in Kenya. Data were collected by law students from the local university who had been trained in data collection and familiarized with the questionnaire. Random sampling was employed. A random point was selected and data collectors knocked on every  $n$ -th door, asking to speak to the adult (at least 18 years of age) whose birthday was next. Respondents were asked about any legal problems they had experienced in the past three years and the outcomes. In

addition, their SLE was measured in relation to five domains of legal problem, including family, neighbour and employment problems.

### 7.3.2 Yemen

In Yemen, 3000 face-to-face surveys were conducted by a professional survey company in three governorates between 24 November and 26 December 2013. These governorates were selected as the only three regions with sufficient security to allow survey activities. The overall population was reflected through purposeful sampling, resulting in a 50:50 gender split and 60% of interviews being conducted in rural areas. To ensure both confidentiality and an equal number of female respondents, interviews with women were conducted by female interviewers. This enabled privacy to be maintained in accordance with local custom. Data were collected as part of a larger research project, but respondents were asked about any legal problems they had experienced in the past three years and the outcomes.

In addition, their SLE was measured in relation to six different legal domains, including family, neighbour and employment problems. In this article, we focus on these three domains that were common to both Yemen and Kenya.

## 7.4 Results

The findings presented in this article provide a ‘first look’ at legal empowerment levels among individuals in Kenya and Yemen. All legal empowerment data were collected using precisely the same measures (Table 7.1). Other information (such as income, educational level and previous problems experienced) was collected on slightly differing scales to reflect local contexts. In order to allow comparison between the countries, these variables were recoded into a common scale. Accordingly, income level was reclassified into three groups and education into four (Table VII 2). Information on prior experience of legal problems was collected in more detail in each of the data collections. For the purposes of analysis, these responses were also reclassified into the higher-order categories in which legal empowerment measures were taken (e.g. disputes with employers over redundancy pay, and disputes with employers over holiday entitlement, were both reclassified as ‘employment disputes’).

Country	Number of Respondents	Gender		Age		
		Male (%)	Female (%)	Min	Max	Mean (SD)
Kenya	303	52	48	18	66	34.0 (8.8)
Yemen	3000	50	50	18	76	37.4 (14.15)
Overall	3303	50	50	18	76	37.1 (13.8)

Table 7.1: Number, gender and age of respondents

	Income				Education		
	<50% GDPPC <sup>1</sup> (%)	of 50-150% of GDPPC (%)	>150% GDPPC (%)	None (%)	Primary (%)	Secondary (%)	Tertiary (%)
Kenya	25	57	19	3	37	46	14
Yemen	15	48	36	28	31	19	21
Overall	16	49	35	26	32	22	20

Table 7.2: Income and Education Level of Respondents

Figure 7.2 indicates the proportion in which different types of problems (family, neighbour, land and employment) were experienced in each country. As can be seen, there is variation between the two countries in terms of the proportion of problems experienced in each domain. Of the three domains, family problems are the most frequent in Kenya, followed by employment problems and then neighbour problems. In contrast, neighbour problems are the most frequent problem in Yemen, followed equally by family and employment problems. In total, the problem domains represent over 35% of the problems reported in Kenya, and just over 25% of the problems reported in Yemen.

In the context of prioritising activities in the different countries, it is important to note that the Kenyan respondents reported just 0.45 problems on average, while the Yemeni respondents reported 4.5. This 10-fold difference in problem reporting rates is highly significant when looking at the levels of problems in different countries, and accordingly how urgent addressing such issues is. Clearly, the Yemen sample reports many more problems per person than the Kenyan sample; however this volume factor does not seem to affect the pattern of empowerment shown in this article.

Figure 7.3 shows the gender differences in legal empowerment across the three domains. The goal of a t-test is to compare groups to see if their scores are significantly different (i.e. that the differences seen are unlikely to be due to chance). T-tests carried out indicate that the gender differences in SLE rating for family and employment problems are significant, while those for neighbour problems are not different.

Between the different problem domains, we see the same pattern as earlier: Higher empowerment for family and neighbour problems, and lower empowerment for employment problems. It is also noticeable that Yemeni men appear to have higher empowerment levels than Kenyan men, while the empowerment ratings of Yemeni and Kenyan women are more variable.

Figure 7.4 demonstrates the empowerment ratings of respondents by income level. Income levels are normalised to proportions of GDP per capita (GDPPC) for each country. As can be seen in Figure 7.4, the empowerment ratings across all of the income brackets follow a similar pattern, with relatively high empowerment in relation to family and neighbour problems, and markedly lower empowerment in relation to

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<sup>1</sup>GDPPC: gross domestic product per capita refers to the GDP of a country divided by the population, giving an average income generation per person.

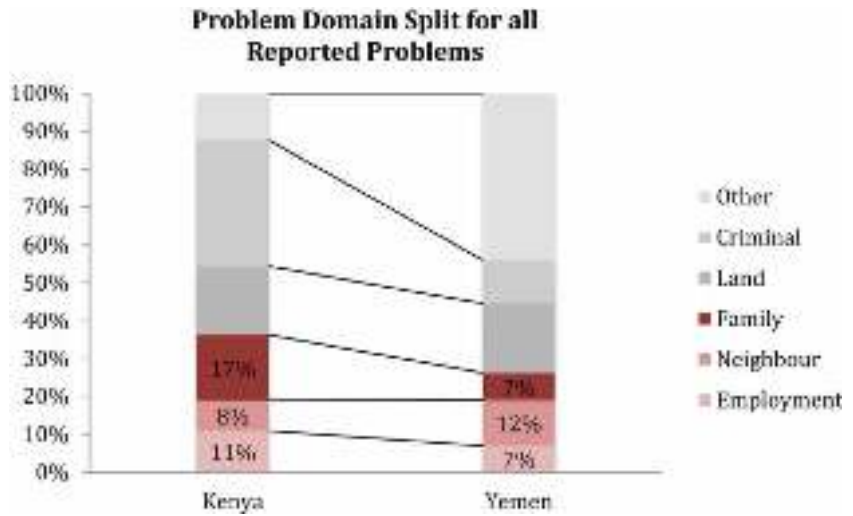


Figure 7.2: Proportion of all problems represented by each problem domain

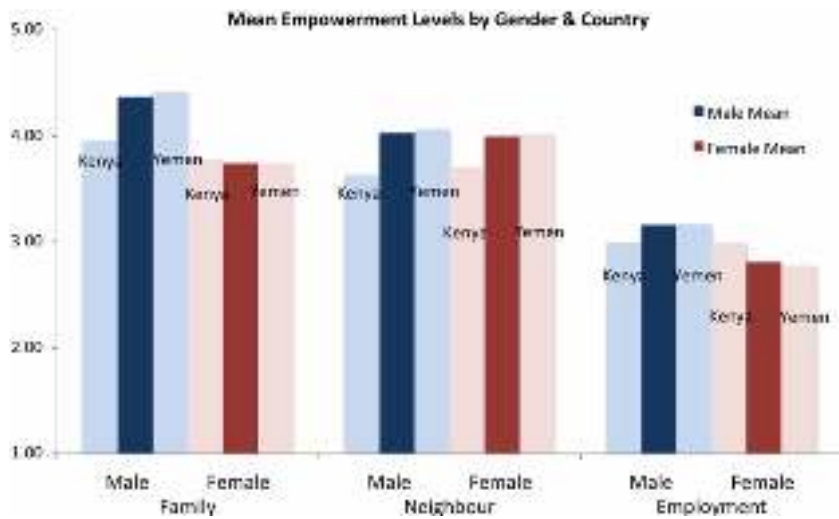


Figure 7.3: Gender Differences in Empowerment



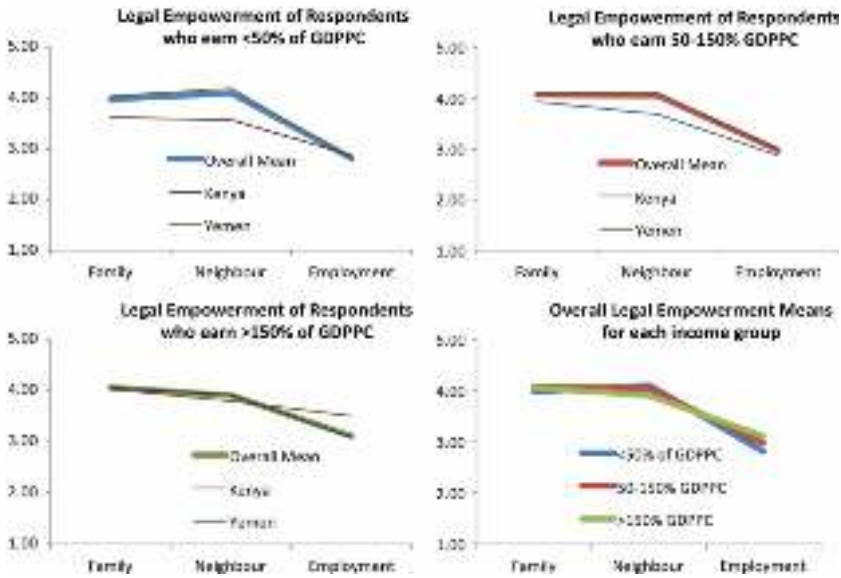


Figure 7.4: Empowerment Ratings by Income Level

employment problems. This pattern is generally repeated at the national level.

Overall, the empowerment ratings for employment problems are significantly lower than those for family and neighbour problems, which are not significantly different from one another. This means that respondents feel that they are less likely to find a solution to an employment problem than they are to find a solution to a family or neighbour problem.

Figure 7.5 and Figure 7.6 show the same pattern of empowerment ratings when they are grouped by education level. The major outlier in the ‘No Education’ group is the very high empowerment ratings for neighbour problems for those with no education in Kenya. This is likely due to the very low N (just eight) for this group.

Figure 7.6 however, shows that when these charts are combined, there seems to be a pattern in the family and employment problem domains: the higher the educational level, the higher the empowerment rating. This is not true in the neighbour problem domain though, where all the scores are bunched around an empowerment rating of four, with little

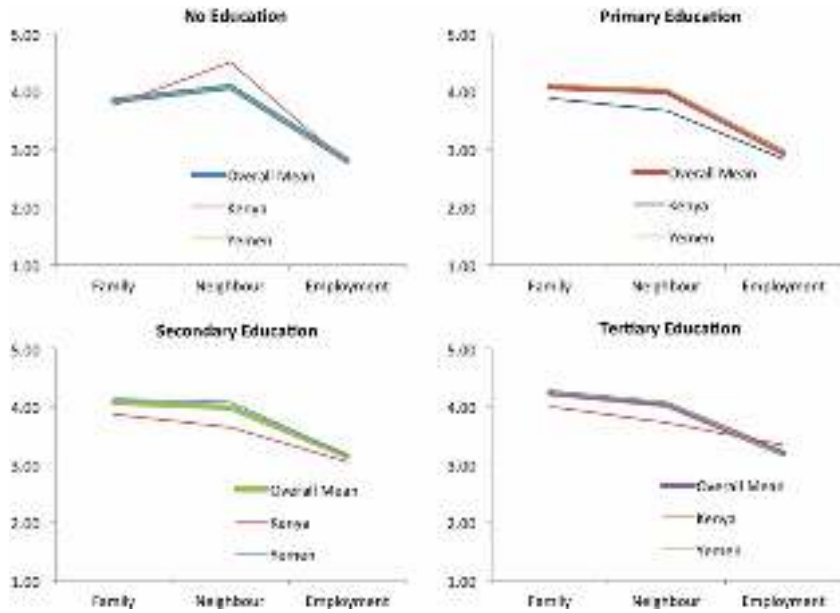


Figure 7.5: Empowerment ratings by education level and country

difference between them.

Figure 7.7 shows the overall SLE ratings for each country. There are differences in the mean country empowerment ratings in family and neighbour domains, but the overall pattern seen previously remains: Higher empowerment ratings in family and neighbor domains compared to employment.

As mentioned earlier, overall empowerment scores in family and neighbour problems are not significantly different from each other, while they are both significantly different to empowerment in the employment domain. This pattern is repeated in the Yemen sample, while in the Kenyan sample, all domains are significantly different to one another. It is also noticeable that the Kenyan sample has lower empowerment ratings in family and neighbour problems compared to the Yemen sample, although there is no difference in their empowerment in relation to employment problems.

