



LEGAL EMPOWERMENT FOR THE POOR [LEP]

AN AGENDA FOR ASIA

BIBEK DEBROY

Abstract:

Poverty is about income and more. It is about distribution of the benefits of growth through decent employment and equitable access to basic services. It is also about participation and empowerment. The legal empowerment of the poor agenda promises to add the missing link to the MDGs.

The three F challenges facing the world today – food, fuel and finance – put more pressure on development as a holistic process of empowerment. The crises will affect the poor indiscriminately; governments will be bent on short term reforms; distracted from longer term institutional reforms, governments will be keen on reform priorities with least implications on their finances. That has implications for legal empowerment of the poor agenda. This paper recommends that UNDP primarily focuses on access to justice or property rights as entry points.

It is fallacious to presume that all reforms are positive sum. Even if they are, there is a time dimension involved and since the costs and benefits of reforms are both uncertain, there is a difference between *ex post* gains and *ex ante* fears of losses. Hence, it is not enough to understand the effects of LEP on the poor; it is also necessary to understand the implications of implementing a LEP agenda on the non-poor.

Engaging civil society is key to obtain buy-in and genuine sustainable reform over time. This is particularly important for the management of the political and economic cost of reforms. Civil society should be defined as including law faculties as well as NGOs.

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DISCLAIMER

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ABSTRACT

Poverty is about income and more. It is about distribution of the benefits of growth through decent employment and equitable access to basic services. It is also about participation and empowerment. The legal empowerment of the poor agenda promises to add the missing link to the MDGs.

The three F challenges facing the world today – food, fuel and finance – put more pressure on development as a holistic process of economic, social, political and legal empowerment. The crises affect the poor – especially urban poor – indiscriminately; governments will be bent on short term reforms, distracted from longer term institutional reforms; governments will also be keen on reform priorities with least implications on their finances.

This paper recommends that UNDP primarily focuses on access to justice or property rights as entry points. With economic growth in Asia and consequent demands on land for urbanization and other forms of non-agricultural usage, including infrastructure, land rights¹ in particular does suggest itself as an area worthy of UNDP intervention.² UNDP is also advised to precede intervention with understanding of priorities and dynamics of exclusion on issues of civil vs criminal justice reform, identity registration, property rights (especially land rights) and labor standards.

It is fallacious to presume that all reforms are positive sum. Even if they are, there is a time dimension involved and since the costs and benefits of reforms are both uncertain, there is a difference between *ex post* gains and *ex ante* fears of losses. It then follows that it is not enough to understand the effects of LEP on the poor. It is also necessary to understand the implications of implementing a LEP agenda on the non-poor.

Engaging civil society is key to obtain buy-in and genuine sustainable reform over time. This is particularly important for the management of the political and economic cost of reforms. Civil society should be defined as including law faculties as well as NGOs.

INTRODUCTION

This paper highlights the main issues related to poverty, exclusion and development in Asia within the context of three intersecting crises – financial, food and fuel. It then looks at the process and product of the Commission of the Legal Empowerment of the Poor CLEP in an evolutionary approach on law and development. The main recommendations of the CLEP report and the national consultations in Asia are highlighted, followed by policy implications for UNDP.

1. POVERTY IN ASIA

Poverty isn't only about head count ratios, that is, the percentage of people who have per capita incomes or expenditures below a designated poverty line. However, head count ratios are invariably used in poverty discussions and they also figure in the first of the eight Millennium Development Goals (MDGs). Until recently, the internationally accepted poverty line used to be 1 US \$ per day, at constant PPP (purchasing power parity) prices. PPP transformations typically increase incomes in developing countries and lower them in developed countries, since prices are lower in the former. Recently, the World Bank has recalibrated the poverty line to 1.25 US \$ per day, because prices were being under-estimated in several developing countries. Following the recalibration, the percentage of people below the poverty line is 16.78% in East Asia

¹ This is not to suggest that other forms of property rights are unimportant. But with scarce resources, there is always a question of priorities.

² In collaboration say, with UN-HABITAT.

and the Pacific and 40.34% in South Asia.³ Though this is not as high as Sub-Saharan Africa's 50.91%, the absolute numbers are considerable – 316.21 million in East Asia and the Pacific and 595.58 million in South Asia. Within the East Asia and Pacific region, head count ratios are in the 40%-plus range in Cambodia and Timor-Leste, in the 30%-plus range in Lao and Papua New Guinea (Papua New Guinea is actually marginally short of 30%) and in the 20%-plus range in rural China, rural Indonesia (urban Indonesia is 18.67%), Mongolia, the Philippines and Vietnam. Within the South Asia region, head count ratios are in the 50%-plus range in Bangladesh and Nepal, in the 40%-plus range in rural India (urban India is close at 36.16%) and in the 20%-plus range in Bhutan and Pakistan.

Admittedly, head count ratios based on national-level poverty lines or the 1 US \$ per day benchmark show lower levels of poverty. As mentioned, within the first of the MDGs, there are two specific poverty-reduction targets - (1) to halve between 1990 and 2015, the percentage of population whose income is less than \$1 a day; and (2) to halve between 1990 and 2015, the percentage of population that suffers from hunger. Largely because of growth in China and India, the developing countries as a group are on track to attain these goals. But that doesn't mean that there aren't large absolute numbers of poor in Asia.

More importantly, these poverty reduction effects have primarily come about through growth. The composition of growth is critical, such as employment in low-productivity subsistence agriculture or in low-value self-employment and casual and unorganized labour. Institutional constraints inhibit graduation to higher levels of income and prosperity. There is nothing automatic about growth leading to higher levels of prosperity for everyone. Growth benefits the poor, or does not, depending on processes determined by institutions. Markets themselves are dependent on institutions. An integral part of these institutions is legal systems and these may work so as to shut out the poor.

