



Making the Law Work for Everyone

Volume I
Report of the Commission on Legal
Empowerment of the Poor

Preface

In November 2006, a delegation from the Commission on Legal Empowerment of the Poor visited a teeming open air market (known as the “Toi market”) in an impoverished neighborhood in Nairobi, Kenya. To picture the market, imagine a mall without walls – or, for that matter, a roof or a floor – where each business is represented by a small table or a blanket laid on the ground. Imagine, as well, a surrounding area that is notorious for poor sanitation, pollution and crime. Floods are frequent. About one person in five has HIV/AIDS. Most of the residents lack legal title to the ramshackle dwellings they call home or to the tiny businesses upon which they depend for a living. These are men and women who are vulnerable and disadvantaged in every way – except for one – they are determined not to be victims.

About a decade ago, the sellers in the market created a communal savings plan to which each contributed fifteen cents a day. The money was used for small business loans and to make civic improvements, such as a public bath. Fifteen cents a day may seem a trifling sum, but in that place and for those people the payment often meant forgoing the purchase of new clothes for a child, food for the family, or a used bicycle for transportation. This was democracy at its purest – the willing surrender of a private benefit to build a ladder out of poverty for the community as a whole. Proposals for loans and projects were approved openly and collectively, with consent signified by the wiggling of fingers and the clapping of hands. Over time, the fund grew by tiny increments to more than \$200,000.

This was still not much in a market with 5000 stalls crammed together, selling everything from toys and cabbage and to spark plugs and flip-flops. Still, the savings plan was a source of hope and pride to people who had put their faith in cooperative action, understood the importance of abiding by shared rules, and were doing everything possible to help themselves. Their courage underlined our conviction that those who consider poverty to be just another part of the human condition are ignorant, for the poor do not accept it, and when given the chance, will seize the opportunity to transform their lives. Because of what we saw and the people we met, the Commission left Nairobi encouraged.

Then, in December 2007, Kenya held a presidential election. The voting was flawed and fights broke out. Hundreds of people died and the market we visited was completely destroyed. There is literally nothing left.

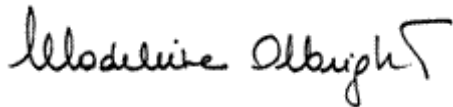
In reply to its expression of sorrow and concern, the Commission received a letter from Joseph Muturi, one of the market leaders. He wrote that the social fabric built up over decades had been torn, and that people had been forced into exile in their own country, simply because of their ethnicity. “We have gone back in time,” he wrote, and “it will take us many years to come back to the level where we were both socially and economically.” He observed that it had taken Kenyans to make Kenya; and now Kenyans

had broken Kenya; but they would – he was sure – recover it again, although at an expense of time and resources that could never fully be regained.

The lesson is clear. When democratic rules are ignored and there is no law capable of providing shelter, the people who suffer most are those who can least afford to lose. Creating an infrastructure of laws, rights, enforcement, and adjudication is not an academic project, of interest to political scientists and social engineers. The establishment of such institutions can spell the difference between vulnerability and security, desperation and dignity for hundreds of millions of our fellow human beings.

In his letter from the ruins of the Toi market, Joseph Muturi said that “the big task that has occupied me is to try to bring the people together in order to salvage our sense of community.” Creating a sense of mutual responsibility and community on a global basis is a key to fighting poverty and a challenge to us all. It is our hope that this Commission report, with its recommendations, will help point the way to that goal and to a better and more equitable future for us all.

Respectfully,



Madeleine K. Albright



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Co-chairs
Commission on Legal Empowerment of the Poor

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Executive Summary

In the 21st century, Legal Empowerment of the four billion excluded is the key to unlocking vital energies needed to end poverty and build a more stable and peaceful world.

The spectre of poverty and the resultant suffering from want and fear have been realities for so long that poverty is often deemed to be a natural and inevitable part of the human condition. In earlier times, when the struggle merely to survive was paramount for most people, this conclusion seemed reasonable, perhaps even unavoidable. In our era, however, we have every possibility to make economic opportunity broadly available. In the last six decades, more wealth has been created than in all previous history. No longer can it be argued that poverty is natural or inevitable.

Though many have shared in this prosperity, far too many of the world's people have been left behind, still living in deprivation, taking talent unused to the grave. Sub-Saharan Africa is not on track to achieve any of the Millennium Development Goals and extreme poverty persists on every continent. Statistics abound of the number of people that live in extreme poverty in terms of income, no matter how hard they work. And lack of income is just one dimension of poverty.

This Commission argues that four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.¹ Whether living below or slightly above the poverty line, these men, women and children lack the protections and rights afforded by the law. They may be citizens of the country in which they live, but their resources, modest at best, can neither be properly protected nor leveraged. It is thus not absence of assets or work that holds them back, but the fact that their assets and work are insecure, unprotected and far less productive than they might be. There are further vulnerabilities, as well. Indigenous communities may be deprived of political voice and see their human rights violated. In addition to exclusion based on their poverty and their gender, poor women may also be denied the right to inherit property. In our own era then, vast poverty must be understood as created by society itself.

In too many countries, the laws, institutions and policies governing economic, social and political affairs deny a large part of society the chance to participate on equal terms. The rules of the game are unfair. This is not only morally unacceptable; it stunts economic development and can readily undermine stability and security. The outcomes of governance -, the cumulative effect of policies and institutions on peoples' lives - will only change if the processes of governance change, and change fundamentally.

The Commission...

The Commission on Legal Empowerment of the Poor was created to address this challenge. It is comprised of 25 Commissioners, including former heads of state and government, cabinet ministers, jurists, economic researchers, and other senior policy-makers from the North, South, East and West. We hold diverse views regarding the pluses and minuses of globalization but agree on the imperative of finding better ways to fight poverty and exclusion. During the past three years, we conducted 22 national consultation processes with representatives from local governments, academia, civil society and grassroots movements. We launched five technical working groups which submitted specialized reports. We drew on our own experience, reviewed relevant literature, talked to people from all walks of life, and debated with national and international policymakers and amongst ourselves. We have seen and heard success stories and believe there is compelling evidence that when poor people are accorded the protections of the rule of law, they can prosper.

... and its Assessment: Four Billion Lives Excluded

The Commission believes poverty is man-made, by action and inaction, a failure of public policies and of markets. The Commission sees that in rich countries people are more likely to enjoy access to justice and other rights – as workers, businesspeople and owners of property. The recent vast creation of wealth rests upon various legal protections, norms and instruments governing such things as business organisations, corporations, tradable assets, labour contracts, workers associations, venture capital, insurance and intellectual property. While the same protections and instruments exist in many developing countries, the overwhelming majority has no way to access them. Notwithstanding this reality, the legal underpinnings of entrepreneurship, employment and market interaction are often taken for granted by traditional approaches to development and standard economic theory. Contracts and property rights are assumed to be in place, and what transpires in the informal economy is scarcely taken into account. In fact, most development initiatives tend to focus on the official economy, the formal legal system and institutions at the national rather than the local level.

Most of the poor, however, do not live under the shelter of the law, but far from the law's protection and the opportunities it affords. Their lives and livelihoods are governed by informal local norms and institutions. Where they are not excluded from the legal system, the poor are often oppressed by it. Because the poor lack recognized rights, they are vulnerable to abuse by authorities who discriminate, seek bribes, or take the side of powerful interests who may wish to prevent the poor from competing economically or seek to evict them from their land. Such discrimination has massive consequences. The Commission finds that at least four billion are excluded from the rule of law. It is the minority of the world's people who can take advantage of legal norms and regulations. The majority of humanity is on the outside looking in, unable to count on the law's protection and unable to enter national markets, let alone global.

Legal Empowerment of the Poor as a development strategy

When the law works for everyone, it defines and enforces the rights and obligations of all. This allows people to interact with one another in an atmosphere that is certain and predictable. Thus, the rule of law is not a mere adornment to development; it is a vital source of progress. It creates an environment in which the full spectrum of human creativity can flourish and prosperity can be built. The Commission understands Legal Empowerment to be the process of systemic change through which the poor and excluded become able to use the law, the legal system and legal services, to protect and advance their rights and interests as citizens and economic actors.

The law is the platform on which rest the vital institutions of society. No modern market economy can function without law and to be legitimate, power itself must submit to the law. A thriving and inclusive market can provide the fiscal space that allows national governments to better fulfil their own responsibilities. The relationship between society, the state and the market is symbiotic. For example, the market not only reflects basic freedoms such as association and movement, but generates resources to provide, uphold and enforce the full array of human rights. It is processes such as these, in which the poor realise their rights and reap the benefits of new opportunities, that enable the fruition of citizenship – in short: Legal Empowerment.

If law is a barrier to the poor who wish to better their condition, if it is seen as an obstacle to dignity and security, then the idea of law as a legitimate institution will soon be renounced. If the law is accepted and understood as offering protection and equality of opportunity, and ensuring access to fair and neutral process, then the law will be revered as a foundation of justice.

There are no technical fixes for development. For states to guarantee their citizens' right to protection, systems can and have to be changed, and changed systemically. Legal Empowerment is a central force in such a reform process. It involves states delivering on their duty to respect, protect and fulfil human rights and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as well as through those of their supporters, wider networks and governments. The elements of Legal Empowerment are all grounded in the spirit and letter of international human rights law, and particularly in Article 1 of the Universal Declaration of Human Rights which declares: "All human beings are born free and equal in dignity and rights."

Democracy: Indispensable Means, Just End

The Declaration's fine words, written sixty years ago, are universally accepted but rarely fulfilled. If the poor are to be legally empowered, they must have effective, legally protected rights. These also include the right to vote, the right to free expression, and the right to due process. It is a central purpose of democratic societies to provide these rights, and an ongoing challenge to do so consistently and equitably. International organizations, both regional and global, can help support the construction of democratic institutions through a variety of means.

Some have cautioned against democratisation while the rule of law remains unperfected. The Commission disagrees. Democracy and Legal Empowerment are kindred spirits, and are better synchronised than sequenced. In the absence of empowerment, societies lose the benefits that come from the free flow of information, open debate, and new ideas. Meanwhile, governments are not held accountable for unwise policies. There is a reason that no democracy has experienced famine and trends over several decades suggest that democracies are less likely to become embroiled in conflict. There is, of course, no single model of democracy, but the needs of the poor can often be better voiced when decision making is decentralised to the local level. The core principle underlying democracy in all its forms is that legitimate power is derived from the freely expressed will of the people. Strengthening democracy is essential to Legal Empowerment.

To the Reformers: Resistance and Reward

Transforming a society to include the poor requires comprehensive legal, political, social and economic reforms. In the short term, reform is unlikely to seem an easy option. There is, however, a harvest to leadership. When the poor are able to find protection and opportunity in the legal system, practical benefits become evident. As the informal economy becomes documented, the tax base is widened, increasing revenue for national development. Economic gains expand local markets and increase financial activity at all levels. As the rule of law spreads, the predatory networks that exploit vulnerable participants in the informal economy begin to unravel. More and more people develop a stake in the reduction of crime and the maintenance of a peaceful social order. As this transformation occurs, reform gains momentum and governments that have embraced reformist ideas are accorded increasing credibility, especially among political constituencies whose voices had previously gone unheard. In this way, Legal Empowerment can embody and live out a compelling narrative for progress.

Legal Empowerment is not a substitute for other important development initiatives, such as investing more in education, public services and infrastructure, enhancing participation in trade and mitigating and adapting to climate change: instead, it complements such initiatives, multiplying their impact by creating the conditions for their success. People living in abject poverty need immediate assistance and specially targeted interventions. The provision of quality education, especially for girls, could not be more urgent. The Commission is convinced that the world's four billion excluded possess significant capabilities. If states and laws are reformed to appropriately recognize the poor, if the law can be made to work for everyone, those excluded will quickly begin to transcend their current circumstances and contribute to the solution of otherwise chronic economic and social problems.

The Four Pillars of Legal Empowerment of the Poor

In the course of its deliberations, the Commission developed a comprehensive agenda for Legal Empowerment encompassing four crucial pillars that must be central in national

and international efforts to give the poor protection and opportunities. Legal Empowerment can only be realized through systemic change aimed at unlocking the civic and economic potential of the poor. The Commission's agenda includes: *access to justice and rule of law, property rights, labour rights, and 'business rights'*.ⁱ These four pillars reinforce and rely on each other. In their convergence and through their synergy, Legal Empowerment can be achieved.

First Pillar: Access to Justice and Rule of Law

First among rights is that which guarantees all others: access to justice and the rule of law. Legal Empowerment is impossible when, *de jure* or *de facto*, poor people are denied access to a well functioning justice system. Where just laws enshrine and enforce the rights and obligations of society, the benefits to all, especially the poor, are beyond measure. Ensuring equitable access to justice, though fundamental to progress, is hard to achieve. Even if the legal system is technically inclusive and fair, equal access to justice can only be realized with the commitment of the state and public institutions. Legal Empowerment measures in this domain must:

- Ensure that everyone has the fundamental right to legal identity, and is registered at birth
- Repeal or modify laws and regulations that are biased against the rights, interests, and livelihoods of poor people
- Facilitate the creation of state and civil society organizations and coalitions, including paralegals who work in the interest of the excluded
- Establish a legitimate state monopoly on the means of coercion, through, for example, effective and impartial policing
- Make the formal judicial system, land administration systems and relevant public institutions more accessible by recognising and integrating customary and informal legal procedures with which the poor are already familiar
- Encourage courts to give due consideration to the interests of the poor
- Support mechanisms for alternative dispute resolution
- Foster and institutionalize access to legal services so that the poor will know about laws and will be able to take advantage of them
- Support concrete measures for the Legal Empowerment of women, minorities, refugees and internally displaced, and indigenous people

Second Pillar: Property Rights

Ownership of property, alone or in association with others, is a human right. A fully functioning property system is composed of four building blocks: a system of rules that defines the bundle of rights and obligations between people and assets reflecting the multiplicity and diversity of property systems around the world; a system of governance; a functioning market for the exchange of assets; and an instrument of social policy. Each

ⁱ “Business rights” need not yet be regarded as a new term in law, but rather as derived from existing rights related to doing business of the individual, newly bundled together under this term on the basis of their vital instrumentality in the livelihoods of the poor.

of these components can be dysfunctional, operating against the poor. When the system fully functions, it becomes a vehicle for the inclusion of the poor in the formal economy, and a mechanism for their upward social mobility. When the entire system or a single component is dysfunctional, the poor are deprived of opportunity or discriminated against.

As reforms of property rights are inherently risky, full attention should be paid to securing the rights of the poor. Women, who constitute half the world's population, own only 10% of the world's property. Indigenous people and others also have been actively discriminated against. To ensure group rights, imaginative legal thinking is required. Providing the absolute poor with rights and access to assets means direct social interventions.

To be fully productive, assets need to be formally recognised by a system encompassing both individual and collective property rights. This includes recognition of customary rights. Embodying them in standard records, titles and contracts in accordance with the law, protects households and businesses. Evictions should only be an option in circumstances where physical safety of life and property is threatened, where contract agreements have been breached or under fair eminent domain procedures. It must be by due legal process, equally applicable, contestable and independent, and where the cost of eviction is fully compensated. Property rights, including tenure security, should not only be protected by law, but also by connecting the property of the poor to wide societal interest (by increasing the range of validation of their tenure security). The possibility is opened for the poor to use property as collateral for obtaining credit, such as a business loan or a mortgage. It encourages compliance by attaching owners to assets, assets to addresses, and addresses to enforcement: making people accountable. As such, property reform can strengthen access to legal identity and to justice. Property records unify dispersed arrangements into a single legally compatible system. This integrates fragmented local markets, enabling businesses to seek out new opportunities outside their immediate vicinity, and putting them in the context of the law where they will be better protected by due process and association of cause. Legal Empowerment measures in this domain must:

- Promote efficient governance of individual and collective property in order to integrate the extralegal economy into the formal economy and ensure it remains easily accessible to all citizens.
- Ensure that all property recognised in each nation is legally enforceable by law and that all owners have access to the same rights and standards.
- Create a functioning market for the exchange of assets that is accessible, transparent and accountable.
- Broaden the availability of property rights through social and other public policies, such as access to housing, low interest loans, and the distribution of state land.
- Promote an inclusive property rights system that will automatically recognize real and immoveable property bought by men as the co-property of their wives or common law partners.

Third Pillar: Labour Rights

The poor may spend most of their waking hours at the workplace, barely surviving on what they take from it. But labour is not a commodity. In the same way that property and the physical assets of the poor are recognised, so also must the greatest asset of the poor – their labour and human capital – be effectively recognised. The legitimacy, even the acceptability, of the economy depends upon basic labour rights, and so does the development of human capital necessary for sustained growth. In turn, the continuous improvement of labour and social rights depends on a successfully functioning market economy. The typical and tired pattern of low productivity, low earnings and high risks must be replaced by the fulfilment of the *Fundamental Principles and Rights at Work* and the *Decent Work Agenda* and the strategy to provide protection and opportunity to workers in the informal economy: a coalition described as an emerging global social contract. Here is how:

- Respect, promote and realize freedom of association so that the identity, voice, and representation of the working poor can be strengthened in the social and political dialogue about reform and its design
- Improve the quality of labour regulation and the functioning of labour market institutions, thereby creating synergy between the protection and productivity of the poor
- Ensure effective enforcement of a minimum package of labour rights for workers and enterprises in the informal economy that upholds and goes beyond the *Declaration of Fundamental Principles and Rights at Work*
- Increase access to employment opportunities in the growing and more inclusive market economy
- Expand social protection for poor workers in the event of economic shocks and structural changes
- Promote measures that guarantee access to medical care, health insurance, and pensions
- Ensure that Legal Empowerment drives gender equality, thus meeting the commitments under ILO standards that promote the elimination of discrimination and actively promote equality of opportunity for and treatment of women - who have emerged as a major force in poverty reduction in poor communities

Fourth Pillar: Business Rights²

The Commission holds it to be self-evident that the poor are entitled to rights not only when working for others, but in developing their own businesses. Access to basic financial services is indispensable for potential or emerging entrepreneurs. Just as important is access to protections and opportunities such as the ability to contract to make deals, to raise investment capital through shares, bonds, or other means, to contain personal financial risk through asset shielding and limited liability, and to pass ownership from one generation to another. These rights may not be equally relevant to every entrepreneur, but they are instrumental in poverty eradication and economic development. They must be accessible to all the many micro, small and medium

enterprises in the developing world – many operated by women - that employ a large portion of the labour force. The success or failure of this economic sector will often spell the difference between economic progress versus stagnation, increased employment versus widespread joblessness, and creation of a broader society of stakeholders versus deeper inequality leading to a weakened social contract. Legal Empowerment measures in this domain must:

- Guarantee basic business rights; including the right to vend, to have a workspace, and have access to necessary infrastructure and services (shelter, electricity, water, sanitation)
- Strengthen effective economic governance that makes it easy and affordable to set up and operate a business, to access markets – and to exit business if necessary
- Expand the definition of “legal person” to include legal liability companies that allow owners to separate their business and personal assets – and thus enable prudent risk-taking
- Promote inclusive financial services that offer to all entrepreneurs in the developing world what many of their counterparts elsewhere take for granted: savings, credit, insurance, pensions, and other tools for risk management
- Expand access to new business opportunities through specialized programs to familiarize entrepreneurs with new markets, that help them comply with regulations and requirements, and that support backward and forward linkages between larger and smaller firms

Institutional Momentum and Implementation

To succeed, Legal Empowerment has to lead to systemic change, including institutional reform. In a comprehensive agenda, rather than a piecemeal approach the four pillars of Legal Empowerment reinforce each other. Effective institutions and laws that spell out rights and obligations give individuals the confidence to cooperate with others over time and distance, thereby steadily creating wealth. Productivity gains released through reform in one area carry over into others. Mechanisms for social protection and labour rights are closely linked to the development of a competitive and productive business environment. In Legal Empowerment, good things go together.

Political leadership is imperative. A comprehensive agenda will be best run not by individual ministries, in competition for support and attention, but by presidents and prime ministers in cooperation with ministers of finance, justice and labour. Using their political authority, presidents and prime ministers can drive the agenda forward and create vital political momentum. But high office is not a precondition to effective leadership. Citizens and grass roots organisations can create valuable momentum for change by educating the public and rallying around the themes of Legal Empowerment. Many improvements in the lives of the poor have been realised through social innovation. Legal Empowerment must also travel bottom-up.

The Commission's recommended approach to Legal Empowerment is different from traditional approaches to legal and institutional reform and does not involve off-the-shelf blueprints for implementation. National and local contexts differ, creating a varied array of hurdles and opportunities for reform that must be taken into account. Success, however, is likely to share common features. Broad political coalitions, drawing leaders from across society, committed to championing policies, will smooth the way to Legal Empowerment and help overcome resistance, diversion and delay. Knowledge and attunement to the political context and reforms based on a deep and shared understanding of local conditions in both the formal and informal economy is essential. The gender dimension needs critical attention in all four domains, as do indigenous peoples' rights and customary law. The poor are not the object of Legal Empowerment, but the co-designers and facilitators of it. They must participate and provide feedback in all phases of the reform including the close monitoring of the results. Reform must grow from the realities and the needs of the poor. The Commission is convinced that success is most likely where the will to democracy is greatest.

How to Proceed in the Multilateral Realm

While the government is the key responsible actor, the 'duty bearer' in human rights terms, in a process of Legal Empowerment of the Poor, the United Nations and the broader multilateral system can help by lending their full support. The international nongovernmental community can do the same. More specifically:

- The Legal Empowerment agenda must be integrated as a core concern of global multilateral agencies such as the World Bank, UNDP, ILO, FAO and UN HABITAT. In their distinctive ways, these agencies influence how governments establish and implement the rules that define economic and social protections and opportunities. Their strategies and operational approaches must change in order for them to provide strong, sustained and coordinated support to Legal Empowerment of the Poor. UNDP should take the lead and work with other UN agencies to develop a coherent multilateral agenda for Legal Empowerment.
- Legal Empowerment of the Poor must also become a core mission for regional political organisations, regional banks and regional UN institutions. These organisations can work closely with national leaders both to assist governments engaged in reform and to exert a normative influence on governments less willing to embrace reform.
- Civil Society and community based organisations, can contribute by connecting the poor to political institutions at every level, advocating better representation for the poor, organising support for reform agendas, and serving as independent auditors of the political system.
- The business community can smooth the way for Legal Empowerment through the UN Global Compact and by supporting and participating in reform efforts on a local and national basis.

- Religious communities and indigenous spiritual traditions can play a unique and vital part in translating the moral imperatives of Legal Empowerment into concrete action.
- Professional associations of jurists and lawyers can also play a role in gathering and disseminating information in the legal community about access to justice issues, and offer political support for access to justice reform and increased funding for necessary legal aid services.

Together, these initiatives should give:

- coherent support for Legal Empowerment efforts in individual countries.
- foster a political consensus for Legal Empowerment at the regional and global levels.
- create new instruments for supporting Legal Empowerment, such as:
 - A “Global Legal Empowerment Compact” as a first step in codifying core rights and spelling out a framework for their realisation.
 - Mechanisms for tracking progress at every level.
 - A clearing house for recording, storing, and disseminating experiences and lessons learned related to Legal Empowerment.
 - Public-private partnerships.
 - A global initiative to promote grass roots knowledge and innovation.

In summary, the vast majority of the world’s people live outside the law. This is a recipe for national and global stagnation. A state that is blind to itself is destined to fail. When so many people are excluded from the rule of law, societies are unable to reach their potential. Every element of the economic system--from productivity and savings, to investment and markets, to planning and innovation--is deprived of energy and assets. This exclusion makes it harder for governments to meet national needs, and creates social conditions that can generate civil unrest and social disintegration.

