

Collective Representation and the Last Mile

*Innovations Case Commentary:
Protimos*

While much of the discussion about legal empowerment focuses on adjusting systems to improve individual access to justice, Protimos has a different and unique approach: collective representation. By serving community-level interests through formal litigation, Protimos represents last-mile communities in systems that have historically ignored or marginalized them. When these actions succeed, they protect the homes and livelihoods of the populations who need them most. Within the legal services profession, too few organizations focus on the tremendous potential of emerging markets in low-functioning formal systems. Although one could make plenty of commercial arguments about service models that are accessible to low-resource populations, Protimos focuses on the development and empowerment that result from representing last-mile communities.

As many have observed, formal legal structures have largely failed to make the rule of law accessible to low-resource communities. However, the rising costs of formal legal services, the increasing complexity of administrative processes, and the emergence of new connection technologies, along with many other factors, are driving a period of innovation in dispute resolution systems around the world. Much of this work focuses on improving access to justice for individuals through systemic reforms, such as the adoption of alternative dispute resolution, user-centric design, legal information distribution, and new communication platforms. Of these, alternative dispute resolution (ADR), as a methodology and a catch-all term for informal systems, has achieved the most institutional recognition. That said, ADR processes typically rely on good-faith negotiations, which are less likely in situations involving large legal power disparities. Protimos fills that gap by enabling its client communities to bring actions in formal legal settings, thereby addressing a disparity in the design of ADR and legal services.

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By working at the community level, Protimos focuses on cultural and legal conceptions of collective rights to meet the basic needs of marginalized populations. This approach offers two major innovations: it prioritizes locally appropriate conceptions of rights and ownership, and it facilitates interaction between formal and community-driven mechanisms for distributing resources. Recognizing the difficulty of systemic reform, Protimos harnesses the benefits of collective action to deliver communal value and, gradually, progress.

Perhaps the most exciting aspect of this progress is the interaction between formal legal systems and customary mechanisms for resource management. The approach works equally well with communities that understand property rights as

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emanating from the individual or the collective. When a Protimos lawsuit succeeds, it protects interests that are typically managed by “informal,” customary, or community mechanisms. Its approach seeks to win collective resources through the formal system and then seemingly relies on the community to distribute those resources. Community management of resources and local dispute resolution hybridizes the implementation of a judgment, allocat-

ing authority to different parties at each stage of the process. This is one of the material differences between community representation and class-action lawsuits, which direct the distribution of judgments through formal means. Where litigation results in the community gaining assets, such as commercial protections for intellectual property, local management of those assets comes with the implied approval of the formal legal system. This is consistent with the prevalent trend of adopting ADR mechanisms to manage small claims and civil matters. By working with leaders in the client community to implement judgments, Protimos creates secondary benefits, including procedural precedent and capacity-building.

In many legal and administrative systems (especially common law systems), judicial decisions cumulatively define and interpret governance norms, informing similar subsequent cases. The value of precedent for protecting vulnerable communities is no different: each time Protimos wins a case, it creates at least the potential for similarly situated communities to take the same steps to seek justice. Although the formal value of a precedent varies significantly within and between legal and dispute resolution mechanisms, each positive outcome becomes a point

of reference for clients, practitioners, and the legal community at large. Taken alone, each case addresses only the issues raised by the litigating community. In the aggregate, though, cases that establish or protect the interests of last-mile communities begin to set, interpret, and apply increasingly inclusive social norms. There is also the potential that formal enforcement of community rights will have a deterrent effect on common abusers. This is not to imply that, by itself, case-by-case litigation is sufficient to drive systemic reform, but rather that it is a critical element of legal empowerment. The Green Light Programme is an interesting effort to capture and use an international protocol to replicate successful customary and community engagements. Although efforts to standardize and institutionalize norms across legal frameworks vary widely in outcome, every step toward effectively integrating formal and customary systems contributes to the overarching evolution of both systems. Protimos's success stories demonstrate the power of community legal representation, paving the way for subsequent advocacy and reform efforts.

Creating the procedural framework for empowerment, however, is rarely enough. As Ms. Darroch notes, community empowerment requires ongoing access to capable lawyers and a familiarity with the formal system. The process of working intensively with lawyers and the legal system can be very instructive for client communities, gradually reducing aversion and misinformation about the role of formal institutions. Protimos's work also builds the capacity of lawyers in a range of specialized rights enforcement areas, from environmental regulation to commercial intellectual property to forced resettlement. The experience of researching, litigating, and resolving these cases increases the capacity of local lawyers to represent similarly marginalized communities. Each initiative helps build local, specialized capacity in client communities and lawyers, making high-quality services more accessible to last-mile communities. By fostering networks and professional legal services that are accessible to low-resource communities, Protimos is building the human infrastructure necessary for sustainable legal empowerment.

There is no doubt that Protimos's approach has exciting potential, but it also raises a number of questions. One of the major challenges in the legal services industry is that equality of access is constitutionally promised but logistically difficult to deliver. The inability of virtually every government around the world to create legal services markets that adequately meet the needs of low-resource and last-mile communities demonstrates the difficulty of effective legal empowerment. While Protimos provides obvious value to its clients in these communities, it's not clear whether or how their collective representation and capacity-building model will achieve financial sustainability. Ms. Darroch refers to development funding and impact investing as potential sources of support, but third-party actors are no substitute for functioning commercial markets. Although pro bono and legal aid programs inarguably provide enormous benefits, subsidized legal services can only meet a fraction of the needs of low-resource communities because of limited resources. In the absence of a demand-driven funding model, it's unclear how

Protimos's local partners will be able to sustainably provide pro bono representation to low-resource communities.

The lack of a sustainability model raises a few secondary questions. For example, does involving third-party development funders or investors in subsidizing legal services constitute a conflict of interest? Third parties often fund dispute resolution mechanisms, but very few such projects have the potential to incur such high-stakes dependence from last-mile communities. How do Protimos partner organizations use the capacity built during the course of these projects? A number of innovative legal service payment models, from unbundling to collective savings, may contribute a solution, but pricing remains a primary concern in many service-oriented development interventions. In the absence of free legal services, will client communities be able to enforce the initial judgment or associated rights? Civil decision enforcement can be onerous, even in functioning systems, and it becomes substantially more so in high-volume legal environments. Whatever the legal environment, rights like intellectual property are variably enforced and expensive to defend. Each of these questions focuses on a design element of Protimos's work and on how it is contextualized in the greater universe of legal services for low-resource and last-mile communities.

One of the most exciting elements of this approach is the way it builds precedent and human infrastructure for the formal recognition of customary conceptions of collective rights in traditionally individually focused Western systems. As this approach continues to gain traction, generate data, and affect the systems in which it operates, Protimos will have the opportunity to articulate the ways that these projects represent a model capable of making a systemic impact. In the meantime, by using collective representation as the mechanism of engagement to strengthen ADR processes, create reform advocacy frameworks, and build local capacity, Protimos is playing a meaningful part in the legal innovation that will define the next evolution in service provision for last-mile communities.