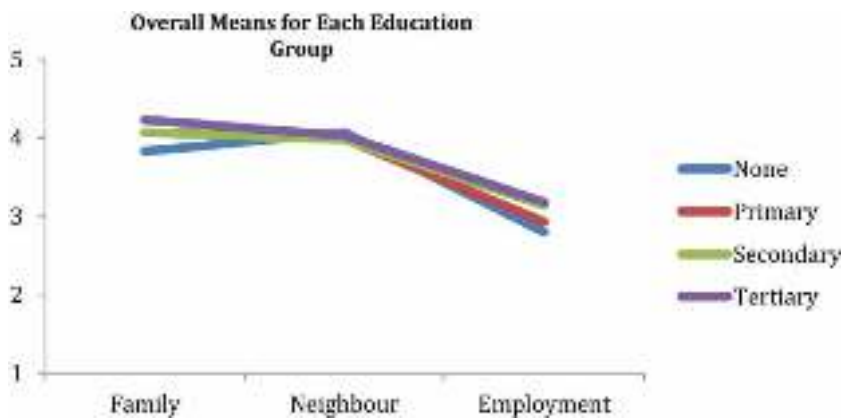


Figure 7.6: Combined Empowerment by Education

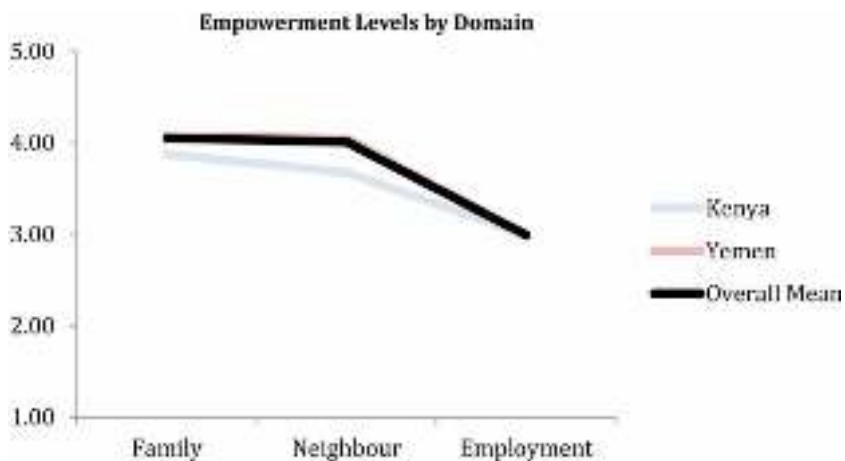


Figure 7.7: SLE ratings in Different Domains

## 7.5 Discussion

Subjective legal empowerment in both countries is quite high, varying between 3.0 and 4.1 on average. This means that individuals in these countries are relatively empowered, particularly in relation to family and neighbour problems. This is particularly positive as these countries are in transition, where established rules and institutions are being challenged and changed. It is not possible to determine any direction of travel in empowerment levels from these data. In the absence of a baseline study, it is hard to know exactly how the transition may have effected individuals' empowerment. Consequently, this discussion focuses on the current levels of legal empowerment and what it might mean for transition mechanisms in general.

As can be seen in Figures 7.3-7.7, legal empowerment ratings differ across the various domains. What is noticeable is the similarity in the pattern of empowerment across the countries. Figure 7.7 shows how legal empowerment ratings differ across domains and countries. We can see how the overall average is low for employment (overall mean of 3.0), and higher for neighbour and family problems (with means of 4.0 and 4.1 respectively). A closer examination of Figure 7.7 shows that there is a similarity in perceptions across these transition countries that their different histories and different methods of addressing that history make surprising.

In both countries, empowerment in relation to employment problems is lower than for neighbour and family problems, but it is not immediately clear why. Countries undergoing transition are in a situation where institutions and politics are in a state of change. In the case of Kenya, an entirely new constitution has been written and adopted in the last few years, while this process is ongoing in Yemen. SLE ratings reflect an individual's belief in their ability to achieve a solution to the problem. If the institutions that they would normally rely upon are in a state of change, then it seems likely that they would not have the confidence in their ability to use these institutions as they had previously. Through the process of transition, individuals on the ground are likely to have experienced a significant reduction in reliability of the state institutions involved in solving legal problems. It may be that the institutions following transition are fairer than those prior to the transition, but the certainty of process and outcome is lost, and needs to be rebuilt for these individuals.

On the other hand, family and neighbour problems do not seem to be affected by these changes. In both Kenya and Yemen, the formal system is not necessarily the first place that people would approach to solve their problems. Rather, they may rely on more informal mechanisms such as village chiefs or tribal leaders. These mechanisms are often biased, susceptible to corruption, unable to counteract power imbalances, discriminatory against women, and non-compliant with international human rights standards (Wojkowska, 2006). Accordingly, it seems likely that individuals would expect problems between individuals of similar power and income to be solved more fairly by these informal mechanisms.

This relatively balanced power relationship is, in general, found in both family and neighbour disputes. In contrast, employment problems between an employee and employer (whether in the formal or informal sector) have an inherent power imbalance. Employers are very likely to have more social and economic power than their employees. This would make the informal dispute mechanisms much less likely to produce a fair process or result. This is the pattern that we see reflected in the data collected here.

As mentioned earlier, it is difficult to know the 'direction of travel' of legal empowerment through the transition, as we have no baseline figure. However, it is clear that at this point, in both countries, individuals do not think that it is likely that they will be able to achieve a fair solution to their employment problems. The pattern of high empowerment in relation to family and neighbour problems and low empowerment for employment problems is replicated generally across the genders. It is noticeable however that in both family and employment problems, women are less empowered than men. This may reflect discrimination against women in the dispute resolution mechanism (Wojkowska, 2006). Figures 7.4-7.6 show the same pattern reflected across income levels.

It may seem only natural that respondents should feel more able to solve conflicts with those close to them, and that it is reasonable to expect that problems in areas such as employment will always elicit lower legal empowerment, as they are by their nature more complicated to solve. However, if we look at the empowerment scores given we can see that respondents overall do not think they are likely to get a solution at all (a score of three reflecting the statement 'Neither likely nor unlikely to achieve a solution') while the scores for neighbour and family disputes correspond to 'likely to get a solution' or better.

In these employment problems, where there is an inherent power imbalance (financial, social or of another kind), respondents in both

transition countries feel that they are not likely to get a fair solution to their problem. This should probably not come as much of a surprise. The interventions we see in both these countries are national-level initiatives that have been undertaken to try and ease the process of transition. What we do not see are any interventions that focus on the experiences citizens on the ground experience. This is the key promoted by many of those who want to see approaches to transition modified.

Promoting legal empowerment and trust or belief in the institutions of government require that we pay attention to the needs and requirements of the individuals using those institutions. Prior to, and during, transition this understanding of, and trust in, the institutions is lost. The aim of transition mechanisms is to restore it (Porter et al., 2012). The focus of efforts in transition countries needs to be more on the needs and perceptions of individual citizens, protecting the rights of individuals in practice rather than the development of fair processes in theory.

This essentially means that attention has to be paid to issues such as the speed and ease of access to, and fairness of, dispute resolutions in relation to common problems. In addition to working on ‘higher level’ issues such as separation of powers, or lustration, it is critical that the experience of individuals is such that they believe both that the system works, and that it works for people like them. The basis of these opinions may be perceptions and subjective experiences, but that does not reduce their impact. Efforts to measure users’ perceptions and experiences of legal systems have shown that perceptions of fairness, and respect are important factors in an individual’s opinion of a process (Genn and Beinart, 1999; Genn and Paterson, 2001; Gramatikov, 2008). In transition countries this is of even greater importance, as there can be no assumption of pre-existing trust in a system that is undergoing, or has recently undergone, significant change.

It might be expected that the higher an individual’s income or education level (which are positively correlated in our sample), the higher that individual’s legal empowerment, seeing as these attributes would give an individual the advantage of being able to buy better advice or support, and/or a higher level of understanding of the situation and systems. Our data find that this is true for family and employment disputes, but not for neighbour disputes. In fact, the lower the income, the higher the legal empowerment in relation to neighbour disputes (Figure 7.4). However, in all of the cases, there is little difference between the highest and lowest levels of empowerment in any of the domains, indicating that although there are advantages to having an education and/or higher income, these

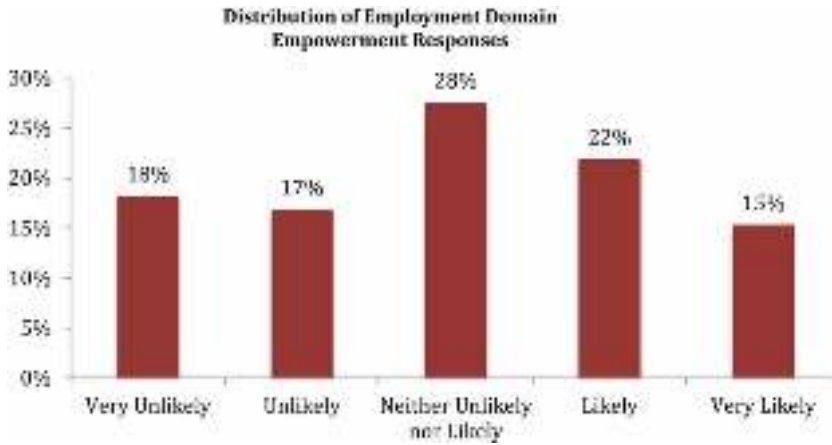


Figure 7.8: Distribution of Employment Domain Empowerment Responses

advantages are fairly limited.

Together, these findings do not show a widespread problem with empowerment in the countries studied. Rather, they show that in relation to employment problems, individuals have a significantly lower empowerment level than they do in relation to family or neighbour problems. While this may not appear to be a significant problem, that this is the only problem domain tested that involves a power imbalance highlights the full potential of the problem. Namely, it appears that in these countries there is limited ability for the conflict resolution systems to combat pre-existing power imbalances.

Clearly, if this finding is accurate, this is a significant problem in the protection of rights of more vulnerable citizens. A failure to rectify power imbalances (to create a 'level playing field') results in the denial of justice and fair decisions for those at the weaker end of the power imbalance, typically women and minority groups. The fact that in relation to employment problems, the mean from both countries lies almost exactly in the middle of the scale, and that there is a very even distribution of responses across the scale (see Figure 7.8), indicates that there is a large portion of respondents (35%) who think that if they encounter an employment problem, they are unlikely to get a fair solution. In other words, they think that if they encounter an employment problem, their

right to a fair process and/or a fair outcome to that process will not be upheld. As a result of this belief, these individuals are unlikely to act to try and solve their problem. These individuals are failed by the mechanisms designed to protect them, simply because they do not believe that those mechanisms will help.

## 7.6 Conclusion

As can be seen from the data presented here, respondents in both transition countries feel significantly more empowered in relation to family and neighbour problems than they do in relation to employment problems. Indeed, a large proportion of the respondents indicate that they do not think that they would receive a fair solution if they encountered a problem related to employment. This perceived inability to achieve a fair solution reflects a failure of processes aimed at improving empowerment and access to justice, and as a knock-on effect, the protection of rights in these situations. Respondents do not think they will receive a fair solution, and so they are unlikely to act to try and achieve such an outcome (Bandura et al., 1980; Bandura and Adams, 1977).

The implications, should these findings be replicated, are clear. While national-level processes are important to the development of transition countries, more attention needs to be paid to the protection of rights of individuals in relation to everyday disputes and their perceptions of justice systems. In all countries, small-scale civil disputes have the greatest impact on individuals (Barendrecht et al., 2012), yet for countries in transition, the focus remains on high-level state or international mechanisms. The theory behind these interventions makes sense: that for trust in legal institutions to be improved, those responsible for human rights and other abuses must be appropriately dealt with, and the pain and anger that is created by these abuses must be assuaged.

However, these activities do not seem to be empowering individuals in all problem domains. Quite apart from the apparent failure of some of these transitional mechanisms to provide what they promise at an individual level (Robins, 2011), they do not look at how legal processes and institutions are used and experienced by individuals, and how effective they are at protecting their rights. If increasing empowerment of individuals in relation to their legal problems is an aim of transition mechanisms, then much greater attention needs to be paid to how those individuals experience and perceive justice in the real world, and making



fair and just dispute resolution accessible to all.

Although we cannot draw any wide conclusions regarding the effect of transition mechanisms in countries beyond Yemen and Kenya, we can see that comprehensive evaluations of transitions in the future need to examine both the higher-order structural changes that are effected, as well as the manner in which the legal empowerment of individuals is affected. SLE represents a method of assessing the efficacy of such transition mechanisms aimed at influencing legal empowerment.

# Legal Needs and Legal Empowerment: A Study of Internally Displaced People in Azerbaijan

Not published

## 8.1 Abstract

Little is known about the legal empowerment of the 800,000 Internally Displaced Persons (IDPs) in Azerbaijan. This paper presents data from a survey of 400 IDPs from four different cities that looked at their perception of legal problems, actual incidence, and legal empowerment using a measure of Subjective Legal Empowerment (SLE). It finds that IDPs have an accurate perception of the most common problems in their communities that reflect problems experienced, but that their empowerment in relation to problems is low, although there is significant variation between locations. Conclusions are drawn regarding the future focus of work to assist this hard-to-reach population.

Keywords: IDPs; Azerbaijan; Legal Empowerment; Subjective Legal Empowerment; Legal Problems; Empirical

## 8.2 Introduction

Internally Displaced Persons (IDPs) are those individuals who are forced from their place of residence by one of a range of factors. There has been extensive discussion over the precise definition of an IDP, however all definitions share "...two core criteria of involuntary movement and being within one's borders." (Mooney, 2005, p.13). These definitions include individuals moved through conflict, persecution, development projects or natural disasters. This makes the definition a very wide one, and different from the 'internal refugee' conception of IDPs which was previously prevalent (Geissler, 1999; Mooney and French, 2004).

IDPs face a number of challenges in their lives. In addition to being removed from their place of residence and moved to a new location, they often experience difficulty accessing services, such as identification cards and the services that come along with them, and in some instances experience difficulties more extreme than those faced by refugees (Mooney and French, 2004). One of the problems faced is the unique situation and time-scales involved in the relocation of IDPs, and a determination of when one stops being internally displaced, and now simply resides in the new location. In the case of Azerbaijan, there are individuals who have been displaced since the beginning of the Nagorno-Karabakh conflict in 1991, 23 years ago.