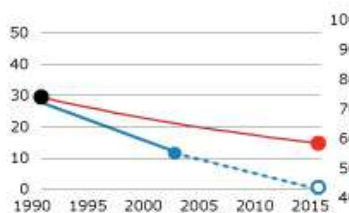
Poverty is also about access to health and education. To some extent, these are captured in the MDGs and within Asia, unlike Sub-Saharan Africa, progress towards MDGs is varied. In both East Asia and the Pacific and in South Asia, apart from what has been said about poverty earlier, success has been more on education than on health. In both regions, there are concerns about attaining the educational goal of gender disparity and in health, "success" or its lack is entirely a function of the target one has in mind. For instance, success has been better in reducing infant mortality than in reducing maternal mortality. Alternatively, the immunization track record is better than the record in providing sewage treatment or sanitation in urban slums. Having said this, the two graphs that follow illustrate progress in the two regions towards the MDGs.⁴ However, these are aggregate graphs and do not reveal problem areas within individual countries, such as health in Indonesia, Malaysia, the Philippines, Papua New Guinea, Bangladesh and Nepal or education in Vietnam.

³ <http://iresearch.worldbank.org/PovcalNet/povDuplic.html>. Data are for 2005. Also see, "The developing world is poorer than we thought, but no less successful in the fight against poverty", Shaohua Chen and Martin Ravallion, *Policy Research Working Paper*, World Bank, <http://econ.worldbank.org/docsearch>

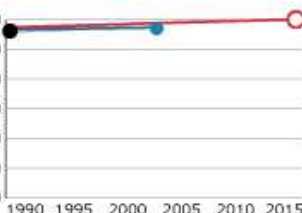
⁴ <http://ddp-ext.worldbank.org/ext/GMIS/gdmis.do?siteId=2&menuId=LNAV01REGSUB1>

East Asia and the Pacific

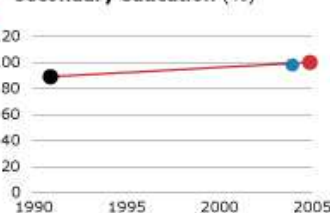
Goal 1 - People living on less than \$1 a day (%)



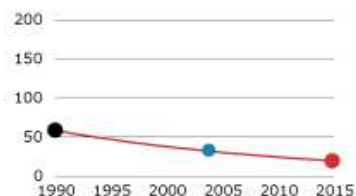
Goal 2 - Primary completion rate total (%)



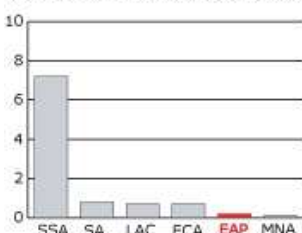
Goal 3 - Ratio of girls to boys in primary and secondary education (%)



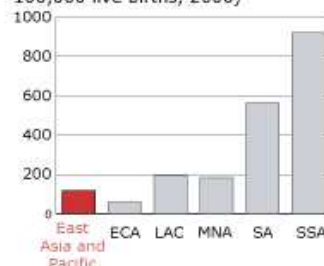
Goal 4 - Under 5 mortality (deaths per 1,000)



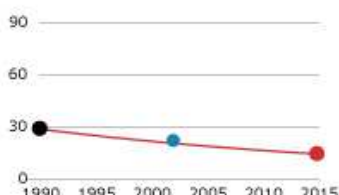
Goal 6 - Prevalence of HIV, (% of population ages 15-49, 2003)



Goal 5 - Maternal mortality ratio, (modeled estimate, per 100,000 live births, 2000)



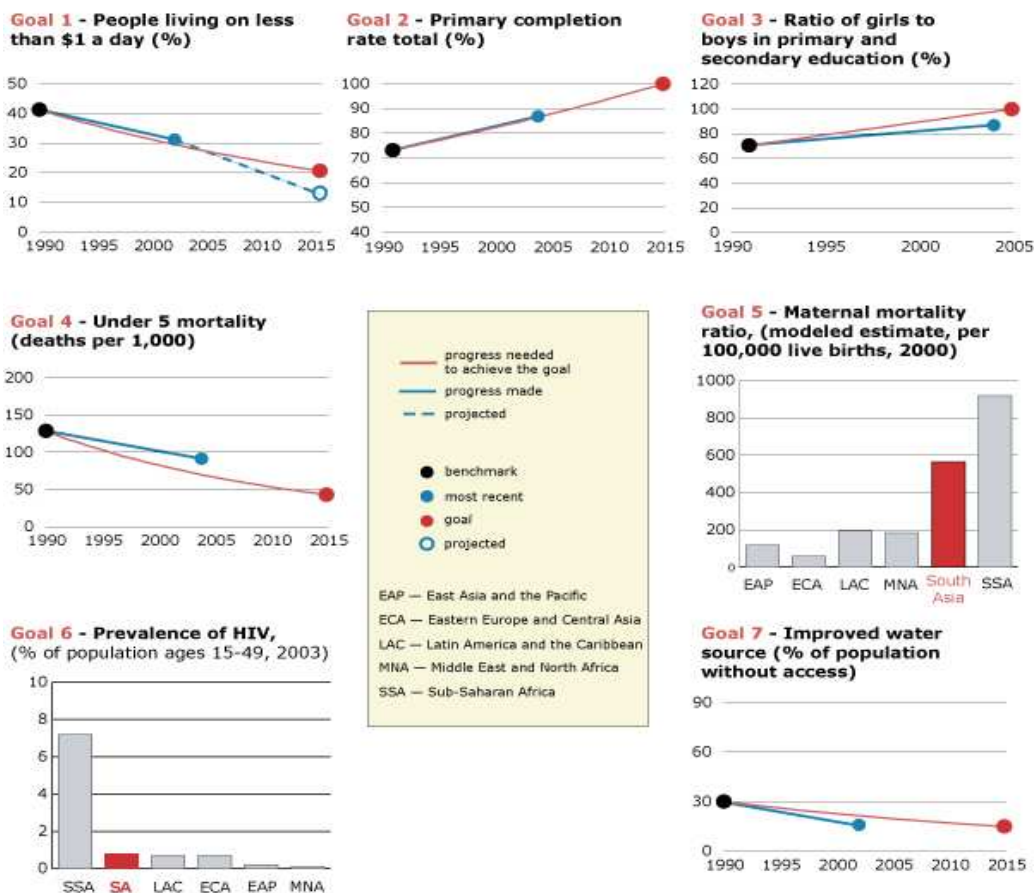
Goal 7 - Improved water source (% of population without access)



The misgivings about the aggregate nature of MDGs is common concern by now. While the MDGs served a useful purpose, they did not capture inequalities within regions, such as the obvious rural/urban divide, nor did they capture social inequalities. It is not quite the case that these disparities only characterize large countries. Most conspicuous is the fact that MDGs missed out on any indicators of legal empowerment of the poor, since it is recognized that institutions play a key role in eliminating poverty (LEP). This is the right place to mention the SAARC Development Goals (SDGs), which evolved after the 12th SAARC Summit in January 2004, because they were felt to be more relevant than MDGs to the SAARC region. These SDGs were developed by the Independent South Asian Commission for Poverty Alleviation (ISACPA) and were formally adopted by the 13th SAARC Summit in January 2006. The SDGs are for the period 2007-11 and are divided into four heads – livelihood, health, education and environment. Within the livelihood category, the seventh of the SDGs is on “ensuring access to affordable justice”.

