

Decentralization and Legal Empowerment
of the Poor

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The past twenty-five years have seen significant shifts in geopolitics, the global environment, globalization, security, poverty, and economic inequality. These shifts create both new challenges and new opportunities for action. The 1980s, for example, witnessed a new wave in environmental consciousness, culminating in the United Nations Conference on Environment and Development—the Rio Summit—in 1992. In 1989, the end of the cold war ushered in a new era of geopolitics that brought the rethinking of development cooperation. Governance entered the development cooperation lexicon as a means of examining and better understanding how politics and power affect development opportunities and outcomes. The concept of sustainable livelihoods was introduced soon after that and received international political attention at the Rio Summit.¹ The 1990s witnessed many UN summits on various themes of development cooperation with accompanying high-level political commitment to take action, change behaviors, and increase resource flows to poor countries. This culminated with the publication, in 1996, of *Shaping the 21st Century*, by the Organization for Economic Cooperation and Development's Development Assistance Committee, outlining the ways

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in which donor behavior should change. The UN Millennium Summit in 2000 and the subsequent publication of its millennium development goals offered a set of internationally agreed upon development targets and shared responsibilities to improve aid effectiveness.

This chapter focuses on the role of decentralized governance (meaning decentralized government characterized by effective local interaction with civil society organizations) in developing countries in this new era of development cooperation. It argues that decentralized governance can help create an enabling environment for people to transform their lives by reconceptualizing power through an expansion of the rule of law. It examines the constitutive aspects of decentralized governance, and the ways that the latter can strengthen the assets and adaptive strategies that men and women use to make a living. A reexamination of the legal frameworks that govern the allocation and protection of property and labor rights and business opportunities for the poor can help them to take greater control of their livelihoods. Coupled with decentralized governance, these legal frameworks provide useful entry points for changing power relations so that the poor can benefit without doing so at the expense of others. This chapter also examines the linkages between decentralization, power, and poverty; the opportunities that decentralization creates for power sharing; and specific actions that can be taken to make the reallocation of power a positive-sum game through decentralized governance.

Decentralization, Power, and Poverty

Decentralization, defined as the “transfer of political, financial, administrative, and legal authority from central government to regional/sub-national and local governments,” plays an important role in changing power dynamics and in addressing local poverty reduction issues.² Successful decentralization allows for increased participation of the poor in community planning, project development and implementation, and problem solving, and increases the prospects for sustainability and local ownership.³ Theoretically, it allows

local people to become more engaged in the development process and to strengthen their capacity for decisionmaking by having greater access to local political participation.

For decentralization to effectively assist the poor in getting themselves out of poverty, it must be accompanied by fundamental structural changes in those decisionmaking processes that maintain asymmetric power relations and by changes that bring government nearer to the people. Bringing government closer to the people can be achieved in many ways. One entails giving a voice to the poor, offering greater opportunities for participation in political decisionmaking, and enhancing livelihood opportunities via government investment in pro-poor development projects. Although these changes should

have positive outcomes on the livelihoods of the poor, the reality is visibly different. Unintended outcomes arise from skewed power relations between the poor and local elites that allow the latter to capture control over local provision of goods and services. The typical response to "elite capture" has been the advocacy of empowerment programs that are, because of skewed power relationships, usually doomed from the outset.

The relationship between poverty and power is rarely discussed in studies of development cooperation. Power is defined as "not just something one holds, but rather something one has or does not have in relation to others."⁴ Poverty is a symptom of power inequalities because those who lack power often lack access to basic resources. Poverty is created, maintained, and often exacerbated by power relationships in society because it is these social relationships that determine how resources are distributed among people. Thus, poverty is created when the powerful limit other people's access to the resources they need to meet their basic needs. As a result, power becomes defined as material control.

In addition, poverty can be attributed to "overt bigotry against the poor and against low-power groups who are associated with poverty" as dominant groups continue to blame poverty on the "character deficits of poor people."⁵ The strong prejudice against the poor (or powerless) by the rich (or powerful) further restricts poor people's power and increases poverty.⁶ Therefore, we can define power as the capacity of the poor to control the factors that impact their livelihoods.

Although power is often discussed as a zero-sum game, it is possible to perceive of power as a positive-sum game in which everyone benefits. A positive-sum outcome "becomes possible when the size of the pie is somehow enlarged so that there is more wealth to distribute between the parties than there was originally, or some other way is devised so everyone gets what they want or need."⁷ Those who have power, however, never willingly give it up. Development initiatives that help the poor survive at a subsistence level through income generation projects and basic health and education programs are, of course, often welcomed, but they are allowed to succeed because they maintain and even reinforce existing skewed power relations.