National governments have the primary responsibility to care for IDPs, however there is a more recent trend towards international responsibility for their protection, particularly where "...states are unable or unwilling to safeguard the right of their citizens." (Feller, 2006, p.11). Of particular interest in the context of this paper are the rights and freedoms re-iterated as being in particular need of protection in the case of IDPs by the Guiding Principles on Internal Displacement. In particular "Rights related to economic, social and cultural protection (e.g. rights to employment, education and property)" (Solomon, 2009, p.5). It is legal empowerment in relation to precisely these rights that this paper will examine.

Azerbaijan has a complex history, having been under the control of the Russian Empire, the Ottoman Empire, a British-controlled government, a Republican Government, the Union of Soviet Socialist Republics, and finally an independent government, in the 20th century alone. Azerbaijan became free of the USSR on the 30th of August 1991, following a period of civil unrest.

The first elections introduced President Mutalibov, who was swiftly followed by President Elchibey in 1992. He was deposed through a 'bloodless coup' by Heydar Aliyev in 1993, and his position was confirmed by presidential elections in October of that year. Following his sudden illness an election was held in 2003, which his son Ilham Aliyev won with a reported 75% of the vote. This election was criticized by many independent observers as being neither free nor fair, and witnessed mass violence throughout Azerbaijan. Aliyev has subsequently been re-elected in 2008 (with a reported 87% of the vote) and more recently in 2013 (with a reported 84% of the vote).

The presidency of Ilham Aliyev has been characterised by reductions in civil and political liberties, and increased concentration of power with the president. In 2009 a constitutional referendum abolished term limits for the presidency and restricted freedom of the press, while in 2010 Parliamentary elections produced a parliament entirely composed of the ruling party. Corruption is considered to be extensive, and in the days prior to the 2013 election, results containing the names of the 2013 candidates were released giving Aliyev 72% of the vote. The presence of the 2013 candidate names reduced the credibility of claims by the Central Election Committee that the results were those of the 2008 election (Fisher, 2013). The released 'results' were retracted and Aliyev was eventually credited with 84% of the vote.

The Nagorno-Karabakh conflict began in 1991 as an armed conflict between Armenia and Azerbaijan in the Nagorno-Karabakh region. Although the war ended three years later in 1994, with the agreement of a ceasefire, peace talks between the two countries have still not created a permanent solution. Indeed over the summer of 2014, tensions have escalated again, with sporadic fighting again breaking out (Broers, 2014). There are an estimated 230,000 displaced people in Armenia, and 800,000 in Azerbaijan as a result of the conflict. In the 23 years since war broke out, these 800,000 IDPs have been living in temporary accommodation throughout Azerbaijan, but focused in Baku, Sumgayit, Ganja and Fizuli. Accordingly, their position is one that has generated concern in a variety of bodies, including CSOs and the government within Azerbaijan, and the international community.

Although no solution appears to be forthcoming to the Nagorno-Karabakh conflict, the situation of IDPs within Azerbaijan remains of some concern. In addition to concerns regarding the state-induced nature of the displacement (Orchard, 2010), and the possibility that there are political gains from keeping them displaced (Ibrahimova, 2013) ,

there is at present very little information relating to the particular problems that they face, or their legal empowerment. The information that is available is both concerning, and often collected some time ago (Posner et al., 2002). This paper aims to contribute to filling this gap in our knowledge so as to assist in the development of solutions to their problems and the provision of assistance.

SLE is a method of measuring the legal empowerment of individuals, through their subjective perceptions of their ability to achieve solutions to problems in different legal domains. It is valuable as an evaluation methodology as it enables legal empowerment to be gathered from all individuals, regardless of their direct experience of trying to solve legal problems. SLE is based on the theory of self-efficacy established by Bandura since the 1970s (Bandura and Adams, 1977; Bandura, 1997; Bandura et al., 1982; Bandura and Locke, 2003). SLE is measured through questions relating to potential future problems in various domains of law (for instance, employment problems, neighbor problems etc.). Respondents indicate their likelihood of achieving a solution if they encountered such a problem.

Praxis is an Azerbaijani civil society organisation, founded in 2003 to “...promote conditions of sustainable human development in which people are able to enjoy a full range of human rights, fulfill their needs free from poverty and live in dignity.” (Praxis, 2014). Praxis frequently works with IDPs in all four cities where data was collected for this study.

### 8.3 Methods

This data was collected through a survey implemented with IDPs in four cities in Azerbaijan: Baku, Sumgayit, Fizuli and Ganja. Each questionnaire was designed to capture both the legal needs of the respondents and their legal empowerment in relation to a range of problem domains. The problem domains were selected as those most likely to be common problems, based on the advice of Praxis, who have extensive experience working with IDPs in these communities.

The survey instrument used two methodologies to look at legal needs, and at legal empowerment respectively. The legal needs approach was used to determine the prior legal history of the respondents over the previous three years (American Bar Association, 1994; Genn and Beinart, 1999; Genn and Paterson, 2001), while a measure of Subjective Legal Empowerment (SLE) was used to determine their legal empowerment.

The legal needs methodology looked at what type of problems had been encountered over the time, how these problems affected the respondents, what action they had taken or attempted to take, and the situation of the problem now. From this a clear picture of prior legal experience can be built, as well as legal needs. SLE is a measure of legal empowerment based on the theory of self-efficacy (Bandura and Adams, 1977; Bandura et al., 1982; Bandura, 2005). This involves individuals rating how likely they think it is that they would be able to solve a variety of legal problems, and provides a measure of their empowerment in relation to legal issues.

### 8.3.1 Sample

One hundred respondents were recruited from each city, based on convenience and snowball sampling, from IDPs who had come into contact with Praxis. Thus, a total of 400 responses were received, although there were no guarantees regarding the representativeness of the sample collected. The sample was collected by Praxis staff in September and October 2013. Individuals were contacted by visiting housing schemes where IDPs are known to live. Following initial contact with IDPs, further respondents were contacted through snowball sampling, where respondents were asked to put the researchers in contact with other IDPs who might be willing to take part. This sampling approach was taken in response to the significant practical issues associated with contacting IDPs in Azerbaijan, and with the practical limitations to the resources available to conduct the data collection.

These sampling and data collection methods present some biases that must be acknowledged in the understanding of this data. Collecting data through the agents of Praxis was a necessary process in order to gain the consent and cooperation of IDPs. Praxis is a well known defender of IDP rights in Azerbaijan and accordingly has the ability to access this hard to reach respondent group.

Unfortunately, this also meant that the interviewers were Praxis employees, a fact that was known to the respondents. This likely introduces a bias in the data collected, as the respondents will be very likely to try and provide the answers that they thought Praxis would 'want' to hear. This bias was counteracted as far as possible through reassurances that all information would remain confidential, that the data was being collected in collaboration with Tilburg University, and that the research was interested in what they felt or thought and that there were no right

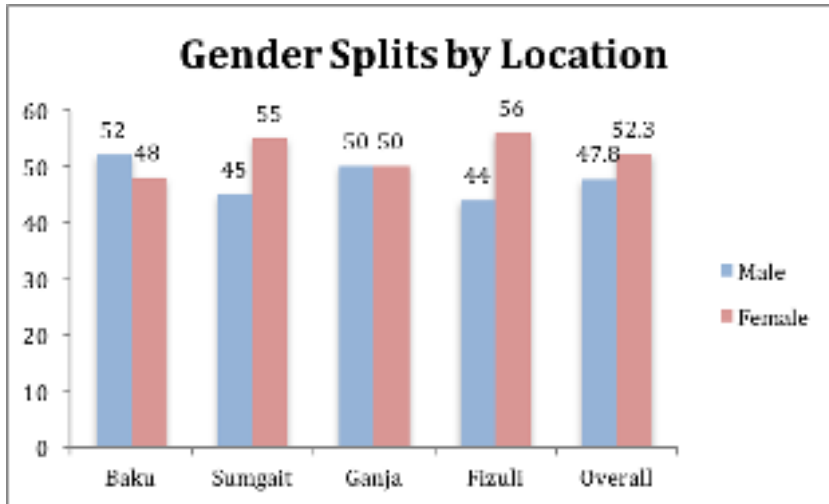


Figure 8.1: Gender Split in Samples

or wrong answers. However, we cannot discount the possibility of a bias, and we should be aware of how this might operate.

If the survey is seen as being an evaluation of Praxis' work, respondents may wish to show Praxis in a more positive light by reporting higher empowerment and satisfaction. If, on the other hand, the survey is seen as being linked in some way to the government, the overriding concern may be about not 'complaining' about their situation, as complaints are perceived to make a reduction in services more likely. Conversely, there may be an incentive to report lower than actual legal empowerment in an attempt to ensure continued funding for, and efforts by, Praxis. Although these biases are all possible, it is not possible to determine which, if any, has affected our dataset.

## 8.4 Results

The mean age of the sample as a whole is 43.8 years ( $SD = 15.0$ ). The population is 52% female, and 48% male, although there is a degree of variability between the different cities studied (see Figure 8.1).

The years of education completed in the sample is shown in Figure 8.2, with a mean of nearly 11.9 years completed ( $SD = 2.9$ ). As can be

seen, there are predictable spikes around 10 and 15 years, reflecting completed primary and secondary school education. This data demonstrates much a similar level of education that that reported in Azerbaijan in general. The data reflects the findings in the Human Development Report 2014, that that 95.5% of the population have experienced at least some degree of secondary education (Malik et al., 2014, p.193). As secondary school begins after 4 years of primary education, this is reflected in our sample.

As can be seen from Figure 8.3, despite the comparable levels of education among the sample, we can see here that household incomes are significantly below average. In fact, 97% of our sample have household incomes below the 75% of Gross Domestic Produce Per Capita (GDPPC), and 66% of respondents have a household income below 37% of GDPPC. This pattern of low income is replicated across all four of the cities, and across age brackets, although the youngest respondents, aged 18-25 years, have a significantly lower income than older respondents. A sizeable portion of our sample (25%) have household incomes below 15% of GDPPC.

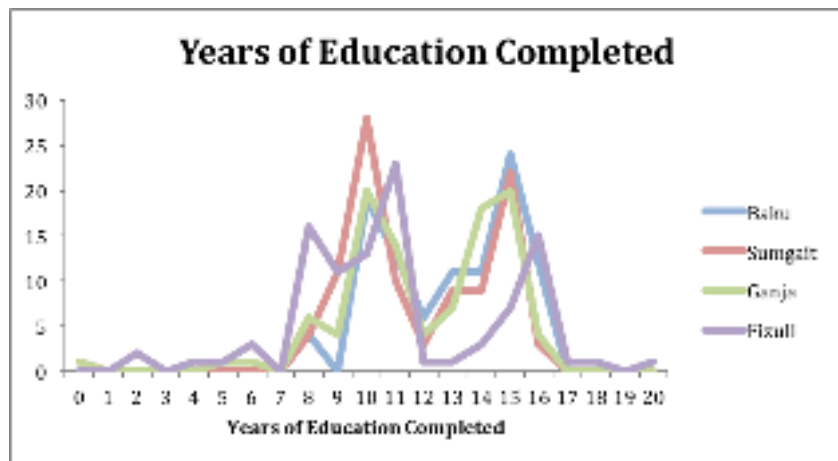


Figure 8.2: Years of Education Completed



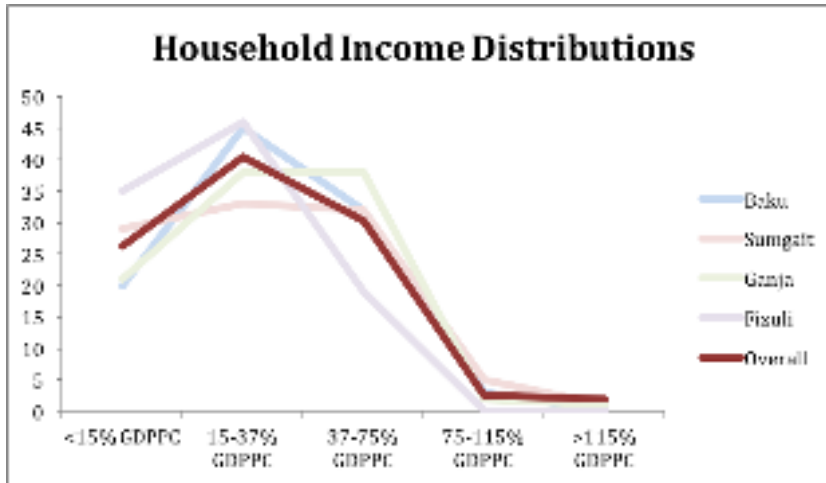


Figure 8.3: Household Incomes

As can be seen from Figure 8.4, there is a very accurate perception of the problems experienced by IDPs in all four communities. In fact, the problems perceived and experienced only differ to any large degree in relation to debt problems, which are perceived as more prevalent than they are reported, and in relation to family problems, which are perceived at an extremely low level, but were not reported at all. There is also a slightly higher incidence of domestic violence and administrative problems than was perceived by our sample.

There are few differences in the overall level of empowerment between the four domains, with only the neighbour domain being significantly different from the other three domains. However, when we look between the cities (Figure 8.5), we find more significant differences. Here we find that only the comparison between Baku and Fizuli produces a non-significant difference in scores, indicating that empowerment in each of the domains varies significantly between the different locations. There are no differences in legal empowerment scores in relation to age grouping or income bracket.