Poverty is also about participation in decision-making processes. While this is difficult to concretize and measure, which is why existing MDGs don't mention participation, within the livelihood category, the eighth of the SDGs is on “ensuring effective participation of the poor and of women in anti-poverty policies and programmes”. There is also a SDG goal on connectivity for poorer regions and for the poor. The SDGs partly evolved to fill a gap in the present MDGs. Since the MDGs have now been accepted globally, the point made about a gap in the present MDGs also needs global acceptance, and that is about the acceptance of legal institutions and a LEP as part of the roadmap towards attaining MDGs.

South Asia



2. THE NEW F-CHALLENGES – FOOD, FUEL AND FINANCIAL

Three recent developments complicate this poverty picture. The first has been described as a food security issue. At one level, food security is posed as a balance of payments problem, that is, a country's ability to pay for its required imports of food. However, more commonly, food security is defined as an individual household's access to food, or lack thereof, falling short of chronic instances of famine. For the period 2002-04, FAO estimates under-nourishment in the total population as 30% for Bangladesh, 20% for India, 10% for the Maldives, 17% for Nepal, 24% for Pakistan and 22% for Sri Lanka.⁵ The figures are 9% for China, 26% for Cambodia, 17% for Indonesia, 19% for Lao, 16% for the Philippines, 17% for Thailand, 22% for Timor-Leste and 14% for Vietnam.

Food security has become even more of an issue because of a switch of farmland to bio-fuels, population growth, agricultural land being eaten up by urbanization and industrial development, climate change effects, soil degradation and increasing growth-related consumption in countries like China and India.

The second development has been linked to the food price increase and concerns an increase in fuel prices. Rising food and fuel prices both have adverse effects on poverty; however, for the direct poverty impact, the main concerns typically relate to the higher cost of food especially for the urban poor. The main reason is that the share of household expenditure spent on food typically far exceeds the direct share of oil-related products and services, particularly in emerging and developing economies. In large emerging economies, the share typically exceeds 25 per-

⁵ http://www.fao.org/es/ess/faostat/foodsecurity/Files/PrevalenceUndernourishment_en.xls

cent, and in developing economies, it is often above 50 percent. In contrast, the share spent on fuel is typically below 10 percent, partly reflecting high domestic fuel subsidies in some countries.

The effects of higher food prices vary from commodity to commodity and country to country.⁶ In Cambodia, a 10% increase in the price of rice increases national poverty (both rural and urban) by 0.5%. But beef price hikes lower poverty. In Pakistan, increase in prices of agricultural goods (rice, wheat, dairy) lowers rural poverty, but increases urban poverty. A similar effect is found for rice price increases in Vietnam. Within countries, the urban poor are most affected by high food and fuel prices. The rural poor are more likely to be partially self-sufficient in food supplies. The urban poor, together with food-deficit farmers, are the worst affected by food price inflation, because they rely on food purchases for their food supply. Increasing food prices are said to bypass even food-surplus farmers, as input costs (fuel, fertilizer, and transportation) are often faster to reach the farmer than hikes in world market prices for food. Finally, “the share of undernourished could rise rapidly above the current 40 percent of total population in developing countries.”⁷

But in general, one shouldn't forget that the extent to which higher food prices are passed on in the form of higher retail prices depend on the extent to which there is a cushion through subsidies. However, throughout the region, track records in identifying the poor and targeting subsidies to them alone are suspect. And fiscal constraints limit the capacity of governments to subsidize across the board through lower prices, even if one were to assume such subsidization was desirable. Both food and fuel prices have moderated somewhat now. However, the underlying trends leading to upward pressures on both sets of prices are long-term. They cannot be wished away. Consequently, institutional and legal constraints that prevent the poor, both rural and urban, from improving their lives remain important issues. One should also mention that there has been increasing privatization of expenditure on health and education. If expenditure by the poor is switched away towards food, that adversely affects expenditure on health and education.

The global financial crisis complicates the poverty story. The financial sector integration is obvious enough and one should also make the point that the financial and real sectors aren't rigid water-tight compartments without spillover effects. Ipso facto, one is talking about lower growth rates throughout the region and the IMF's projections reflect this.⁸ The IMF also takes a view that recovery is likely to begin towards the second half of 2009 and it is possible to argue that the recovery is likely to be more long-drawn than the IMF's projections.

What does the slowdown mean for the poor in Asia? First, exports, foreign investments (direct and portfolio) and ODA flows will suffer, reflected in slower growth throughout the region. Second, this means poverty-reduction effects of growth also suffer. Third, government revenue is adversely affected, limiting the fiscal space available to governments. Fourth, there are differential spatial effects, since those who are more integrated and connected with global and national markets suffer more.⁹ Fifth, the poor are more vulnerable to shocks in the sense that if the shocks cross a threshold, there are long-lasting effects on poverty, even after the economy recovers, since debt increase, productive assets like livestock and land are sold and children are taken out of school.¹⁰ Nutrition levels also tend to suffer.

⁶ See the simulations in Maros Ivanic and Will Martin, “Implications of Higher Global Food Prices for Poverty in Low-Income Countries,” *Policy Research Working Paper*, World Bank, No. 4594, April 2008.

⁷ *Food and Fuel Prices – Recent Developments, Macroeconomic Impact, and Policy Responses*, IMF, 30 June 2008, <http://www.imf.org/external/np/pp/eng/2008/063008.pdf>.