The remedy for exclusion is inclusion through Legal Empowerment of the poor. This is important economically, politically, socially and morally. A country whose laws and institutions do not shut the poor out will benefit from the contributions of its entire population and from a legal, social and economic order in which all segments of society have both a voice and a stake. Such countries will be better able to build national cohesion and more likely to find a positive niche in the competitive world marketplace. The world as a whole will benefit as more and more states undertake the reforms needed to empower the poor. Such initiatives will help to reduce the pressures created by refugee migrations, under-development, famines, environmental neglect, health emergencies, and strife. In an interdependent world, we will all do better if our neighbours are both able to count on the protections of law and expected live up to their responsibilities under it.

After all, our era is one of seismic shifts, not only in the economic order but in the creation of a global public domain. Myriad ungoverned interactions flow between states, from the obvious to the near-invisible, from the malign to the beneficent. Some must be

curbed, some controlled, some eased and encouraged. Yet, as at the national level, our global institutions remain blind to much of reality, equipped rather for yesterday than today, hampering our attempts to grapple with each new problem we face. Who can deny that we all share a responsibility to protect: one which we are far from meeting? Whether for climate change, trade, migration or security, the world will expect fair rules for the 21st century, rules offering protection and opportunity for all, in accordance with shared human rights obligations.

Time for a renewed anti-poverty agenda

It is time for a renewed anti-poverty agenda aimed at including the vast majority of the world's population in the systems of rights and obligations that have shown their ability to foster prosperity over the past 60 years. It is the responsibility of national and global leaders, and of us all, to enlarge that circle of opportunity and extend the reach of protection - not by replicating the trajectory of rich countries but by finding means that enable every country to chart its own path. Though methods will vary, the goal is the same – to enable and empower the poor to succeed both as individuals and contributors to the economic and social well-being of their communities. Further inaction and delay will send human talent early and unused to its grave, and blight the lives which remain.

Making poverty history cannot be accomplished through Legal Empowerment alone, but it is hard to see how it can be done without it. Legal Empowerment of the Poor recognises the complexity of society and the rich potential of the poor. By unleashing their energy and creativity, we have it within our power to forge a better, more prosperous, equal and humane world. The time has come to unite in support of that vital and transforming task.

Chapter 1: Making the law work for everyone

Before the violence came, Margaret Atieno Okoth sold cabbage six days a week at a cramped stall in Nairobi's Toi market, alongside vendors hawking everything from second-hand shoes to bicycle parts. Her meagre earnings allowed her to send only three of her twelve children to school, while her husband John sought out odd jobs in the middle-class estates within walking distance of their home. But no matter how hard Margaret worked, her family had to subsist in a one-room tin shack with no electricity, water or sanitation. They were trapped in Kibera, a squalid slum where a million Kenyans struggle to survive and poverty is passed down from one generation to the next.

In thousands of such settlements around the world, poor people like Margaret have no legal identity: no birth certificate, no legal address, no rights to their shack or market stall. Without legal documents, their ability to make the most of their efforts and assets is limited, and they live in constant fear of being evicted by local officials or landlords. Criminals prey on them; corrupt officials fleece them. And, as witnessed in the recent violence in Kenya, security eludes them. Shortly before the violence erupted, Joseph Muturi, who ran a small clothing business in Toi market, told friends and colleagues: "I know that in a matter of hours all this can disappear." He was mainly concerned with the threat of bulldozers flattening the market to make way for more powerful economic interests. In the end, the violence was political and triggered by a disputed election. For thousands of people in Toi market, the event simply proved the fundamental truth of Joseph's words. Everything did disappear. There was no security and no protection when it was needed the most.

Such problems may seem intractable. But change *is* possible. Just visit Delhi's Sewa Nagar market.

"I'll never forget how terrible life was before," says Mehboob, who sells plastic ware at Sewa Nagar. "We struggled to survive through honest, hard work, but it was almost impossible. The police and local officials demanded bribes, threatening to evict me or confiscate my goods. I had to pay up, but I was still harassed and beaten up. My produce was seized and I lost count how many times I was evicted. I never thought things could be any different."

A visitor to Sewa Nagar nowadays could scarcely recognize the awful conditions that Mehboob painfully recalls. The market throngs with shoppers rooting out bargains from the clean and well-maintained stalls that jostle for their attention. Madan Sal is selling dried fruit, Santosh tempts female clients with bangles and cosmetics, Raju does a brisk trade shaving the men – and none of them is afraid any more.

The source of this remarkable transformation is simple yet profound. Whereas previously Santosh and the other traders were not legally entitled to trade, now they have obtained official licenses to do so. On paper that may not seem revolutionary, but in practice it empowers the market's poor traders to make their hard work pay. In exchange for a

reasonable monthly rent, the traders now have secure rights for their pitches. “We no longer have to pay bribes,” explains Mehboob. “I feel good because I’m earning honest money and paying my taxes.”

Most of India’s street vendors are not as fortunate. The country’s municipal laws prohibit street trading without a license, yet Delhi, with a population of over 15 million people, has issued fewer than 4,000. It is reckoned that 99% of the country’s 10 million street vendors are forced to work illegally. Instead of being protected by the law, they are excluded from it.

Part of the problem is that the voices of the poor are not heard. Sewa Nagar’s transformation came about because a Delhi-based action group called Manushi led a grassroots campaign to lobby government officials for change. That won them the backing of the local authority and members of parliament, at least in public.

“We have been facing a great deal of violence and threats in recent months,” says Madhu Kishwar of Manushi. “But the good news is that Manushi has received strong support for this work at the highest levels, cutting across party lines.”

“The Prime Minister’s office has intervened in the matter and given instructions that this project should not be disturbed. The lieutenant governor is also supportive, as is the deputy commissioner of the area. But local politicians are after our blood and the local police are playing a dubious role for obvious reasons. This had become a bribe-free zone – something the lower-level police cannot stomach. They are also under heavy pressure from politicians who are desperate to keep vending spots under their control, not only because this yields a lot of income but also because they can then arm-twist these people to come for political rallies, do election work for them and be available whenever they need to have a show of strength.”

For Madhu, the battle is only just beginning. “This pilot project is part of a much larger campaign that seeks to free the lives of the self-employed poor in India from needless bureaucratic controls and extortionist mafias” she says. “It recognizes that poor people’s enterprise plays a vital role in the country’s economy and that they have a right to earn a living free from harassment, extortion, beatings and other human-rights abuses.”

Sewa Nagar’s metamorphosis demonstrates a basic, but often overlooked truth: law induced exclusion and poverty go hand in hand, yet neither is inevitable. If Sewa Nagar can change, so could Kibera. Margaret could yet enjoy a better life too. Even after disaster, new beginnings are possible.

The Importance of the Law

Far from being a luxury that the poor can live without, effective legal rights are a necessity for everyone. Poor people’s exclusion from the law is not just desperately unfair, it denies them an opportunity to improve their lives – and stunts poor countries’ development.

Around half the people in urban areas worldwide live in squatter settlements and work in shadow economies. An even larger absolute number of poor are in isolated rural areas with limited secure access to land and other resources. They operate not within the law, but outside it: they enter into informal labour contracts, run unregistered businesses and often occupy land to which they have no formal rights. In the Philippines, 65% of homes and businesses are unregistered, in Tanzania 90%. In many countries the figure is over 80%. In terms of GDP, the informal economy accounts for over a third – and rising – of the developing world’s economy.³

When would-be entrepreneurs set out to legally register a business, they are thwarted by bureaucratic red tape and costly fees. A recent study of 12 Latin American countries by the Inter-American Development Bank found that only 8% of all enterprises are legally registered, and that nearly 23 million businesses operate informally. The owners of these businesses cannot get formal bank loans,⁴ nor can they enforce contracts or expand beyond a personal network of familiar customers and partners. An estimated 2 billion people are without access to basic financial services.⁵ As a result, the poor have no choice but to accept insecurity and instability as a way of life.

The poor’s exclusion from the law is a crucial issue, yet it has received little practical attention – until now.

This report by the Commission on Legal Empowerment of the Poor is the first to highlight how giving the world’s poor women and men access to justice, underpinning and enabling property, labour and business⁶ rights – the legal rights that most people in rich countries take for granted – can empower them to change their lives for the better.

The Commission on Legal Empowerment of the Poor

The Commission on Legal Empowerment of the Poor is the first global initiative to focus on the link between exclusion, poverty and the law. Launched by a group of developing and developed countries including Canada, Denmark, Egypt, Finland, Guatemala, Norway, Sweden, South Africa, Tanzania and the United Kingdom, it has been hosted by the United Nations Development Programme (UNDP) in New York.

Co-chaired by former U.S. Secretary of State Madeleine Albright and the Peruvian economist Hernando de Soto, it brings together eminent policymakers and practitioners from around the world. The full list of Commission members is at the opening of this report.

Legal empowerment is not about aid, but about helping poor people lift themselves out of poverty by working for policy and institutional reforms that expand their legal opportunities and protections.

The Commission brings together illustrious women and men of different backgrounds, varying political persuasions and a vast range of expertise. We have spent the past three years sifting through a mountain of evidence, observing the plight of the poor first hand, and seeking out the views of a variety of people all over the world – policymakers and ordinary citizens, rich and poor, businesspeople, civil society and community-based organisations, international development experts and representatives of slum dwellers. We have listened and we have learned. This report reflects many voices, but above all those of the poor. The message that comes through loud and clear is that the world has not grasped the importance of making the law work for everyone to provide protection and opportunity. And the consequence of this is that there is still too much truth in Rousseau’s words, that “Man is born free but is everywhere in chains”.

Progress and Frustration

The world economy becomes ever more dichotomous. Recent decades have witnessed unprecedented advances in economic growth and human development. In much of the world, living standards have improved, as have life expectancy, infant survival, access to clean water, schooling rates and the treatment of women. Some 500 million people have escaped extreme poverty in the past 25 years.⁷

This remarkable progress has gone hand in hand with an evolution in development-policy thinking and practice. We have learned important lessons about what works and what does not. What began in the 1950s as a narrow agenda of investing in infrastructure to spur economic growth is now much broader. It encompasses measures to boost social development and meet the basic needs of poor people. It covers macroeconomic reform and the encouragement of private sector-led growth. It considers issues such as trade, debt, environment and gender. And since the early 1990s it proposes democratic governance and a vibrant civil society.

“The poor” is shorthand for a huge variety of people who have low incomes, and struggle with problems such as hunger, ill-health, and inadequate housing. They live in remote rural villages as well as in urban shantytowns. They work as household service providers, subsistence farmers, casual labourers, street vendors, and trash recyclers. Many are from underrepresented ethnic minorities – often internal or international migrants who have moved to an area where they lack clear legal status. Many have been displaced by war and civil unrest. Others are indigenous peoples who have been excluded by the dominant society. The poor are disproportionately women.

At the turn of the century, the United Nations’ Millennium Summit adopted the Millennium Declaration and set eight ambitious Millennium Development Goals (MDGs). These goals mark an unprecedented global commitment to reducing poverty and promoting human development: better food security and healthcare, improved access to education, less discrimination, greater environmental sustainability.

Extreme poverty has fallen. And yet, eradicating global poverty remains an elusive target. Sub-Saharan Africa is not on target for a single Millennium Development Goal.⁸ Around the world, inequality is on the rise. Market solutions and macroeconomic rigor have not delivered all they promised. And although efforts towards more sustainable development and democratic governance are clearly important, they have failed to deliver the breakthroughs that many had hoped for.

Flaws in the international system continue to undermine development efforts. The inchoate state of international law and its application leaves international security, let alone international justice, a chimera. Even though international trade is vital for developing countries, the Doha Development Agenda negotiations at the World Trade Organization are stalled. There has been progress in the relief of debt, but much remains to be done. Most donor countries still fall far short of their internationally agreed commitments to give 0.7% of their gross national income in aid. Overseas aid is not always targeted at alleviating poverty and is often delivered in a poorly coordinated and ineffective way.⁹

The insidious effect of the law's failings on the lives of the poor has long been a theme of great commentators – take, for example, almost all the novels of Charles Dickens. Among economists, Douglass North was one of the first to note that the policy prescriptions associated with traditional economic theory failed to capture the nuances and complexities of informal economic activity. He, and later economists such as Nicholas Stern, shifted their focus from standard theories of how markets operate to the importance of market institutions, such as property systems, the business environment and labour.¹⁰ These institutions, they argued, shape ordinary people's economic activity – and are highly resistant to change because of entrenched interests.

“Ending extreme poverty is crucial not solely as a matter of compassion. The world economy will benefit enormously from the contributions of those who are able to move from a state of dependency to full participation. (...) The Commission's mandate is daunting but also vital, for legal empowerment can add much to the world's arsenal in its ongoing struggle to save and enrich human lives.”

Madeleine Albright

From this new understanding of the challenges associated with economic development came a focus on better governance of these critical market institutions. Particular emphasis was put on the investment climate and the rules and norms affecting property and labour. Stern and others also advocated creating mechanisms to enable poor men and women to participate in decision making that affects their lives. They called for greater investment in people, through education, improved access to information, and capacity development in key public institutions.¹¹

Stern's focus on poor people's assets and capabilities and the functioning institutions needed to release their potential mirrors Amartya Sen's emphasis on the poor's freedom to shape their own lives. Sen identifies political and economic governance – and the quality of relevant institutions – as intrinsic and instrumental to the expansion of human development as freedom. This encompasses access to, and the quality of, education and health, as well as political and market participation. Sen's agenda of development as freedom is virtually synonymous with the political, social and economic empowerment of people grounded in human rights. Development thus understood is both a moral imperative and, according to Sen, the route towards prosperity and poverty reduction.

Based on the lessons of the past 50 years, the OECD's Development Cooperation Directorate has set out guidelines for increasing the effectiveness of aid and development cooperation, and they are similarly comprehensive: ensure local and national ownership of the development process; promote good governance, including democracy, human rights and the rule of law; turn from traditional development projects towards more policy-based approaches and direct budgetary support; and encourage the active participation of civil society.¹²

But if this nears a comprehensive sense of what is required, the challenge of how to get there is a journey only just begun. Support to the rule of law is a case in point: it has had its own ebb and flow in the last 50 years, but a growing body of literature paints its practice as incipient.¹³ Old-school approaches to Law and Development require revision.

And many factors are neglected altogether. Most development initiatives still tend to focus on the official economy, the formal legal system and other established institutions, implemented mostly at a national rather than a local level. For instance, programs promoting access to justice and the rule of law generally emphasise formal institutions such as parliaments, the electoral system, the judiciary and the executive branches of government. Economic assistance tends to focus on improving the investment climate for registered or foreign businesses.

Yet most people in developing countries – particularly the poor – scarcely interact with national institutions and the formal legal system. Their lives are mostly shaped by informal local norms and institutions, such as the conditions of the slum in which they live or the degree of corruption of local officials. Big national reforms pass them by.

Addressing the Four Billion Poor and Excluded

In *The Bottom Billion*, Paul Collier argues that the international community should focus its aid efforts on the world's very poorest countries – with a combined population of a billion or so - often in, or recently emerged from, conflict. He argues that aid is most needed and can potentially do most good in such countries. But he believes that aid will do relatively little to boost development and reduce poverty in other developing countries which have other resources to tap, such as trade, foreign direct investment and taxation.

International development assistance is indeed essential for the poorest countries and for societies recovering from conflict. Donors should prioritize these countries and target funding at effective poverty reduction and economic recovery. But focusing only on the bottom billion is a flawed and insufficient response to global poverty. Collier argues we should “narrow the target and broaden the instruments”. This report is an essential part of the broadening, but no narrowing should accompany its application.

We know there are depressing figures for the number of people living on less than 1 dollar a day (those in extreme poverty)¹⁴ and those living on less than 2 dollars a day (those in moderate poverty).¹⁵ But the Commission observes that around four billion people, the majority of the world's population are excluded from the rule of law.¹⁶ They live with at best very modest, unprotected assets that cannot be leveraged in the market due to cumulative mechanisms of exclusion. The Legal Empowerment agenda speaks to all these four billion. Their poverty in income terms may vary but their right to equal protection and opportunity under the rule of law does not.

Four billion people are not protected adequately by law and by open and functioning institutions and, for a range of reasons, are unable to use the law effectively to improve their livelihoods. Yet these four billion are not a monolithic group. Those in extreme poverty are typically asset-poor and will not be able to get out of poverty merely by legal reforms. Their situation can only be improved through a range of measures, from protection of their livelihoods to access to additional resources and services, and systemic reforms to make public institutions accessible and fair. Those living in moderate poverty have some assets and income which can enable them to take advantage of institutional change. For all these people, protection of their assets is fundamental. But protection of

what they have is not enough, for they are poor and their possessions meagre. They deserve a chance to make their business operations, no matter how small or even micro they are, more productive and they are entitled to decent working conditions. Reforms of the institutions they relate to are essential for their empowerment. Only through such systemic change will the poorest be able to take advantage of new opportunities and be attracted to joining the formal economy.

But we must also address those that, while not in extreme or moderate poverty, are nevertheless not able to use the law to their advantage and are in constant danger of joining the ranks of the very poor. The Legal Empowerment agenda means preventing this slippage and strengthening the poor with more capacity and resources. Empowerment of this group may also have an additional positive development impact for both economic and political reasons. The economic reason being that empowered poor in this stratum stimulate market interactions. In many countries it would strengthen the chain of value addition among the poor and the lower middle class, and ultimately the higher strata. Politically, strengthening the hand of these poor can gain more voice, capacity for self-organization and ultimately for self-empowerment. While Legal Empowerment of this broader range of poor people may not—thankfully—consume a large part of scarce aid resources, it is a critical component for effective poverty reduction and socio-economic development. Legal Empowerment is a versatile agenda for all the four billion excluded.

Realizing Rights through Political Change

Legal Empowerment is anchored the basic principles of human rights articulated in the Universal Declaration of Human Rights - and the subsequent global and regional international human rights conventions - beginning with Article 1: “All human beings are born free and equal in dignity and rights”. The implications of this simple statement could not be more profound, and indeed, out of familiar and established principles, comes a radical agenda of Legal Empowerment: not a technical fix, but an agenda for fundamental reform. All citizens should enjoy effective protection of their basic rights, assets and livelihoods, upheld by law. They should be protected from injustice, whether caused by their fellow citizens or government officials, all of whom – high and low – must be bound by the law. The international community has a duty to support Legal Empowerment both as an expression of these principles and as a core strategy for achieving the Millennium Development Goals.

This is intimately related to democracy: the ultimate bottom-up process, at once the indispensable means to and the expression of numerous human rights, and the least worst way mankind has devised for arranging its affairs. Legal Empowerment can lay the ground for successful democratisation, yet it need not delay it – the two need to work in tandem. In much of the world, including the old democracies, the development of democracy is arrested, and the search for innovation and renewal must be redoubled. Where democratic practice can flourish, so will Legal Empowerment, and so will individuals and their communities. It is an advantage in practice and principle that Legal Empowerment is less prescriptive than other approaches to development, having as its aim the increased capacity of the poor, including in the public sphere, such that decisions

on the nature of development are theirs, rather than being pronounced from reports such as this.

Legal Empowerment is the Way Forward

The Commission believes poverty can be eliminated – but only with a radical shift in thinking and approach by governments and international institutions. Some argue that ending poverty depends largely on unleashing market forces and others favour greater reliance on the guiding hand of government, but both of these traditional views are missing a vital part of the picture. Development depends on more than markets and economic policy; it also depends on how laws and institutions function and relate to citizens. That in turn reflects how power and influence are distributed in society. The problem for Sewa Nagar market was not an absence of enterprise or a lack of government regulation; it was the lack of a politically agreed and supported legal underpinning.

We believe it is time to go beyond the outdated battle lines of yesteryear: left versus right, state versus market, local versus global. Our agenda is not based on abstract theories or utopian pieties; it reflects the realities of poverty and exclusion experienced by poor people themselves. It focuses on removing the barriers that hold the poor back, and building a framework of laws and institutions that provide genuine protection and opportunity for all. The tools needed to act are available and ought to have broad political appeal.

The Commission believes that poverty is man-made, a consequence of our actions – and our inaction. By design or by default, markets, laws, institutions and politics often fail to serve the common good, excluding or discriminating against poor women and men. Democracy is often more of a mantra than a reality; the rule of law, in practice, often rule *by* law, arbitrarily and unequally applied. While people in poor countries may have rights on paper, that is often where they remain. Frequently the only laws that people know are informal rules, some traditional, others more recent.

“Public servants often believe they are helping the poor as a favor. They feel totally distant from the poor and often do not want to engage with them.”

National Consultation in **Uganda**

In most rich countries, in contrast, most people have effective rights and duties, whether as workers, businesspeople, tenants or property owners. If their rights are violated, they have recourse to the law; if they breach their obligations, legal action can be taken against them. The knowledge that legal rights and obligations can be enforced if necessary guides people’s everyday actions – and this certainty allows them to pursue economic and other opportunities. In effect, rich countries’ prosperity is created through a variety of sophisticated instruments and norms such as limited-liability companies, partnerships and cooperatives, tradable assets, labour contracts, venture capital, insurance and intellectual property – all of which rely on an effective framework of law and functioning institutions. Even the most developed countries, however, are far from eradicating exclusion and legal disempowerment. There may be great problems affording representation, there may be no legal framework to create a micro-credit bank,¹⁷ and migrants may languish on the outside of society, surrounded by a world they cannot

access. Legal Empowerment of the Poor is not an agenda any part of the world can regard with complacency.

Empowering poor people to realize their enormous potential would allow them to grasp their destiny both as citizens and as pioneers of development. That in turn would enable countries to be better equipped to face some of the challenges of globalization: trade competitiveness, full employment, environmental sustainability, access to technologies. All of this is not a substitute for other important initiatives, such as investing more in social services and infrastructure, enhancing participation in world trade, and making efforts to mitigate and adapt to climate change; it complements them. Legal Empowerment provides 21st-century solutions to the age-old problem of poverty and is a crucial component in addressing the new challenges of our time.

Making Poverty History

Making poverty history will be difficult. It demands popular pressure, political leadership at all levels, time, and huge efforts from poor women and men themselves. Yet the poor can only escape poverty if they are empowered to help themselves.

The stakes could not be higher. Our ever smaller world, riven between rich and poor, is not just desperately unfair; it is dangerously unstable. Our lives are inescapably intertwined; we can harm – or help – each other. Thus globalization not only poses a challenge; it also offers a choice. Act now, and build a better world for all; or do nothing, and put at risk everything we cherish.

That is why we must transform security and opportunity from the privilege of the few to the reality of all. Justice demands it, and so does development. Our core message is simple: making the law work for everyone offers protection and opportunity for all. This report details how: setting out the pillars of Legal Empowerment, its political and economic advantages, an agenda for reform, policy measures, phases and tactics, and action required at the international level.

Chapter 2: The Four Pillars of Legal Empowerment

Like Margaret and John in Kibera, most of the world's poor live outside the ambit of the law, their penury both a cause and a consequence of their lack of effective legal rights. They struggle to survive, let alone better themselves, living in fear and insecurity, their efforts hindered at every turn. Because the system works against them, the poor have to run just to stand still.

"The lives of each and every person living in the formal city are served directly or indirectly by thousands of informal workers who work long hours, often under terrible conditions, for incomes that hardly cover their food costs. They also live with the constant threat of eviction from their informal settlements."

Sheela Patel

They cope by devising their own solutions. They come up with "informal" ways of doing things that blend customary practice with modern ingenuity (as do the rich, but for advantage not necessity). These – sometimes very sophisticated – informal structures guide how the poor live, work, and do business, obtain essential services such as education, water and energy, and protect and police their communities. For instance, the poor create informal means of adjudicating property, documenting transactions, guaranteeing and obtaining credit, creating business associations, dividing labour and verifying identity.