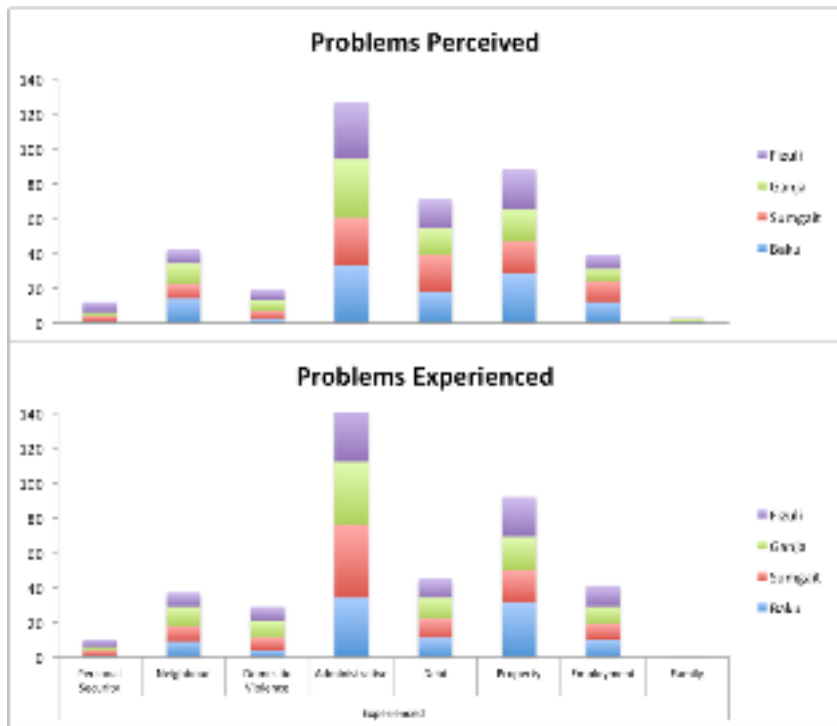


Figure 8.4: Perceived and Experienced Problem Levels

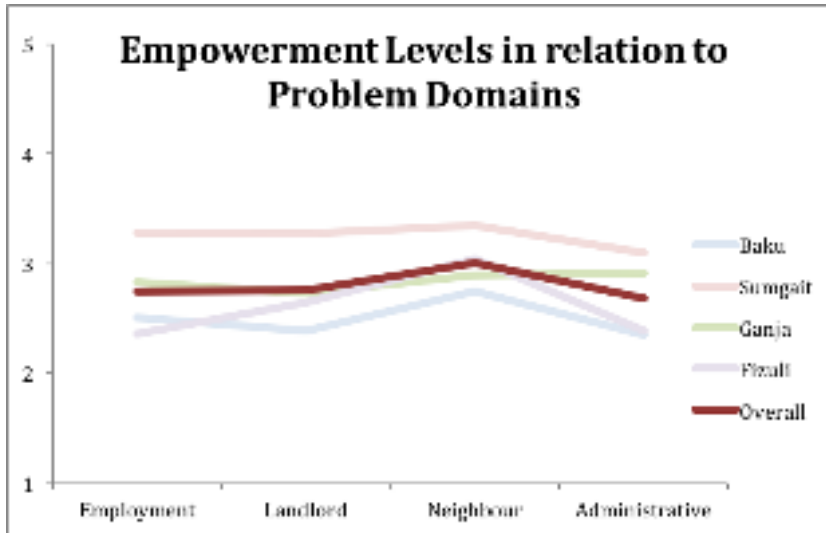


Figure 8.5: Empowerment in Different Problem Domains

## 8.5 Discussion

The demographics for our sample are broadly representative of the Azerbaijan population over 18 as a whole, with a very similar age profile, although our sample slightly over-represents women, who make up 52.3% of our sample, compared to 50.3% in the population in general (SSCRA, 2014). The variable gender splits seen in the different cities is likely due to the snowball sampling method employed. While this method means we cannot be sure of having accessed a representative sample of IDPs, it was the only method available to the researchers to get into contact with a sufficient number of IDPs. Accordingly, while there may be some biases due to the data collection method, the respondents are broadly representative of the wider Azeri population. It is not possible to determine whether this sample is representative of the IDP population in Azerbaijan, as comprehensive data on this is not available.

### 8.5.1 Overall Findings

It is clear that overall, IDPs represent a very poor section of society, with two thirds of the population having a household income of less than 40% of GDPPC, and one quarter having an income below 15% of GDPPC. While it is unsurprising that IDPs have a lower than average income, as they have been moved away from their homes and previously established income generation methods, the income level compared to the GDPPC is still very low. A monthly household income of 50% GDPPC is equivalent to just 381 USD (purchasing power parity (Trading Economics, 2014), a very low level of income indeed.

The next clear finding is that, alongside being remarkably accurate in their perceptions of the most common problems facing their community, IDPs experience a very high incidence of problems in relation to administrative affairs. Over 1/3 of respondents reported experiencing a problem with administrative issues, followed by nearly a quarter of respondents (23%) reporting problems with property, then debt, employment and neighbour problems all being reported by approximately 10% of the sample. Accordingly, it can be seen that legal empowerment is particularly important in relation to these domains. Unfortunately, due to the nature of the study, the domains in which legal empowerment were measured were pre-determined based on the anticipated most common problems. Although this correctly identified four of the five most frequent problems, debt problems were not included in the legal empowerment domains.

The fact that debt represents one of the most common problems to the IDP population, affecting about 10% of the sample, should not go unnoticed, and is an area where further investigation is of significant importance. In light of the situation that IDPs find themselves in, this debt is unlikely to be to formal banking institutions, as they frequently lack property on which to secure such debt, but is much more likely to be interpersonal. The knock-on effects of such debt problems are accordingly much more opaque, and require further investigation, with a more specific aim to determine their impact.

Overall there is a low level of legal empowerment in relation to all four domains examined. Respondents indicated that on average they feel they are unlikely to achieve a solution to employment problems, problems with their landlord, or problems with the administration (mean scores below three, indicating a response of 'Neither likely nor unlikely to achieve a solution), while the highest mean score is for neighbour

problems, which receive a mean score of precisely three. This higher rating of neighbour problems compared to others is consistent with findings published elsewhere however it is noticeable that the ratings for these domains is much lower than those recorded elsewhere. The implication of this is that IDPs in Azerbaijan experience particularly low levels of legal empowerment across the range of problem domains examined, although direct comparisons between countries may be misleading due to cultural and contextual differences.

There are many potential explanations for both the low levels of legal empowerment across all four problem domains, and the higher average rating for neighbour problems. The difference between neighbour and the other problem domains is likely to be due to the level of involvement of formal systems. Neighbour disputes are most commonly solved through personal communication between the parties, rather than through formal mechanisms. This is true of the general population as well as IDPs. Compared to employment, landlord and administrative problems, which all require or involve formal structures to differing degrees, neighbour problems can be solved outside of any formal structures.

However, the empowerment rates for neighbour problems are still low, at just three on a five point scale, reflecting ‘Neither likely nor unlikely to achieve a solution’. This is possibly explained by the nature of the IDP population, in that they have been removed from their social setting. Problems such as neighbour disputes are often solved through community means, such as influential people or tribal leaders. In the forced relocation from their homes, such social networks and hierarchies become disturbed if not entirely broken. This leads to a situation where there is no authority figure in the social environment that the parties to a problem can turn to in order to help reach a solution. This may account for a significant reduction in the empowerment of individuals in relation to neighbour problems.

### **8.5.2 City-Specific Findings**

The clearest city-specific finding is that respondents from Sumgayit have a higher level of empowerment in all four domains, compared to the other three locations. The difference, which is relatively easy to see in Figure 8.5, is significant. It is hard to find a clear explanation for this finding. In Figure 8.3 Sumgayit appears to have a slightly higher average income, but this is not significantly different from the other regions. It is noticeable that Sumgayit follows the overall pattern of having a higher

level of legal empowerment in relation to neighbour problems than the other three problem domains. This suggests that whatever is causing the elevated levels of legal empowerment compared to the other locations, it is a universal attribute that is affecting legal empowerment in relation to all domains equally.

There appears to be no signs as to what has caused this difference in the data collected here. Respondents from Sumgayit both perceive and experience similar levels of each problem type as the other three locations, the mean age is very similar to the overall sample (44.4 in Sumgayit as opposed to 43.9 in the sample as a whole), the distribution of ages is similar, as is the average number of years of education (11.8 in Sumgayit compared to 11.9 overall). Sumgayit does have one of the largest differences in the Male:Female ratio in the sample (45:55), however the Fizuli sample has a larger difference in the ration (44:56) but report no associated increase in legal empowerment.

Similarly Baku has a lower mean empowerment level in three of the four domains (the exception being the employment domain, where Fizuli respondents report lower empowerment), and there is similarly little noticeable difference between Baku and the other locations on any demographic measure taken. Baku is the capital and largest city in Azerbaijan, but there appears to be little reason for this to have any affect on empowerment levels amongst IDPs in this location. Indeed, any impact would be thought more likely to increase legal empowerment, as services and relevant government buildings are likely to be based in the capital, and thus be much more accessible. However, the higher population of the capital (over 2 million inhabitants, compared to 313,000 for Ganja, the next most populous city (“The State Statistical Committee of the Republic of Azerbaijan,” 2014)) may mean that there accessing services is more difficult than in the less populous areas. Once again, more detailed investigation is necessary to determine the precise causes of these differences. However, despite these differences, across all four geographic areas, IDPs experience low levels of legal empowerment.

## 8.6 Conclusions

The data presented here shows high incidences of a wide range of problems experienced by IDPs, combined with low levels of empowerment in relation to these problems. IDPs sampled experience a large number of problems, with all respondents indicating that they had experienced at

least one of these problems in the last 3 years. The combination of these two results, high problem frequency, and low empowerment, presents a significant challenge to IDPs faced with these problems in their everyday life, as well as to those organisations who seek to help these individuals.

However, what this data does provide is an indication of the areas in which most work needs to be focused. Not only are administrative problems the most frequent problem, but they also receive one of the lowest empowerment ratings across the different locations. Combined with the importance of administrative affairs in the lives of IDPs (think of registering for education services, benefits, and healthcare), these represent an urgent area of need for Azeri IDPs. Although this group is notoriously hard to reach, interventions through trusted organisations such as Praxis would seem to have the highest likelihood of success.

There is also a significant location effect on the legal empowerment of respondents. The cause of this discrepancy is not immediately clear, as the incidence of problems is almost identical across the different locations. However the difference is persistent across the domains, indicating that the different locations have systematic variations that affect the empowerment of resident IDPs.

Overall, the rights related to economic social and cultural protection from the Guiding Principles on Internal Displacement (Guiding Principles on Internal Displacement, 1998) do indeed appear to be those which relate to the most frequent problems encountered by Azeri IDPs. However, there appears to be a short-fall in empowerment in relation to these rights. As the most powerful source of information forming SLE ratings is personal experience, followed by vicarious experiences of people known to the respondent, these results indicate that problems in relation to these rights are not being adequately addressed. This is an area of significant concern for those involved in work with IDPs in Azerbaijan, and should raise awareness of those working with similar groups in other countries.

# Conclusions

## 9.1 Summary of Findings

### 9.1.1 Introduction

In chapter 1 we saw the problems that exist in relation to legal empowerment. We saw how a lack of legal empowerment and solutions to legal problems can impact upon people's lives. The examples given demonstrate the importance of improving legal empowerment. To do that, it is important that an accurate measure of legal empowerment is created and used in order to generate real improvements in the ways in which individuals experience legal problems and their solutions.

### 9.1.2 Literature Review

The Literature review set the legal empowerment movement in the evolution of the law and society debate. We saw how legal empowerment developed from disenfranchisement with the rule of law approach, and incorporated more grass-roots approaches which focus on the ability of individuals and groups to achieve outcomes. These approaches are being followed alongside, rather than instead of, the building of legal orders and the development of rule of law.

Having looked at the development of legal empowerment we saw how the lack of a clear definition produced an environment in which a wide and varied range of activities were given the label 'legal empowerment'. We saw how the lack of a clear measure of legal empowerment resulted in the situation where organisations providing legal empowerment interventions, funders and commissioners were unable to identify the activities that positively influenced legal empowerment, and were thus unable to focus activities or resources into those activities which produced the best outcomes for those experiencing legal problems.

We then looked at the contribution that the theory of self-efficacy could bring to a measurement instrument for legal empowerment. We saw how self-efficacy measures could be used to operationalize the concept of legal empowerment and make it measurable. We then looked in more detail at the model of subjective legal empowerment proposed,



and outlined the hypotheses that were made in relation to this model. Finally, we looked at previous attempts to measure legal empowerment, and their relative successes and shortcomings.

### **9.1.3 Methodology**

This chapter provided the methodological approaches used in the development, testing and implementation of the SLE model. This chapter summarised how the SLE model was tested in relation to different forms of validity. This chapter also introduced how the development of the SLE measure was based on practicality, where the use and usefulness of the measure were considered as essential measures of the success of the measure. Finally, this chapter provided greater detail on the contextualization process utilized in the different implementation sites.

### **9.1.4 Measurement of legal empowerment through the subjective perceptions of individuals**

This chapter presented the first of four papers that have already been published. In this case the paper presented gave a thorough examination of the theoretical benefits and challenges that the SLE model for measurement of legal empowerment could bring to the monitoring and assessment of legal empowerment projects throughout the world.