⁸ *World Economic Outlook: Financial Stress, Downturns and Recoveries*, IMF, October 2008, <http://www.imf.org/external/pubs/ft/weo/2008/02/index.htm>

⁹ See, Martin Ravallion, “Bailing out the World's Poorest,” *Policy Research Working Paper*, No. 4763, World Bank, October 2008, http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2008/10/29/000158349_20081029084618/Rendered/PDF/WPS4763.pdf

¹⁰ *Ibid.*

Stated differently, a poverty removal or LEP agenda becomes even more necessary because of these three additional developments. However, there are two caveats. First, government attention tends to focus on proximate causes of the slowdown or crisis and immediate policy responses, deflecting attention from the somewhat longer-term agenda of removing institutional barriers. Thus, the need to engage with civil society and generate countervailing pressure becomes more important. Second, revenue considerations become far more important. One therefore needs to focus on reforms that are fundamentally revenue neutral and there are several reforms that fit into this category.

3. LAW AND DEVELOPMENT

The emphasis on law as a critical component in determining developmental processes actually goes back to the classical economists, whose writings were much more grounded in institutions than modern economics often is. However, in the last couple of decades there has been some switch in focus and Nobel Prizes in Economics have also reflected this change.

A few general comments are in order first about the law and development movement and its success or failure. The law and development movement dates to the 1960s, driven primarily by USAID and the Ford Foundation. It emphasized that law and justice institutions, and a State that follows rule of law, have positive correlations with economic development and even with political and social development. This is part of the broader agenda of institutional reform and recognition that institutions matter in the development process. The institutional reform agenda, and the sub-set of a legal reform agenda, have been driven both by donors, multilateral and bilateral, and by national governments. This is notwithstanding problems with defining the term “rule of law” and questions about whether Western donor-driven “rule of law” programmes, promoted in developing and transition economies, have reduced corruption and crime or even promoted investment and growth.

Some stylized facts bear repetition. First, an attempt to spur economic development cannot assume that required institutions, and this includes legal institutions, exist. Second, legal institutions that preserve property rights and enforce them, ensure contracts, reduce transaction costs and prevent coercion are desirable public goods in themselves. Third, there are several problems in measuring the quality of legal institutions and any attempts that are made are perforce restricted to formal institutions, not factoring in the informal ones. This also upsets the correlation calculation between legal institutions and economic development, since informal mechanisms, however inefficient, exist as substitutes for delivery of legal enforcement and protection and these are not incorporated. If the law and development movement is today perceived not to have been quite successful, that’s largely because of a failure to recognize customary law and informal systems.

Notwithstanding these problems, the empirical literature shows correlation between quality of legal institutions, however measured, and economic development, however measured. But while this correlation is robust, the causality is by no means obvious and probably runs both ways. As a consequence of this, we don’t quite know what legal institutions to reform and given paucity of resources, what kind of reform has a greater impact. As a follow-up point, there is a question of whether poor countries should expend heavily in upgrading legal institutions, an investment that they can ill afford or whether incremental legal reform should focus on the cheaper option of transiting to more efficient rules.¹¹

While the law and development movement erred in its emphasis on formal legal systems, the spate of donor-driven (the World Bank, the Inter-American Development Bank, the Asian Development Bank) initiatives since the mid-1990s seem to be erring in their inordinate focus on

¹¹ This is the argument in Hay, J.R., Andrei Shleifer and R.W. Vishny “Privatization in Transition Economies: Towards a Theory of Legal Reform,” *European Economic Review*, Vol. 40, No. 315, 1996.

judicial reform and the court system. Any legal reform initiative in developing and transition economies must therefore guard against the twin pitfalls of focusing on formal legal institutions alone or the court system alone.

There are indeed problems with defining legal culture or classifying legal systems according to the family, common, civil or Islamic taxonomy or even the adversarial vis-à-vis non-adversarial classification. Hence, there remains the question of the extent to which imported and foreign legal models from developed market economies can be successfully transplanted. The empirical literature is clear on two points. The process of transplant is more important than the content of the transplant. Countries that have developed legal orders internally tend to adapt the transplanted law and this is more important than the class of legal family the receiving country or the supplying country comes from. And transplantation is likely to succeed when it is implemented in conjunction with broader institutional reform. The often contradictory findings of empirical literature can perhaps be reconciled in the following way. Legal regimes (including mechanisms for contract enforcement) can be relation-based or rule-based.¹² Relation-based ones depend on informal channels and networks, have low fixed costs, but also high marginal costs if one wishes to expand and scale up. In contrast, rule-based regimes have high fixed costs, but low marginal costs. Relation-based regimes may be more efficient with lower scales, but rule-based ones are more efficient with larger scales. From the cost kind of perspective mentioned earlier, middle income countries, particularly those where relation-based and rule-based regimes are complements, might wish to introduce a comprehensive package of reforms. However, low income countries, particularly those where relation-based and rule-based regimes are substitutes, might wish to incrementally reform relation-based regimes, instead of wholesale replacement with a rule-based regime.

4. THE COMMISSION FOR LEGAL EMPOWERMENT OF THE POOR

4.1 Genesis

On 6th September 2005, Denmark, Finland, Iceland, Norway, Sweden, Canada, Egypt, Guatemala, Tanzania and the UK, in cooperation with UNDP and UN Economic Commission for Europe (UNECE), launched a proposal to create an international initiative that would focus on the link between poverty and the informal economy. This initiative eventually became the High-Level Commission on Legal Empowerment of the Poor (CLEP). A quote from the Concept Paper drafted then is illustrative of what this initiative was expected to accomplish.¹³ “One of the staggering facts about poverty, which is not addressed explicitly in the MDGs, is that the vast majority of the world’s poor live their daily lives in what is often referred to as the *informal* or *extralegal* sector, often excluded from the benefits of a legal order.” This recognized the importance of the legal system. And explicitly, CLEP was expected to go beyond the work of the World Commission on Social Dimensions of Globalization and the Commission on the Private Sector and Development.