While the poor often resort to informal means because they are in effect excluded from the formal economy, they sometimes choose to operate informally because formal institutions are so dysfunctional or corrupt. Formality and informality often overlap and interact: many workers and businesses decide how much to engage with state institutions by weighing the benefits of doing so against the potential costs of not doing so.¹⁸ Indeed, the distinction between the formal and the informal economies is often blurred: a broad spectrum of arrangements of varying degrees of formality and informality exists.

But informal institutions can leave the poor vulnerable to corruption, exploitation, bureaucratic meddling, the strong arm of the law and criminals. The justice meted out can be exemplary (developed countries could learn much from some ancient systems of restorative justice), but equally it is often brutal and discriminatory, not least against women. Economic transactions remain unpredictable, insecure and limited. Opportunity is circumscribed by the limited reach of local networks; tapping national or international markets is almost impossible. Informality is therefore unlikely to be a springboard for development. It provides few opportunities for economic growth and limited revenue for public investment in essential services – such as health, education, infrastructure and justice – that would benefit the poor.

However, the objective of Legal Empowerment is not to "fix" the informal economy. That would be the equivalent of treating symptoms rather than causes, and punishing efforts to cope rather than supporting them. The principal cause of widespread informality is the failure of formal laws, institutions and governance. Consequently, many people shy away from the state and public institutions and remain in the traditional, informal economy. Myriad local informal practices and solutions help sustain these communities. But if the best practices of informality can provide the building blocks for

an attractive formal economy and a legitimate and inclusive legal order, the poor's horizons would be vastly expanded. The core part of the Legal Empowerment agenda is therefore not only to incorporate these building blocks into the formal legal system, but also to reform the existing *formal* institutions and make *them* open, accessible and legitimate.

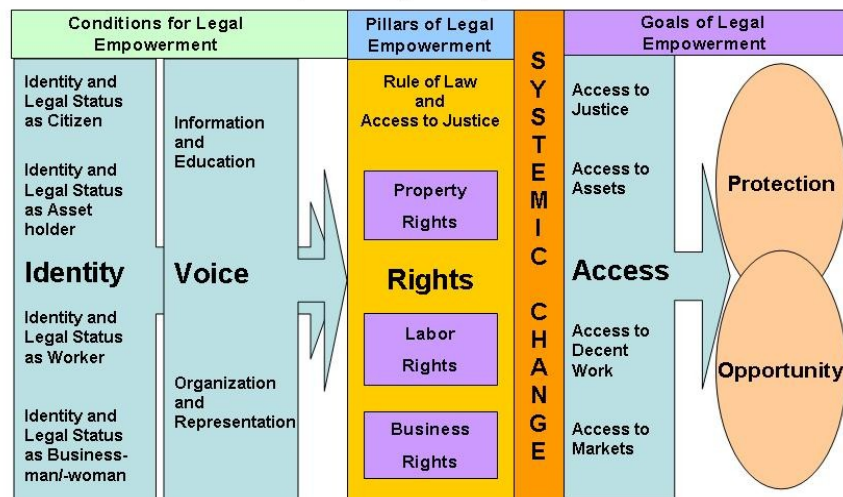
The Concept of Legal Empowerment

Legal Empowerment is 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. It involves the poor realizing their rights fully, and reaping the opportunities that flow from them, through public support and their own efforts as well as the efforts of their supporters and wider networks. Legal Empowerment takes place at the national and local level, it is a country and context-based approach.

The most tangible face of the state to the poor is the police officer in the favelas, who often engages in behavior that violates their fundamental rights.

National Consultation in **Brazil**

The Concept of Legal Empowerment



The Commission's approach to the concept of Legal Empowerment is depicted in the diagram above. Two key conditions for Legal Empowerment of the Poor are identity and voice. The poor need (proof of) a recognized identity, corresponding to their civic and economic agency as citizens, asset holders, workers, and businessmen/-women. Without a voice for poor people, a Legal Empowerment process cannot be. Crucially, this voice needs to be based on information and education on the one hand and organization and representation on the other.

Starting from the livelihoods of the poor, composed of their assets and their activities, three empowerment domains are identified as vital: property rights, labour rights and 'business rights'.¹⁹ Access to justice and rule of law are to be considered the fundamental and enabling framework that supports realization of these rights. The core bundles of rights cannot be fully effective unless there is a realistic option of enforcing them. Legal

Empowerment is thus a comprehensive framework with four pillars, access to justice and rule of law, property rights, labour rights and business rights.

As a reform process, Legal Empowerment requires parallel and coordinated interventions. The whole process is to be understood as iterative and the relationship between the Legal Empowerment process and systemic change is mutually reinforcing. Poor people that are legally empowered will have increased voice and identity; they will have more influence on institutional and legal reforms and social policies which in turn will improve the realization of their rights as citizens, asset holders, workers and businessmen/-women. Legal Empowerment of the Poor requires systemic change, but if the poor are truly empowered this in turn fundamentally improves the relationship between the state and all its citizens. With identity in their different roles, a voice in the processes of change and improved rights in the three empowerment domains, the poor will effectively have increased access to justice and the rule of law, improved access to assets, more access to decent work and better access to markets.

Women, indigenous peoples and vulnerable groups must be fully and fairly included in all phases of the legal-empowerment process. For them ‘equal’ access may not be enough; active promotion and facilitation of these groups’ meaningful participation may be necessary to ensure just outcomes and their full participation in the process.

The end goals of Legal Empowerment are expanding protection and opportunity for all: protecting poor people from injustice – such as wrongful eviction, expropriation, extortion and exploitation – and offering them equal opportunity to access local, national and international markets.

“Legal empowerment is also about opportunity: the poor can and do generate income, and are incredibly resourceful and ingenious in scratching out a living. In cities and villages around the developing world, they sell goods and services in the streets and organize markets that governments refuse to recognize.”

Kumi Naidoo

Identity and Voice as key conditions of Legal Empowerment

“Everyone has the right to be recognized before the law” is one of the most central human rights. The state is thus under the obligation to give formal, legal recognition that a person exists. Legal Empowerment requires an affordable document with which the bearer can prove his or her identity. Without such proof of their legal identity the poor in particular are often excluded from the formal protections of the state legal system and as beneficiaries of public goods and services.

People also need information about their rights and how they can help shape decision-making. They need a voice over how their society and the economy are organized. Voice requires education, which, like information and identity, is too often asymmetrically available to the rich and poor. And the poor need representative organisations of their own choosing. There is strength and protection in numbers. Organizations can demand and negotiate reforms and engage with the state more broadly. Almost all poor people have access to groups or associations of some kind – such as small farmers’ cooperatives, trade unions, small business associations, community-based organizations, women’s

associations or faith-based communities – which can provide a more effective platform from which to advance their rights.

Human Rights

Legal Empowerment finds its normative basis in globally agreed standards of human rights and should always meet or exceed these global standards. Human rights should guide the Legal Empowerment process, in particular institutional and legal reforms as well as social policies that aim to reconfigure the relation between state and citizens at the national and local level.

Property rights are human rights

The *Universal Declaration of Human Rights* stipulates that “Everyone has the right to own property alone as well as in association with others” and that “No one shall be arbitrarily deprived of his property.”²⁰ According to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his [or her] possessions except in the public

interest and subject to the conditions provided for by law and by the general principles of international law.”²¹ The *American Convention on Human Rights* holds that “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.” It further provides that “No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”²² The same legal intention is expressed in the *African [Banjul] Charter on Human and Peoples’ Rights* when it holds that “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”²³ In the context of peace-building and in dealing with the complex situation of refugees and internally displaced persons (IDPs) property restitution is considered an important human rights issue. According to representative texts of the international community, there is no just peace without the institution of private property and without the restitution of arbitrarily expropriated property or an equivalent compensation for expropriated goods.²⁴ The *Convention on the Elimination of All Forms of Discrimination against Women* states in its Article 16: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”.

”A discussion of human rights quickly brings to mind the atrocities taking place in Darfur, or Congolese warlords drafting children into their ranks, or migrant women and children sold into sexual slavery. (...) But while these crises call the world’s attention to some of the most visible and dramatic examples of human injustice, the lack of basic human rights endured by millions living in absolute poverty, originates in the underlying structures of many societies, which systemically divide rich from poor, powerful from powerless. In fact, more than half the world’s population lives outside recognized and enforceable laws, without effective legal means to protect their families, homes or other possessions.”

Mary Robinson

English translation of editorial in Madrid’s *El Pais* of June 1, 2007

Labour rights are human rights

An important part of the international human rights law encompasses fundamental labour rights such as the freedom of association and protection of the right to organise; suppression of forced or compulsory labour in all its forms; elimination of discrimination in access to employment, training and working conditions; equal pay for men and women for work of equal value and abolition of child labour stipulating minimum age for admission to employment.

Business rights as a new area of human rights?

Business rights need not yet be regarded as a new term in law. Rather it is a composite of existing rights of individuals and groups of people to engage in economic activity and market transactions. The Commission has bundled these rights together on the basis of their vital instrumentality in the livelihoods and economic prospects of the poor. Business rights include the right of people to start a legally recognised business without arbitrarily applied regulations or discrimination in the application of norms and procedures. It focuses on removing unnecessary barriers that limit economic opportunities and on protecting the investments that people make in their enterprises, however small they may be. Business rights derive from political and civil rights as well as economic and social ones. The right to organise and the freedom of association, for instance, underpin the right to form business cooperatives, other companies and employers' and workers' associations. Business activities are an expression of an entire class of liberties, namely freedom of association, freedom of movement, freedom to develop one's own talents, freedom to exchange legitimately acquired goods and services.

The rationale for promoting business rights is their connection to fundamental freedoms of the individual as well as the immense importance of small and medium sized enterprises in overcoming poverty. A large proportion of the poor work in such businesses (even more so if we include farming). As such enterprises grow, they provide increased labour and rising incomes. Even modest growth in income at this level makes a profound difference to security and quality of life. The more inclusive the formal market becomes the better the opportunities for expanding the coverage and quality of labour rights, which in turn builds human capital.

A human rights agenda

We propose an ambitious agenda for change and an effective strategy for implementing it, all of which will have to be negotiated and agreed locally and nationally. At the same time we strongly urge the international community to expand the basis of Legal Empowerment in international human rights law. The core rights of Legal Empowerment deserve to be further developed in regional or global Legal Empowerment compacts and eventually in international human rights treaties.

Such a framework can buttress national reform, but in order for reforms to benefit the poor they must be built from the bottom-up – not the top-down or outside-in.

Participation and ownership by the poor themselves is key to any success. The Elders-led campaign “Every Human has Rights” is a good example of how the human rights agenda can be embedded in culture and civil society – a step towards Legal Empowerment.²⁵ Reforms that are imposed, no matter how well intended, rarely take root in society. To be recognized as relevant and legitimate by a broad majority of people, laws must be anchored in existing values, customs and structures, and also be consistent with international human-rights obligations. That is especially true for Legal Empowerment, which is about giving voice to the poor and teeth to their rights. It is an advantage in practice and principle that Legal Empowerment is less prescriptive than other approaches to development, having as its aim the increased capacity of the poor, including in the public sphere, such that decisions on the nature of development are theirs, rather than being pronounced from reports such as this.

The Four Pillars of Legal Empowerment ... and the Scale of the Problem

Access to justice and rule of law, as the fundamental and enabling framework is the first pillar of Legal Empowerment. The three other pillars are the domains of empowerment derived from the livelihoods of the poor: property rights, labour rights and business rights. In each pillar the scale of the problem that the Commission is trying to address is surveyed, before turning to solutions in the chapters ahead.

First pillar: Access to Justice and Rule of Law

Access to justice and the rule of law are central to Legal Empowerment. Reforming the law on paper is not enough to change how the poor experience it day to day. Even the best laws are mere paper tigers if poor people cannot use the justice system to give them teeth. Even the best regulations do not help the poor if the institutions enforcing them are ineffective, corrupt or captured by elites. It is therefore vitally important to reform public institutions and remove the legal and administrative barriers that prevent the poor from securing their rights and interests.

Legal identity is a cornerstone for access to justice. Despite the unequivocal provision in the Universal Declaration of Human Rights tens of millions of people lack a formally documented legal identity. Over seven in ten children in the world’s least-developed countries are reckoned not to have birth certificates or other registration documents.²⁶ This prevents many of them from accessing education and health care. It leaves them more vulnerable to exploitation, such as child labour and human trafficking. And without documentary proof of their existence, their parents may find it hard to interact politically, economically and even socially outside their local communities. Absence of legal documents may be used to block them from taking advantage of anti-poverty programs specifically intended for them.

The justice system is characterized by delays in the dispensation of justice, lack of institutional capacity and inefficient systems of law enforcement and congestion. These problems exist mainly because of a shortage of adequately trained personnel and a lack of essential equipment and facilities at both federal and regional levels.

National Consultation in **Ethiopia**

Even when in possession of a legal identity, most poor people still experience that they do not have access to justice. State institutions tend to serve the established networks, political and economic elites rather than the poor. Comparative global statistics on access to justice are hard to come by; even accurate measurement is tricky.²⁷ A country that is thronging with lawyers, for instance, may not necessarily have a better and fairer legal system. But figures can still indicate the scale of the problem. India reportedly has only 11 judges for every million people; over 20 million legal cases are pending and some civil cases take over 20 years to reach court.²⁸ Around a million cases are pending in Kenya, over 300,000 before the High Court in Nairobi alone.²⁹ The average judge in the Philippines has a backlog of 1,479 cases.³⁰

Laws that are vital to the poor are often unclear, contradictory, outdated or discriminatory in their impact. In the Philippines, for instance, settlers must prove they lived on land before 1992 in order to obtain formal rights; informal settlers can rarely demonstrate such proof, while settlers since 1992 are excluded by the law altogether.

The existence of effective procedural rights, functioning mechanisms to implement rights is also important. A recent study of five countries in Central America shows that poorly designed or missing procedural laws are an important reason for ineffective substantive law. This may partly explain why constitutional rights remain on paper only, taxes are not collected and public investment in social services stays below “guaranteed” levels.

The poor may be unable to access the justice system because they do not understand it, or lack knowledge about it. They may be illiterate, which severely hampers their ability to interact with the justice system. In many countries, the law is drafted and administered only in the national language, which many poor people may be unable to speak or read. In almost all African countries, for example, the justice system operates solely in English, French or Portuguese, excluding the majority of the population that speak local languages. Courts may be far away, underfunded and take years to decide cases. Bringing a case to court swiftly may require bribes. Judicial procedures may be inaccessible for those who lack legal representation, which is generally too expensive for the poor. Restrictions on who may practice law and provide legal services are other barriers that can block more accessible forms of legal services such as legal clinics and paralegals.

Besides the fact that justice does not use a language that is easily understood, particularly by the poor, the illiteracy of the large majority of the Beninese constitutes a serious obstacle to their access to justice. It is often a source of incomprehension and suspicion: the poor may feel that justice is biased towards the rich, that many decisions are rigged, and that judges are corruptible. The unfamiliarity towards justice translates into feelings of incomprehension, frustration and disaffection.

National Consultation in **Benin**

Difficulties in obtaining access to justice reinforce poverty and exclusion. As surveys of legal needs, crime and victims demonstrate, the poor need better legal protection. Their personal security is often threatened. Many live in constant fear of eviction and expropriation.

The most serious problems that the poor report in surveys of their legal needs surround changes in the major relationships that govern their lives and their assets. For example, since poor people usually live in family homes that have not been formally documented and registered, the death of the head of the family throws into question who owns it and who has a right to live there. In addition, land is often prepared for farming and then used without formal rights to it ever being established. The absence of formal rights leaves the poor vulnerable to eviction if the legal landowner changes, and makes due process and full compensation less likely during attempts at eviction by the public authorities. Similarly if her rights have not been formalized, a woman who helps build a business with her husband is likely to lose everything in case of divorce. When communities jointly own pastures, share water and use the same fishing grounds, it is almost impossible for people who move out to realize their assets, which effectively limits their freedom to change their way of life. At the same time new arrivals may be denied access to collectively held resources.

Malign dependency is a high risk. Partners are tied to each other by specific investments, which they risk losing if they leave the relationship. The poorest person in the relationship generally has most to lose: tenants and employees tend to have more invested in a specific piece of land or business than a landlord or employer has invested in them. Women often devote more time and effort to their family and its assets than their husbands do. That renders it difficult for them to escape an unhappy marriage and makes them vulnerable to exploitation.

Despite their need for it, many poor people steer clear of the legal system and state institutions in general. They believe, often correctly, that these institutions will not help solve their problems. Even if the system could conceivably provide adequate redress, it may take too long, cost too much and require expertise that they lack.

The principle of equality before the law is fundamentally important, yet incredibly difficult to fulfil. Even fully-fledged democracies with well-functioning state institutions struggle to do so. In countries where democracy is weak, institutions are more likely to be captured by elites. All too often, the law is a tool of the state and ruling elites to use as they please – an option for the few, not an obligation that applies equally to all.

Second pillar: Property rights

The relevance of property rights goes way beyond their role as economic assets. Secure and accessible property rights provide a sense of identity, dignity, and belonging. They create reliable ties of rights and obligations within a community and a system of mutual recognition of rights and responsibilities beyond it. For many poor individuals and communities, land is more than just an aggregate of occupied and used plots. It is the expression of a way of life which they should have the opportunity to improve by their own efforts.

Starting out as ownership over parcels of nature, property arrangements have evolved enormously covering land, other concrete assets, and ever-expanding abstractions such as pollution quotas, financial products, inventions and ideas. Overwhelming evidence all over the world shows that functional property relationships are associated with stable

growth and social contracts, whereas dysfunctional property relationships are associated with poor, unequal and unstable societies. When property rights are out of peoples' reach or rights are subject to competing claims, their assets are often not secure and their economic potential remains severely inhibited.

Yet most of the world's poor lack effective property rights: they are without secure tenure, unaware of their legal rights, or unable to exercise them. This is true not only in the poorest states, but also in more prosperous ones such as Brazil, China and Russia. The intrinsic economic power of their property remains untapped, and the poor unable, for example, to provide collateral on a loan to increase their incomes or improve their businesses. Insecurity hits the poor hard. They can be subject to arbitrary evictions, forced off their land any time without compensation, and are powerless in disputes over assets with powerful actors. Their livelihoods are under constant threat, and there is little to encourage future investment in their land or small scale business. In many countries state institutions do not provide the protection the poor need and are entitled to.

Analysis of the World Bank's Country Performance and Institutional Assessments (CPIA) shows the extent of the problem. Based on a rating of 1 (lowest) to 6 (highest), only five of the 76 developing countries surveyed in 2005 had property rights and rule-based governance rated 4 or above – and all five were small island states.³¹ This means that the property rights of most people in developing countries are not protected, that contracts are not enforced; registries and other institutions required to protect property function poorly or not at all.³²

The poor's assets may be documented through informal local arrangements that provide some protection and liquidity. But these are rarely recognized by national institutions and do not allow capital to be leveraged more widely. Whatever economic assets people have the right to remain underemployed. Owners cannot use their assets to get loans, enforce contracts or expand beyond a personal network of familiar customers and partners. Their property is often vulnerable to seizure through force or law. Moreover, informal capital is invisible and unproductive for the national economy. And since the poor are unable to participate in the economy beyond their immediate vicinity, their possibilities for trade are diminished.

This is a huge wasted opportunity. In Peru, for instance, informal capital is estimated to be worth \$74 billion. The

After being cleared to eradicate the tse tse fly and create cropland and space for its growing population, the Shinyanga region became the Desert of Tanzania. In 1986, a governmental initiative known as the Hashi project empowered the agro-pastoralist Sukuma people, who used their ecological knowledge and strong traditional institutions to restore the productivity of their land. They reestablished protected enclosures known as "ngitili". It did not take long for nature to respond. With the re-growth of acacia and miombo trees, shrub grass and herb varieties came the return of birds and mammal species and of course cattle – a liquid asset within this rural community. Other lands became the property of individual families. Hard work and modest investment restored soil fertility and drove agricultural productivity up. Households' incomes, diet, and security improved significantly. Meanwhile, income from the shared enclosures have increasingly helped the communities pay for public services such as enhanced education, health service and access to markets for their products. Hashi provides proof that empowerment, poverty reduction and environmental sustainability go hand in hand

Source: The Wealth of the Poor World Resources 2005

figure for Haiti is over \$5.4 billion; Honduras, nearly \$13 billion; Albania nearly \$16 billion; Tanzania, over \$29 billion; the Philippines over \$132 billion; Egypt over \$248 billion; Mexico over \$310 billion.³³ That this informal capital cannot be put to its full use is particularly galling because it is already where it is needed most: in the hands of poor people and their communities. External sources of capital, such as official aid and foreign investment, are less abundant and do not always reach the poor.

Uncertainty over legal ownership of forests, pastures, swamplands, and sources of fresh water - access to which most of the rural poor depend on for their livelihoods - is another huge concern. Already, nearly a third of the world's population suffers from a moderate to high water shortage. The World Commission on Water estimates that rising populations and economic growth will boost demand for water by half in the next 30 years: some 4 billion people will be severely short of water by 2025.³⁴ The value of land and real property often depends directly on the existence of adequate water rights. In this situation, a key role will be played by property rights defining who has access to water.

Vulnerable groups suffer most from a lack of property rights. Indigenous peoples are frequently victims of property discrimination; collectively held indigenous lands have often been declared public or unoccupied lands (and collectivity can be retained in formalizing property rights). Women, who constitute half of the world's population, own very little of the world's property - as little as 2 per cent in some countries. Rarely do they own more than 15 per cent of it.³⁵ Even when women do have legal property rights, their actual control of land may be tenuous, since access is often mediated by men.

Women are half the world's population, produce 60 to 80 percent of the food in developing countries, and are increasingly responsible for rural households, yet they own less than 10 percent of the world's property. Much of the misery in the developing world is due to statutory and customary property systems which disenfranchise women. Women often face barriers to owning, using, and transferring or inheriting property. Women face forcible eviction from their homes and their land (land over which they had customary or other rights) by family members, traditional authorities and or neighbors.

Sources: UN 1980; FAO 1999 Women's Right to Land and Natural Resources: some implications for a human-rights based approach

Third pillar: Labour rights

A well-designed system of labour rights should provide both protection and opportunity. The Universal Declaration of Human Rights sets out a series of labour rights, as does a long tradition of internationally agreed labour standards. Laws must protect vulnerable workers from exploitation without diminishing their opportunities for formal employment (excessive or inefficient regulations can do more harm than good). Our outlook must switch from viewing labour as a raw resource to be extracted to viewing labour as deriving from human beings who must become the subject of investment if prosperity is to be built.

Most of the world's poor scrape by doing insecure and poorly paid jobs in the informal economy. They are street vendors, rubbish collectors, construction workers, small-scale furniture makers, garment workers working from home, fishers, small farmers, and forest gatherers. Nearly all of the almost 500 million working poor who earn less than \$1 a day, labour in the unofficial economy. Informal work accounts for over half of total

employment in developing countries – and as much as 90% in some South Asian and African countries.³⁶ Roughly half of informal workers are self-employed, often in disguised wage relationships; informal enterprises or households employ another quarter; the final quarter is employed informally by formal businesses.

However hard they work, these self-employed workers, casual day labourers and industrial outworkers cannot escape poverty. They have basic rights and protections in theory, but not in practice. They do not benefit from labour laws and collective-bargaining arrangements, because their employment relationship is unclear. They suffer inferior working conditions and job insecurity.

They are typically denied access to state or employer benefits and social security.³⁷ Recognition and enforcement of the rights of individual workers and of their organizations is critical for breaking the cycle of poverty.³⁸

Most Mexican citizens do not have access to banking and only 13% hold mortgage debt. In the absence of financial institutions, the poor and lower middle classes rely on pawn shops. The annualized interest rate they charge ranges from 48% in non-profit pawnshops to 160% in for-profit ones.