The findings of this paper included that the SLE measure had a number of advantages; it would provide data that was linked to behaviour; was able to measure large-scale impacts; was applicable to individuals who had not, or were not, experiencing a legal problem; could generate actionable feedback for the design of interventions; and enabled the comparison of legal empowerment levels between communities. There were also challenges highlighted, such as the subjective nature of the measure. The paper demonstrated how these challenges could be minimized through the use of appropriate methodologies and sampling.

The paper also highlighted the benefits of the SLE measure in terms of program design, evaluation and refinement. The benefits of its use by impact assessors and evaluators was discussed, and well as the importance of the use of comparable standards in the measurement of legal empowerment in order to promote improved legal empowerment interventions and outcomes for individuals.

### **9.1.5 SLE in Kenyan Slum Communities: Development of the Concept**

Chapter 5 provided the first evidence of the validity and practicality of the SLE measure, following an implementation in Kenya. The finding supported the model of SLE proposed, and began to provide evidence to support the benefits anticipated in the previous chapter. The findings demonstrated that individuals were able to differentiate between legal domains, as well as the individual tasks required to achieve a solution to a potential problem. These findings supported the idea that individuals do not hold one overall level of legal empowerment, but rather experience differing levels of empowerment in relation to different legal domains.

The further finding that respondents' empowerment to complete a task varied by the domain in which that task was taking place supported both the proposed model, and the practical benefits of the SLE measure. This paper demonstrated how the use of an SLE measure can create data that is of direct use to organizations who look to improve legal empowerment among their clients.

### **9.1.6 I know what to expect: The impact of previous experience on legal empowerment**

Chapter 6 demonstrated the value of the SLE measure in informing our understanding of the law and legal processes, and what they mean to individuals. In this paper, we found that contrary to most expectations, experience of attempting to resolve a problem in a particular domain, was associated with a decrease in legal empowerment in relation to that domain. This finding was demonstrated regardless of the outcome in relation to the first problem (success or failure to reach a solution), and was found not to influence legal empowerment in relation to other domains.

This paper demonstrated the value of SLE in determining how legal experience impacts upon certain individuals, in this case users of the Tilburg Rechtswinkel. Possible reasons for the findings were discussed.

### **9.1.7 Transition and empowerment: experience of conflicts and legal empowerment in transitioning countries**

In this paper, we saw the ability of SLE to be used to create international comparisons between populations. In this case, the legal empowerment of respondents from Kenya and Yemen were compared to illustrate possible issues in the approach towards transitions.

In this paper we again saw how the SLE measure can be used to highlight domains of law in which respondents feel less empowered to gain solutions to legal problems. In this case, we saw that respondents felt significantly less empowered in relation to employment issues than they are in relation to family problems, or problems with neighbours. The reasons for this difference were discussed in the context of the transitioning of the countries in question, as well as looking at the wider implications of the findings for countries undergoing transition. This paper demonstrated the wide applicability of the SLE measure, as well as providing a first look at how it might be used to draw wider conclusions about international approaches to problems.

### **9.1.8 Legal Needs and Legal Empowerment: A Study of Internally Displaced People in Azerbaijan**

This chapter presented the results of an SLE study of internally displaced people (IDPs) in Azerbaijan. This study found that IDPs experienced high rates of legal problems, and low rates of empowerment in relation to them. In particular it was shown that problems relating to government administrations were of particular concern. This paper demonstrated how SLE can be used to inform both organizational practice to improve legal empowerment among their target group, and governmental policy to improve systems and ways of working to ensure that individuals experience the highest levels of legal empowerment possible.

## **9.2 Discussion**

Following the findings listed above from each of the chapters of this book, there are some general findings that can be seen either specifically in one piece of evidence, or seen from the pattern of results overall. In the following paragraphs we discuss the key findings from this thesis.

### 9.2.1 Legal Empowerment is measurable and quantifiable

Looking across the evidence provided, from the literature review in Chapter 2, to the theoretical arguments in Chapter 4 and the applications of SLE in Chapters 5-8, we can see demonstrated repeatedly that legal empowerment is a measurable, quantifiable, concept that can provide feedback to practitioners in legally related services. This is seen in the range of findings from those living in slums in Kenya, to users of the Tilburg Rechtswinkel in the Netherlands. This collective finding is the most significant outcome from this project, and provides a substantial basis from which further investigation can be carried out both into the specific workings of legal empowerment in relation to a range of different problems, and in a range of different contexts, as well as beginning to look at interventions from a quantitative legal empowerment perspective.

The implications of this single cumulative finding are wide-ranging and important. Most directly, as detailed in Chapter 4, this begins to provide an solution to the problem presented by Bruce et al (2007), Asser (2008) and Khair (2009), that the law and development community lacks a tool to aid them in monitoring and assessment. Many organisations, particularly in developing contexts, are charged by funding bodies with improving legal empowerment amongst their beneficiaries. However, it has been very difficult to demonstrate improved outcomes in relation to this requirement in part due to the absence of any comprehensive measure of legal empowerment (Banik, 2009). With the evidence presented in this thesis, practitioners are in a position to gather data that speaks directly to the legal empowerment of their beneficiaries, and so more comprehensively demonstrate their fulfillment of their funding obligations.

However the use of an SLE measurement tool can provide much more than just evidence of improvements (or lack thereof) in legal empowerment. As demonstrated in Chapter 5, a detailed SLE measure can provide information about where the strengths and weaknesses of beneficiaries lie in relation to legal empowerment. Using this information, practitioners are able to identify in relation to which tasks individuals feel the most (or least) empowerment (whether that might be in talking to the other party or beginning a court case), and therefore target their activities at these weaknesses in the system or in individual's capabilities. For example, Praxis (Chapter 8) might look to initiate a specific

program in Fizuli to address difficulties IDPs experience in attempting to solve administrative problems. Thus, a thoroughly implemented measure of SLE is capable of providing evidence of organizational attainment of objectives as well as indicating future target areas for activities. Such a measure can help ensure that resources deployed by such organisations are used to the maximum effect in promoting legal empowerment.

### 9.2.2 Legal empowerment varies by individual and domain

From the collection of results presented in this thesis, it is clear, and unsurprising, that across the countries in which studies were conducted, legal empowerment varies between both the individual respondents, and the problems in relation to which they are rating their empowerment. This in itself is a finding that may produce significant impacts in the activities of organisations and people in a range of fields.

It is not the case that individuals consider their ability to obtain a solution to legal problems as a single concept. Individuals do not have a single feeling of empowerment in relation to all legal problems. Indeed, as anticipated by others (Alsop, 2005; Asser, 2008) respondents differentiated their empowerment between different legal domains. Thus, it can be that a respondent (or group of respondents) can feel very empowered in relation to one domain, while feeling un-empowered in relation to one or more others. In Chapter 7 we saw how individuals in both Kenya and Yemen felt much more empowered in relation to neighbour and family problems, compared to those with employers. Likewise, respondent IDPs in Azerbaijan felt higher empowerment in relation to neighbour problems, compared to family, landlord or administrative problems.

The pattern of empowerment differs between countries and respondents according to their particular situation, but their ability to differentiate between the problems remains consistent. The implications of this finding are significant to all organisations that seek to promote empowerment in relation to a range of legal problems. Such organisations include governments, legal aid bodies, bar associations, NGOs and international aid organisations. If individuals do *not* have a single legal empowerment level in relation to all types of legal problem, then it follows that the factors that influence empowerment in relation to one problem type may not be the same factors that influence empowerment in relation to another. Thus, while understanding of administrative processes may be the key to empowerment in relation to administrative problems, this knowl-

edge may not impact on empowerment in relation to being the victim of a crime.

For these organisations, then, the challenge is presented to engage in targeted activities to promote the empowerment of specific groups in relation to specific domains of law, or even in relation to specific individual legal problems. To an extent this is already happening, particularly in relation to aid and development programmes. There are many projects aimed at, for example, enhancing the empowerment of women to gain title to land in cases of inheritance (Cotula and Mathieu, 2008). These projects are already aimed at a specific, albeit large, group (women), and a specific problem (inheritance of land). However this approach is rarely replicated when empowerment in relation to governments is addressed (Jayasundere, 2011). Here, projects often promote empowerment in relation to the courts. While this may well improve empowerment in a range of different problems, the broad-strokes approach which seeks to improve empowerment in relation to going to court may well be overlooking crucial differences in the multitude of problems or legal domains that prevent individuals feeling empowered to use the courts. In ignoring these differences, such projects risk reducing their potential impact.

As is demonstrated in Chapter 7, respondents in Kenya and Yemen reported lower SLE rankings in relation to administrative problems, compared to inter-personal problems, and similar findings are demonstrated in Azerbaijan (Chapter 8). Together, these results indicate the more general idea that individuals feel more empowered in relation to their closer personal connections than they do in relation to institutions or government bodies. This is not a wholly surprising outcome; Individuals may well be expected to be more empowered in relation to others who have similar power and resource levels (see below). However, what is new is that this finding has been demonstrated across a range countries which inevitably have different contexts and environments. While empowerment in a wide range of individual contexts has been recognised (Maru, 2009), wider patterns of empowerment in relation to specific problems such as this, where individuals feel dis-empowerment in relation to government and administrative bodies compared to those of on an equal power footing, have not been demonstrated until now. Previous research has identified the outcomes of such disempowerment (Galanter, 1974; He and Su, 2013; Kritzer and Silbey, 2003), but the data presented here begins to illustrate the disempowerment that individuals take in to attempts to resolve problems.

### 9.2.3 Legal experience can dis-empower

Along-side this pattern of lower empowerment in relation to administrative and government bodies, the study of service users of the Tilburg Rechtswinkel produced a quite different outcome (Chapter 6). It is often thought that individuals who have experience of gaining a solution to their legal problem, or even just the experience of following a legal process will have higher empowerment (Menkel-Meadow, 1999). This is based on the logic that these individuals will have a greater understanding of the processes and steps involved in achieving a solution, and as a result will feel better equipped to pursue a solution should they experience another legal problem. However, the data presented in Chapter 6 of this thesis demonstrates that at least within some populations, gathering experience of attempting to solve a legal problem can actually have a negative effect on the empowerment of individuals. Thus, those who have experience of legal problems become less empowered than those who have no such experience.

The logic that anticipates a positive impact of legal experience is sometimes modified to argue that this empowering effect will only be felt by those who are satisfied with the solution that is obtained (Perry, 2008). However, as was also demonstrated in Chapter 6 amongst users of the Tilburg Rechtswinkel, the negative impact on empowerment of prior legal experience is not affected by the success or otherwise of that experience. Those who were successful in their earlier experience were just as dis-empowered as those who were unsuccessful. Further analysis also removed the number of prior problems experienced as an explanation predictor of SLE, and highlighted that only domain-specific prior experience (i.e. experience in that particular domain) was a predictor of SLE ratings within any domains.

Although this finding is taken from a relatively specialist population (users of a free, volunteer student staffed, legal advice and assistance centre), the finding certainly provides a warning about the possible impacts of legal experience, and has many implications for legal systems and those who would make them more accessible and effective. The most significant implication of this finding is that the current system is in need of redesign to ensure that it empowers individuals to solve their problems. This redesign would have to utilize measures of satisfaction from the perspective of users (such as those proposed by (Gramatikov, 2008), as well as an empowerment measure such as SLE, to determine the changes to be made. The type of adjustments that would come from such

investigation would likely revolve around concepts of procedural, informational and interactional justice, as these are the most person-centred elements of justice perceptions (Blodgett et al., 1997; Gramatikov and Porter, 2012; Klaming and Giesen, 2008; Tyler, 1988; Wenzel, 2006). Accordingly, redesign that is likely to impact on legal empowerment would be to improve understanding and expectations of the procedure, involvement of the participants in the process, as well as respecting and acknowledging their views and experiences.

Although this research does not directly answer why individuals who have experienced a legal process feel less empowered in relation to that problem, it does raise two potential answers. Firstly, it may be that the experience is unpleasant, confusing, or unsatisfactory. If the process to solve the problem does not appear effective to those who use it, then they are unlikely to want to use it again. This could generate feelings of disempowerment in relation to these problems. The fact that respondents who had successfully resolved their prior problem still felt less empowered than those who had not had a problem at all indicates that the problem is with the experience of the process, rather than with the results of that process.

Secondly, it may be that our sample is critically flawed, as we are missing those respondents who experienced a problem and did not return to the Rechtswinkel for assistance the second time. This problem has two possible interpretations; That those who had an experience were so empowered by the processes that they elected not to use the services of the Rechtswinkel when they experienced a second problem, or that they were so dis-empowered that they either sought more formal assistance (for instance full representation by a lawyer) or decided simply not to pursue a solution to the problem. It is, at present, impossible to determine which of these possible interpretations is correct, however the answer is within our reach if measures of legal empowerment such as SLE were to be utilized on a nationwide scale at regular points. Such measurement would ensure that a sufficient representative sample was collected that would allow us to answer questions such as ‘Does the legal empowerment of users of our legal processes increase or decrease as a result of the process?’ and ‘What are the key characteristics of the process that affect change in empowerment?’. Such questions are key to the development of improved legal processes that encourage everybody to pursue a solution to their problems.