If real empowerment of the poor appears to be succeeding, the establishment (those who hold formal power) is likely to crush such a process in its incipient stage. Think of a plantation owner losing cheap labor because his employees can become union members. He would use his "connections" to prevent any such thing. Yash Tandon also expresses this point of view when he writes that "power is not there for the giving but the taking. Those who 'give' power condition it; power has to be taken."⁸ Thus, it appears that power relations are changed through processes of self-empowerment. To achieve this change in power relations, power must be reconceptualized as a positive-sum

game based on mechanisms that help the poor empower themselves and at the

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same time create benefits for “the establishment.”

Negotiation can be seen as either a zero-sum game or a positive-sum game. It is a zero-sum game when actors attempt to divide a fixed amount of something, since they can only increase their share at the expense of another. Negotiations can also be conceived of as a positive-sum game when actors work to “make the pie larger, so that all actors can have a bigger share.”⁹ To ensure that negotiations are a positive-sum game, actors must perceive themselves as partners rather than adversaries so that they can work together to “try to negotiate mutually beneficial outcomes.”¹⁰ Actors need to “search for innovative and original win-win solutions” so that they can address “problem[s] of mutual concern, invent options for collective gain and use objective criteria to decide outcomes.”¹¹ Expansion of the rule of law can offer greater access to legal benefits and protections to the poor and new opportunities for reducing poverty through decentralized governance.

Government decentralization can increase the likelihood of positive-sum outcomes by bringing power closer to local people. Theoretically, decentralization allows local governments to create a space where people can exercise greater political power by enabling them “to express their views and participate in local decision-making processes.”¹² Although decentralization can bring about positive-sum results, this does not always happen. People may participate at the local government level but may still feel disconnected from and skeptical about higher levels of government. For example, research conducted on decentralization in Uganda found that although people felt that decision-making at local levels of government was a positive-sum game, at higher levels of government they felt that the situation was closer to a zero-sum game.¹³ Further, they believed that higher-level leaders were constantly benefiting at their expense.¹⁴ This implies that for decentralization to create a positive-sum situation, there is a need for greater transparency within all levels of government. Leaders at the higher levels also need to ensure that there is adequate communication with local people so that the latter feel that their views and ideas are being listened to and acted upon.

Empowerment implies a change in power relations between the powerful and the powerless. It is not a neutral process because it can create social problems and resistance. Furthermore, empowerment can be both a zero-sum game and a positive-sum game. For example, empowerment that requires the redistribution of land or wealth from the powerful to the powerless may result in some people losing their assets and others benefiting from this. However, if empowerment increases productivity and income it may not lead to a zero-sum game. Empowerment that brings about a growth in self-confidence and personal abilities in addition to material benefits is a positive-sum game as well, since someone does not have to lose in order for someone else to gain.¹⁵

For societies to become self-empowered, actions need to be taken to confront “the multidimensional nature of poverty.” Actions that can effectively combat poverty include changing power relations within the community and the household.¹⁶ Social movements are important because they focus on the roots of poverty and disempowerment and work to challenge and improve the status quo. The problem with this approach is that social movements are more susceptible to resistance and opposition from those in power and may provoke violence.¹⁷

Mobilizing marginalized people to organize themselves can strengthen their cause and increase their power. Organization helps to overcome the weaknesses arising from the isolation of the poor and enables them to gain the power they need to effectively deal with issues related to poverty. Community-based organizations seeking to alleviate poverty are also more effective when membership is restricted to the poor. When all members of the community are included, the organization tends “to be dominated by the minority of elite

interests who will turn the activities of the organizations in their own favor.”¹⁸ A

community organization as such cannot fully provide the means to enable the poor to improve their situation; organizations for the poor need to be led by the poor themselves.

Although in some countries organizations can be legally recognized if they form cooperatives under a cooperative law, many organizations continue to work informally in order to avoid bureaucracy and possible state interference.¹⁹ The main reason for this is that the organization of marginalized people can lead to “a diffusion of power,” and organizing can prove to be difficult as it meets resistance from politicians at higher levels who believe that some of their current power would be redistributed to the poor.²⁰ Even if they are organized, the poor are often prevented from fully participating in the growth of their communities.