Source: *La Crónica de Hoy*, 9 October, 2006.

Informal employment often expands in upturns as well as downturns. While recession throws people into informal work to survive, recovery may also boost informal employment in entrepreneurial small firms and sub-contracted and outsourced activities linked to the global production system.³⁹

Women are particularly likely to work in the informal economy. In developing countries excluding North Africa, over three in five women in non-agricultural work are informally employed. In countries where they are allowed to work, women account for anything from 30% to 90% of street vendors and 35% to 80% of home-based workers.⁴⁰ Over four-fifths of home-based industrial outworkers in the developing world are women. Moreover, women predominate in the lowest categories of informal work and typically earn less than men.

The last two decades have seen a marked increase in women's participation in the labour force. The pervasive segmentation of labour markets by gender suggests that women's labour did not simply substitute for men's. Rather, a parallel process has created low-paid and poor informal employment opportunities, primarily for women.⁴¹

Indigenous peoples have also often been forced into informal work by the loss of their traditional lands, relocation without compensation and basic support services, under-investment in education and health, and ill-adapted educational systems and materials.

More broadly, increasing global competition, ineffective, outdated or poorly designed labour regulations, and rising informality are together widening the gap between labour law and the reality of the workplace.

Fourth pillar: Business rights

Most of the world's poor entrepreneurs operate informally and as a consequence an impressive share of the economy in developing countries is informal.⁴² Ensuring their rights to vend, to have a workspace, and related infrastructure and services (shelter, electricity, water, sanitation), thereby facilitating the success of small and medium enterprises, would be an invaluable step towards poverty reduction. The poor occupy land that they do not hold title to, work in small, unregistered businesses, and rely on family and friends for loans or risk sharing. They are particularly vulnerable to the vagaries, corruption and violence of criminals and officials. They have few means of settling disputes apart from bribery or violence.

Their economic opportunities are limited. They have difficulty accessing finance and markets. They can rarely obtain tax breaks and other business incentives. They must work around urban zoning regulations that prevent them from trading. They are often denied the right to use common and public resources. And they may be constrained by burdensome public health and sanitation rules, notably in the production of street food. As things stand, the four billion excluded have no prospect of the legal tools developed countries have used to create wealth. Most likely they will not be able to create a legal identity, obtain limited liability, associate with other entrepreneurs to integrate capital, access financial mechanisms to obtain liquidity, extend credit, contract with employees, suppliers and customers, access export opportunities, and much more.

“Utility connections (water, electricity and telephone) require a legally recognized property title or lease as a form of security. Thus, informal traders are often deprived of these services.”

National Consultation in **Sri Lanka**

When the laws regulating small businesses are unfairly drafted, implemented or enforced, or simply too weak and inefficient, they leave the poor little option but to trade in the informal economy. Obtaining a license, the first step to registering a business, is often prohibitively expensive and difficult. In Kenya, for example, over 1,000 licenses govern entrepreneurial entry; over 130 separate laws regulate agriculture alone. Costly and cumbersome regulations prevent poor people from bettering themselves through enterprise and stifle the economy's development.

The scale of the problem

The problem that the Commission addresses is of massive proportions. In each of the four pillars the problems are deep and affect poor people around the globe. Four billion people are excluded from the rule of law... *Four billion people are excluded from the rule of law.* This Commission has an agenda to change that and we believe that addressing the issue of Legal Empowerment is both smart politics as well as good economics.

PROMOTING ENVIRONMENTAL SUSTAINABILITY AND ADDRESSING CLIMATE CHANGE

Securing land and resource rights for the poor can combat poverty as well as environmental degradation. The poor depend more directly on their local environment for their day-to-day survival than the rich. They bear the immediate brunt when ecological resources and services collapse. Yet evidence from around the world shows that reversing environmental damage such as over-fishing, water pollution, land degradation and deforestation is closely associated with ensuring that local people and communities have ownership or stewardship over the environmental resources they depend on.⁴³

Consider Namibia. Legal reforms in 1996 created a framework for the community-based management of natural resources, giving Namibians who form conservation areas legal rights to manage wildlife reserves. These secure rights have enabled rural Namibians to reduce poaching and caused wildlife numbers and ecosystems to rebound. Poor Namibians have also gained new entrepreneurial opportunities based on eco-tourism and related activities. These businesses provide a new source of income and work as well as a broader sense of purpose and dignity. Namibia's experience shows that devolving secure legal rights to local people can promote conservation and economic development.⁴⁴

Climate change is an even bigger challenge – and the poor are most at risk. As the Intergovernmental Panel on Climate Change makes clear, a big cut in greenhouse-gas emissions is required to stave off globally disastrous consequences. But UNDP's 2007 Human Development Report documents the extent to which the poor are already affected. Poor women and men are the most vulnerable because they are living in marginal environments: areas prone to drought and desertification, areas at high risk of flooding, countries and communities with little scope to prevent or manage disasters or adapt to environmental change. When disaster strikes, disputes about land and other property rights are particularly contentious and difficult, not least when people are displaced. The destruction – or lack – of a valid, recognized system of property titles can lead to conflict and stop recovery and reconstruction in their tracks. During the cyclone in Bangladesh in 2006, many farmers' lands simply disappeared under water, forcing them to move.⁴⁵ Climate change is likely to trigger future refugee crises as certain areas become uninhabitable.

“There are more floods now and the river banks are being washed away faster. There's nowhere to go. My land is in the river, I have nothing now.”

Intsar Husain, Antar Para, north-western Bangladesh, 2007 (in HDR 2007/2008)

Negotiations pursuant to the global Convention on Climate Change offer opportunities to address the growing vulnerability of the poor through increased international cooperation on adapting to climate change, as well as efforts to limit it. A global agreement would need to include clear commitments to step up financing to help people in poor countries adjust. Legal Empowerment of the Poor should be part and parcel of the discussion. Without access to legal tools and protections, poor people will continue to remain exposed. Climate-proofing infrastructure and improving disaster preparedness are not enough.

We urge the UN to include the Legal Empowerment agenda in the Post-2012 negotiations on climate change as a core element in the strategies for adaptation. The UN Framework Convention on Climate Change (FCCC) recognises the right of the poor countries to receive support in adaptation to climate change. Since 2006 there is an agreement on a Nairobi Work Programme on Impacts, Vulnerability and Adaptation to Climate Change. In these negotiations Legal Empowerment of the Poor should be included as a basic element of adaptation strategies and policies.

In a world in which carbon emissions urgently need to be restricted, ‘cap-and-trade’ carbon markets will provide important incentives for emission reductions and the transition towards cleaner and more sustainable technologies. These incentives should also generate a greatly increased demand for carbon offset projects, including from developing countries. But the potential for the poor to access and benefit from this carbon financing, notably for projects addressing sustainable land management, will surely depend in important ways on their Legal Empowerment.

Thanks to the Kyoto Protocol, billions of dollars have been generated for investments in more sustainable solutions in developing countries, such as renewable energy. Such mechanisms must be expanded so that they can finance much broader investments in climate-friendly poverty reduction. Combining innovations in environmental finance and pro-poor legal reforms could provide a new model of development finance capable of reaching poor communities much more directly than conventional assistance.

The rehabilitation of degraded forests, grasslands and agricultural land is an important part of mitigating climate change. Such lands, which have the potential to sequester significant amounts of carbon from the atmosphere, are found in large parts of Sub-Saharan Africa and many other developing regions. Through efforts to increase soil productivity, water retention and vegetative cover, these degraded lands can contribute to meeting global climate goals while helping poor and vulnerable communities. Such investments should therefore qualify for financing from the Clean Development Mechanism or other instruments associated with the growing carbon markets.

The Kyoto Protocol has offered very few opportunities for land-related carbon finance. The new round of negotiations triggered by the Bali climate conference in December 2007 provides the opportunity to address this shortcoming. However, equally important are the many issues related to a lack of clear rights to the ownership and use of land and other natural resources. Poor farming communities’ lack of secure land rights denies them access to the carbon market as well as other forms of finance and services.

Carbon finance could help address both climate change and rural poverty. It is a great opportunity to bringing sorely needed investment to poverty-stricken rural areas. But without effective land rights, it will not happen.⁴⁶

Chapter 3: Legal Empowerment is Smart Politics and Good Economics

In most countries, rich and powerful elites dominate politics and the economic sphere. Their interests, rather than those of the poor majority struggling to make ends meet, shape public policy and its outcomes. Inequitable and dysfunctional laws and institutions and the poor's lack of access to justice tend to reinforce these economic and political inequalities. This is not just unfair, it is short sighted. It may enable the rich to stay at the top of the pile for now – but at a huge cost. It erodes the state's powers, stunts economic growth and breeds instability. Corruption and rent seeking⁴⁷ are particularly costly. In the worst cases, failing states descend into conflict. But even in countries where matters have not deteriorated as far, unjust systems that undermine security and restrict opportunity ultimately harm not just the poor, but society as a whole and even the elites.

Many people do not know what their human rights are and are unaware of the meaning of having a right.

National Consultation in **Mozambique**

Legal Empowerment is Smart Politics

Where formal laws and institutions do not serve the needs of the poor, politics gravitates towards informal channels. When governments are unable or unwilling to deliver protection and opportunity for all, the formal system's legitimacy and relevance are eroded. A vicious circle develops, with the decay of legal institutions and the growth of makeshift informal arrangements feeding on each other. The state hollows out. Society fragments. In worst cases, the economy stagnates. Unrest brews. The legitimacy and authority of political leaders is undermined. The upshot: at best, a precarious state of arrested development; potentially, collapse.

Governance matters and more often than not poorer countries have less effective governance. Their people get less justice from the courts and are more subject to crime, corruption, and government interference in their lives. Good governance – in the form of institutions that establish a predictable, impartial, and consistently enforced set of rules – is crucial for achieving a more just, a more prosperous, and a more sustainable society.

Combating corruption requires raising awareness of the destructive consequences of corruption, enhancing the role of governmental and non-governmental monitoring institutions, asserting the role of the media and creating an independent and impartial judiciary.

National Consultation in **Jordan**

Legal Empowerment of the Poor does not have to be a zero-sum game, where some people will gain and others will lose. As was pointed out, Legal Empowerment starts with identity and voice. A successful strategy to give all people such an identity makes it harder to exploit poor people, but it does not reduce the identity of anyone else. Voice and representation for the poor does not deny others the same. In Legal Empowerment reforms, however, it is critical that the voices of the poor are not diluted. When institutional reform enhances poor people's access to justice, society as a whole is better off. Functioning property rights will contribute to functioning markets for

assets, which will improve the productivity of land and other assets thus reaping economic dividends for the poor. Property rights are a crucial legal tool for the poor and as such they can be an instrument for inclusion and improved equality rather than of further marginalization.

Legal Empowerment is not just a matter of emancipating the poor; it also offers greater prosperity and security for society as a whole. Legal Empowerment bolsters the state's effectiveness and legitimacy, and thus that of its officials and representatives at all levels. Bold leaders that champion Legal Empowerment of the Poor will win support far and wide.

A Political Challenge with Rewards

Undeniably, though, reform is tough. Any leader – whether a president, a political party leader in Parliament, the head of a civil society or community based organisation, a village chief or a slum warden – who wants to take up this challenge faces several particular difficulties.

For a start, the poor generally mistrust state institutions and the legal system – with good reason. It is the institutions with the power to establish and uphold the rules governing economic activity, which often perpetuate economic inequality. Those institutions must be reformed to work in the interests of all. In a Soviet-era study of one East European country, 82 percent of informal business owners said bribing officials was necessary to continue operating.⁴⁸ Experience has taught the poor to be wary of politicians promising reform. To win them over, they need to see tangible results. Politicians need to show that the formal system is changing to cater to their needs. Sewa Nagar market shows that it can be done.

“The poor continue to perceive the law as mainly for the rich, recognizing the undemocratic reality that the law is the expression of the ideology of the dominant elite.”

National Consultation in **Philippines**

There is also a widespread perception that promoting property rights will further the interests of the elite few. This is not necessarily true. It all depends on how such reforms are implemented and whether the interests of the poor are consistently safeguarded from the outset. Implemented well, a well-functioning and inclusive property rights system is as – if not more – important for the poor.

Myriad conventional experts on legal and development issues peddling technical solutions for every possible problem must also be bypassed. Quick technical fixes may seem appealing, but unless reforms are based on local needs and conditions, and negotiated and implemented by getting the poor on side, they will not be able to take root and make a real difference.

Perhaps most importantly, a majority of society has to be persuaded that building a more inclusive and effective legal order is feasible and ultimately desirable for everyone. Utopian proposals elicit cynicism; revolutionary ones, fear and resistance. The poor need a voice, organization and information; the rich and powerful, persuasion and reassurance.

Politics cannot be wished away. Powerful actors must be co-opted, won over. National leadership and broad coalitions for change are vital.

Legal Empowerment, however, does not require its political champions to be Saints (although that could be useful) but only to see an enlightened self-interest. Significant political capital accrues to the reformer. As informal economic activity sees opportunities within the formal system, the tax base is widened. Extra economic activity that results from Legal Empowerment further increases public revenue. As more and more people develop a stake in the reduction of crime and the maintenance of peace, the political base of reform advocates extends. Moreover, leadership requires a credible vision of the future. Legal Empowerment draws upon powerful notions of freedom, fairness, and solidarity and can shape a compelling such vision. People understand the language of inclusion, particularly if they suffer exclusion on a daily basis. And what better political legacy than to have made a lasting contribution to the development of one's country, to have given people a real opportunity to better their lives. Institutionalised in laws and practices, Legal Empowerment is a legacy that endures.

An Essential Role for Democracy

The poor's plight is often rooted in political systems where citizens are denied a voice; government institutions have no obligation to answer to the people, and special interests exploit resources without fear of scrutiny. Democratic rule can encourage the development of policies and delivery of programs that address people's demands. It provides incentives and safeguards that allow all citizens – even the poorest – to reward officials who act in the public interest and hold accountable those who fail to address their needs. Famously, no democracy has ever experienced a famine.

While non-democratic governments may be able to provide security and basic services, democratic ones are more likely to respond to people's needs in a way that is perceived to be legitimate. There is empirical evidence suggesting that democracies outperform autocracies in per capita GDP growth and other social welfare indicators.⁴⁹ There also is a strong association among developing countries between democracy and well-being (as captured by the Human Development Index).

“Legal and judicial systems are not accountable.”

National Consultation in **Tanzania**

The self-correcting mechanisms of democracy, derived through checks and balances imposed by the branches of government also foster accountability, curtail the abuse of power, and promote responsiveness to the concerns of the majority of the electorate. There is no substitute for a truly inclusive, participatory and deliberative process, where alternative viewpoints are considered and the interests of poor and marginalized citizens are taken into account. Nobody is as wise as everybody.

Almost invariably, the poor suffer most from a lack of voice, representation and influence – even in open and competitive government systems. Lasting political exclusion hardens into resignation and fatalism vis-à-vis the formal institutions and decision-making processes of the state. Vigorous efforts are needed to help citizens organize and

participate effectively in influencing decisions that affect their lives, as well as enable political parties and parliaments to better represent voters' needs. Overly centralized power is frequently a constraint on meaningful citizen participation. Decentralization and Legal Empowerment can mutually reinforce each other, because government close to the people is more likely to be government by and for it. But even in the most decentralised systems exclusion can occur and well functioning accountability mechanisms need to be in place.

Many democracies are fragile. They have inherited endemic problems such as debt, disease, ethnic divisions, poverty, and corruption. In many countries, checks and balances on power remain weak. But while controversy surrounds whether democratisation facilitates the rule of law, there is no disagreement that progress made in establishing the rule of law facilitates democratisation.⁵⁰ It would be more accurate to say that democratisation and Legal Empowerment must be synchronised rather than sequenced: for they are kindred spirits who must not be allowed to fall out. Democracy can help drive Legal Empowerment too, and both are intrinsic and instrumental to development.

Legal Empowerment is Good Economics

For years Venancio Andrade eked out a meagre living selling pots and pans on the dusty streets of Lima and neighbouring towns. He eventually taught himself how to make aluminium kitchen supplies, and in 1985 he scraped together enough money to buy a parcel of land in a barren industrial park on the outskirts of the Peruvian capital. His ownership of property qualified Andrade for bank loans that helped his cooking utensils company grow, and he now heads the business association of Villa El Salvador, a sprawling shantytown of 400,000 that sprang up on the edges of the industrial park. The 62-year-old Andrade has five full-time employees on his payroll, and during peak production periods employs as many as 30 people. By his own reckoning, it was the acquisition of formal property titles that made him and other small businessmen in Villa El Salvador viable clients in the eyes of prospective lenders. "Credit has allowed me to meet rising demand for my products when I need to produce more," explains Andrade.⁵¹

Mountains of research confirm that good institutions are vital to economies' long-term success. Indeed, some claim that the security of property rights has been historically the biggest determinant of why some countries grew rich and others remained poor.⁵² This does not imply that property rights are the silver bullet. Rather it is a key, yet often overlooked, ingredient that must be part and parcel of a broader Legal Empowerment and development agenda and that will allow countries to develop modern economies. Making institutions and rules work for the broader public good is at the heart of this agenda.

Effective and inclusive laws, enforced through well-functioning institutions, bring a host of economic benefits that are so fundamental that they are often forgotten. They make transactions easier and cheaper. They foster predictability, security and trust. They make enforceable long-term contracts between strangers possible. That, in turn, permits a greater specialization and division of labour, economies of scale, long-distance trade and essential financial functions such as credit and insurance. Such features mark the difference between a rudimentary economy with a simple pattern of production and exchange and a vastly more complex and productive developed economy. Well-designed

and fairly implemented laws can also promote competition, investment and innovation. What matters is not so much regulation or deregulation *per se*, but the quality of laws, regulations and institutions.

Equity – by which we mean equality of protection and opportunity – requires that the poor have the necessary security and a fair chance to participate in the formal economy. But so does efficiency: if the poor are unable to make the most of their talents, growth suffers. Bright ideas and profitable investments go untapped. Poverty becomes entrenched, people's potential is wasted and economic growth slows.⁵³

Following a strike by Bogota's public-cleaning and waste-management service in the mid-nineties, the local government asked rag pickers to help. Heeding the city's call, they disposed of more than 700 tonnes of waste daily. Spotting a business opportunity, they organized themselves into the *Asociacion de Recicladores de Bogota (ARB)*, an association of 25 waste-pickers' co-ops. But when the contract to provide solid waste-management services was subsequently put out to competitive tender, government legislation and the terms of the tender barred them from competing for it. Helped by *pro bono* lawyers, ARB demanded a constitutional review of this unfair provision and a writ of protection of human rights. Colombia's Constitutional Court accepted their arguments and granted them affirmative action for their inclusion in competitive bidding processes connected to waste management.

Legal Empowerment can make a difference in development. But it is not a panacea. Sound macroeconomic conditions also matter. So does openness to trade and foreign investment. Investment in education, training, infrastructure and essential services is vital. Underpinned by Legal Empowerment, all of these will promote broad-based growth and poverty reduction.

The Benefits of Access to Justice and the Rule of Law

To reap the full benefits of allocating property rights, defining employment relationships and legally registering enterprises, rights must be enforceable. And they must be implemented by functioning institutions. While measuring the economic value of access to justice is notoriously difficult, most studies find that the rule of law makes a significant contribution to growth and poverty reduction. Yet studies that focus narrowly on the impact of the rule of law on the security of foreign investment understate its true economic benefits. They neglect the value to the poor of being able to obtain redress for grievances.⁵⁴ They omit the huge wider benefits of making all economic transactions and relationships predictable, transparent and fair.

Access to justice and the rule of law also makes it easier to settle disputes. Determining the ownership of assets, such as land, mining rights and water is often difficult. Duties to perform services and intangible assets such as client relationships may be difficult to define. The relationships in which these assets accrue are often difficult to regulate in a contract, in particular for the poor. Disputes inevitably arise, particularly when relationships change. A court or neutral arbitrator can help defuse conflict, reduce abuse and enable the poor to obtain redress. While being able to enforce contracts fairly is hugely valuable, unchecked legalism can cause defensiveness and uncertainty. Defendants need to be protected against the threat of flimsy claims whose huge costs are in effect a form of extortion. A balance needs to be struck.

The Benefits of Property Rights

Property rights is to be understood as a bundle of rights and obligations between people and assets, reflecting the multiplicity and diversity of property systems around the world. In all property rights systems, creating security and predictability is fundamental. Property systems are a central facet of state functionality and are important indicators of its effectiveness.

In economic terms, to be fully productive, assets need to be formally recognized by a legal property rights system. Embodying them in standard records, titles and contracts in accordance to the law, gives households and businesses secure tenure that protects them from involuntary removal. Evictions should only be possible in exceptional circumstances by means of due legal process, which must be equally applicable, contestable and independent, and where the cost of eviction is fully compensated, only in circumstances where physical safety of life and property is threatened, where contract agreements have not been fulfilled and fair eminent domain procedures are applicable.

Property rights, including tenure security, should not only be protected by law, but also by connecting the property of the poor to wide societal interests (by increasing the range of validation of the tenure security) such as opening the possibility of using them as collateral for obtaining credit, such as a business loan or a mortgage. Such systems encourage compliance by attaching owners and asset holders to assets, assets to addresses, and addresses to enforcement. As such, property reform, if implemented in the right way, can strengthen access to legal identity and to justice. Property records unify dispersed arrangements into a single legally compatible system. This can integrate fragmented local markets, enabling businesses to seek out new opportunities outside their immediate vicinity.

Without effective property rights, managed by functioning institutions, advanced economies would shrivel. Conversely, their introduction could permit developing ones to make a huge leap forward. Consider China. A colossal challenge of poverty and inequality remains, as well as a great and historic debate on the nature and extent of property reform, but China's experience proves beyond doubt the instrumentality of property rights in the creation of wealth. The *de facto* securitization of property after the economy started to be liberalized in the 1980s has generated US\$ 7.4 trillion in capital for the country's economic expansion. This dwarfs the US\$ 611 billion of foreign direct investment and almost US\$ 46 billion of overseas aid that it has received.⁵⁵

The rights of indigenous peoples depend on, and interact with, a wide range of measures and policies, such as those covering land tenure; the protection of endangered species; health, food and agriculture; water quality; access to and exploitation of natural resources; environmental management; soil conservation; and the protection of cultural heritage. Within this broader horizon, **intellectual-property rights** may help create or protect indigenous rights. One example illustrating the use of intellectual property rights relates to traditional medicines in the People's Republic of China, in respect of which several thousand patents have been granted in past years.

Source: WIPO 2005

Evidence abounds that secure property rights boost business investment. Surveys in Poland, Romania, Russia, Slovakia and Ukraine reveal that businesspeople who believe that their property rights are secure reinvest as much as 40% more of their income than those who do not.

Farmers plough more back into their land too. In Ghana and Nicaragua, it was found that farmers with secure tenure invest more in their land.⁵⁶ Rural land in Brazil, Indonesia, the Philippines and Thailand shot up in value by between 43 percent and 81 percent after it was titled. Rising land values reflect increased investment and feed through into higher productivity, output and incomes. In China, the combined effect of titling and price liberalization increased farm production by 42 percent between 1978 and 1984.⁵⁷ Thai farmers who receive title to their land produce a quarter more than those who do not.