### 9.2.4 SLE provides actionable programmatic information

As intimated earlier, and throughout Chapters 2, 4, 5, 6 and 8, one of the most critical benefits that can come from a comprehensive measure of legal empowerment, is that it provides information to practitioners on how they can best work to improve the empowerment of their targeted beneficiaries. Chapter 5 demonstrated how SLE can provide a more detailed breakdown of the difficulties that individuals perceive in solving their problems. Chapter 4 highlighted how the modification of an SLE measure can provide data that is contextually relevant (the measure can be adapted to ensure it reflects local circumstances) and enables specific analysis of the local situation. This can provide context-specific information that enables an individual organization to focus their efforts to maximum effect.

In fact, in the case of Kituo Cha Sheria in Kenya, the data collected indicated that key areas to focus on in order to improve legal empowerment within the slum communities investigated were access to courts and representation. This information supported the activities that KCS were already carrying out, namely providing free representation and guiding individuals through the process of gaining a solution to their problems through the courts. However, it was also noted that if legal empowerment in the domain of Land problems was of particular concern, then access to courts and representation was considered less of a problem to respondents than gaining information on what to do, and gathering evidence to support their claim. This provides valuable information that KCS can use to fine tune their support in relation to land problems.

In all domains, on the other hand, there was a high confidence in respondents' ability to discuss the problem with the other party, indicating that informal negotiations were not a barrier to gaining solutions for these communities.

From this brief example, we can see how a thorough SLE measure can provide a wealth of information that organisations can use to tailor their programmes to the specific circumstances that they face in their communities or target groups. Such information enables practitioners to focus their resources on the areas that present the most significant barriers to individuals, making the biggest impact on legal empowerment for the lowest cost.

### 9.2.5 SLE provides comparative data

Chapter 7 provides some evidence that the SLE measure can provide data that enables comparative research to be conducted between countries and groups of respondents. Absolute scores are unlikely to ever be legitimate comparators between diverse geographic or cultural groups, due to the large and diverse range of factors that can affect individuals' evaluations and scores on a subjective measure such as SLE (for example in much of Asia, going to court is considered less culturally acceptable than in other countries (Blankenburg, 1997). Many of these factors are cultural in nature, and may reflect cultural tendencies to under- or over-represent confidence, perceived pressure to rate certain elements highly (perhaps due to fear of reprisals or removal of existing services, see Chapter 8), or bias from other sources.

This caveat aside however, we are still in a position to compare the pattern of responses gathered in different countries (see Chapter 7), and going into the future, could be in a position to compare 'direction of travel' on SLE measures between different countries, groups or geographic areas. Chapter 7 provides just such a comparison of pattern of SLE scores between Kenya and Yemen, but due to the different cultural settings, it is difficult to draw solid conclusions based on differences in scores.

Direction of travel scores are likely to be of much more use to country administrations who wish to improve the legal empowerment of the population or specific groups within it. As repeated measures of the same population would eliminate the variation from cultural factors, it would enable more subtle improvements to be detected, and more confidence to be placed in differences between, for example, year-on-year scores.

Comparing between countries in similar situations and the changes in SLE scores over time enable us to look at the impact of nationwide initiatives targeting legal empowerment, and compare between different approaches. As indicated early, caution is necessary in the analysis and comparison of such data, due to cultural differences, contextual differences in the measure, different populations, and the legal systems that empowerment relates to. However the universal application and quantitative nature of the SLE measure enables identical application in different contexts, and the production of equivalent data. This facilitates comparative research as far as is possible, whilst simultaneously providing information on national performances in relation to legal empowerment

## **9.3 Indications/Leads for further research**

### **9.3.1 Personal Relationships Boost Empowerment**

Many of the implications to be found in the data presented in this thesis are concerned with negative aspects. The impact of lack of power, lower empowerment ratings as a result of lower socio-economic status, and the disempowerment possibly resulting from very formal processes. This is a result of an enthusiasm for improving that which is currently inadequate. However, there is a more positive implication that runs throughout the findings from each country collected, and it is that close relationships between the respondents to a problem boosts empowerment.

The problem domains in which respondents consistently report higher levels of empowerment are those where the respondents have a personal relationship. See the high empowerment scores routinely attributed to problems with family or neighbours across a range of countries. The implications of this are encouraging for the future improvement of legal empowerment, as it implies that individuals are likely to feel empowered where they are able to communicate with the other party, and/or where they feel that the other party also has an interest in solving the problem. Part of the answer to raising legal empowerment levels may hinge on making interaction between respondents easier.

### **9.3.2 Relationships with power imbalances produce lower SLE**

In Chapters 5, 6, 7, and 8 it was demonstrated that respondents produced differing levels of empowerment for the different legal domains. Further to this wide finding, there was a more specific finding briefly mentioned when we discussed that legal empowerment differed by domain; that relationships with power imbalances produce lower levels of SLE. This applied across the different contexts and cultures investigated, and regardless of income, education or experience of solving legal problems. This finding is caveated similarly to other findings from this data in that they represent small and relatively select populations, however there is the additional caveat here that respondents were not directly asked about the power balances that were experienced in the legal domains they were being asked about. However, given the consistency of the responses to domains where we see a power imbalance, there is a case for further investigation.

We can see from the data that in each case, problem domains where individuals would be expected to be on the lower end of a power imbalance (tenancy, employment, and administrative problems in particular), demonstrate lower levels of legal empowerment in each setting than problems where power between the two parties would be expected to be more in line (e.g. neighbour and family problems). Although not confirmed by this thesis, such a finding would be unsurprising. Power imbalances are frequently cited as being a problem in the gaining a fair resolution to problems. The power imbalance can manifest in a variety of ways, but is most commonly seen in differing financial ability to pay for legal advice and/or counsel and higher social standing making it more likely that one parties interpretation will be given more weight than the other. However, there are other ways in which power imbalances can affect outcomes and processes, such as higher educational levels making respondents more equipped to handle the complexities of a legal problem (in particular the ability to read and write in many settings can be a critical difference giving one party a significant advantage over the other), or the simply greater knowledge and/or experience of legal problems which gives one party an advantage in trying to solve their legal problem.

It should also be noted that in most cases, power imbalances will tend to cluster. Those with greater financial ability tend to have higher levels of education, higher social standing and greater experience of legal problems. This can be seen in a variety of contexts including Kenya (Chaper 5) and the Netherlands (Chapter 6), highlighting that these power imbalance problems should not be seen as exclusively developmental problems. In Chapter 6, for instance, many respondents from the Rechtswinkel were unable to read and write Dutch, the language in which all processes in relation to their legal problem would be held. This grouping of power imbalances also links back to the low empowerment ratings for administrative problems across the board. Administrative bodies are almost exclusively the more powerful party in any dispute they are involved in. They have a greater knowledge and experience of the process and the rules surrounding it (indeed in many cases they create the rules and processes), they have greater financial ability to pay for legal advice and counsel, and as a result of this have access to highly educated resources.

Addressing power imbalances is therefore a problem of interest to almost all people and organisations interested in the development of legal aid, rule of law, legal empowerment, and law and development. The issues has been acknowledged for many years, yet how these power

imbalances are best addressed has been a challenge that is yet to be resolved (Galanter, 1974; He and Su, 2013; Kritzer and Silbey, 2003; Menkel-Meadow, 1999)), and it is not proposed that the data, or interpretation of it, presented here provide new information in relation to solutions. However, what it does indicate is that power imbalances are all too prevalent across a range of contexts and cultures, and remains a significant problem for individuals who wish to solve their legal problems. Indeed, it seems that administrative procedures are particularly prone to imbalances of power (He and Su, 2013; Yoon, 2006).

In particular the majority of legal systems claim to provide a ‘level playing field’ for both parties, yet this is not borne out by the findings presented here in Chapter 5, nor by much of the evidence presented by other authors (De Hoon, 2007; Domingo and O’Neil, 2014; He and Su, 2013; Kritzer and Silbey, 2003).

If power imbalances are truly to be overcome in legal systems around the world, there needs to be a concerted and genuine effort to change how they are addressed. In particular there are large groups of significantly disadvantaged individuals. These groups may need special assistance to pursue their claims. The time-limits that are frequently placed on legal-aid provision (either directly through the length of free consultation, or indirectly through a limit to the costs that will be covered) may well be to the disadvantage of more disadvantaged groups who require more time to have the process explained and documents and letters translated. Accordingly it seems that legal aid (where it exists at all) may need to be more significantly nuanced to take account of individuals ability to understand and engage (their empowerment) as much as their ability to pay. Where legal aid does not exist addressing these problems becomes more challenging, and requires that systems and processes take account of individual’s ability to comprehend and take part, and provide assistance or leniency as appropriate.

It is predominantly these disadvantaged groups that are represented in the data presented in this thesis (slum dwellers in Kenya, Chapter 5, those accessing free student-staffed legal information in the Netherlands, Chapter 6, and internally displaced people in Azerbaijan, Chapter 8), so it is to be expected that such power imbalances will become visible, however this does not reduce the need for these imbalances to be addressed. It appears likely that power imbalances are contributing to lowered empowerment among disadvantaged groups around the world.

### 9.3.3 ‘Formal’ Problems Produce Lower Empowerment Ratings than ‘Informal’ Problems

Another wider interpretation of much of the data presented in these papers is that ‘formal’ problems produce lower empowerment levels than ‘informal’ problems. This is explicated in more detail in Chapter 7 in relation to the data from Yemen and Kenya, however there is some indication that this pattern is replicated across the countries studied. In Azerbaijan, administrative problems were given the lowest empowerment scores (closely followed by employment and landlord problems), while in the Netherlands land problems scored the lowest empowerment levels, followed by Business disputes.

Formality is another possible explanation of low SLE ratings in some domains. In particular, the low scores for land and business problems in the Netherlands are of some interest. Both land and business problems are likely to be between respondents of relatively equal power, and so we need to look elsewhere for an explanation for the low scores given to these problems compared to neighbour and family problems. One of the likely explanations lies in the relative formality of the processes to solve land and business problems compared to those with neighbours or family members. Land and business transactions and conflicts are surrounded by a high level of law and regulation (Palacio, 2006), which govern how they should be handled and the procedures that must be followed. This formality may well act as a procedural barrier to individuals who feel they do not understand how to complete the formalities, or that they are not capable of doing so. Equally it may be that they feel that the other respondent is simply more capable of doing so than they are.

### 9.3.4 Socio-Economic Factors and Empowerment

Another theme that is brought up throughout the data collected in these papers is the effect of socio-economic factors on empowerment. In each country studied, where socio-economic data was collected (this was regrettably not possible in the Dutch sample) it demonstrated an effect on the empowerment of individuals. Not only did it produce an impact in each case, the impact generated was generally consistent across the contexts and countries.

In particular, income level and education appear to have a positive impact on empowerment, with income level in Azerbaijan and education in Yemen and Kenya producing slight differences in legal empowerment

ratings. This fits into the wider development narrative, that in order to improve outcomes for the very poor in society, we need to provide economic growth and higher educational attainment (Lyons, 2013; Narayan, 2005; Payne et al., 2007). However, the fact that these socio-economic factors appear to have a relatively small impact upon empowerment ratings in the different domains, indicates that empowerment is not primarily determined by these factors, although they do seem to have some impact. Indeed, the limited impact that is demonstrated by socio-economic factors is arguably as worthy of comment as the impact that they generate. For example, it is perhaps more surprising to see the limited impact of education and income on legal empowerment amongst IDPs in Azerbaijan (Chapter 8), and the limited (positive) impact it has in Yemen and Kenya (Chapter 5). It is thus possible to draw a general implication, that the limited support found for the current developmental approach focusing on education and income, and the indications that these socio-economic factors are not as important in relation to legal empowerment as might be expected, indicate that focusing on education and income may not be the most efficient manner of boosting legal empowerment.

## 9.4 Summary

There is a range of future research that would be of considerable benefit in expanding the evidence base for SLE. The foremost of these would be a longitudinal study of SLE. If the measure is to have significant value in real-world application, it should not only differentiate between domains and tasks (as it has been shown to do), but the ratings should contribute to the prediction of behavior when such problems are encountered. This research would answer the question ‘Do SLE ratings in a domain predict behavior in reality?’ There is a sound theoretical basis anticipating this outcome (see Chapter 2), however it has yet to be demonstrated in the real world. Should SLE be demonstrated to predict future behavior, the case for using it extensively as an indicator for legal empowerment would be even stronger.

Such a study would also provide further information regarding the effect of different experiences on SLE. We have already seen that experience of legal problems reduced SLE ratings amongst one population (Chapter 3), but this requires further study to replicate the findings and demonstrate the extent to which this finding is applicable to wider populations. In the same vein, longitudinal data would also enable us

to examine with more clarity the predictors of SLE ratings, i.e. those things that improve the legal empowerment of an individual. Such information would be invaluable to individuals and organisations interested in the promotion of legal empowerment worldwide.

There is also much research that is necessary to further develop the concept and application of SLE. Further work on the tasks which are seen as necessary for different domains in different circumstances, as well as clarification of ‘critical tasks’ (see Chapter 3). The identification of critical tasks (where they exist) would be of considerable use to practitioners who wish to improve legal empowerment levels. It would also be of interest to look at what interaction exists between legal knowledge and empowerment. Clearly, links would be expected as legal education is the most frequently employed legal empowerment approaches utilized (Goodwin and Maru, 2014), but given the lack of improvement in legal empowerment following experience (and therefore presumably some increase in knowledge or understanding) of legal processes demonstrated in Chapter 5), there are clearly nuances to this relationship that need to be investigated.