At the 1st Commission meeting in January 2006, an overview paper was presented.¹⁴ This made the following points. First, informality can be defined in different ways – share of housing or land that is titled, share of non-agricultural workforce that is employed in the informal sector, share of GDP that originates in informal small and medium enterprises and so on. Second, however defined, there is an inverse correlation between the size of the informal economy and the level of economic development, measured say, by per capita GDP. Third, informality has

¹² See, Avinash Dixit, “Evaluating Recipes for Development Success”, <http://www.princeton.edu/~dixitak/home/Recipes.pdf>, June, 2005.

¹³ *Concept Paper, Poverty Reduction through Improved Asset Security, Formalisation of Property Rights and the Rule of Law*, http://legalempowerment.undp.org/pdf/Concept_Paper.pdf, 6 September 2005.

¹⁴ January 2006, http://legalempowerment.undp.org/pdf/HLCLEP_Overview.pdf.

been worsening in many developing countries. That is, the share of the informal economy as a percentage of GDP has been increasing over time. Fourth, informality has costs through insecurity, environmental and socio-political considerations, labour exploitation, lack of social services (health, education), lack of access to financial markets (including credit), lack of access to public infrastructure, lack of access to contract enforcement socio-political alienation and increased possibility of conflict.

At this 1st Commission meeting in January 2006, some principles and a conceptual framework were also agreed to.¹⁵ By this time, CLEP's work had crystallized around the four thematic working groups (WGs) of (1) access to justice and rule of law; (2) property rights; (3) labour rights; and (4) legal mechanisms to empower informal businesses, with a fifth working group on implementation, though there was recognition that there would be cross-cutting issues across the four thematic working groups, to be addressed by the fifth working group on implementation.

The outcome document from the 2nd Commission meeting in June 2006¹⁶ added a few more points, sometimes explicitly, sometimes implicitly. First, in addition to being context-specific and country-specific, legal reform didn't mean an overnight supplanting of informal systems with formal ones. Instead, informal systems would have to be integrated with formal ones, not replaced. Second, legal empowerment agendas would have to be bottom-up, not top-down and it is here that the regional and national consultations assumed significance. Third, legal empowerment would have to be conceptualized as a process. There was a double agenda to regional/national consultations. First, within the generic legal empowerment reform template, use them to determine the specific menu that makes sense in the regional/national context. Second, use the networks to sell and implement the reform package subsequently.

4.2 World Bank's Voices of the Poor

Implementation of a LEP agenda requires us to understand who the poor are, what their needs are (as perceived by the poor themselves) and what legal empowerment can, and should, mean for the poor. Why are people poor and how do the poor view poverty and themselves? The World Bank brought out a series of three volumes in the "Voices of the Poor" series.¹⁷ What are bulleted points that emerge from this exercise? First, the poor view well-being holistically, poverty is much more than income alone. Poverty is a complex and multi-dimensional phenomenon. Although it is often interpreted as lack of physical well-being (food, clothing, housing, land and other assets) and lack of access to services (education, health, roads, water), there are psychological dimensions to poverty as well, contributing to a sense of being marginalized. Any notion of poverty must therefore be broad-based enough to extend beyond income poverty and include lack of opportunity and power, since people can face discrimination and abuse as a result of gender, race, ethnicity, religion and other personal attributes. Second, insecurity has increased. Violence is on the rise, both domestically and in society. The poor feel they have been bypassed by new economic opportunities. Third, gender inequality is widespread, domestic violence pervasive and gender relations stressed. Fourth, the poor want governments and state institutions to be more accountable to them. Corruption emerges as a key poverty issue. Fifth, NGOs receive mixed ratings. Sixth, the poor rely on informal networks and local institutions to survive, including the local holy man and the local nurse. The first, the fourth and the sixth should be key points for driving the LEP agenda.

¹⁵ *Agreed Principles and Conceptual Framework*, January 2006, http://legalempowerment.undp.org/pdf/Agreed_principles_conceptual_framework.pdf.

¹⁶ From Concept to Action, <http://legalempowerment.undp.org/pdf/concepttoaction.pdf>

¹⁷ World Bank and Oxford University Press, *Voices of the Poor: Can Anyone Hear Us?*, Deepa Narayan, Raj Patel, Kai Schafft, Anne Rademacher and Sarah Koch-Schulte, 2000; *Voices of the Poor: Crying Out for Change*, Deepa Narayan, Robert Chambers, Meera Kaul Shah and Patti Petesch, 2000 and *Voices of the Poor: From Many Lands*, Deepa Narayan and Patti Petesch, 2002.

4.3 What is Legal Empowerment

The word “empowerment” is itself linked to some notion of power and this brings in nuances of power structures, control and domination, and relationships between people and between people and institutions. Empowerment cannot occur unless these change. *Ipsa facto*, empowerment is a dynamic process that may be difficult to define universally, because it is situation and context-specific. Nor is it always obvious that empowerment is positive sum. To the extent that empowerment enables people to have better control over their lives and increase their opportunities, it can indeed be positive sum. But to the extent that it requires other people to give up domination, it has zero sum elements and it is unlikely that the losers, so to speak, will do so voluntarily.

What about legal empowerment? Even if it is difficult to obtain a precise definition, it is useful to have some kind of handle on what it might mean. Following some work by Stephen Golub, the Asian Development Bank (ADB) defines it thus and this is probably the most satisfactory definition that exists:¹⁸ “Legal empowerment is both a process and a goal. As a process, it involves the use of law to increase disadvantaged populations’ control over their lives through a combination of education and action. Such control may relate to such priorities as basic security, livelihood, access to essential resources, and participation in public decision-making processes. It reflects the increased knowledge, capacity, and confidence of the disadvantaged, and the enhancement of their ability to work together to advance common development objectives. As a goal, legal empowerment refers to the actual achievement by the disadvantaged of increased control over their lives through the use of law. The distinction is important, because the process of legal empowerment can proceed even if the goal has yet to be achieved...”