Decentralized governance is inextricably linked to broader conceptual challenges and opportunities. Decentralization has many forms. Deconcentration—the shifting of administrative responsibilities from central ministries and departments to regional and local levels of government—results in the least amount of power transferred to the local community. Devolution, on the other hand, which is “aimed at creating or strengthening independent units of government by devolving functions and authority,” provides the best opportunity for local-level participation.²¹ Devolution can play a major role in promoting self-empowerment and changing power relations between the haves and have-nots. Political decentralization (another term for devolution) is a transfer of political power that gives local populations increased decision-making power in political, social, and economic issues.²² Successful decentralization promotes “the well being of all people” and creates a situation in which the central government and the local governments share power. ²³

Decentralization helps promote democracy by allowing people at different levels of government to have a say in political decisions while allowing “for greater representation of various political, religious, social and ethnic groups.”²⁴

It can also support democratic reforms by encouraging greater accountability and legitimacy from the central government. In a decentralized system of governance, local communities become increasingly visible to the central government and thus are in a better position to monitor the actions of government officials and hold them accountable for the decisions they make. Decentralization “strengthens the capacity of local governments” by allowing them to take on functions that used to be filled by the central government and giving citizens the opportunity to participate in decisions affecting their community.²⁵ Decentralization allows the poor to voice their opinions and ideas about community concerns, so that they can participate in creating solutions to local development problems.²⁶

However, decentralization may not succeed in achieving these goals if local elites capture power. Although decentralization can increase local decision-making power and control, it can also redistribute power from central government officials to local elites.²⁷ To prevent this, decentralization should be accompanied by stronger government accountability. One way to achieve greater accountability is to create local community organizations comprising members of the general public and of opposition parties and civil society groups that work to hold the government accountable for its actions and decisions.²⁸

Decentralization is most successful if a state has a strong and legitimate central government and if local people are empowered—“otherwise it contains no intrinsic value for being a natural promoter of peaceful development and democracy.”²⁹ Decentralization should be viewed “as part of a framework for

state and public administration reform aimed at empowering local governments and communities legally, technically and financially to cater for their interests” while the central government remains responsible for higher state issues.³⁰ The participation of local people in governance is important for successful decentralization because it allows “local-level services to be tailored according to local preferences” and local knowledge and ideas to be applied in order to deal with community problems more effectively.³¹ With decentralization, local resources can also be employed more efficiently to meet local needs. Some local people may even be more willing to pay their taxes if they feel that they have increased control over the use of public revenues.³²

Decentralization and Power Sharing

As is evident from the foregoing discussion, decentralization is linked to a shift of power.³³ Indeed, decentralization may lead to good governance and poverty reduction only if it expands power through the rule of law. By

changing power relationships, decentralization can enable the poor to secure sustainable livelihoods. Decentralization, as a transfer of functional responsibilities from central governments to local authorities, alters social relationships and power structures that affect people’s access to and ownership of resources. To promote power sharing, a basic conceptual shift is needed in development assistance from the focus on needs to a focus on assets. The former emphasizes opportunities for donor activity, and the challenges of making aid more effective. The latter begins with what the poor already have or could have, and focuses on how to help them build their own prosperity, and in doing so addresses their needs. The needs of the poor are indeed great, but so is their potential to help themselves.

Enhanced local participation in decisionmaking designed to mobilize communities toward self-empowerment serves to improve the livelihoods of the poor. This can be done through articulation of common problems, followed by mobilization, the creation of political space, and, finally, the use of the law to confirm and protect newly recognized rights. Donors will do well to recognize this potential and work with it by designing development projects that begin with an assessment of the assets of the poor rather than an assessment of their needs.³⁴ The common assumption that the poor have no assets needs to be discarded.

Decentralization, accompanied by an expansion of legal rights for the poor, produces the conditions necessary to facilitate power-sharing, which in turn enables them to transform opportunities into sustainable livelihoods, become self-empowered, and contribute to poverty reduction. Sustainability implies the capacity to cope with and recover from shocks and stresses, and to benefit from economic effectiveness, ecological integrity, and social equity. The sustainable livelihoods approach demands a self-empowering model of development cooperation in which the poor seek to take power over their own destinies, rather than a model of cooperation essentially between donor and recipient governments. This is not to minimize the roles of these entities but to rethink them in some rather fundamental ways.

Implicit in the notion of decentralized governance as power sharing is conceiving of decentralization not as a centrifugal phenomenon that assumes a transfer of power away from the center, such as from national to local governments or from local elites to the poor, but as a structure for expansive, and therefore inclusive, decisionmaking. Decentralization can help to reverse exclusionary trends through targeted interventions from the bottom up. Thus, a feasible strategy must be in place for the poor to participate in processes that

identify existing assets and barriers toward upward mobility. Expanding the rule of law establishes an enabling environment in which opportunities for decentralized power sharing is conceived of as a positive-sum game, leading to self-empowerment. It is in this context that we draw on the lessons learned in

decentralized governance, described elsewhere in this book, to examine its role in promoting sustainable livelihoods in poor but well-governed countries, failed and fragile states, and middle-income countries.