There is a significant cultural element to legal empowerment. The avenues available to solve a problem vary somewhat dependent on cultural differences, and it is likely that expectations, and preference for problem solving methods, vary as well (Kandler et al., 2012; Laxminarayan, 2012; Otto et al., 2011). How do these differences impact upon legal empowerment? We have seen that SLE can be used in these different environments to yield valuable information, but a deeper understanding of the impact of cultural differences on legal empowerment would facilitate cross-border and inter-community empowerment comparisons.

Finally, a deeper investigation of the interaction of legal empowerment with socio-economic status would also provide information of great interest. There is an assumption of increased empowerment with increased wealth and education, which is borne out by evidence presented here (see Chapter 7), but the particularities of this relationship are also still to be fully examined. Given the overall lack of empowerment found in relation to problems with administrative bodies, how do economic advantage and education level moderate this relationship? Given that the aim of legal empowerment is to assist the poor and vulnerable to achieve better outcomes (High Level Commission on Legal Empowerment of the Poor, 2006), there seem to be few investigations that would be considered more pertinent.





# 10

## Recommendations

This short section highlights the most important recommendations to three groups of organisations; Governments, Practitioners (both those specifically interested in the development of legal empowerment and those who are involved in legal processes), and international development funding organisations.

### 10.1 Governments

Using a measure of subjective legal empowerment to carry out regular, population-weighted, measurements of legal empowerment will provide valuable information about citizens' levels of legal empowerment, as well as the barriers and bottlenecks that are blocking greater empowerment, populations who are in particular need of assistance, and the general direction of travel of legal empowerment amongst the population.

Making legal empowerment a targeted area for improvement allows a holistic approach to legal problems that is not limited by the particular state-mandated problem-solving mechanism. This enables a government to assess the empowerment of its population in relation to all of the potential problem-solving avenues available to them, and can encourage the development of services that fit, and are responsive to, the needs of the service users.

### 10.2 Practitioners

Using a measure of subjective legal empowerment to assess impact on legal empowerment can be a practical and useful tool to evaluate the success of empowerment-focused initiatives. An SLE based measure can highlight areas for improvement of existing services, or areas where new services need to be developed to improve the empowerment of target populations.

### 10.3 Funders

Incorporating SLE based measures into the evaluation of projects with an aim to improve legal can simply and effectively assess their success or otherwise, create baselines from which to establish the direction of travel, and highlight areas where future projects might make the greatest impact.

The development of a universal, easily applicable, quantitative measure of legal empowerment allows the measurement of legal empowerment among whole populations, disadvantaged, and/or minority groups to become not just a pillar of the law and development agenda, but allows the discussions of what works to improve legal empowerment to develop beyond the theoretical, into practical field studies, that should enable us to work with ever greater efficiency to improve the lives of the poor and vulnerable throughout the world.

# Appendix I: Kituo Cha Sheria Questionnaire (English)

## Kituo Cha Sheria: Baseline Measure

FILL IN YOUR PERSONAL CODE AND THE NUMBER OF THIS QUESTIONNAIRE

Interviewer's personal code \_\_\_\_\_

Questionnaire No. \_\_\_\_\_

Section: \_\_\_\_\_

Justice Center / Church / School / Door-to- door / Other: \_\_\_\_\_

The goal of this questionnaire is to get answers from people that help us get an idea of the extent in which they feel legally empowered. In the questionnaire, you find various items asking people about their feelings of legal empowerment in hypothetical situations. We want them to provide answers on how they think their situation would be if they would have a legal problem.

Interviews should take place in a private setting.

*NO OUTSIDERS CAN BE PRESENT*

#### INTRODUCE YOURSELF

My name is \_\_\_\_\_ and I am from University of Nairobi/ Kenya School of Law/Kenyatta University. I am cooperating in a study that focuses on how people living here see their access to justice. I would like to ask you a few questions about this.

*(If you doubt whether people are 18 years or older state: If you are 18 years or older, I would like to ask you a few questions about this.)*

It will take about 20 minutes of your time. If you have time to cooperate, we can provide you 100 KES to compensate you.

*IF NO:*

Thank you very much for your time.

*IF YES:*

I am going to ask you questions about difficulties when people have a legal problem. Bear in mind: there are no right or wrong answers: we are interested in how you feel, and what your ideas are. First, I am going to ask you for some personal information. Your answers will be kept strictly confidential and will not be identified by name.

## Demographics

1) INDICATE GENDER RESPONDENT  Male  Female

2) What is your year of birth:\_\_\_\_\_?

3) How many people are there in your household: \_\_\_\_\_?

3a) How many sources of income does your household have \_\_\_\_\_?

3b) What is the average monthly income of your household  
(all income together)?

- Less than 1,000 KES
- 1,000 - 2,000 KES
- 2,000 - 5,000 KES
- 5,000 - 10,000 KES
- 10,000 - 20,000 KES
- 20,000 - 50,000 KES
- >50,000 KES

3c) What is the average monthly expenditure of your household  
(all spending together)?

- Less than 1,000 KES
- 1,000 - 2,000 KES
- 2,000 - 5,000 KES
- 5,000 - 10,000 KES
- 10,000 - 20,000 KES
- 20,000 - 50,000 KES
- >50,000 KES

4) What is the highest level of education you enjoyed?

\_\_\_\_\_

5) a) Where were you born? \_\_\_\_\_

b) How long have you lived in Kibera / Kamukunji?: \_\_\_\_\_  
years

5C) Have you ever been engaged in a legal matter?

\_\_\_\_\_

5D) Short description (what was it about, how did they proceed, what was the outcome, etc.):

## This section is about Employment Conflicts

6) a) Imagine that you had a conflict with an employer. For instance, about working conditions, pay, or being made unemployed. How likely is it that you would get a solution to the problem? (USE CHART A):

\_\_\_\_\_

b) If you did receive a solution, how fair do you think it would be? (USE CHART B):

\_\_\_\_\_

7) If you had such a conflict with an employer, do you think you could complete the following, and if so, how confident are you?: (USE CHART C)

Task	Could Complete?	Confidence
a) Getting information about your labour rights and the law concerning employment	Yes/No	_____
b) Collecting appropriate documentation or evidence	Yes/No	_____
c) Talking to your employer about the problem	Yes/No	_____
d) Getting help to reach a solution with your employer	Yes/No	_____
e) Finding a 3rd party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against your employer	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against your employer	Yes/No	_____



## This section is about Landlord or Tenant Problems

8) a) Imagine you had a conflict with a landlord. Perhaps about a rent increase, or being evicted. How likely is it that you would get a solution to the problem? (USE CHART A): \_\_\_\_\_

b) If you did receive a solution, how fair do you think it would be? (USE CHART B): \_\_\_\_\_

9) If you had such a conflict with your landlord, do you think you could complete the following, and if so, how confident are you?: (USE CHART C)

Task	Could Complete?	Confidence
a) Getting information about tenancy rights and the law concerning landlords and leases	Yes/No	_____
b) Collecting appropriate documentation or evidence	Yes/No	_____
c) Talking to your landlord about the problem	Yes/No	_____
d) Getting help to reach a solution with your landlord	Yes/No	_____
e) Finding a 3rd party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against your landlord	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against your landlord	Yes/No	_____

## This section is about Land Problems

10) a) Imagine you had a conflict over some land. For instance, someone else claims they own your land, or are trying to take a piece of it. How likely is it that you would get a solution to the problem? (USE CHART A):

\_\_\_\_\_

b) If you did receive a solution, how fair do you think it would be? (USE CHART B):

\_\_\_\_\_

11) If you had such a conflict over some land, do you think you could complete the following, and if so, how confident are you?: (USE CHART C)

Task	Could Complete?	Confidence
a) Getting information about your land rights and the law concerning land	Yes/No	_____
b) Collecting appropriate documentation or evidence	Yes/No	_____
c) Talking to the other party about the problem	Yes/No	_____
d) Getting help to reach a solution with the other party	Yes/No	_____
e) Finding a 3rd party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against the other party	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against the other party	Yes/No	_____

## This section is about Neighbour Problems

12) a) Imagine you had a conflict with a neighbour. For instance, they are making a lot of noise, or have slandered you. How likely is it that you would get a solution to the problem? (USE CHART A):

\_\_\_\_\_

b) If you did receive a solution, how fair do you think it would be? (USE CHART B):

\_\_\_\_\_

13) If you had such a conflict with your neighbour, do you think you could complete the following, and if so, how confident are you?: (USE CHART C)

Task	Could Complete?	Confidence
a) Getting information about your rights and the law	Yes/No	_____
b) Collecting appropriate documentation or evidence	Yes/No	_____
c) Talking to your neighbour about the problem	Yes/No	_____
d) Getting help to reach a solution with your neighbour	Yes/No	_____
e) Finding a 3 <sup>rd</sup> party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against your neighbour	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against your neighbour	Yes/No	_____

## This section is about Family Problems

14) a) Imagine you had a conflict with someone else in your family, perhaps there is a conflict over inheritance, or a divorce. How likely is it that you would get a solution to the problem? (USE CHART A):

\_\_\_\_\_

b) If you did receive a solution, how fair do you think it would be? (USE CHART B):

\_\_\_\_\_

15) If you had such a conflict with someone in your family, do you think you could complete the following, and if so, how confident are you?: (USE CHART C)

Task	Could Complete?	Confidence
a) Getting information about your family rights and the law	Yes/No	_____
b) Collecting appropriate documentation or evidence	Yes/No	_____
c) Talking to your family member about the problem	Yes/No	_____
d) Getting help to reach a solution with your family member	Yes/No	_____
e) Finding a 3 <sup>rd</sup> party to make a decision (e.g. community or religious leader)	Yes/No	_____
f) Starting a court proceeding against your family member	Yes/No	_____
g) Getting a lawyer to help you in a court proceeding against your family member	Yes/No	_____

**This final section is about how easy you think it is to do certain things...**

16) Please answer these questions by indicating how easy you feel it is to achieve the following: (USE CHART D)

- a) Getting Access to a Paralegal \_\_\_\_\_
- b) Getting Access to legal information \_\_\_\_\_
- c) Getting access to a lawyer \_\_\_\_\_
- d) Knowing what you are likely to get as an outcome to a problem  
\_\_\_\_\_

17) a) If you were to look for information about your rights and the law, where would you go?

- |   |  |
|---|--|
| <input type="checkbox"/> Family/friends         | <input type="checkbox"/> Police                              |
| <input type="checkbox"/> Lawyer                 | <input type="checkbox"/> Church/mosque/temple                |
| <input type="checkbox"/> NGO                    | <input type="checkbox"/> Village Elder                       |
| <input type="checkbox"/> Chief                  | <input type="checkbox"/> Internet, newspapers, journals etc. |
| <input type="checkbox"/> Government Institution | <input type="checkbox"/> Other _____                         |

b) Why would you go to this person or place?

\_\_\_\_\_

18) a) If you wanted help in reaching a solution to a problem, who would you ask?

- |   |   |
|---|---|
| <input type="checkbox"/> Family/friends | <input type="checkbox"/> Police                 |
| <input type="checkbox"/> Lawyer         | <input type="checkbox"/> Church/mosque/temple   |
| <input type="checkbox"/> NGO            | <input type="checkbox"/> Village Elder          |
| <input type="checkbox"/> Chief          | <input type="checkbox"/> Government Institution |
| <input type="checkbox"/> Other          | _____   |

b) Why would you ask this person?

---

19) a) If you were looking for a third party to make a decision, who would you go to?

- |   |   |
|---|---|
| <input type="checkbox"/> Family/friends | <input type="checkbox"/> Police                 |
| <input type="checkbox"/> Lawyer         | <input type="checkbox"/> Church/mosque/temple   |
| <input type="checkbox"/> NGO            | <input type="checkbox"/> Village Elder          |
| <input type="checkbox"/> Chief          | <input type="checkbox"/> Government Institution |
| <input type="checkbox"/> Other          | _____   |

b) Why would you go to this person?

---

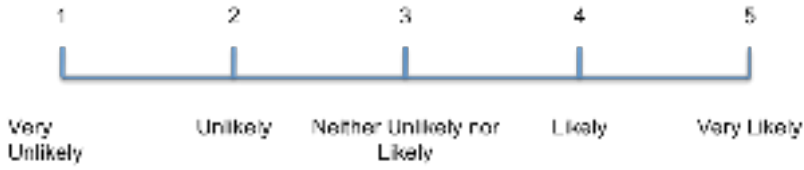


Figure 11.1: Chart A



Figure 11.2: Chart B

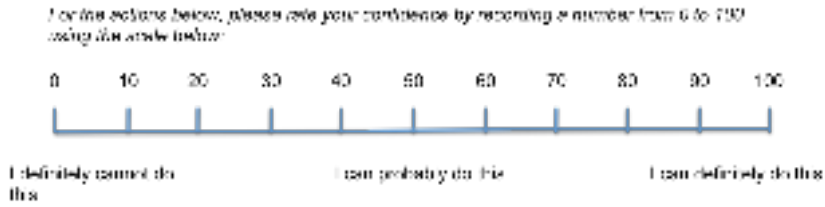


Figure 11.3: Chart C

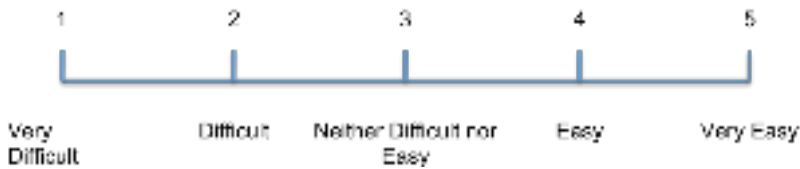


Figure 11.4: Chart D

# Appendix II: Rechtswinkel Questionnaire (English)

Dear Sir/Madam,

Thank you for taking the time to complete this short questionnaire. This is designed to find out about the needs of people who use the Rechtswinkel, as well as some information about their belief in their ability to achieve a solution to their problem.