The same document distinguishes between legal empowerment and rule of law. “...Legal empowerment is not the same as promoting the rule of law, although the two frequently overlap. Efforts to promote the rule of law have traditionally tended to focus on judiciaries and other formal legal institutions and actors. These efforts aim to strengthen and reform legal institutions and systems so that they operate fairly, efficiently, and free of interference by the state or powerful private interests. In some cases, rule of law initiatives involve and indirectly benefit the disadvantaged. In contrast, while legal empowerment has clear rule of law implications, its processes and goals focus directly on the circumstances and needs of the disadvantaged. It concerns how the law can be used to benefit them in a broad array of development fields that may not have a strict legal dimension, including education, public health promotion, agriculture, and natural resource management. Legal empowerment thus bridges a gap between the rule of law and socioeconomic development, integrating the rule of law to meet priorities in other development fields.”

4.4 What is Legal Empowerment of the Poor

In a concept paper written for the World Bank against the background of CLEP being set up, Ana Palacio has a similar argument.¹⁹ “In the development arena, legal empowerment of the poor has been driven primarily by empirical experimentation, largely devoid of any theoretical underpinning. Legal empowerment of the poor (LEP) suffers from a lack of clarity at many levels of definition, operation and evaluation. In response to increasing demands, aid agencies have tried to secure a handle on the massive new undertaking by breaking the concept down into the specific areas in need of reform, leading to a diversity of approaches to LEP. These approaches have tried to overcome the complexity of addressing LEP by privileging a single area of focus. This paper argues that LEP should not be defined narrowly as the formalization of property rights, or the simplification of business regulations, or the reform of the justice system.

¹⁸ Asian Development Bank, *Legal Empowerment: Advancing Good Governance and Poverty Reduction*, 2000.

¹⁹ Palacio, Ana, “Legal Empowerment of the Poor: An Action Agenda for the World Bank,” March, <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalEmpowermentofthePoor.pdf>, 2006.

It should be viewed rather as an integrated framework to strengthen the link between the state and citizens that may encompass these and other reform efforts.” This too, brings in the emphasis on the process. The Regional/National Consultations were meant to factor in this process.

4.5 Recommendations of the Commission on Legal Empowerment of the Poor

The final report was submitted in February 2008.²⁰ Annex 1 lists out the recommendations, as set out in the final report. Given the current food, fuel and financial crises (resulting in a combination of lower growth, lower tax revenue and perhaps even higher subsidy expenditure), revenue neutral reforms or those with minimal revenue implications are more likely to be adopted. Thus, at the risk of some subjectivity in assessment, the report recommendations that are likely to be largely revenue neutral, or have minimal revenue impacts, are marked in bold. Unless there is external donor funding, acceptability is higher when reforms do not lead to additional fiscal pressures, even if greater public expenditure is more than compensated by revenue gains in the longer term.

Incorporating Customary Practices

Especially for access to justice and property rights, less so for labour rights and legal mechanisms to empower informal businesses, there is a cross-cutting theme on recognizing and incorporating legal regimes and systems that are based on customary practices. This splices in with what was said earlier about supplanting of legal regimes and foreign imports often being unsuccessful. Instead of looking at traditional and modern legal regimes in a binary way, with everything in black and white, the challenge is one of gradually and incrementally integrating the former with the latter. Second, there is an emphasis on legal identity and ignorance about legal rights. Access to legal institutions, markets and even public services, requires identity, both at individual and enterprise levels. High transaction costs act as deterrents, remembering that choosing not to obtain a legal identity is often a conscious decision for the poor, since the benefits from obtaining legal identity do not compensate for the higher costs. Sometimes, there is of course lack of information, about both processes to obtain identity or registration and the legal system in general, since asymmetry of information hurts the poor more. Third, lack of access to capital, credit and insurance (or financial services in general) cuts across all four thematic groups, since land, labour and capital are inputs into any production process.

Dealing with Exclusion through Registration and Formalization

In addition to this, the report of the CLEP has flagged lack of recognition-vulnerability, lack of credit and capital and lack of social security, lack of protection of assets and institutional barriers to the formal economy such as complicated procedures (entry/exit, expansion contracts, conflict resolution). However, beyond the police and local authority harassment mentioned in the national consultation recommendations (that too, is a cross-cutting theme), do the CLEP recommendations provide any entry point for donor intervention?

The issue of simplifying procedures for registration, creating incentives for formalization and disincentives for informalization is too general and has been pushed either through unilateral reform attempts or through the World Bank.²¹ Artificial formalization also has its pitfalls and a failure in Vietnam, through the 1990 Company Law and the 2000 Enterprise Law has been re-

²⁰ *Making the Law Work for Everyone, Volume II*, February 2008, pre-publication edition, <http://legalempowerment.undp.org/reports/concept2action.html>.

²¹ This is also true of transparency in government procurement, where the WTO also kicks in, though the code on government procurement is presently plurilateral and not mandatory as multilateral agreements are.

ported.²² Addressing the informal/formal issue requires much more than streamlining of administrative processes and reducing the number of business licenses and approvals. Broader institutional reforms are required. Nor should one forget that there are often fiscal incentives in favour of remaining informal. If anything, the present crises might encourage governments and enterprises in many developing countries to remain informal, since formality increases costs and can result in price uncompetitiveness. Fifth, this same argument can also be extended to labour rights. Hence, reforms under both business and labour rights are likely to be more dependent on endogenous country-specific agendas determined by host governments, even though the importance of external pressure cannot be denied. If this argument is valid, any UNDP intervention should therefore primarily focus on access to justice or property rights as entry points.

Land Titling

What is interesting about the property right recommendations (both in the final report of the CLEP and in the national consultations) is that property rights reforms are not equated with legal land-titling programmes, notwithstanding the successes that have been reported from East Europe (Georgia, Ukraine, Moldova, Armenia, Bulgaria, Latvia, Romania) or Latin America (Nicaragua, Brazil, Mexico, Peru, El Salvador). Legal land titling programmes often over-estimate the benefits and down-play the problems.²³ For instance, they are more successful in urban and peri-urban areas²⁴, less so in rural areas, where for social security reasons, customary systems restrict the marketability of land. Conflicts may arise, sometimes between customary law and statutory law. In the absence of a credible adjudicatory system that addresses conflicts, reform programmes may fail, as they sometimes have in African countries like Kenya and Uganda. Sometimes, land titling programmes have prohibitive costs, money as well as time.²⁵ The required expertise and capacities may not exist. Even if they do, the assumed economic benefits of land titling may not materialize if there are distortions in financial, labour, land and housing markets, compounded by poor infrastructure.