The value of urban land dramatically increased after it was titled: by 14 percent in Manila, by 25 percent in Guayaquil and Lima, and by 58% in Davao.⁵⁸ It also encourages people to do up their homes. A study of a shantytown in Argentina found that when squatters received legal title to their homes the number of houses with good-quality walls rose by 40 percent, while those with good roofs increased by 47 percent.⁵⁹ Provision of secure rights over land in Lima raised spending on housing renovation by 68 percent.⁶⁰

When people's rights over their land are insecure, they have to devote valuable resources to physically protect it and get tied down in conflicts over plot boundaries. A study of Peru found that nearly half (47 percent) of those without a property title had to hire watchmen to look after their plots. Families with more secure title were able to devote longer to finding better job opportunities. In total, household members spent 45 more hours a week in productive employment – the equivalent of adding an extra person's income to the household. Women who would otherwise have stayed home to protect it benefited most.⁶¹

Children stand to gain as well. Families in the Peruvian program, for instance, are less likely to pack their young children off to work and more likely to send them to school. Since they have higher incomes from working longer hours outside their homes, they resort less to child labour.⁶²

Empowering women with property rights makes a big dent in poverty and malnutrition. As women earn more, they tend to spend a bigger share of their income on keeping their children healthy and well-fed. Ensuring women had effective property rights would thus underpin strong families and businesses.

Protecting what existing assets they have is the first concern of the poor. Measures to achieve such protection will in itself empower poor people, secure their livelihoods and make investments in their future more attractive. Property rights are fundamental to the life and operation of society and so their reform cannot be neglected. For this very same reason, reform carries risks, and special care must be taken to learn from past errors where benefits have been captured by local elites rather than the poor. Ensuring that property reforms do not weaken women's rights and indigenous or pastoralist groups' communal rights is notoriously difficult. Not only must the beneficiaries be consulted,

Legal Empowerment ensures that the poor participate in property rights systems voluntarily as they perceive the benefits exceeding the costs. It is a program that grounds reform in the local realities and the needs and interests of the vulnerable.

Many indigenous lands have been, and still are, declared public or unoccupied lands, because they are held collectively according to conceptions of ownership and access that do not fit well with imported property systems. This lack of status, recognition and registration of collective user rights or group owned property has huge consequences for indigenous asset holders and society at large. It is a critical issue for property rights reform globally. In addressing such issues in regions where the delimitation and identification of indigenous peoples is difficult and contested, it is better to focus on promoting that indigenous land systems are recognized, standardized and documented in accordance with the law. This sidesteps the troubled definition as to who is and who is not 'indigenous' and has the added advantage of zeroing in on the systemic issues of indigenous or customary tenure regimes.

Customary tenure systems were once thought to provide insufficient security, but research shows that they can be flexible and responsive to changing economic circumstances.⁶³ In many developing countries, particularly in sub-Saharan Africa, customary tenure systems represent an appropriate and cost effective way to secure access to land for the rural poor. A household, village or kin group often provides insurance against risks, as well as access to informal credit and security. Customary systems are thus able to provide some of the essential economic functions of a formal property rights system. However, it is extremely important to ensure that the rights of women are safeguarded. Customary systems must pass the test of fundamental human rights obligations. Wherever assets can be represented in a standard form, the horizons of the poor's economic activity will be correspondingly enlarged. Whatever the characteristics of the local property system, when it becomes documented and protected by law, it can be integrated into the national and international market economy.

Whether through customary tenure, collective rights or individual land titling, the poor need to be able to use their assets effectively. If they sell it to cope with a crisis, they might be worse off than before. The corollary areas of labour and business rights are critical for the poor to earn sufficient income through decent work and entrepreneurship in order to be able to leverage their property assets.

The Benefits of Labour Rights

It is broadly accepted that labour is not a commodity.⁶⁴ The labour market is different from other markets: it not only creates value, it also shapes the distribution of income and prosperity. While progress requires that competition weed out failing businesses, people cannot be thrown on the scrapheap.

Removing children from work requires overcoming social prejudice, building enough good schools, and compensating poor families for the loss of a child's income. While these costs are not insignificant, the economic benefits of eliminating child labour – the greater productivity and earnings generated by more schooling and improved health – far exceed them.

Source: UNDP IPC In Focus; Children in Poverty; March 2004

Ideological questions on regulation or deregulation have been debated endlessly. More important, however, is the question how regulation can be used to promote decent work for the working poor. The focus should be on finding the right balance between security, supportive structures, and flexibility for firms in both the formal and informal economy, while working on the kinds of reforms that will lower the costs of entry for small businesses to the formal economy, where labour rights can be more effectively enforced. Productive and decent work can raise individuals out of poverty.⁶⁵

To promote decent work, it is necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed, and promoting the protection of workers and economic units in the informal economy and their incorporation into the mainstream economy.⁶⁶

Giving workers secure labour rights encourages them – and their employers – to invest in new skills that enhance their productivity. It would give them more bargaining power and consequently higher wages, commensurate with their increased productivity. It would also enable them to obtain a fairer share of a business' profits. And it would protect them from exploitation and ensure they have decent working conditions.

Secure workers are generally better motivated. They are more likely to invest in their future and that of their children. If they feel they have a stake in society, they will contribute more to it. So effective labour rights are not just about protecting workers; they also strengthen the economy and society.

While inadequate or inappropriate labour regulations can hinder productivity and access to decent work, deregulation can be counterproductive and leave workers vulnerable and insecure. Squaring the circle is not impossible: labour regulations should promote decent employment without discouraging businesses from hiring workers legally. Legal Empowerment can thus enhance productivity as well as decent working conditions.

The Benefits of Business Rights

Legal registration can dramatically improve the productivity and profitability of informal businesses. It enables them to create hierarchies that permit the division and specialization of labour. It helps them obtain fresh capital and accumulate the capital that they generate. It allows them to take on bigger risks, and thus to take advantage of new, potentially profitable opportunities. So while traditional and informal businesses certainly have their advantages, poor people should have the opportunity to legally register their businesses if they so wish.

Ugandans fear bankruptcy and the resulting loss of personal property.

National Consultation in **Uganda**

Limited liability companies are among the most productivity enhancing legal institutions. They enable a business to constitute a legal entity distinct from its owners. This separates entrepreneurs' personal finances from those of their businesses. If the business fails, the entrepreneur's family will not lose everything; if the entrepreneur falls on hard times, the

business can still survive, or be sold. This encourages businessmen and women to take bigger risks, and thus earn higher returns.

Most informal businesses have to operate with no more than a limited amount of family capital. Entrepreneurs can sometimes borrow small sums from informal creditors, but only for short periods and at punitively high interest rates. These credit constraints prevent informal businesses from expanding and expose them to greater financial and operational risks. Legally registered companies find it much easier to raise capital. Rather than relying on friends and family for finance, they can issue shares to a wider group of investors and borrow from microfinance institutions, banks and eventually capital markets. Their cost of capital is much lower, because they can tap a wider pool of finance, creditors have much greater certainty that they will be repaid, and investors can trade their shares more easily. When capital constraints are relaxed, new investments suddenly become possible. Entrepreneurs are able to diversify their risks and opportunities that would have been missed can be seized.

Formal companies are also better able to commit to contracts and hold others to them. They do not need to dedicate as much time and resources to monitoring their agents and partners. They find it cheaper and easier to trade with strangers, even distant ones, and do not need to rely on relatives, close friends and local contacts. New markets open up for them.

Formal companies are also more robust and adaptable. Since a company's capital consists of both tangible assets and intangible ones, such as good relationships with customers, its value is greater than the sum of its parts. If the owner of a formally registered business decides to leave, its value can readily be transferred by selling its shares. In an informal business, this is not possible. The firm's assets are the owner's personal property; its commercial relationships are personal too. As a result, viable informal companies are often dissolved and their accumulated capital lost. For instance, when the owner of a legally registered company dies, the heirs inherit shares in the company. In the case of an informal business, the heirs inherit the business's physical assets. Unsurprisingly, informal businesses often have very short lives, and much of their accumulated capital is lost.

Public investment policies that promote the use of labour-intensive technologies have improved small local contractors' access to public procurement contracts in Andean countries. Activities range from micro-enterprises for routine road maintenance in rural areas to involving micro-enterprises in waste collection and street cleaning in urban areas. An ILO study shows, however, that small local contractors' access to public procurement is still very limited due to legal and institutional barriers. For example, countries may restrict contracts to enterprises recorded in the national contractor register or to recognized civil engineers or architects. Some regions have therefore introduced a "small contractor card" and a register for local contractors, enabling small contractors to carry out small and medium-sized works in the local area subject to certain minimum requirements.

Source: Yeng and Cartier van Dissel 2004. ILO

Another weakness of informal businesses is that they do not usually have clear hierarchies and specialized roles. Because hiring workers is costly and contracts are impossible to enforce, most tasks tend to be concentrated in the hands of family or close

friends. The family hierarchy often supplants the hierarchy of the business – and efficiency tends to suffer. Because legal companies can enforce contracts, they can hire strangers. This gives them access to a much bigger talent pool. Legal registration also allows companies to divide responsibilities among specialized workers organized through business hierarchies that make the most of their employees' talents. This greatly enhances companies' productivity. Employees specialize in what they do best, while the costs of processing information, communication, coordinating productive activities, and acquiring and spreading knowledge are reduced.

The Benefits of Legal Empowerment of the Poor

Legal Empowerment's benefits go wide and deep, unlocking human potential to startling results. This is a match for the scale of the problem. What's more, the Commission has a comprehensive agenda for change.

MAKING TRADE FAIR AND INCLUSIVE

World trade has soared in recent decades, delivering huge benefits for much of the world's population. But it could do far more to reduce poverty and improve opportunities for all. Open markets governed by predictable rules allow new entrants and start-ups a fairer go thereby providing more opportunities, including for those who live in poverty but were previously locked out. A rules-based trading system internally and internationally is therefore a useful leveller and development tool.

Unfortunately, the WTO's Doha Development Round has stalled. The pressing issues of improved market access for developing countries and enhanced opportunities for the poorest countries have not progressed despite their laudable efforts to build trade-related capacity. In many countries, domestic economic policies have failed to stimulate job creation and growth with equity. For example, many countries rely on intensive natural-resource extraction to earn foreign exchange but have not combined this with policies to create new businesses and jobs around it. Opening markets must be complemented by appropriate change-management. Opening markets results in winners and losers although accompanying measures that expand skills, infrastructure and safety nets can help mitigate the negative effects. Trade-related policies are hence important drivers in promoting change and productivity.

Legal Empowerment could play a role. Exclusion from property, business and labour rights severely constrains opportunities for people and businesses to benefit from cross-border trade. In Mexico, for instance, only 7 percent of businesses have the legal status and documents needed to trade with the United States and Canada under NAFTA. For Peru, only 2 percent are able to trade internationally. Expanding access to legal rights would give many more local businesses the opportunity to benefit from trade.

Registered businesses have greater access not only to markets but also to the resources needed to grow and reap economies of scale, and thus become more competitive. Access to finance is important, but so too are access to risk sharing, information and training. Most small farmers and industrial producers find it difficult to export. Their inability to penetrate foreign markets often reinforces gender inequalities since women are disproportionately represented in these categories. They need property, business and labour reforms to give them a chance to trade. They need innovative financial products and services. They need measures to protect informal workers through legally guaranteed and regulated employment and health-insurance schemes.

Chapter 4: Agenda for Change

The state has a duty to protect and the citizens have the right to protection. Thus, legal systems have to be changed and change must be systemic to establish a new balance between the authority of governments and the rights of citizens. The basic framework conditions of societies- national law, lawmaking and law enforcement - have to be reformed.

This chapter sets out an agenda for change, with a series of reform measures for the four Legal Empowerment pillars. It presents viable alternatives for government agencies, the private sector, civil society, including academia, and community based organizations. A Comprehensive reform agenda is the one that will have the greatest impact on poor people's lives. However, as the situation in countries will differ, both with regard to national context and the challenges facing poor people, it is critical that the reform agenda grows from local conditions. There is no single right way forward. In some countries, certain policy measures are more urgent than others, and the timing and sequencing of reforms will vary. Every country and community needs to find their own way in the Legal Empowerment process. Poor people improve their lives incrementally; at each stage, an appropriate combination of Legal Empowerment reforms must be available to them.

Reform Options	
<i>Justice</i>	<ul style="list-style-type: none">• Improved identity registration systems, without user fees.• Effective, affordable and accessible systems of alternative dispute resolution.• Legal simplification and standardization and legal literacy campaigns targeting the poor.• Stronger legal aid systems and expanded legal service cadres with paralegals and law students.• Structural reform enabling community-based groups to pool legal risks.
<i>Property</i>	<ul style="list-style-type: none">• Institutionalize an efficient property rights governance system that systematically and massively brings the extralegal economy into the formal economy and that ensures that it remains easily accessible to all citizens.• Promote an inclusive property rights system that will automatically recognize real and immovable property bought by men as the co-property of their wives or common law partners, as well as clear inheritance rules.• Create a functioning market for the exchange of assets that is transparent and accountable.• Ensure that all property recognised in each nation is legally enforceable by law and that all owners have access to the same rights and standards.• Reinforce property rights through social and other public policies, such as access to housing, low interest loans, and the distribution of state land.

<ul style="list-style-type: none"> • Legal guidelines for forced relocation, including fair compensation. • Recognition of a variety of land tenure, including customary rights, indigenous peoples' rights, group rights, certificates, etc., including their standardisation and integration of these practices into the legal system. • State land audits with findings published to discourage illegal taking possession of public land. • Simplified procedures to register and transfer land and property.
<p><i>Labour</i></p> <ul style="list-style-type: none"> • Fundamental rights at work, especially freedom of association, collective bargaining and non-discrimination. • Improved quality of labour regulation and its enforcement. • Inclusive approaches to social protection, delinked from the employment relationship. Labour rights (health and safety, hours of work, minimum income) extended to workers in the informal economy. • More opportunities for education, training and retraining.
<p><i>Business</i></p> <ul style="list-style-type: none"> • Appropriate legal and regulatory frameworks, including enforceable commercial contracts, private property rights, use of public space. • Fair commercial transactions between informal enterprises and formal firms. Financial, business development, and marketing services for informal enterprises. • Micro business incentives, including government procurement, tax rebates, and subsidies. Social protection for informal entrepreneurs.

An Agenda for Access to Justice

In order for the legal system to play a role in empowering poor people to escape poverty, they not only need laws that confer the appropriate mix of rights, powers, privileges, and immunities—they also need reforms in the public institutions and a legal and judicial system that can make these legal entitlements practically meaningful. As part of the access to justice effort there is need to audit all laws, regulations, procedures and institutional set-ups. Laws that discriminate against the rights, interests, and livelihoods of the poor need critical evaluation and revision.

Ensure everyone has a legal identity

Legal identity is a cornerstone of access to justice. A legal identity for all people requires addressing a number of issues including the lack of capacity in states' identity registration systems, eliminating user fees associated with the system, supporting outreach and if necessary bundling registration services with other social services or traditional practices. It will also require creating incentives to register one's legal identity with the state by providing information, working through trustworthy local intermediaries, and minimizing any adverse consequences of formal registration. The ultimate goal is not to increase registration rates, but rather to improve access to protections and opportunities. Though

"The law is not something that you invent in a university – the law is something that you discover. Poor people already have agreements among themselves, social contracts, and what you have to do is professionally standardize these contracts to create one legal system that everybody recognizes and respects."

Hernando de Soto

distribution of birth certificates alone will not lead to these goals, it is to be understood as an element of a larger reform agenda of Legal Empowerment.

Improve Access to Justice in the Government Bureaucracy

Many poor people rely on the bureaucratic system, be it related to land administration, urban planning, registration of assets and business, access to public credit-schemes etc. These systems may be open to abuse by those in power, serving the interests of the few, through corruption and lack of transparency, rather than acting as a framework for empowerment of the many. Hence, reform has to include improving access to legal justice, but also improving access to justice in the government bureaucracy. Addressing the problems of the bureaucratic system may entail public administration reforms such as improving bureaucratic adjudication and grievance procedures, pursuing civil service reform to expand opportunities for performance incentives in government administration, and increasing decentralization and redundancy in bureaucratic service provision. Administrative law reforms, including appropriately-tailored expansions of freedom of information laws, impact statement requirements, and whistleblower protections, as well as appropriate but limited judicial review of administrative action can also be important in increasing access to administrative justice.

Broaden the scope of legal services for the poor

Access to justice rests in great part on reasonable access to legal services. This can be achieved in several ways. One is gradually liberalizing the market for legal services by reducing regulatory entry barriers (such as “unauthorized practice of law” restrictions) for service providers, including non-lawyers, who are interested in offering legal services to the poor. Another is designing efficient legal-aid systems, which may entail greater emphasis on legal assistance provided by paralegals⁶⁷ and law students and the bundling of legal aid with other services.

Taking into consideration the role of national and international bar associations and fostering an effective working relationship with the bar is important in developing targeted legal aid programmes that work. Bar associations could help gather and disseminate information in the legal community about access to justice issues, provide useful oversight, offer political support for access to justice reform and increased funding for necessary legal aid services, help determine the most worthy candidates for legal aid and possibly sponsor legal education programmes geared towards meeting the needs of the poor.

In Bangladesh, for instance, oral divorce is forbidden by the constitution but is still prevalent in poor rural communities. A Bangladeshi NGO found that simply informing members of local customary courts that oral divorce was outlawed substantially reduced the practice. It was also possible to introduce norms from national law into community deliberations and mediation practices based on customary law and traditional norms.

Source: Golub 2000

Related reforms include increasing the ability of poor people to secure financing for positive expected-value legal claims and expanding opportunities for representative or

aggregate legal claims such as class actions. The former requires appropriate liberalization of the market for such financing, which may include expanding the opportunities for contingency fee arrangements, third-party investment in legal claims, and claim subrogation. While class actions have their flaws, situations in which large numbers of victims of the same or similar (often small) legal injury can pursue their claims collectively, do represent advantages in terms of affordability for the victims and hence in improving their access to justice.

Management of the courts

All people, the poor most of all, must have meaningful access to the courts to resolve civil disputes, and to enforce their rights against abuse by powerful state or private interests. First and foremost this requires a sufficient number and geographical spread of courts for the population to reach them, and provisions made for all citizens to understand the proceedings. Improvements in the management and organization of courts can go a long way toward facilitating the use of the courts, such as help desks and information kiosks that enable citizens to access information about their cases and about the court proceedings. The work required to create or improve a nation's court system is difficult and long, and many past projects have not delivered for the poor, but a number of successful projects, especially in middle income countries, have been undertaken that served to increase the impartiality, speed, and reliability of court systems.

In 2004 the Government of Serbia began introducing an automated case management system in its commercial courts, long a bastion of corruption. The new system selected judges at random, charged litigants standard fees and allowed citizens to track the progress of their cases online. The resulting increase in transparency, efficiency and fairness caused a 24% reduction in the inventory of pending cases during 2006 and, between 2004 and 2006 a 38% reduction in the time needed to enforce a contract.

Encourage courts to give due consideration to the interests of the poor

Courts in both common-law and civil-law countries have found new ways to redress injustice. Judges are capable of making all human rights – civil and political, as well as economic, social, and cultural – subject to law. Social action litigation and public-interest law in South Asia and South Africa has shown how to empower courts to become an institutional voice for the poor. These innovations should be recognized and incorporated into policies for improving access to justice in all countries.⁶⁸ Enabling judiciaries to apply international human-rights norms and standards when adjudicating disputes arising under national or domestic law will go a long way towards making the legal system more capable of empowering the poor.

Improve informal and customary dispute resolution

Although much of the focus of the Legal Empowerment agenda is on how to achieve empowerment through the formal institutions of the state, the vast majority of the world's poor rely on non-state, informal justice systems. Therefore, it is vitally important to consider non-state justice. Appropriately structuring the relationship between state and non-state systems is crucial. Reforms in pluralistic legal systems might include

combining formal or tacit recognition of the non-state justice system with education and awareness campaigns that promote evolution of the informal legal system. Targeted constraints on the non-state system are also important, in particular in regard to limits on practices that perpetuate the subordination of women. These systems may also be strengthened through support via civil society and community based organizations.

In many contexts, *Third Party Arbitration Courts* (TPACs) can be considered a success. These mechanisms offer effective protection of rights and/or effective resolutions of disputes over contested property arrangements, especially for disenfranchised women. In general, the success of alternative dispute resolution depends on certain standards and practices, such as the right of poor people to appoint judges of their choice for the dispute resolution. But it is equally imperative that the alternative dispute resolution mechanisms are recognized as legitimate and linked to formal enforcement and do not operate totally outside the realm of the legal system⁶⁹

Enable self-help with information and community organising

While there is a certain tendency to equate access to justice with access to legal services, assuming that the only road to justice leads through lawyers and courts, often a poor person's first (and sometimes only) option is to look what she can do herself. Empowering the poor through improved dissemination of legal information and formation of peer groups (self-help) strategies is a first step towards justice. Poor people may not receive the protection or opportunities to which they are legally entitled because they do not know the law or do not know how to go about securing the assistance of someone who can provide the necessary help. Modern information and communication technologies are particularly well suited to support interventions geared towards strengthening information-sharing groups, teaching the poor about their rights and encouraging non-formal legal education.

An Agenda for Property Rights

Promote an inclusive property rights system

An inclusive pro-poor property rights system requires rules that clearly define the bundle of rights and obligations between people and assets. Property law should offer clear and simple options of legal personality and corporate ownership for small businesses and customary associations of the poor. Legal protection of limited liability has to be extended to poor micro entrepreneurs and adverse possession rights formally recognized for their real as well as intangible assets. Legal frameworks enabling housing and land associations should be promoted, allowing individual and common property to be combined by people with limited assets. Officially recognized property documentation should take the form of simple certificates which grant formal recognition to social practices and customary tenure.

The state should enhance the asset base of the poor by enabling community-based ownership. In some legal cultures community-based ownership in natural resources such as grazing lands, forests, water, fisheries, and surface minerals are traditional and effective ways to grant control and proprietary rights to persons who have little or no other property. These systems should be recognized and be fully protected against arbitrary seizure. At the same time communities should be given the option to recognize individual property rights within the community and extend them to outsiders. But, depending on the context, if private operators want to exploit these resources and seek to take them out of communal control, while the affected community depends upon the resources for their lives and destiny, the State may have an interest to intervene, at the request and on behalf of this community. In general, the use of natural resources must be regulated by clear and predictable rules and standards that are applicable not only to the community but also to private owners.

In the lowlands of eastern Bolivia, land rights lie at the heart of a pioneering agreement to preserve both an indigenous people's way of life and a unique tract of dry tropical forest. Negotiations between the Government and the Guarani-Izoceno resulted in two landmark decisions. The first preserved 3.4 million hectares of uninhabited Gran Chaco forest as a national park. The second granted the Guarani-Izoceno title to 1.5 million hectares as a communally owned indigenous territory. For the Guarani-Izoceno, the outcome was a pragmatic compromise in which they relinquished any ownership claim to the Gran Chaco forest but gained sole right to exploit the land and forests of their titled territory.

Source: The Wealth of the Poor 2005

Efforts should be made to secure the property rights of urban shanty-dwellers and rural state land squatters by using a range of measures, including financial mechanisms, granting them adequate documentation to their already occupied lands, or by providing them suitable alternatives. Rental markets often provide the first step out of landlessness for the poor. More robust and transparent guarantees should strengthen the position of the rural and urban poor in rental arrangements. By virtue of marriage or free union real and moveable property held or bought by the male partner should automatically be considered the co-property of the woman. Inheritance rules have to provide for male and female heirs to receive equal consideration in testamentary distributions and prevent the disinheritance of women and girls, and divorce laws must also treat men and women equally.

Promoting a truly inclusive property rights system that incorporates measures to strengthen tenure security requires learning from the mixed experience with past individual titling programs. To ensure protection and inclusion of the poorest, a broad range of policy measures should be considered. This includes formal recognition, adequate representation and integration of a variety of forms of land tenure, such as customary rights, indigenous peoples' rights, group rights and certificates. Success depends greatly upon comprehensively reforming the governance system surrounding property rights, as explored below. These systems need to be accessible, affordable, transparent and free from unnecessary complexity. Above all, the poor must be protected from arbitrary eviction by due process and full compensation. Reforms must be accompanied by innovative mechanisms of social policy such as providing affordable finance for housing, livelihoods, infrastructure and basic services. Conducting state land

audits and publishing the findings can help reduce the opportunities for the grabbing of public land.