Making Power a Positive-sum Game

Decentralized governance supports the expansion of sustainable livelihoods; both are associated with ownership and self-empowerment from the bottom up. Specifically, pro-poor policies that protect property and labor rights, expand access to justice and the law, and create business opportunities help reverse trends in developing countries that force the majority of the poor to operate outside formal legal and economic systems.

Property Rights

Attaining sustainable livelihoods requires that the poor have legal rights that protect the value of their property and labor and that enhance their opportunities for upward mobility. It is estimated that land and buildings account for up to three fourths of a country's wealth in most economies,³⁵ but in many developing countries property is not formally registered. Further, in many countries, such as India, income derived from "commons" resources such as forests, fisheries, and agricultural lands accounts for 15 to 25 percent of household incomes.³⁶

The concept of property is broadened in scope when it is linked to land tenure, buildings, tools, equipment, and natural resources and is redefined to include both formal and informal property holdings of the poor. To assist the millions of poor around the world who informally claim these assets yet lack the legal capacity to capitalize on them requires a process of decentralization that expands these rights at the local level and provides greater opportunity for the poor to participate in securing sustainable livelihoods.

One form of property is land, which not only is an economic asset but also is linked to social, political, and cultural sources of power. Although land itself is an easily identifiable asset, millions of the poor who depend on land for their livelihoods lack formal access to rights that recognize and protect this asset. For example, It is estimated that in West Africa, only 2 percent of land ownership is formally documented. The fact that the majority of the poor do not legally register their property is attributed to the complex and costly systems that currently regulate property rights in most developing countries. These systems deter the poor from registering property because the benefits of doing so often do not justify the cost and effort.

Formal registration systems provide local and national governments with the tools necessary to identify and protect the assets of the poor while generating economic growth. Land registration enables the poor who depend on land for their livelihood to enhance the economic opportunities of this asset.

According to the World Bank publication *Doing Business in 2006*, simplifying property registration procedures can potentially spur economic growth, reduce corruption, and enhance property rights. In Thailand, for example, the reduction of barriers to acquiring titles for land resulted in the issuance of 8.5 million property titles, almost doubling land value and investment.³⁷

Simplifying the process of registering property through recording and titling,

however, is only a part of the process of empowering the poor. Ultimately this measure must be accompanied by policies that ensure that the poor are able to benefit from property to which they are rightfully entitled. This is essential to the expansion of property rights. Property registration reduces the vulnerability of the poor by preventing those in power from buying and selling land that is considered unclaimed. For property rights to result in the empowerment of the poor, rights associated with property must not benefit elites at the expense of the poor. The restoration of security through acquiring ownership of fungible property facilitates the transition of the poor from the informal to the formal economy and reduces their vulnerability.

It is likely that the process of registering property and the rights associated with registration would minimally impact poverty reduction if they were driven primarily by the central government. Historically, topdown approaches to property rights have resulted in the concentration of financial advantages among existing power holders. This is why the majority of the world's poor continue to be pushed into the informal sector. The lack of real economic, social, or political incentives reduces the faith of the poor in formal institutions, particularly national governments. The notion that pro-poor property rights can in fact reduce poverty and generate economic growth has been gaining widespread acceptance, most prominently through the work of the Peruvian economist Hernando de Soto.³⁸ Simultaneously there is growing acceptance that local customs and systems of tenure have to be incorporated into the formal legal framework for the latter to offer an environment for sustainable livelihoods. The process of integrating these dual themes associated with enhanced property rights requires the identification of these local systems and the ways in which they can contribute to poverty reduction.

Decentralized governance can contribute to the creation of effective property rights by localizing efforts to integrate existing systems of land tenure into a formal legal framework by building on local knowledge and practices that informally govern existing systems of tenure. Decentralized governance can establish the institutional environment necessary to alleviate poverty—one in which property rights are inclusive, locally legitimate, and legally defined and protected.

Labor Rights

Labor, as an income-generating activity, also improves the well-being of the poor because the majority of the world's poor find that securing a job is the

main way to get out of poverty.³⁹ workers in developing countries, however, face many constraints that force them to operate outside the formal economy. These constraints stem from laws that directly affect workers' rights and determine their capacity to collectively organize. Consequently decentralization must deal with two key components broadly associated with labor rights: constraints faced by workers in the formal sector that force the poor to operate outside it, and rights that protect workers once they enter the formal economy.