This questionnaire is entirely voluntary, and completing this questionnaire in no way affects the quality or availability of any services to you. Any information you provide here will be kept strictly confidential and anonymous. No information that could be used to identify you will be made public. The data you provide will be used to help improve the Rechtswinkel.

Thank you for your co-operation  
The Rechtswinkel



1) In the last 3 years, have you had any of the following types of problems (other than the one you are at the Rechtswinkel to discuss)? (please tick all that apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Problems related to your personal security (violence, threats, other) | <input type="checkbox"/> Problems related to use, ownership and claims to housing or land |
| <input type="checkbox"/> Problems related to family relationships                              | <input type="checkbox"/> Problems claiming social security benefits                       |
| <input type="checkbox"/> Problems with neighbours  | <input type="checkbox"/> Business disputes with public authorities                        |
| <input type="checkbox"/> Purchase of defective or dangerous goods or services                  | <input type="checkbox"/> No Conflicts in the last 3 years.                                |

2) Thinking about the most recent problem (other than the one you are at the Rechtswinkel to discuss), how did the problem affect your life? (please tick all that apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Loss of employment | <input type="checkbox"/> Stress                  |
| <input type="checkbox"/> Loss of time       | <input type="checkbox"/> Loss of money           |
| <input type="checkbox"/> Health Problems    | <input type="checkbox"/> Damage to Relationships |

Other \_\_\_\_\_

3) Did you make any effort to resolve the problem?

- Yes  No

4) Did you contact the other party?

- Yes  No

5) Did you manage (alone or with an intermediary) to reach an agreement with the other party?

- Yes  No

6) At this moment is the problem solved?

- Yes  No

IF NO: What are the reasons for the problem to remain unsolved?  
(please tick all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> Did not have sufficient money                | <input type="checkbox"/> Did not have enough time       |
| <input type="checkbox"/> The problem was not worth the expected costs | <input type="checkbox"/> The other party has more power |
| <input type="checkbox"/> It was difficult to find out what to do      |   |

Other \_\_\_\_\_

7) Where did you go for information, advice and personal support?  
(please tick all that apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Family members, friends, colleagues      | <input type="checkbox"/> Lawyer                              |
| <input type="checkbox"/> Municipality                             | <input type="checkbox"/> Central Public Authority            |
| <input type="checkbox"/> Police                                   | <input type="checkbox"/> Employer                            |
| <input type="checkbox"/> Rechtswinkel                             | <input type="checkbox"/> Politician                          |
| <input type="checkbox"/> Professional Association                 | <input type="checkbox"/> Internet                            |
| <input type="checkbox"/> Court/Other dispute resolution mechanism | <input type="checkbox"/> Did not look for information/Advice |
| <input type="checkbox"/> Don't know/Do not want to answer         |  |

8) What person/organisation did you ask to intervene? (please tick all that apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Family members, friends, colleagues      | <input type="checkbox"/> Lawyer                              |
| <input type="checkbox"/> Municipality                             | <input type="checkbox"/> Central Public Authority            |
| <input type="checkbox"/> Police                                   | <input type="checkbox"/> Employer                            |
| <input type="checkbox"/> Rechtswinkel                             | <input type="checkbox"/> Politician                          |
| <input type="checkbox"/> Professional Association                 | <input type="checkbox"/> Internet                            |
| <input type="checkbox"/> Court/Other dispute resolution mechanism | <input type="checkbox"/> Did not look for information/Advice |
| <input type="checkbox"/> Don't know/Do not want to answer         |  |

9) Which costs were a significant barrier to solving the problem? (please tick all that apply)

- Payment to lawyers or other helpers
- Court Fees
- Travel expenses
- Costs of lost time
- Communication Costs
- Expected stress and negative emotions
- Other \_\_\_\_\_
- Don't know

10) Please indicate how likely you think you would be to get a fair solution if you...

	Very Unlikely	Unlikely	Neither Unlikely nor Likely	Likely	Very Likely
had a conflict with your employer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
had a conflict with a family member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
had a conflict with a neighbour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
had a land dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
had a business dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
became a victim of crime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11) Finally, please indicate how you came to hear of the Rechtswinkel:

- Newspaper
- Friend/Relative
- Professional
- Poster
- Previous Experience
- Other

Thank you for completing this Questionnaire!

# Appendix III: PRAXIS Questionnaire (English)

## Praxis/TISCO - Legal Needs/SLE Survey

Date: \_\_\_\_\_ Community/Municipality: \_\_\_\_\_

1. Birth: Day \_\_\_\_\_ Month \_\_\_\_\_ 19 \_\_ \_\_

2. Years of Education (including primary, secondary and higher):  
\_\_\_\_\_

3. Gender:  Male  Female

4. Occupation: \_\_\_\_\_

5. How many people live in your home (only people with whom they lived (slept and ate) in the same house for the past 3 months):  
\_\_\_\_\_

6. How many of them are under 16 years of age? \_\_\_\_\_

## 7. Average monthly income:

- Less than 100AZN
- 100 - 250AZN
- 251 - 500AZN
- 501 - 750AZN
- 750AZN or more

## 8. In your experience, what kind of conflict from the list below are the most common conflicts in their neighbourhood or community

- |  |   |
|--|---|
| <input type="checkbox"/> Personal Security   | <input type="checkbox"/> Debt Problems        |
| <input type="checkbox"/> Sexual Assault  | <input type="checkbox"/> Property Conflicts   |
| <input type="checkbox"/> Neighbourhood Disputes  | <input type="checkbox"/> Employment Conflicts |
| <input type="checkbox"/> Family Conflicts  | <input type="checkbox"/> Accidents            |
| <input type="checkbox"/> Domestic Violence (Excluding sexual violence)                     | <input type="checkbox"/> Business Conflicts   |
| <input type="checkbox"/> Administrative problems (including benefits, Identification etc.) |   |

## 9. In the past 12 months, have you experienced a problem in any of the following categories? (please tick all that apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Personal Security                             | <input type="checkbox"/> Debt Problems        |
| <input type="checkbox"/> Sexual Assault                                | <input type="checkbox"/> Property Conflicts   |
| <input type="checkbox"/> Neighbourhood Disputes                        | <input type="checkbox"/> Employment Conflicts |
| <input type="checkbox"/> Family Conflicts                              | <input type="checkbox"/> Accidents            |
| <input type="checkbox"/> Domestic Violence (Excluding sexual violence) | <input type="checkbox"/> Business Conflicts   |
| <input type="checkbox"/> Administrative problems                       | <input type="checkbox"/> None, no conflicts   |

Think about the last problem you experienced - If NO problems, go to page 3

10. What was the problem? \_\_\_\_\_

## 11. Did you manage (alone or with an intermediary) to reach an agreement with the other party to resolve the problem?

- Yes       No

12. At this moment, is the problem solved?  Yes  No

**IF NO:** What is/are the major reason/s for the problem to remain unsolved?

---

13. Where did you go for information, advice and personal support for solving the problem? (please tick all that apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Family members, friends, colleagues | <input type="checkbox"/> Professional Association     |
| <input type="checkbox"/> Lawyer                              | <input type="checkbox"/> Politician                   |
| <input type="checkbox"/> Facilitator                         | <input type="checkbox"/> Internet                     |
| <input type="checkbox"/> Municipality                        | <input type="checkbox"/> Newspapers/Press             |
| <input type="checkbox"/> Central public authority            | <input type="checkbox"/> Court                        |
| <input type="checkbox"/> Police                              | <input type="checkbox"/> Other                        |
| <input type="checkbox"/> Employer                            | <input type="checkbox"/> Did not look for information |
| <input type="checkbox"/> NGO                                 | Why did you decide not to seek advice?                |
- 

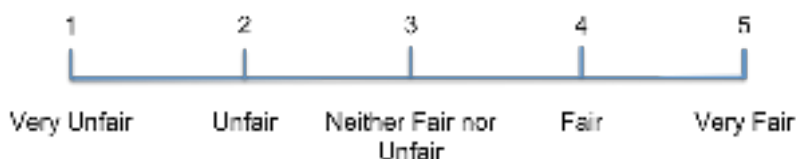
14. Which, if any, person/organisation did you ask to intervene and to influence the other party so that he/she would cooperate to a fair solution?

---

15. Which, if any, costs were a significant barrier for you to obtain a just outcome to the problem?

---

16. To what extent was the resolution of the problem fair/just in your opinion?:



17. How much effort did you spend to resolve the problem?



**Gender Equality**

18. Think of your 10 closest family and friends, how many of them do you think have suffered domestic violence in the last 12 months?:

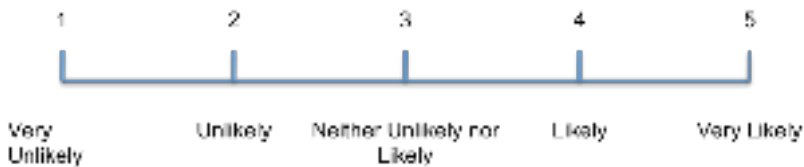
\_\_\_\_\_

**If you had a legal problem IN THE FUTURE...**

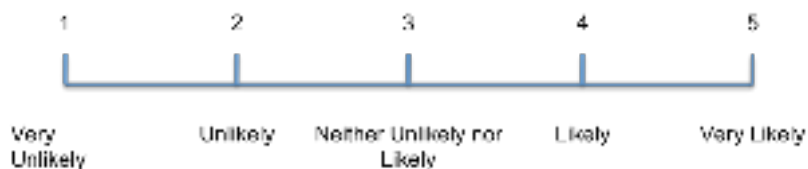
19. Whatever it might be, what are the steps you would take to try to solve the problem?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

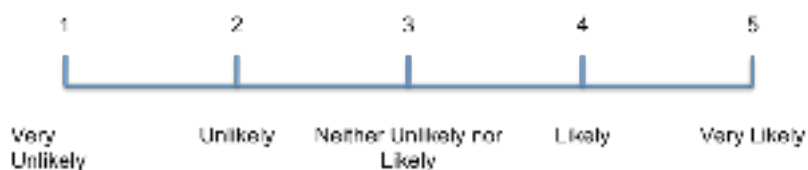
20. If you had a conflict with your employer tomorrow, perhaps about working conditions, pay, or being made unemployed. How likely is it that you would get a solution to the problem?



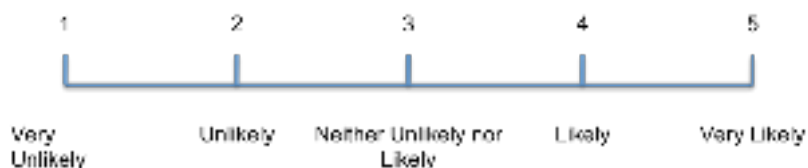
21. If you had a conflict with your landlord, perhaps about a rent increase, or being evicted. How likely is it that you would get a solution to the problem?



22. If you had a conflict with your neighbour, perhaps they are making a lot of noise or have slandered you. How likely is it that you would get a solution to the problem?



23. If you had a conflict with an administrative body, perhaps about obtaining benefits, or identity documents. How likely is it that you would get a solution to the problem?







# Appendix IV: Yemen

## Questionnaire (English)

### 14.1 Extract from full survey detailing SLE questions

Imagine you had a conflict with a neighbour who often causes a significant disturbance to you, for instance by making a lot of noise or leaving garbage out.

Question 8.6. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution      Very likely, I would get a solution

Question 8.7. If you did receive a solution, how fair do you think it would be?

Not fair at all      Very Fair

Imagine you had a problem with your employer, for example a conflict over your dismissal.

Question 8.8. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution                   Very likely, I would get a solution

Question 8.9. If you did receive a solution, how fair do you think it would be?

Not fair at all                                     Very Fair

Imagine you bought a cell phone from a big retailer, and it was defective

Question 8.10. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution                   Very likely, I would get a solution

Question 8.11. If you did receive a solution, how fair do you think it would be?

Not fair at all                                     Very Fair

Imagine you had a conflict with the official authority that issues driving licenses (or similar)

Question 8.12. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution                   Very likely, I would get a solution

Question 8.13. If you did receive a solution, how fair do you think it would be?

Not fair at all                                     Very Fair

Imagine you became a victim of domestic violence, and were physically hurt by a family member

Question 8.14. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution                   Very likely, I would get a solution

Question 8.15. If you did receive a solution, how fair do you think it would be?

Not fair at all                                     Very Fair

Imagine you lent approximately 25,000 Yemeni reals to a friend, and he refuses to pay it back

Question 8.16. How likely is it that you would get a fair solution to the problem?

Very unlikely, I would not get a solution                   Very likely, I would get a solution

Question 8.17. If you did receive a solution, how fair do you think it would be?

Not fair at all                                     Very Fair

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