Institutionalize an effective property rights governance system

The functioning of the property administration agency and land administration bodies are critical for the poor. Rules are resources that can easily be subverted to serve the interests of the few, for example through corruption and lack of transparency. Hence, the governance structure and performance of such systems should be reviewed and, as necessary, reformed. The separation of the powers of land registration and public land management is one such reform which will reduce the risk of abusive practices. In addition, property administration agencies should have offices easily accessible to the poor, and in general, decentralised and accountable land management and governance systems should be promoted – especially where they can build on traditional mechanisms, such as of conflict resolution. The time and cost of formally registering property should be slashed. To ensure that a nation's property is recognised and legally enforceable by law all owners must have access to the same rights and standards. This would allow bringing the extralegal economy into the formal economy systematically and massively.

The number of steps buyers and sellers must follow to formally transfer property should be kept to a minimum. The responsibilities of various levels of government in managing public land should be clearly defined. Strict limits should be set on the state's ability to expropriate land. The legal framework should be adequately enforced and sufficiently coherent so that it does not conflict with other property-related laws that would disenfranchise these groups. Among the laws and codes that should be reviewed for consistency are: property laws, land laws, collateral laws, civil codes, family laws and codes, inheritance laws and codes, and marital law and codes.

Manual systems of land registration are highly labour intensive and lead to significant error and duplication. The costs of property certification can be considerably reduced and transparency improved by computerization and GPS systems, especially where comprehensive records do not yet exist. However, there are three caveats. Corruption can easily increase in the early phase of digitization, though it can be reduced dramatically once the systems are operational. A crucial step is to validate the data collected at the local level with the people concerned. Secondly there is the danger of overengineering. Technical solutions are only sustainable if they match the locally available infrastructure, resources and capacities. Land administration institutions will be independent from pressure of powerful social actors only if they can sustain their recurrent operations financially. Thirdly, computerization and technical fixes will do little good if the broader system of property governance remains unreformed and inaccessible to the poor. Technical solutions in the absence of pro-poor legal and institutional reform can do more damage than good.

Property certification has to be complemented by zoning and planning. Ghetto-formation can be avoided by enforcing mixed land use. Where slums have been formed, creation of

a protective and empowering environment of residence and business activity for the poor through special social interest zones is essential. Slum upgrading should include property certification to plots with a minimum of service development and the provision for incremental improvement of infrastructure. This helps granting the poor sustainable ownership and participation in the value increase of property.

Develop property and credit markets accessible to the poor

A comprehensive and functional property and business system allows land, houses, moveable property, equity shares, and ideas to be transformed into assets that can be leveraged and bought and sold at rates determined by market forces in a transparent and accountable way. It should permit the development of financial mechanisms – including credit and insurance – to facilitate transactions and improve economic outcomes.

The market should be structured to enable the poor to make the most of their assets. Guidance on making contracts should be provided; conditions for land purchase that exclude the poor, such as a requirement for formal education in agriculture, should be minimized; standard sales contracts that the poor can rely on produced; leasing rules kept simple and clear; notaries and fees for small transactions avoided; new and small land owners exempted from registration fees and taxes. Preferential rights to buy granted to co-owners, neighbours, or lessees of land should be considered provided arbitrary seizures do not result. In addition, ceilings of ownership and sales moratoria are considered a reasonably successful protective practice, provided that they are limited in time and that time is used for legal and financial education.

Recognize moveable property as collateral

There is growing evidence that expanding the number of items that can be used legally as collateral reduces the cost of credit. More people can borrow if more types of property can be used as collateral and credit markets become more competitive. More of the poor would be able to create credit histories without risking land and entire homes. The credit system does not evolve automatically from the formalization of assets. Catalytic and concerted action by the state and private financial institutions is needed in order to foster access to credit for poor families and small urban and rural producers. A complementary means of supporting pro poor credit markets is through the creation of moveable property registries.

Reinforce property rights through social and other public policies

The state can do a lot to endow its citizens with property assets – by providing access to housing ownership for the poor, offering low-interest loans and distributing state land, for instance. Redistributive land reform needs to be complemented by access to basic services, managerial ability, technology, credit, and markets for the new owners. As an alternative to authoritative reallocation of land, community-based land reform projects provide funds to groups of beneficiaries to purchase land. The provision of funds is made available under the condition of a productive purpose and when land markets are sufficiently developed. The procedure is legally less complicated and politically less

sensitive than in compulsory acquisition programs. Legal conditionality regarding the beneficiaries gives room for the pursuit of other social purposes, such as the distribution of purchased land in the name of women.

Households' awareness and information on rights held have a significant positive impact on land-related investments and productivity. Only a minority of poor land users is aware of relevant legal provisions. This implies that the lion's share of the associated productivity gains of property certification remains to be realized by education and information.

Multiple consultations and involvement of social organizations contribute to a shift in the power equation and to increased satisfaction and efficiency of property reform. In particular, active communication toward and participation by civil society are important to ensure the quality of systemic change in the property rights regime. On a broader scale, such measures contribute to the fostering of citizenship and social cohesion.

Housing production employs local labour, re-circulates income into the local economy, and contributes to the development of skilled labour. The government can play a catalytic role in housing promotion by providing credit, by bringing together the private sector and other civil society organizations of the poor under conditionality that favour the development of a housing stock for the poor and its final ownership by the poor.

Lastly, the government can also play the role of intermediary to negotiate between the owner of the land and its low income occupiers in situations where the original land owners have little hope of recovering their occupied property without prolonged litigation, and where getting even a part of the land back has major advantages.

An Agenda for Labour Rights

Ultimately, the aim of labour rights is to ensure freely chosen and productive work, carried out in conditions of freedom, dignity and equality – what is summed up as the “decent work agenda.”. The specific content of the decent work agenda accepted as a global goal⁷⁰ is best defined in each country through social dialogue. The aim should be to make employment a central goal of economic policies, and to provide gradual improvements in the quality of work and returns to labour, including through the effective enforcement of labour rights, as a main route out of poverty.

Institutions which help create jobs, improve labour regulations and enforce fundamental principles and rights at work need to be strengthened in order to create synergies between the protection of the working poor, their productivity and that of their assets. Institutions and regulations should be reviewed to examine their impacts on wealth creation and labour protection.

Many voluntary codes of conduct refer to fundamental principles and rights at work, such as the prohibition of forced labour, child labour and discrimination at work, which are based on ILO core labour standards. They are an important tool for motivating multinational corporations to improve their performance and are already playing an important role in strengthening labour rights, as businesses have become more sensitive

to ethical consumer reactions. Efforts to strengthen labour rights should focus on the following.

Strengthen identity, voice, representation and dialogue

The process of Legal Empowerment starts with identity. Just as property and physical assets of the poor are recognized, so also must the greatest asset of the poor, namely their labour and human capital, be effectively recognized. There is a particular need to ensure that workers and entrepreneurs in the informal economy have the right to freedom of association through organizations of their own choosing and to collective bargaining, particularly women and youth who are over-represented in the informal economy. Emphasis should be placed on building up representative organizations of the working poor, particularly of wage and self-employed workers operating in the informal economy, to have voice, representation and dialogue with formal economy operators and with public authorities in order to defend their rights.

Strengthen the quality of labour regulation and the effective enforcement of fundamental principles and rights at work

The purpose is to create synergy between protection and productivity of the working poor and of their assets. Reviewing the quality of institutions and regulation should involve a critical and self-critical review of legal instruments from the point of view of their impacts on productivity and on the protection of labour.

Support minimum package of labour rights for workers in the informal economy

A minimum package of labour rights should be established and enforced for the working poor in the informal economy with gradual and progressive convergence of labour rights applying to all workers. This should uphold and go beyond the Declaration on Fundamental Principles and Rights at Work with the three additional crucial aspects relating to working conditions: health and safety at work, hours of work, and minimum income. Such a minimum floor for empowerment must be realistic and enforceable. Progress towards a fuller set of labour rights should be expected.

In Kenya, both cash transfers and job programs help enhance people's capabilities, particularly children's. Cash transfers which increase the income of poor households may be enough to improve children's education and health if there is an adequate supply of such services. But a job program is likely to have a stronger multiplier impact than child grants if it helps to develop economic and social infrastructure. If such a program involves building health clinics and schools, for instance, it can boost the supply of social services.

Source: International Poverty Center 2007

Strengthen access to opportunities

Policies to create and provide improved access of the poor to new opportunities for full, productive and freely chosen employment, as promoted in ILO Convention 122, can provide a key mechanism for empowering the poor in the informal economy and facilitating their transition to formality. Opportunities for education and capacity building

as well as measures for combating discrimination help increase legal recognition of the poor and also bring them closer to new economic opportunities.

Support inclusive social protection

The recognition of the right to social security has been developed through universally accepted instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, which proclaim that social security is a fundamental societal right to which every human is entitled. This must be upheld by all countries through laws, institutions and responsive mechanisms that can protect the poor from shocks and contingencies that can impoverish and measures that guarantee access to medical care, health insurance, old age pensions, and social services. These mechanisms must not be solely dependent on the evidence of employment status but must be open to all types of workers. From a systemic perspective rights to pensions and health protection should be granted to the people as citizens rather than as workers and awarded on universal principles.

Promote gender equality

Poverty has a gender dimension, and Legal Empowerment can help drive gender equality. A key challenge is to ensure that ILO labour standards which promote equality of opportunity and treatment are effectively extended to informal sector workers.⁷¹ The starting point for this process lies in the core labour standards on gender equality. Useful guidance can be found in the 1996 ILO Home Work Convention⁷² which mandates the extension of legal protection and Legal Empowerment to homeworkers (industrial outworkers who work from their homes), who are predominantly women.

Over 90 per cent of India's workers are in the informal economy (including agricultural workers), with little – if any – statutory social security. Most are casual labourers, contract and piece-rate workers and self-employed own-account workers. The Government of India recently launched the Unorganised Sector Workers' Social Security Scheme on a pilot basis in 50 districts. The scheme provides for three basic protections: old age pension, personal accident insurance and medical insurance. It is compulsory for registered employees and voluntary for self-employed workers. Workers contribute to the scheme, as do employers. Where self-employed workers join the scheme they pay worker and employer contributions. Government also contributes. Workers Facilitation Centres are being set up to assist workers (see above under Securing Rights of Informal Workers). The scheme will be administered through the already existing Employee Provident Fund Organisation offices around the country.

Source: Government of India, 2004

An Agenda for Business Rights

Many developing countries are emerging from a history of heavy-handed regulation, with approvals required for even the smallest activity, and authority overly centralized and inflexible. Years of poor quality law-making has created a tangle of complex and inconsistent laws that present a daunting regulatory hurdle to the would-be formal enterprise. As such, the regulatory systems of these countries are not developed to support a flourishing market economy that will create growth and formal jobs.

Under these circumstances, small informal businesses must often assume larger risks (than the larger and usually formal firms) and spend more time and resources to monitor

their agents and partners (which explains why they usually hire relatives and close friends). They frequently choose low-risk businesses that often yield low returns. They operate with a limited amount of capital and as a result, are forced to do business at a very small scale. Since they hardly accumulate capital, it is often very difficult for these entrepreneurs to sell the business and profit from both the tangible and intangible assets they have accumulated.⁷³

Economic policies and commercial law, which in the great majority of poor countries are most often geared to large enterprises, have to change to become inclusive of the vast numbers of business owners at the base of the economic pyramid. Reforming these policies and legal frameworks should focus on helping informal businesses use all of their assets to operate productive and profitable enterprises. Key elements in efforts to achieve these aims include:

A package of business rights underlined in policies and instituted and enforced through regulatory bodies.

Irrespective of their size or growth potential, the rights of all those operating informal businesses must be recognized. These include the right to work and to incorporate a business, necessitating the ability to, vend, occupy a workplace and access basic infrastructure such as shelter, electricity, water, sanitation. As informal businesses grow, they will need additional legal rights and protections, such as the ability to obtain tax breaks, export licenses, and access to services such as transport and communications. Efforts to strengthen basic business rights must be based on an in-depth knowledge of local practices, incorporating them where possible into the legal framework. Creating mechanisms and financing to provide social protection to informal entrepreneurs is also important, as are legal mechanisms that help people operate and expand their businesses once they have entered the market. Absence of commercial rights, including rules relating to entity shielding, limited liability and capital lock-in and perpetual succession of the firm as well as manager and employee liability rights and protection of minority shareholders, increases the likelihood of businesses returning to informality.

Streamlined administrative procedures

Administrative barriers are the bureaucratic requirements that flow from regulations, their implementation and enforcement. A regulation may be well designed, proportionate and efficient, but its true effect on enterprises comes from the way in which it is administered. Administrative barriers are the hassle that dissuades informal enterprises from wanting to interact with government officials⁷⁴. The regulations imposed on business fall into several categories. Some regulations governing business start-up raise the costs of entering the formal sector. Other regulations govern ongoing business activity and still others affect closing a business. Some are dictated by the central authority, others by regional or municipal governments. Furthermore, small businesses face government imposed costs in the areas of labour practices, payroll charges, health and safety standards, taxation, and foreign trade.

The time and money spent complying with government regulations imposes burdensome transaction costs on businesses. In addition, the direct cost of payments, such as licensing fees, also represents a significant cost of doing business. Conversely, payments made to avoid detection of non-compliance, or payoffs to government officials are the costs of operating in the informal sector.

The red tape and costs involved in registering or obtaining licenses for a business need to be slashed and easily accessible to all business owners.

Broadened access to financial services and support innovation in financial products

Access to finance is essential for businesses; however businesses in the informal economy lack access to financial markets and the capacity to compete in product markets. Improved access to basic financial services consisting of savings, credit, insurance, pensions and tools for risk management is a critical input for emerging and potential entrepreneurs to leverage economic opportunities and improve their quality of life.

More inclusive financial markets require that there be awareness in both formal and informal credit systems of the way the working poor use credit and the barriers and often inappropriate rules in formal lending procedures. They also requires legal and administrative processes in place which make the processing of collateral including moveable property as well as social collateral cheaper, transparent and faster. Support to innovation in financial products and services with a view to deepening their outreach is also needed.

Consultation, participation and inclusive rule-setting

Informal businesses and their representatives need to be consulted and participate in relevant policy-making and rule-setting bodies. They need to be kept informed of their legal rights so that they can bargain effectively, enforce contracts, and seek redress. The Legal Empowerment agenda for business rights emphasizes reforms to provide a legal and institutional environment and rule of law that will enable poor business owners to develop their capacity and to use their talent, energy and initiative to build up their assets and to generate efficient and productive enterprises.

Business reforms combined with property reforms can bring security, resources and increase competitiveness of all firms but particularly micro-, small-, and medium-sized enterprises. Growth of these enterprises greatly enhances the possibilities of strengthening labour rights. The more inclusive and attractive the formal market becomes, the better the chances for regulating labour rights, which in turn helps build the human capital for the next generation. As Ireland and Spain have shown in recent history, there is tremendous potential in bringing policymakers and SME entrepreneurs together to develop strategies along these lines.

Chapter 5: Implementation Strategies

Legal Empowerment of the Poor is a bold vision and its implementation is challenging. This chapter sets out how it can be done. Guidelines for implementation, phases, policies and tactics for national action are outlined. This is followed by an agenda for the international community.

Four billion people live outside the rule of law. Existing political, administrative and judicial institutions are not geared to protect the rights of the poor. Much of the aid community is in crisis as it comes to acknowledge that old approaches are not good enough. Now is the time to reckon with reality, and strive for new solutions. As Albert Einstein observed: “We can't solve problems by using the same kind of thinking we used when we created them.” 21st century solutions are indeed called for to complement or even replace strategies for poverty reduction and wealth creation which were developed in the last century.

The Commission believes that significant changes in the relations between the state and the poor and in public – and private – power are needed. Realizing the full potential of Legal Empowerment ultimately requires establishing more open, inclusive and accountable institutions across the political and economic system. But everything does not need to happen at once. Legal Empowerment can start with a change in some policy areas. As the poor gain income, assets and power, they will be in a stronger position to call for additional institutional reform.

The overarching frameworks for Legal Empowerment of the Poor, such as the Universal Declaration of Human Rights and other international legal covenants, already exist.⁷⁵ The world's governments are committed to them. What are lacking are the myriad national and local rules of the game and policies that give substance to those grand declarations in the poor's everyday lives. Putting the necessary reforms into practical effect takes sober analysis of what is feasible, but it also needs a readiness to take chances when the timing looks right. Pragmatic policymakers look for policy windows that open and create space for moving forward to solve the particular problems facing the poor. It is important to recognize that while it will often make sense to anchor the Legal Empowerment agenda in existing development processes, such as Poverty Reduction Strategies, Legal Empowerment should not be hidebound by any processes which are stalled or dysfunctional.

Broad political coalitions for pro-poor change that involve leaders from across society are needed to galvanise and sustain reforms and prevent reforms from being diverted, diluted or delayed. National contexts differ, and so a single blueprint for accomplishing this objective does not exist. But certain key conditions and rules should guide implementation of Legal Empowerment. As chapter 2 sets out, the four key conditions for Legal Empowerment are identity, information, voice and organization. The five guiding rules are that the process should be bottom-up; affordable; realistic; liberating; and risk aware.

There is revealing comparative experience from countries that have carried out pro-poor legal and regulatory reforms. The Commission's working groups have painstakingly

Implementation of Legal Empowerment

The way in which Legal Empowerment is designed, implemented and monitored is distinctive. It is a bottom-up approach in the sense that it is based in the realities of poverty and exclusion as experienced by the poor and requires their active participation and buy-in. At the same time, it requires political leadership and commitment from the top and alliances with key stakeholders. It is a political approach based on broad coalitions for change, rather than a technical or bureaucratic approach that engages only with international civil servants, government leaders and elites. Above all, while it is buttressed by international human-rights principles its priorities are set by the poor and grounded in local needs and conditions. New indicators, indices, and monitoring and evaluation protocols will be necessary to match the distinctive nature of Legal Empowerment of the Poor.

The Commission has identified five characteristics that together distinguish Legal Empowerment from traditional approaches to legal and institutional reform:

Bottom-up and Pro-poor

The legal-empowerment process should be based on the needs of the poor, as they themselves experience and express them. Reforms must be designed and implemented in an inclusive and participatory way and geared towards helping the poor organize themselves to get out of poverty.

Affordable

Measures proposed, procedures agreed and requirements imposed must all be within the means of the poor that they seek to benefit.

Realistic

Reforms should be based on a realistic understanding of formal and informal mechanisms, norms and institutions, and how they interrelate and interact. Governments need to engage with poor people to find out how and why grassroots institutions work, their strengths and their weaknesses. Unconventional mechanisms for gathering information may be needed.

Liberating

Legal Empowerment should focus on removing legal barriers that hinder the poor's economic activities. While it is inextricably linked to a functioning regulatory and institutional framework, the burden of proof for such requirements lies with the state.

Risk aware

Care must be taken in designing, implementing and monitoring local reforms. Inevitably, though, ambitious reforms may unintentionally harm some poor and vulnerable people. These risks should be scrupulously monitored throughout the process.

collected evidence from around the world about what works and what does not. Their reports analyze why and how, and set out promising approaches involving governments, public-private partnerships, civil-society organizations and innovative social movements that can be modified and applied to a wide variety of settings.⁷⁶ The most common mistakes are to underestimate the impediments to implementation and to not foresee unintended negative consequences for the poor. Success, on the other hand, invariably involve understanding the impediments and addressing them, listening to the poor and learning by doing. Because these processes do not work across societies in exactly the same ways, policymakers must be watchful and experimental. Whatever type of reform is chosen should be phased to mesh with society's unique past and its readiness to accept change.

To kickstart as controversial and deep-seated a change as Legal Empowerment, which threatens many vested interests, the positive role of national political leadership cannot be overstated. Pursuing a particular policy, such as expanding access to justice, requires a handful of leaders who agree on what the problem is and how to solve it. Some of these individuals may emerge as *policy champions* who drive reform forward by marshalling a broader coalition for change within government and overcoming objections and obstacles.

Getting it Right from the Start

Before proceeding very far with Legal Empowerment activities, a contextual analysis must be done to establish what reforms are most in demand and which have the greatest likelihood of success. Such an analysis would also give guidance to the implementation process, and tell reformers which risks need to be mitigated, and which challenges must be addressed. This improves the likelihood of success. The focus should be on social and cultural factors potentially affecting implementation, on the economic context, which also can be both a help and a hindrance, and on the openness and capacity of the state. Supplementing the inventory of these concerns should be a careful analysis of the reach and hold that informal institutions have on the poor. The full contextual analysis is the basis for a feasibility review of various empowerment scenarios. The most important elements of such an analysis are:

- the domestic social structure, especially its gender, class and ethnic makeup, plus cultural attitudes toward participation and equality
- the economic context—including the distribution of wealth and income, and the level and rate of economic growth
- the characteristics of the state—both the political and the administrative system
- the extent of economic and political informality and tensions with the formal and officially recognized systems

Contextual analysis and knowledge of the policy environment are essential to estimate whether conditions appear ripe for extensive or modest Legal Empowerment reforms, which implementation options seem most probable, what sequencing and timelines for

Phases in the Legal Empowerment Process

The policy environment in a country should inform the strategy and design of reform implementation. To be able to make Legal Empowerment a reality for the poor comprehensive reforms are necessary. Such reforms can, however, start with change in some policy areas, and be sequenced and implemented in phases. Lessons learnt from the implementation of other complex reforms show that the generic phases listed in the text box below are particularly useful tools.

Legal Empowerment involves a complex combination of technical, institutional and political changes. The following sets of tasks are important; the specific sequencing will vary by country and context, but the design of each component should be based on the principles of adaptation to user needs and availability of resources, user participation, parsimony (the least amount of information and cost required to accomplish the task), and simplicity.

Agenda Setting: Advocate for change, develop policy issues, and make decisions that launch policy reforms. For these activities, politicians and interest groups tend to take the lead but they will seldom succeed without mobilization of the poor. A detailed assessment should be included of the issues to be addressed. The analysis will identify policy, legal and institutional concerns, as well as gaps in resources, capacity and tools.

Policy Formulation and Legitimization: Address the technical content of reform measures. However, besides technical content, reform measures need to be accepted and seen as necessary and important. The poor should, through their representatives, be part of the reform design process. Critical issues include sequencing and timing, resource constraints, establishing a monitoring and evaluation framework and ensuring a balance between process and products to maintain momentum.

Constituency Building: Convince beneficiaries of the advantages of reforms, and demonstrate that long-term benefits are worth short-term costs. Key issues include coordination mechanisms, adoption of a protocol or agreement, clarification of roles and responsibilities, and agreement on a broad process for reform.

Resource Mobilization: Ensure flow of adequate resources by addressing incentives, and exercising leadership in galvanizing constituencies. Financial, technical, and human resource commitments are needed.

Implementation Design and Development of Organizational Capacity: Reformers need to create and nurture networks and partnerships for cooperation and coordination, and provide for the development of new organizational skills and capacities in the public, private and non-governmental sectors. Old procedures, operating routines, and communication patterns die hard; change is likely to be resisted within some quarters.

Action Planning and Progress Monitoring: Set up systems and procedures for obtaining feedback so that implementation is related to learning and adaptation, so as to produce results and impact. Engage implementing parties and beneficiaries in the draw up of monitoring systems and methodologies and acquire feedback. This will simplify the process of tracking previously identified indicators. Focus group discussions, workshops and similar methods can be used to ensure participation.

reform are best, how the reforms should be designed, what tradeoffs need to be considered, which risk mitigating mechanisms are worth trying, and what variables need special monitoring during implementation.