At the same time the expansion of labor-rights should ensure that entrepreneurs are not driven out of business. Protection of workers' rights should lead to a positive-sum outcome, in which businesses continue to profit and profit-seeking activities do not infringe on the rights of workers. The expansion of labor rights should increase productivity and be seen by business leaders as a source of increased profit. The convergence of formal and informal systems should result in a situation where power can be shared by the expansion of rights and protection of the poor. A positive-sum convergence requires a thorough reexamination of economic institutions and a better understanding of the economic contributions of informal workers.

Three conditions are necessary for labor rights and business viability to reinforce each other: first, the capacity of workers to collectively organize must be

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enhanced; second, local governments must help businesses and informal workers to assess their economic contributions; and third, local governments must become more responsive to the needs of businesses in facilitating the movement of workers from the informal sector into the formal economy.

The poor cannot be forced into the formal economy, nor can the formal economy be drastically altered to accommodate informal activities. However, decentralization provides the means of gradually integrating the two. Opportunities must be widespread, from access to strengthened labor rights for the poor to increased productivity and economic gains for businesses. This situation is indicative of what a positive-sum outcome would look like. Consultative processes as a means of engaging the poor and businesses in negotiations will necessarily take place at the local level, and can facilitate national processes that, when operating in conjunction, will reinforce each other and create a stronger enabling environment.

Expanding Legal Business Opportunities

Many factors contribute to an unstable economy and have significant impacts on the livelihoods of the poor. Inefficient markets, distorted macroeconomic policies, weak institutions, and high inflation rates all weaken economic performance in developing countries and deter the poor from participating fully in the economy. For the poor to become empowered, the expansion of legal business opportunities and the expansion of property and labor rights need to occur simultaneously. Regulatory limitations can exclude the poor from access

to savings accounts, mortgages, consumer credit, insurance, and money transfers and restrict their ability to leverage their assets, safely store possessions, or fund entrepreneurial activity.

What type of environment is necessary for the poor to start profitable businesses in the formal market that build on the innovations, productivity, and profits that they experience in the informal sector? For the poor to access financial services, the regulatory environment has to be conducive to the needs of small businesses. Decentralized governance can make it easier to simplify local regulations and encourage the poor to participate in entrepreneurial activities. Increased accountability, accessibility, and transparency all contribute to greater trust in formal systems.

Of equal importance is the ability of the poor to access credit. Micro-finance programs give the poor (and especially poor women) more access to credit and loans to fund entrepreneurial activity. Because of regulatory constraints, however, few microfinance programs have become sustainable, efficient, and part of the mainstream economy. The complexity and inefficiency of business regulations or the lack of business laws can result in exorbitant interest rates, forcing the poor to operate in the black market or be exploited if they choose to get access to credit via unregulated microfinance schemes. Simple, supportive, and enforceable local regulations, along with adequate financial services such as savings accounts, can help to make microfinance institutions more sustainable. Effective local institutions can stimulate increased economic activity with savings and investment programs that benefit the poor, a crucial factor in transforming the assets of the poor into sustainable livelihoods. Thus, decentralization is key to ensuring the success of microfinance programs.

Access to Justice and the Rule of Law

For decentralized governance to have a positive impact on the capacity of the poor to attain sustainable livelihoods, the poor must have access to the legal justice system. Perceptions that the law benefits the few have significant impacts on the decisions made by the poor to operate outside the legal and regulatory

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system. A justice system that encourages fair dispute resolution and that borrows from customary legal practices, is the foundation for the acquisition of sustainable livelihoods. Public faith in political institutions and economic processes cannot grow unless the public has access to social justice. This is particularly true for women, who are among the most vulnerable members of society in both their productive and their reproductive roles.

The recognition and integration of customary legal systems into formal legal frameworks requires extensive dialogue among diverse groups. In a country such as Tanzania, with more than a hundred ethnic groups, central government policies are not likely to be either inclusive or sustainable. Although there is potential for conflict whether customary, formal, and informal legal systems

operate independently or in association with each other, participatory processes that engage local communities can result in negotiations and compromise. Decentralized governance requires participation and interaction at all levels, linking stakeholders with each other in contributing to a culture of fairness, equity, and the rule of law.

Conclusion

This chapter analyzes the relationship between power and poverty and examines the potential for decentralization to change power relations in assisting the poor to achieve sustainable livelihoods. It argues for a shift in development assistance that focuses on the assets of the poor and on the use of a more inclusive legal system to help the poor use local assets to overcome poverty and create wealth. It describes some specific ways to expand legal inclusiveness in the areas of property and labor rights, to improve business organization, and to promote a pro-poor justice system. Decentralization is considered pivotal in helping to establish such an inclusive legal system where the poor can help create prosperity through legal recognition of their assets, entitlements, and the activities on which their livelihoods are based.

Notes

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