The property rights recommendations emphasize unbundling of property rights, particularly land, recognition and integration of customary systems, speedier dispute resolution, improvement in land administration, reduction in State control, improvement in public land management through participatory processes and better policies on land acquisition, compensation and rehabilitation. With economic growth in Asia and consequent demands on land for urbanization and other forms of non-agricultural usage, including infrastructure, land rights²⁶ does suggest itself as an area worthy of UNDP intervention.²⁷

Formal Legal Systems

The access to justice recommendations don't focus much on formal legal systems, beyond points about improving substantive law, translating substantive law into local languages, devel-

²² *Legal Reform and Economic Development in Vietnam and China, A Comparative Analysis*, Adam Day, The Fletcher School, Tufts University, February 2004. Most businesses in Vietnam remained informal. Or, if they were temporarily formalized, the trend was later reversed. The answer has to do with lack of incentives for formalization, transaction costs of undertaking business through formal channels and networks (such as more efficient dispute resolution) not having declined.

²³ Palacio, *ibid.*

²⁴ A Stock Market Housing Exchange has worked in a slum in Colombo and there are also successes from hill-side and water-front squatter settlements in Brazil.

²⁵ "Thailand, the first country with a national mass titling program, took 20 years to complete its program. In a city of 6 million people where 50 percent of the population lives in irregular settlements, administrators in charge of land management would have to issue 400 titles per working day for 10 years, just to cope with the existing demand." Palacio, *ibid.*

²⁶ This is not to suggest that other forms of property rights are unimportant. But with scarce resources, there is always a question of priorities.

²⁷ In collaboration say, with UN-HABITAT.

oping standard forms and improving legal aid.²⁸ Instead, they focus on registration, informal systems, removing supply-side constraints in provision of legal services, the usually neglected area of administrative law, class action and the somewhat courageous recommendation of targeting subsidies only to cases that have public good characteristics.²⁹

5. THE NATIONAL CONSULTATIONS

The intention behind national consultations and focus group discussions was to make the identification bottom-up and to a limited extent this did happen, at least in the sense of ensuring that recommendations emanated from within countries, rather than being determined in New York. However, within the country, it is not always obvious that consultations were bottom-up, since there is no sense of the degree of consultations that took place before the national consultation papers and recommendations were written. Had the gist of the focus group discussions been available, there would have been greater reason for comfort. Most national consultation papers flag the problems and the inefficiencies of the present system. While this has some utility, problems and constraints are known and have also been documented in assorted reports brought out by the CLEP, including in its final report. Annex 2 focuses on solutions suggested by the national consultation papers. And as before, with some subjectivity in assessment, the ones that have minimal revenue impact

5.1 Civil vs Criminal Justice

There is an emphasis on police reform, prison reform and administration of the criminal justice system, especially in countries like Pakistan, India, Kenya, Uganda and Ethiopia. This is in contrast to the CLEP's recommendations which generally interpret access to justice and rule of law as pertaining to the civil justice system. Criminal justice reform only figures implicitly and tangentially. Clearly, the poor perceive reform of the criminal justice system to be much more important. This suggests that while CLEP offers a generic and strategic template, the tactical implementation will vary from country to country, since national priorities will differ. In countries where a LEP agenda is implemented, possibly with a focus on access to justice and property rights, additional research is needed to identify specific areas for intervention. The national consultations haven't quite offered that research input. Without the research, jumping in with implementation is hazardous, as the failed law and development initiatives of the past have demonstrated.

5.2 Identity and Registration

Second, in the national consultation recommendations, lack of a legal identity, both at an individual or an enterprise level, doesn't figure prominently. *A priori*, one would have assumed this to be a major constraint and has links with the criminal justice point mentioned earlier. Often the poor in developing countries, even if they do not constitute migrant populations, do not possess a legal identity, though Article 6 of the Universal Declaration of Human Rights states, "Everyone has the right to recognition everywhere as a person before the law," a right reiterated in Article 16 of the UN International Covenant on Civil and Political Rights (ICCPR). On paper, the poor do not exist, because a national identify card system doesn't exist. Or even if such a national identity card system exists, the procedures and costs associated with obtaining such identity cards are such that the benefits are not commensurate with the costs. The lack of a legal identity makes it difficult to enroll in school, obtain employment, benefit from social ser-

²⁸ As a side issue, reform of formal legal systems, particularly courts, are likely to be pushed by World Bank and ADB.

²⁹ The national consultations suggest that all access to law is a public good.

vices, exercise political and other rights, prove parentage, marry, prove nationality, take part in court proceedings, avoid being imprisoned, open a bank account and even travel freely.³⁰

Migration, even if it is legal and voluntary, creates special problems for identity purposes. Across borders, an estimated 175 million people (3% of the world's population) are migrants in the sense that they live somewhere other than the country of birth. But this excludes migration within countries, which is far more relevant for identity purposes.

Since national identity registration often flows out of a birth registration system, there have sometimes been donor-driven attempts to push for compulsory registration of births.³¹ After all, Article 24, Clause 2 of ICCPR states, "Every child shall be registered immediately after birth and shall have a name." Article 7 of the UN Convention on the Rights of the Child states, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." Yet, UNICEF estimated that around 48 million global childbirths were not registered, a figure that represents 36% of global births in 2003.³² There have been attempts to push a universal system of birth registrations, such as through the UN project on International Programme for Accelerating the Improvement of Vital Statistics and Civil Registration Systems.

However, there should be caveats attached, and not simply because of costs associated with developing compulsory birth registration systems. In situations where many births take place in homes³³, mandatory birth registration can lead to increased bribery and rent-seeking and also the exclusion of the poor. That apart, one must be careful in jumping to conclusions. First, public services are often non-existent and this has nothing to do with lack of legal identity. Second, when vulnerable groups are denied access to public services that exist, denial is often due to economic, social and political factors, rather than absence of identity alone. Third, in the empirical literature that links lack of identity with economic well-being, correlation is sometimes confused with causation. Fourth, legal identity need not be contingent on obtaining birth certificates. Fifth, without complementary reforms, legal identity alone is often inadequate. A lot depends on the specifics of the country concerned.