Many societies and cultures have hierarchical and patriarchal power structures which make carrying out Legal Empowerment difficult. Involving the poor in decision-making and giving women equal rights may be particularly challenging. In some contexts, custom may run contrary to a vision of human rights enshrined in a national constitution, particularly where it comes to the treatment of women and minorities. A similar dilemma arises when it comes to ensuring minimum levels of accountability and transparency within customary structures. Fortunately, customs are not rigid and unchanging. It is thus possible to aim at a process in which customary practices evolve in response to social development and human rights principles.⁷⁷

These shifting informal mechanisms exist partly because they are often more accessible and helpful to poor people than the official institutions in many instances. They encourage flexibility and compromise within community norms. In other cases, the informal system is neither efficient nor fair. Context is critical.

The distribution of power and wealth also matters for Legal Empowerment. If ownership of land, capital, and other productive assets is highly concentrated, reformers have to be cautious about regularizing the system of economic rights. Entrenching existing inequalities in ownership will negate the value of reform for the poor and can even lead to further marginalization. On the other hand, perpetuating exclusion from formal ownership due to unequal distribution of land and other assets may be an even worse option. Judgement must be married to context.

The effectiveness of state institutions is another contextual factor. How capable is public administration? This is related to corruption, capacity to deliver, and ability to protect citizens and their assets. In many countries laws favourable to the poor exist, but are not implemented. Where the state is not effective its residents must protect assets and resolve disputes pragmatically, by aligning with a political patron, for instance. This will often hamper Legal Empowerment. In fragile states the capacity is even weaker. The legal system is particularly ineffective in such societies. The good news is that once the importance of legal reforms and governance functions for Legal Empowerment is understood, the investment required to strengthen these functions can often be mobilized. The intensity required may be one of effort rather than money.

South Africa's minibus and taxi industry shows how informal institutions that spring up in the absence of effective government regulation can end up being harmful. Minibuses and taxis are the main means of transport for South Africa's poor. A loophole in the transit law allowed this largely unregulated sector to emerge toward the end of the apartheid era. It became dominated by independent micro-business operators. In the absence of government regulation, individual taxi owner-drivers turned to fledgling private industry associations to allocate taxi routes and cab stands, and settle disputes among competitors. These associations soon grew very powerful in their own right and began to fight turf wars. By the mid-1990s a virtual taxi war was costing hundreds of drivers and passengers their lives each year.

Source: Barrett 2003

Legal Empowerment Activities

Legal Empowerment reforms along such a phased approach call for a number of different actions and policy measures. The following concrete activities are among them:

Mobilizing stakeholders: Once the principle stakeholders have been identified, the relevant ones need to be brought together to agree on a process and a set of principles to guide the Legal Empowerment agenda. Key issues include coordination mechanisms, adoption of a protocol or agreement, and clarification of roles and responsibilities, and agreement on a broad process for reform.

Legal Empowerment diagnostic: Building on the initial scan of the environment and contextual analysis, a detailed assessment should be made. This diagnostic should focus on both formal and informal institutions, their workings and interactions. The analysis will identify policy, legal and institutional issues, as well as both assets and gaps in resources, capacity and tools.

Action planning: Development of the goal, objectives, strategies, and specific interventions that will contribute to the Legal Empowerment objective. Critical issues include sequencing and timing, resource constraints, establishing a monitoring and evaluation framework and ensuring a balance between process and products to maintain momentum.

Pilot activities: These should be built around the idea of “quick wins” in areas where these are feasible. In this way one can build the credibility of the Legal Empowerment agenda and demonstrate some initial success.

Scaling-up: Expanding the range of activities and taking on more complicated challenges. Raising awareness of past successes, additional sensitization, strengthening the consultation process will all support this stage.

Institutionalizing change and the change process: Tackling some of the fundamental reforms by building on the experiences in the pilot phase and scaling-up phase to reform the organizations and rules that shape the institutional context.

Managing Stakeholders and Mobilizing Allies

Along with knowledge of context, a second important early task in implementation is stakeholder analysis. Stakeholders are interested parties with the capacity to advance or hinder a policy change. Their position is determined by their perceived interests and they may or may not be formally or self-consciously organized.⁷⁸ It is crucial to differentiate among constituencies, to better understand the divisions, alliances and particular needs. Stakeholders who might oppose or assist with Legal Empowerment need to be scrutinized to establish how they can become supporters of the process. The purpose is to get a firmer grasp of the probability of succeeding with Legal Empowerment reforms, managing the stakeholders and to establish what it takes to build a minimum winning coalition for Legal Empowerment in the country.

The poor are the intended beneficiaries of legal-empowerment policies. A legal or organizational change that looks self-evidently beneficial to experts from the outside may be seen as too risky or not worth doing from the perspective of someone inside the poor community. That is why the poor must have a hand in implementation. Empowerment strategies depend on the beneficiary stakeholders choosing to go along. If the poor resist a change, the best-intended policy will do little good. The poor's principal allies are pro-poor community associations and civil-society activists. They can be mobilized for reform and become strong allies. Some may be local social action or advocacy groups, such as the Indonesian Legal Aid Foundation, whose mission is to defend poor people in court and expand their rights. Others include professional associations sympathetic to the plight of the excluded. Ecuador's Association of Law School Deans, for example, supports legal assistance for the indigent in that country.

In Beijing, law enforcement officers and local authorities look the other way when rural-urban migrant entrepreneurs who do not comply fully with licensing requirements lease licenses illegally from local residents. This illicit trade survives because bureaucrats profit from it. Streamlining business registration in line with legal empowerment goals would threaten illegal but routine bureaucratic income in the Chinese capital.

Source: He 2005

Legal Empowerment will in some cases also create policy "losers". Redistribution of a right or benefit from one group of stakeholders to another is one example when there are mutually exclusive claims to a fixed resource such as fertile land or minerals. Landlords, shopkeepers, moneylenders and other local elites may see a threat from disenfranchised people exercising new rights or reviving latent ones. Professionals may also have a stake in maintaining the disempowering status quo, such as lawyers who would lose out if laws were translated into everyday language or if inexpensive means of conflict resolution spread. Policymakers may endeavour to minimize redistributive conflicts by expanding economic opportunities so that different interests can be negotiated to meet every side's needs, but plenty of potential for confrontation remains as long as important stakeholders believe others' gains come at their expense. This may be linked to the fact that the mutual payoff to Legal Empowerment is in the future, and not now.

Resistance may also come from government officials, court officers, and others who interpret and administer laws, statutes and regulations. Permits, business licenses, tax assessments and the like are sources of power and potential illegal income through bribes, kickbacks and other "rent-seeking" behaviour. Government officials who gain from these policies and legal instruments may sabotage reform. Where possible, they should be

Tactics for Champions and Change agents

To succeed in implementing Legal Empowerment reforms, change agents must be mobilized and think creatively about how to make policies available, affordable and acceptable in the specific context they are working in. The following strategic options and tactical considerations may help achieve that goal:

Find your own way. There is a rich base of comparative international experience, but no ready-made formulas for Legal Empowerment. Solutions that suit one context may be dead wrong in another.

Think systemically, act incrementally. Empowerment takes systemic changes. Yet, big bang approaches are rare and they often run out of steam when they are tried.

Think long, go short. Justice, labour and land issues are complicated and do not lend themselves readily to a traditional three-year project approach. Yet, reforms must provide tangible improvements fairly quickly to maintain the momentum for Legal Empowerment.

Support associations of the poor, but do not compromise their independence. The incongruity is that assisting these groups may cause them to become more accountable to the external funding agency than to their membership.

Dedicate resources to support participatory processes and coordination. While technical solutions often attract significant donor and government interest, capacity development for participation and coordination mechanisms is often undervalued and therefore under-funded.

Provide effective outreach. Without a dedicated promotion campaign, beneficiaries may not take advantage of reforms.

Provide access to information. For example, access to information has helped people to secure tenure and to tackle job discrimination through a better understanding of their rights.

Use plain and local language. One of the key elements for national ownership of reform is language: dialogue, debate and information sharing must be conducted in local languages; legal documents should be demystified by rendering them in layperson's terms.

Work with para-professionals. There are many opportunities to create a new generation of para-professionals, who are trained and possibly certified to respond to the day-to-day service requirements of the poor, but who do not require the advanced studies of current professionals, which are often inappropriately scheduled, expensive and include subjects of limited relevance for the prospective client base.

Bundle service delivery. This is a cost-effective strategy for delivering tangible benefits to the poor. One example is to deliver identity cards with vaccination programs.

Be flexible. Take tactical advantage of opportunities as they arise and do not be constrained by a programmed calendar of deliverables.

given positive incentives to support Legal Empowerment policies instead of resisting them, for example by offering civil servants promotions, interesting new responsibilities, training opportunities or other perquisites if they help with implementation.

Instead of trying to block reforms outright, powerful economic actors may subtly manipulate them to their advantage – a phenomenon known as “elite capture”.⁷⁹ In many countries, for example, speculators pre-empt prospective titling programs by buying up land from squatters at prices slightly higher than prevailing informal ones. Squatters benefit in the short term, but miss out on the main benefits of the titling program, which accrue to the people with deeper pockets.⁸⁰ The sequential and conditional release of funds is one strategy for countering the persistent problem of elite capture.

Collective counteraction by the poor to secure their rights in the face of resistance is difficult. Even if potential policy losers are a minority, such as a handful of large landholders or government bureaucrats, they will tend to organize effectively to defend their vested interests. Prospective winners may not be aware of what they might gain and may rightly fear that they will lose out if change does not happen quickly. Hence, mobilization of allies and supportive stakeholders, and finding ways to manage the critical ones is fundamental. Success is most reliably won when one delivers measurable and meaningful benefits to the beneficiaries.

The UN Global Compact

Some larger businesses and multinational corporations are less adversarial about legal empowerment and might sometimes be policy allies. Over 3,000 companies in more than 100 countries have joined the UN's Global Compact, which commits them to support high standards in areas such as human rights and labour. These firms often say that they would like to forge partnerships with poor communities in the developing world to create business models that are sustainable, equitable and embedded in the local culture.

Sources: UN 2007 and Hart 2005

Action at the International Level

Most current and past poverty reduction strategies were designed on the basis of economic growth and trickle down or on redistribution. Governments were supported to enhance their capacities to provide public goods and services including health and education, security and stability, and a macro-economic environment to stimulate growth and investment. This continues to be necessary but is not sufficient. More equitable distribution of opportunities for participation of the poor in growth has been hoped for, but remains largely unrealized, because of structural and institutional arrangements which have not been working for the large majority of people, most of whom have had to seek refuge in the informal sector to eke out a living.

While commendable efforts to improve the coherence and effectiveness of development aid, such as the Paris Declaration are underway, these are slow to materialise on the ground. Stronger action to meet harmonization and alignment goals is needed. Aid effectiveness and Legal Empowerment of the Poor must complement each other. Therefore the Legal Empowerment of the Poor agenda should be pursued in key development corporation fora such as the OECD-DAC, the UN Development Cooperation Forum and the Annual Meetings of the Bretton Woods institutions. The

rapid growth in South-South cooperation presents promising opportunities and new arenas for Legal Empowerment.

The expanding reach of transnational non-state actors, such as large corporations and civil society and community based organizations is now undeniable. For too long, the international community has failed to recognize the true extent of their influence, particularly on norms and standards. Engaging private sector players is crucial as they have the capacity of acting at a pace and scale that neither governments nor international agencies can equal.⁸¹ But such advantages do not come without risks; for example respect for human, economic and social rights must not fall prey to short term profit considerations.

Likewise, the spheres of influence of civil society and community based organizations are widening. An approach worthy of the 21st century must recognize the immense contributions to change such organizations can bring. To think that the necessary change can be achieved without these players would be misguided.

This year marks the 60th anniversary of the Universal Declaration of Human Rights. It is a momentous occasion - and an exceptional opportunity to harness the moment's political power to make a lasting difference.

The Declaration has been remarkably successful. Few ideas are now as powerful as human rights. Crowds rally to demand them; millions pen letters in support of them; some people are willing to risk their lives for them; and even despots pay lip service to them. Virtually all states subscribe to the Declaration, the two Covenants and the Geneva Conventions; most make a serious attempt to abide by them too.

Yet in many respects, the promise of human rights remains unfulfilled. The fine words of Article 1 of the Universal Declaration – “All human beings are born free and equal in dignity and rights” – ring hollow for someone like Margaret in Kibera slum. Legal Empowerment could make them resonate loud and clear.

It is time for a new approach that builds on the bedrock of existing laws and the broad-based support for human rights to give real meaning to them in the poor's everyday lives. With its focus on working from the bottom up and building a broad coalition for political change tailored to local needs and conditions, Legal Empowerment offers an essential complement to the traditional top-down approach to human rights.

While not advocating a ‘Machiavellian approach’ to Legal Empowerment, the old master may still give us relevant insights into the challenge: “It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favour; and partly from the incredulity of mankind, who do not truly believe in anything new until they have had actual experience of it. Thus it arises that on every opportunity for attacking the reformer, his opponents do so with the zeal of partisans, the others only defend him half-heartedly, so that between them he runs great danger.”

Niccolo Machiavelli

The Commission calls on the United Nations and the broader multilateral system at a global, regional and country level to make Legal Empowerment of the Poor a core mission for the coming decade. Far from replacing the human-rights agenda, it can energize it and drive advances that would otherwise be out of reach. Nor is it a substitute for the MDG agenda and the quest to eradicate poverty; rather, it enriches these efforts with tools and approaches that attack deep and structural causes of poverty and exclusion. An internationally scaled-up effort to meet the MDGs coupled with real commitment to Legal Empowerment can constitute a powerful and dynamic agenda for an accelerated assault on global poverty, between now and 2015 as well as beyond.

The Commission has achieved consensus on a set of recommendations and principles that it believes should guide and inform global, regional and national efforts to advance the Legal Empowerment of the Poor, with a strong focus on action where it counts, namely locally and nationally. We seek to raise awareness of its importance and mobilize governments, intergovernmental institutions, the private sector and civil society to act, but we cannot – and do not wish to – dictate what should be done. Success in public policy requires full ownership by its principal custodians, namely governments and political leaders. Legal Empowerment inherently requires a broad-based, bottom-up approach.

The global agenda that the Commission proposes focuses on building political ownership and supporting local and national reform processes based on solid empirical and analytical knowledge. Making Legal Empowerment a political priority requires a politically relevant and astute strategy. A coalition of countries from North and South should volunteer to champion the Legal Empowerment agenda in the UN leading to UNGA debate and resolution in the 63rd session starting September 2008.

Establish a global Legal Empowerment “open access” arena

The Commission calls on multilateral agencies, foundations, grassroots movements and other civil-society organizations, information and communications firms, and other private-sector entities to jointly establish a global forum and virtual arena for Legal Empowerment of the Poor. This would seek to be truly accessible and inclusive, allowing interested people all over the world to interact, modelled on web-based social and professional networks and communities. A global meeting (combining a major gathering in a physical location with virtual participation around the world) at set intervals should be established to raise awareness and take stock of progress worldwide.

Develop political consensus regionally – A Regional Compact on Legal Empowerment of the Poor

The Commission believes that regional and sub-regional political bodies (such as the African Union, ECOWAS, ASEAN, SAFTA, OAS and Mercosur) should be central to the Legal Empowerment process. We call on these various bodies to start a dialogue on Legal Empowerment among their members using the principles and recommendations of the Commission as a frame of reference. Support can be provided by relevant UN

agencies and regionally based Commission members as needed and requested. The European Union's Neighbourhood Policy which offers countries neighbouring the EU a privileged relationship, building upon a mutual commitment to common values, could serve as inspiration for such a regional compact.

Regional bodies should be encouraged to develop their own outputs such as:

- Guidance and best-practice documents for their members
- Binding policy documents with standards and criteria for national implementation
- Regional cooperation programs
- Common statistical standards, indicator sets, and targets

These are likely to differ from region to region, but would be based on broad consensus within the region and build on universal economic and social rights. Regions could seek to formulate a Regional Legal Empowerment Compact involving key stakeholders within the region, and comprising some or all of the above four elements.

Provide coherent support to Legal Empowerment efforts at the country level

Some countries are already trying to build a more inclusive legal order that provides better opportunities for the poor and the excluded. The Commission urges relevant multilateral agencies and other actors to provide more and faster policy and technical support to such initiatives when requested. As a first step, multilateral agencies should table the principles and recommendations of this report for discussion with the aim of generating a shared global policy agenda (while allowing for different views and approaches within such a framework). A coherent global policy agenda could lead to the establishment of aligned programs of investment and technical assistance, based on clear allocation of functions and responsibilities. A similar process can be envisaged among interested donor countries and international non-governmental organizations. The process should draw from the complementarities of the Aid Effectiveness, Financing for Development and Legal Empowerment of the Poor agenda. Policies should evolve over time based on emerging experiences and lessons learned.

The Commission recommends that dedicated funding mechanisms be established to support regional and country-specific policy and capacity development work. In addition, clear Legal Empowerment criteria should be introduced into appropriate existing mechanisms. Given their broad development-policy mandates, the Commission calls on UNDP and the World Bank to develop a concrete proposal in this regard, in consultation with other relevant UN-organizations, such as UN-HABITAT, FAO and ILO, civil society-organizations and bilateral donors. UNDP and the World Bank will also develop proposals in which they will encourage a series of country pilots through a process of self-selection. The Commission calls on UNDP to establish and lead a global steering committee or Friends-group to ensure broad ownership and follow-up of the Legal Empowerment-agenda.

International actors also need to support knowledge accumulation and learning globally, based on emerging experience and evaluations of results and impacts. An important component would be peer-to-peer exchange programs among and across countries

pursuing Legal Empowerment. In order to build a portfolio with shared characteristics and opportunities for comparison and exchange, such initiatives will have to meet certain eligibility criteria.

The Commission encourages the creation of a small secretariat for coordination and knowledge management, to be housed in UNDP. The inclusion of a wide range of actors will be facilitated through the creation of a knowledge network or community of practice. The global policy and program agenda for Legal Empowerment should be increasingly informed and guided by the regional political processes described above, as well as by initiatives and progress at a country level.

Provide for sustained reflection on Legal Empowerment

Central to human progress, and grounded in many of humanity's most enduring preoccupations, Legal Empowerment needs not only reflective practitioners, but the benefit of institutionalised learning. At the junior and local level, school syllabi which introduce children to civic life and human rights will nurture the child's sense of self and future citizenship. At the international, university level, development curricula and networks of research and teaching need to sustain the intellectual life of Legal Empowerment, and open the minds of future policy-makers. But this is not a straightforward call for yet another specialisation. Professionalised academia is prone to fragmentation, and a hybrid concern such as Legal Empowerment should be a small part of drawing the strands together, and universities recapturing their voice in the public realm. For this, money as well as minds will be needed.

Create innovative mechanisms for Legal Empowerment support

A series of global instruments could be created, ranging from normative initiatives to operational collaboration and knowledge sharing. Such initiatives need to reflect the political nature of Legal Empowerment and foster genuine ownership. Rather than creating new institutions or structures, these instruments should be hosted by existing organizations. Global normative initiatives should be sequenced in relation to regional political processes and country-led operational reform efforts and be directly informed by their outcomes in order to ensure that any global normative framework be securely anchored in actual experience and regional policy processes.

a) Norm setting through a Global Legal Empowerment Compact

While labour rights have been relatively clearly enshrined in international agreements and conventions through the ILO, property and business rights and principles of access to justice have never been elaborated beyond general references or principles. The Commission recommends that a dialogue on a more comprehensive human rights framework on Legal Empowerment be initiated. An end result might be a global Legal Empowerment Compact, ideally based on regionally agreed compacts as described above. Such a compact should be widely understandable: it should make it evident to the average reader that the core rights of Legal Empowerment are human rights as important as freedom of speech, the right to vote and other basic rights. A Compact would define central principles that states should subscribe to and would lay out guidelines on how they could be put into practice. In addition to a Compact – or alternatively – a

Declaration on Legal Empowerment could be prepared for consideration by the UN General Assembly. However, the Commission recommends that such a declaration be proposed based on emerging experiences from national, regional and global initiatives as outlined in this chapter in order to ensure political support and buy-in.

b) Defenders of the Poor

The appointment of “Defenders of the Poor” could send a powerful signal to poor people around the world that their concerns around Legal Empowerment can be heard. It could help link the global and local levels in an action-oriented way. At the local or national level, Defenders of the Poor could play an important role in giving poor people a voice and supporting their Legal Empowerment. The international community could take a decision that such Defenders of the Poor would fall under the concept of human rights defenders as elaborated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.⁸² This would show a very strong commitment by the international community in support of the Defenders of the Poor and protect them in turn from human rights violations. But also at the Global level there could be Defenders of the Poor. This would be an honorary function with no formal authority and no other task than to continually draw the attention to the plight of the poor and the perspective that Legal Empowerment offers to better their lives. The Global Defenders of the Poor could work at the request of poor peoples’ organizations to get issues on the national or international agenda and to support and publicize solutions to problems and barriers that poor people face in the areas of property, labour and business rights. The process would aim to identify and build on local initiatives and find innovative solutions. Initially, some members of the Commission could be asked to serve as a Global Defender of the Poor.

d) Knowledge clearinghouse on Legal Empowerment

An institution could be given the mandate to provide a clearinghouse for knowledge and experience, openly available to all interested parties. This clearinghouse would draw on policy research, evaluations, project reports and other relevant materials. Links with existing or newly created academic networks on Legal Empowerment should serve to promote academic research and agree on a research agenda.

e) Public-private partnerships for Legal Empowerment

Recognizing the complexities of reform and the wide array of functions and services that would be involved, the Commission recommends that imaginative public-private partnerships be established at a global or regional level. These would bring together entities with relevant resources and expertise to support governments and other actors in their efforts to promote Legal Empowerment. Such partnerships could encompass multilateral agencies, financial institutions, entities involved in mapping and geographic information systems, providers of legal services, community-based civil-society organizations, foundations and others.

f) Businesses promoting Legal Empowerment agenda

Businesses increasingly influence norms and standards and therefore have an important role to play in promoting the Legal Empowerment agenda. The UN Global Compact as the world’s largest, global corporate citizenship initiative can play a central role in

building support from the world of business for systemic change for Legal Empowerment.

g) Initiative to promote grassroots knowledge and social innovation

The Commission recommends that a global initiative be launched to support the promotion of grassroots knowledge and the spread of information about social innovations in the area of Legal Empowerment. Such an initiative should reach out broadly to the full range of organizations and networks in which poor people take part, from religious institutions to farmers' associations and women's networks. Recognition could come in many shapes, such as prizes, publications, funding, and technical support. This could be linked to the proposed Global Open Access Arena for Legal Empowerment.

h) Observance of an International Day for Legal Empowerment of the Poor

A special day for Legal Empowerment of the Poor could be set aside in the UN Calendar of yearly observances. It would serve to promote Legal Empowerment of the Poor through local events globally, possibly emphasising the core rights of Legal Empowerment each year. In addition, it could highlight a particular theme closely related to Legal Empowerment.

Those who seek Legal Empowerment of poor people and communities will have the enduring admiration and support of this Commission, and of a daily growing group of people and institutions which, after learning about the views presented in this report, come to share them. But much more important, they will earn the admiration of those whose lives they touch and the satisfaction of helping to secure, amidst a multitude of desperate alternatives, a future of human flourishing.

Acknowledgements

Endnotes

¹ In studies conducted on the ground in 20 countries since 1998 at the request of the governments of Guatemala, Bolivia, Panama, Honduras, Argentina, Mexico, Haiti, Dominican Republic, El Salvador, Ecuador, Colombia, Peru, Tanzania, Egypt, Albania, The Philippines, Ethiopia, Georgia, Ghana, and Pakistan, the Institute for Liberty and Democracy (ILD) conservatively estimated that between 70% and 90% of the urban and rural population were extralegal. Applying these results to 179 developing and former Soviet nations according to the degree of development of their institutional framework it was found that 85% of the population lived in extralegal areas. Given a population in these 179 countries of 4.9 billion, it was concluded that at least 4.1 billion live in extralegal areas.

Studies by a number of other organizations confirm this figure. The International Labor Organization, in the 2002 edition of *Key Indicators of the Labor Market* estimated that “more than 70% of the workforce in developing countries operates in the informal economy”. Taking into account the dependents of these workers, this means that at least 4.3 billion people rely on informal activities for their day to day subsistence in these countries. The World Bank Institute, using conventional definitions of under-employment and poverty has come up with similar estimates. WBI organized the “Inclusive and Sustainable Business: Opening Markets to the Poor” Program, with the objective of supporting strategies designed by private executives and public sector leaders for creating opportunities “for the world’s four billion poor people”.

The ILD estimate has become an international standard, e.g. a study supported by the Inter-American Development Bank, the International Finance Corporation, the World Bank Group, Microsoft, and the Shell Foundation, and A. Hammond’s subsequent book *The Next 4 Billion: Market Size and Business Strategy at the Base of the Pyramid* (March 2007).

² “Business rights” need not yet be regarded as a new term in law, but rather as derived from existing rights related to doing business of the individual, newly bundled together under this term on the basis of their vital instrumentality in the livelihoods of the poor.

³ Schneider, Friedrich. “Shadow Economies and Corruption all over the World: New Estimates for 145 Countries”, July 2007, published in: *Economics, The Open-Access, Open-Assessment E-Journal*, No. 2007-9. Available at <http://www.econ.jku.at/Schneider/publik.html>

⁴ Low-income and rural populations often have difficulty accessing commercial banks. They may be illiterate; the local branch may be too far away; fees and minimum balance requirements may be prohibitive. An estimated 2 billion people are without access to basic financial services. *Figure based on DFID Press Release, 18 June 2007* (<http://www.dfid.gov.uk/News/files/pressreleases/bank-billion-benefit.asp>).

⁵ *DFID Press Release, 18 June 2007* (<http://www.dfid.gov.uk/News/files/pressreleases/bank-billion-benefit.asp>)

⁶ “Business rights” need not yet be regarded as a new term in law, but rather as derived from existing codified rights of the individual, newly bundled together under this term on the basis of their vital instrumentality in the livelihoods of the poor.

⁷ WDI 2007

⁸ The Millennium Development Goals Report 2007, UN, 2007.

⁹ World Bank: *Economic Growth in the 1990s: Learning from a Decade of Reform*, 2005.

¹⁰ North, D.C., *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 1990

¹¹ Stern, Dethier and Rogers: *Growth and Empowerment - Making Development Happen*, MIT Press, 2005

¹² *Harmonising Donor Practices for Effective Aid Delivery Volume 2; DAC Guidelines and Reference Series*; OECD-DAC 2006 <http://www.oecd.org/dataoecd/53/7/34583142.pdf>

¹³ Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge*, Carnegie Endowment Working Paper No. 34, Rule of Law Series, Democracy and Rule of Law Project (Washington, D.C.: Carnegie Endowment for International Peace, January 2003), 3.

¹⁴ According to the WDI 2007, there were an estimated 985 million people living in extreme poverty, i.e. living on less than \$1 in 2004. Some 500 million of those who survive on less than a dollar a day work, but despite their long hours of toil in often terrible conditions, they cannot escape poverty. ILO, *World Employment Report 2004-05* and ILO, *Working out of Poverty*, 2003.

¹⁵ According to the WDI 2007, an estimated 2.6 billion people, almost half the population of the developing world, were still living below the poverty rate of 2\$ a day.

- ¹⁶ See footnote 1.
- ¹⁷ Muhammad Yunus: “Yunus takes microfinance to New York”, Financial Times, 15 February 2008
- ¹⁸ World Bank (2007) Informality: Exit and Exclusion
- ¹⁹ “Business rights” need not yet be regarded as a new term in law, but rather as derived from existing rights related to doing business of the individual, newly bundled together under this term on the basis of their vital instrumentality in the livelihoods of the poor.
- ²⁰ Article 17, The Universal Declaration of Human Rights, UN Doc. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
- ²¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS No. 5), 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, Protocol I on enforcement of certain rights and freedoms not included in Section I. of the Convention, 20 March 1952.
- ²² Article 21, American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978, in: Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).
- ²³ Article 14, African [Banjul] Charter on Human and Peoples’ Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.
- ²⁴ Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 56th session, Economic, Social and Cultural Rights. “Housing and property restitution in the context of the return of refugees and internally displaced persons”. Final report of the Special Rapporteur, Paulo Sérgio Pinheiro. E/CN.4/Sub.2/2005/1 28 June 2005. See Arts. 7; 15.
- ²⁵ See http://www.everyhumanhasrights.org/read_it/ (25. Jan. 2008). See esp. Arts. 2, 6, 7, 8, 17, 20, 23.
- ²⁶ UNICEF. 2005. The “Rights” Start to Life: A Statistical Analysis of Birth Registration, available at <http://www.childinfo.org/areas/birthregistration/docs/Full%20text%20English.pdf>. (23.Jan. 2008)
- ²⁷ Barendrecht, Maurits, Mulder, José and Giesen, Ivo, "How to Measure the Price and Quality of Access to Justice?" (November 2006). <http://ssrn.com/abstract=949209>
- ²⁸ <http://www.hrdc.net/sahrdc/hrfeatures/HRF154.htm> and http://www.icj.org/news.php3?id_article=2684&lang=en
- ²⁹ <http://allafrica.com/stories/200710021003.html> and <http://allafrica.com/stories/200708071187.html>
- ³⁰ American Bar Association, ‘Judicial Reform Index for the Philippines’, March 2006 http://www.abanet.org/rol/publications/philippines_jri_2006.pdf
- ³¹ The five countries were Dominica, Grenada, Samoa, St. Lucia and St. Vincent and the Grenadines, all tiny island states. Of the 76 countries measured within the CPIA, only Samoa scored an aggregate 4 out of 6 over the total 16 governance indicators. 2005 IDA Resource Allocation Index, available at www.worldbank.org
- ³² World Bank, CPIA 2005 Assessment Questionnaire: 33, available at www.worldbank.org
- ³³ <http://www.ild.org.pe/en/whatwedo/diagnostics>
- ³⁴ Conditions are particularly severe in Africa, the Middle East and South Asia. See World Bank, Water Resources Sector Strategy: Strategic Directions for World Bank Engagement World Bank, Washington D.C. (2003) p. 1
- ³⁵ <http://www.icrw.org/>. See also FAO 1999. *Women’s right to land and natural resources: some implications for a human-rights based approach*. SD Dimensions. Available at: FAO: <http://www.fao.org/sd/LTdirect/LTan0025.htm> (23. Jan. 2008).
- ³⁶ ILO, Women and Men in the Informal Economy: A Statistical Picture, 2002
- ³⁷ ILO, Resolution of the 90th Session of the General Conference, 2002
- ³⁸ ILO: *Working out of Poverty*, 2003
- ³⁹ Chen *et al.* 2005.
- ⁴⁰ ILO, Women and Men in the Informal Economy: A Statistical Picture, 2002
- ⁴¹ *ibid.*
- ⁴² The informal economy of 96 developing countries accounts for 37% of the economy or official GDP. (Schneider, Friedrich. "Shadow Economies and Corruption all over the World: New Estimates for 145 Countries", July 2007, published in: Economics, The Open-Access, Open-Assessment E-Journal, No. 2007-9. Available at <http://www.econ.jku.at/Schneider/publik.html>)
- The informal economy produces 27% of non-agricultural output in North Africa, 29% in Latin America and 31% in Sub-Saharan Africa and Asia. In Thailand and Nigeria, it exceeds 70% of the economy. (ILO, Women and Men in the Informal Economy: A Statistical Picture, 2002)
- ⁴³ WRI Report 2005

- ⁴⁴ Boudreaux 2007
- ⁴⁵ HDR 2007/2008
- ⁴⁶ HDR 2007/2008; P Gutman “From Goodwill to Payments for Environmental Services: A Survey of Financing Options for Sustainable Natural Resource Management in Developing Countries” 2004
- ⁴⁷ Economic rent is income that would not exist in a competitive marketplace. Rent-seeking behaviour refers to efforts to get government to create economic rents, which can then be captured for private gain, at the expense of society due to the inefficiencies it creates.
- ⁴⁸ De Soto, Hernando. 1989. *The Other Path* (New York: Basic Books)
- ⁴⁹ Morton H. Halperin, Joseph T. Siegle, Michael M. Weinstein “The Democracy Advantage: How Democracies Promote Prosperity and Peace” Routledge 2005
- ⁵⁰ Journal of Democracy, July 2007, Volume 18, Number 3 (which is devoted to this debate and provides an overview including Snyder, Carothers and Fukuyama)
- ⁵¹ Latin America: The Search for Good Jobs, *Newsweek*, 23 October 2007
- ⁵² Dani Rodrik in Goodbye, Washington consensus, Hello, Washington Confusion, Harvard, 2006 referring to work by Acemoglu, Johnson, and Robinson “The Colonial Origins of Comparative Development,” *American Economic Review*, 2001.
- ⁵³ 2006 World Development Report: Equity and Development, September 2005.
- ⁵⁴ Danielle Resnick and Regina Birner, Does Good Governance Contribute to Pro-poor Growth?: A Conceptual Framework and Empirical Evidence from Cross-Country Studies, 2005.
- ⁵⁵ World Development Indicators 2007.
- ⁵⁶ World Bank. *World Development Report 2005. A Better Investment Climate for Everyone*. p.79.
- ⁵⁷ Op. Cit. pp. 80-81.
- ⁵⁸ Op. Cit. p. 80.
- ⁵⁹ Galiani, Sebastián y Ernesto Schargrodsky. *Property Rights for the Poor: Effects of Land Titling*. En: http://economics.uchicago.edu/pdf/Galiani_022706.pdf
- ⁶⁰ Field, Erica. *Property Rights and Investment in Urban Slums*. In: <http://www.economics.harvard.edu/faculty/field/papers/FieldinvestJEEA.pdf>
- ⁶¹ Field, Erica. “Entitled to Work: Urban Property Rights and Labour Supply in Peru”. page 24.
- ⁶² Ibid.
- ⁶³ Place & Hazell 1993; Bruce & Migot-Adholla 1994; Harrison 1990; Mighot-Adholla et al. 1994a; Collier & Gunning 1999
- ⁶⁴ Article I of the Declaration of Philadelphia, 1944, Annex to the Constitution, Convention of the International Labour Organization.
- ⁶⁵ See Report of Working Group 3 in chapter 3 of Volume II
- ⁶⁶ Resolution on decent work and the informal economy, ILO, 2002
- ⁶⁷ The term ‘paralegal’ may be somewhat misleading insofar as it suggests an assistant who performs ministerial legal tasks. Paralegals in many developing country programmes are better thought of as community activists who not only have a substantial training in legal principles, but also familiarity with local community norms and practices and an ability to offer advice and advocacy services that go beyond narrow legal advice.
- ⁶⁸ Evidence from Angola, Brazil, Colombia, other Latin American countries, Hungary, India, and South Africa on how this can be done is documented in *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?*, eds., Roberto Gargella, Pilar Domingo, Theunis Roux, Ashgate, U.K., 2007.
- ⁶⁹ Brustinow 2006
- ⁷⁰ Outcome Document, paragraph 47. UN World Summit, New York, September 2005; ECOSOC Ministerial Declaration on *Creating a conducive environment for productive employment and decent work*, Geneva, July 2006;
- ⁷¹ See also Convention 156, Workers with Family Responsibilities.
- ⁷² No. 177, 1966.
- ⁷³ ILD paper on Legal Tools to Empower Informal Businesses submitted to WG4. 2006
- ⁷⁴ USAID, Removing Barriers to Formalization: The Case for Reform and Emerging Best Practice, 2005
- ⁷⁵ These international agreements include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESR), ILO Declaration on Fundamental Rights and Principles at work including fundamental core fundamental Conventions on freedom of association/collective bargaining, and

prohibition of forced labour, , elimination of child labour and non-discrimination promoting equality of opportunity and treatment; and for indigenous peoples, the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169). In addition, there is an internationally recognized “Right to Adequate Housing,” which includes security of tenure as one of its six components.

⁷⁶ The full working groups are available in Volume II of this report

⁷⁷ Cotula 2007

⁷⁸ Two useful approaches to analyzing stakeholder interests in development are DFID’s drivers of change (<http://www.gsdrc.org/go/topic-guides/drivers-of-change>) and SIDA’s power analysis (http://www.sida.se/sida/jsp/sida.jsp?d=118&a=24300&language=en_US).

⁷⁹ Decker 2005

⁸⁰ Platteau 2004

⁸¹ Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises E/CN.4/2006/97

⁸² General Assembly resolution; A/RES/53/144

Bibliography

- African [Banjul] Charter on Human and Peoples' Rights*.
<http://www1.umn.edu/humanrts/instree/z1afchar.htm>.
- American Bar Association. *Judicial Reform Index for the Philippines*. American Bar Association, March 2006.
http://www.abanet.org/rol/publications/philippines_jri_2006.pdf.
- Barendrecht, Maurits, José Mulder, and Ivo Giesen. "How to Measure the Price and Quality of Access to Justice," November 2006.
http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID949209_code74344.pdf?abstractid=949209&mirid=1.
- Boudreaux, Karol. *State Power, Entrepreneurship, and Coffee: The Rwandan Experience*. Mercatus Policy Series. <http://ssrn.com/abstract=1026935>.
- Bruce, John W., and S. E. Migot-Adholla. *Searching for Land Tenure Security in Africa*. Kendall/Hunt, 1994.
- Chen, Martha. *Progress of the World's Women: Women, Work and Poverty*. United Nations Publications, 2005.
http://www.unifem.org/attachments/products/PoWW2005_eng.pdf.
- Chen, Martha. *Women and Men in the Informal Economy: A statistical picture*. Geneva: ILO, 2002.
<http://www.wiego.org/publications/women%20and%20men%20in%20the%20informal%20economy.pdf>.
- Collier, Paul. *The bottom billion : why the poorest countries are failing and what can be done about it*. Oxford ; New York: Oxford University Press, 2007.
- Collier, Paul, and Jan Willem Gunning. "Explaining African Economic Performance." *Journal of Economic Literature* 37, no. 1. *Journal of Economic Literature* (1999): 64-111. <http://ideas.repec.org/a/aea/jeclit/v37y1999i1p64-111.html>.
- Cotula, Lorenzo. *Changes in "customary" Land Tenure Systems in Africa*. IIED, 2007.
- Council of Europe. *Convention for the Protection of Human Rights and Fundamental Freedoms*. London: H. M. Stationery Off, 1951.
<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.
- Crowley, Eve . "FAO SD dimensions: Women's right to land and natural resources:Some implications for a human rights-based approach," January 1999.
<http://www.fao.org/sd/LTdirect/LTan0025.htm>.

- Decker, Klaus, Caroline Sage, and Milena Stefanova. *Law or Justice: Building Equitable Legal Institutions*. World Bank, 2005.
http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Law_or_Justice_Building_Equitable_Legal_Institutions.pdf.
- “DFID | News | Press Release | Billion benefit from bank accounts.”
<http://www.dfid.gov.uk/News/files/pressreleases/bank-billion-benefit.asp>.
- “Every Human Has Rights.” http://www.everyhumanhasrights.org/read_it/.
- Field, Erica. “Entitled to Work: Urban Property Rights and Labor Supply in Peru.” *The Quarterly Journal of Economics* 122, no. 4. The Quarterly Journal of Economics (2007): 1561-1602. <http://ideas.repec.org/a/tpr/qjecon/v122y2007i4p1561-1602.html>.
- Field, Erica. “Property Rights and Investment in Urban Slums.” *Journal of the European Economic Association* 3, no. 2-3. Journal of the European Economic Association (2005): 279-290. <http://ideas.repec.org/a/tpr/jeurec/v3y2005i2-3p279-290.html>.
- Galiani, Sebastian, and Ernesto Schargrodsky. *Property Rights for the Poor: Effects of Land Titling*. Universidad Torcuato Di Tella, 2005. RePEc.
<http://ideas.repec.org/p/udt/wpbsdt/propyrightspoor.html>.
- Gargarella, Roberto. *Courts and social transformation in new democracies : an institutional voice for the poor?* Hampshire England ;;Burlington VT: Ashgate, 2006.
- Halperin, Morton H., Joseph T. Siegle, and Michael M. Weinstein. *The Democracy Advantage: How Democracies Promote Prosperity And Peace*. Routledge, 2005.
- He, Xin. 2005. “Why Do They Not Comply with the Law? Illegality and Semi-Legality among Rural-Urban Migrant Entrepreneurs in Beijing.” *Law and Society Review* 39 (3), 527-562.
- Harrison, Paul. *Inside the Third World: The Anatomy of Poverty*. Penguin, 1990.
- Harrison, Paul. *The greening of Africa : breaking through in the battle for land and food*. New York N.Y. U.S.A.: Penguin, 1987.
- Inter-American Commission on Human Rights, and Inter-American Court of Human Rights. *Basic Documents Pertaining to Human Rights in the Inter-American System: Updated to 1 March 1988*. Washington, D.C: General Secretariat, Organization of American States, 1988.
<http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>.
- International Commission of Jurists. “Attacks on Justice 2002 - India.” International Commission of Jurists, August 27, 2002. <http://www.icj.org/IMG/pdf/india.pdf>.

International Labour Office. *Working Out of Poverty: Report of the Director-General*. International Labour Organization, 2003.

International Labour Organisation. "Effect to be given to resolutions adopted by the International Labour Conference at its 90th Session (2002) : (b) resolution concerning decent work and the informal economy." *Papers of the Governing Body*. (2002). <http://www.ilo.org/public/english/standards/relm/gb/docs/gb285/pdf/gb-7-2.pdf>.

Journal of Democracy. Vol. 18. The Johns Hopkins University Press, 2007.

Langman, Jimmy. "Latin America, The Search For Good Jobs." *Newsweek*, December 22, 2003. <http://www.newsweek.com/id/60944>.

"Legal Reforms and Investment Prospects in India." Human Rights Features (November 30, 2006). <http://www.hrdc.net/sahrdc/hrfeatures/HRF154.htm>.

Machuhi, Eunice. "Kenya: One Million Cases Pending in Courts." *The Nation (Nairobi)*, August 7, 2007. <http://allafrica.com/stories/printable/200708071187.html>.

"Monitoring Elite Capture in Community-Driven Development." *Development and Change* 35, no. 2 (April 2004): 223.

Muriuki, Albert. "Slow Judicial System a Major Obstacle to Growth ." *Business Daily (Nairobi)*, October 2, 2007. <http://allafrica.com/stories/printable/200710021003.html>.

North, Douglass. *Institutions, Institutional Change and Economic Performance*. Cambridge University Press, 1990.

OECD DAC. *Harmonising Donor Practices for Effective Aid Delivery*. Vol. 2. DAC Guidelines and Reference Series. OECD Online Bookshop, 2006. <http://www.oecd.org/dataoecd/53/7/34583142.pdf>.

Perry, Guillermo, and William F. Maloney. *Informality: Exit and Exclusion*. World Bank Publications, 2007.

Pimlott, Daniel . "Yunus takes microfinance to New York." *Financial Times*, February 15, 2008. <http://www.ft.com/cms/s/0/f39adbe2-dc02-11dc-bc82-0000779fd2ac.html>.

Place, Frank, and Peter Hazell. "Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa." *American Journal of Agricultural Economics* Vol. 75, no. No. 1 (February 1993): 10-19.

- Resnick, Danielle, and Regina Birner. *Does Good Governance Contribute to Pro-poor Growth?: A Conceptual Framework and Empirical Evidence from Cross-Country Studies*. Verein fuer Socialpolitik, Research Committee Development Economics, 2005. <http://ideas.repec.org/p/zbw/gdec05/3478.html>.
- Rodrik, Dani. "Washington consensus, Hello, Washington Confusion," January 2006. http://ksghome.harvard.edu/~drodrik/Lessons%20of%20the%201990s%20review%20_JEL_.pdf.
- Schneider, Friedrich. "Shadow Economies and Corruption All Over the World: New Estimates for 145 Countries." *The Open-Access, Open-Assessment E-Journal* Vol. 1, 2007-9 (July 24, 2007). <http://www.economics-ejournal.org/economics/journalarticles/2007-9>.
- Soto, Hernando De. *The Other Path: The Economic Answer to Terrorism*. 1st. Perseus Books Group, 2002.
- Soto, Hernando de. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books, 2000.
- Stern, Nicholas Herbert, Dethier, Jean-Jacques, and F. Halsey Rogers. *Growth and Empowerment: Making Development Happen*. MIT Press, 2005.
- "UN Economic and Social Council." <http://www.un.org/ecosoc/docs/fullandp10.shtml>.
- UN. General Assembly (60th sess. : 2005-2006). *2005 World Summit Outcome : resolution*. Vol. 60. New York: UN, 2005.
- UNDP. *Human Development Report 2007/2008: Human Development and Climate Change*. Palgrave Macmillan, 2008. <http://hdr.undp.org/en/reports/global/hdr2007-2008/>.
- UNICEF . *The 'Rights' Start to Life: A statistical analysis of birth registration*. UNICEF , February 2005. http://www.unicef.org/publications/files/BirthReg10a_rev.pdf.
- United Nations. *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons: Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro: Principles on Housing and Property Restitution for Refugees and Displaced Persons*. E/CN.4/SUB.2/2005/17. Geneva: UN. <http://daccessdds.un.org/doc/UNDOC/GEN/G05/146/95/PDF/G0514695.pdf?OpenElement>.
- United Nations. *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*. Geneva: UN.

- United Nations. *The Millennium Development Goals Report 2007*. United Nations, 2007.
- United Nations. *The Universal Declaration of Human Rights*. [New York: King Typographic Service Corp, 1949. <http://www.unhchr.ch/udhr/lang/eng.pdf>.
- USAID. *Removing Barriers to Formalization: The Case for Reform and Emerging Best Practice*. USAID, 2005. <http://www.oecd.org/dataoecd/36/27/38452590.pdf>.
- World Bank. *Economic Growth in the 1990s: Learning from a Decade of Reform*. Washington, D.C: World Bank, 2005.
- World Bank. “IDA - 2005 IDA Resource Allocation Index (IRAI).” <http://go.worldbank.org/MY944F3BN0>.
- World Bank. *Water Resources Sector Strategy: Strategic Directions for World Bank Engagement*. World Bank Publications, 2004.
- World Bank. *World Development Indicators 2007*. World Bank. <http://siteresources.worldbank.org/DATASTATISTICS/Resources/WDI07frontmatter.pdf>.
- World Bank. *World Development Report 2005: A Better Investment Climate for Everyone*. World Bank Publications, 2004. <http://go.worldbank.org/WVDAOSZJ20>.
- World Bank. *World Development Report 2006: Equity and Development*. World Bank ; Palgravedistributor, 2006. <http://go.worldbank.org/UWYLB43C0>.
- WIPO 2005 “Intellectual Property and Traditional Knowledge”, Booklet No 2. Publication No. 920(E). http://www.wipo.int/freepublications/en/tk/920/wipo_pub_920.pdf
- World Resource Institute, ed. *World Resources 2005 -- The Wealth of the Poor: Managing ecosystems to fight poverty*, 2005. http://archive.wri.org/publication_detail.cfm?pubid=4073.
- Yeng, José and Cartier van Dissel, Serge. “Improving access of small local contractors to public procurement – The experience of Andean Countries” *ASIST Bulletin* No. 18, September 2004, International Labour Organisation