5.3 Labour Laws

On the issue of core labour standards, it is important to recognize that the issue of what is "core" becomes critical. In most developing countries, labour is a source of comparative advantage. Indeed, some elements of informal and self-employment in developing countries may be disguised wage employment, except that it is disguised through out-sourcing. This not only reduces non-wage labour costs like social security, it also reduces non-labour costs like rentals, materials, equipment and even transportation costs. While there can be legitimate concerns about workers being denied their rights and there being exploitation because core labour standards aren't adhered to, regardless of the level of economic development, there can't possibly be unanimity about what a "core" labour standard is. For instance, a mechanical application of Article 24 of the Universal Declaration of Human Rights is hardly likely to be taken seriously. This reads, "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." Minimum wages, working hours, overtime payment, occupational health and safety, non-discrimination, protection against unfair dismissal, right to

³⁰ There is a flip side to registration, since collected information can be misused and even used by the State apparatus to target specific groups.

³¹ There are also gaps in registration of marriages and deaths.

³² UNICEF, *The 'Rights' Start to Life: A Statistical Analysis of Birth Registration*, 2005.

³³ Supplanting them with a system of births in nursing homes and hospitals is neither realistic, nor desirable. As long as births in homes are attended by trained mid-wives who know when to refer complications to nursing homes and hospitals, there is no particular health issue consequent to birth in homes. The UNICEF study finds that unregistered children are generally born at home, without the assistance of trained health professionals and also suffer from higher levels of malnutrition and mortality rates. But this really flags systemic flaws in public health delivery systems.

collective bargaining and restrictions on use of child labour are rights that ought to be treated on a somewhat different footing from holidays paid for by the employer. There is an inevitable trade-off and tension between protecting rights and ensuring labour cost competitiveness. As economic development occurs, a higher premium is attached to rights. But this change in premium ought to be based on what is happening internally within the country and not because of external pressure from donors or trading partners.

If one can extrapolate on the basis of the national consultation recommendations, the poor want the criminal justice system to be reformed. In contrast, CLEP focuses more on civil justice, legal identity and core labour standards. The priorities are a little different.

5.4 Asian Cases

The final CLEP report and the CLEP work in general have cited examples from Asia. These aren't fully-written out cases in a management or law literature sense. Instead, they are more like examples of successes. If prerequisites or conditions for success can be distilled out from these cases, they can offer valuable lessons for up-scaling and replication. Admittedly, even more valuable lessons can be gleaned from instances of failures, but these are even more difficult to document. Annex 3 indicates what the CLEP has flagged from Asian examples.

6. POLICY IMPLICATIONS FOR UNDP

A legal empowerment of the poor agenda represents the intersection of what in developmental economics can now be called two separate agendas – the poverty reduction agenda and the governance agenda. While there may be lack of conceptual clarity on what is meant by LEP, *de facto*, LEP has amounted to three kinds of initiatives³⁴ - (i) establishing rule of law and a legal order through reform of the judiciary; (ii) attempting to address the informality problem through simplification and codification of business regulations; and (iii) formalizing property rights, primarily through legal land titling programmes³⁵. All three initiatives have had successes, but they don't always provide quick-fix solutions and are not without their problems. Consider these one at a time.

6.1 Be Cautious about the Focus

Access to justice and rule of law initiatives have focused too much on courts, without recognizing the importance of non-formal institutions and without addressing the demand side. Similarly, addressing the informal/formal issue requires much more than streamlining of administrative processes and reducing the number of business licenses and approvals. Broader institutional reforms are required. Nor should one forget that there are often fiscal incentives in favour of remaining informal. Legal land titling programmes often over-estimate the benefits and down-play the problems. For instance, they are more successful in urban and peri-urban areas, less so in rural areas, where for social security reasons, customary systems restrict the marketability of land. Conflicts may arise, sometimes between customary law and statutory law. In the absence of a credible adjudicatory system that addresses conflicts, reform programmes may fail, as they sometimes have in African countries. Sometimes, land titling programmes have prohibitive costs, money as well as time.³⁶ The required expertise and capacities may not exist. Even

³⁴ Three of these figure in HLCLEP, with labour rights added.

³⁵ However, these have also covered non-real estate assets like machinery and tools, the Asset Credit Bureau in Thailand being an example.

³⁶ Thailand, the first country with a national mass titling program, took 20 years to complete its program. In a city of 6 million people where 50 percent of the population lives in irregular settlements, administrators

if they do, the assumed economic benefits of land titling may not materialize if there are distortions in financial, labour, land and housing markets, compounded by poor infrastructure. The short point is that there are no quick-fixes in LEP and LEP is often a long drawn-out and dynamic process, with benefits accruing in the long run. The reason for repeating these points is that it is all too easy to forget the poverty reduction and governance agendas that provide the basis for LEP.

6.2 Be Attentive to Political and Economic Costs

It is fallacious to presume that all reforms are positive sum. Even if they are, there is a time dimension involved and since the costs and benefits of reforms are both uncertain, there is a difference between *ex post* gains and *ex ante* fears of losses. That apart, reforms may be net welfare creating in overall terms, but more often than not, will lead to both losers and gainers in the short term. There is no credible mechanism for gainers to compensate losers. After all, reforms will be driven by political parties and politicians. It is possible that, in both democracies and non-democracies, different groups do not figure equally in political objective functions and higher weights are placed on those who are likely to be losers. Indeed, it is possible that even in democracies, the poor have relatively lower weights in such objective functions, compared to the relatively rich. It then follows that it is not enough to understand the effects of LEP on the poor. It is also necessary to understand the implications of implementing a LEP agenda on the non-poor.

There is often also tension between different tiers of government. A national government need not have the same priorities and the same stake-holder representation as regional governments or local ones. This assumes significance because gainers and losers may vary across tiers of government. Donors too need to appreciate this difference across various tiers of government.

Without a broader view of social justice, why should private owners of illegally occupied property voluntarily agree to land allocation to squatters, even if market-value based compensation is obtained? There are issues of who determines the market value and of whether the market value under consideration is the value today or that in the future. Why should informal business voluntarily agree to formalization if this brings in increased transaction costs of undertaking business, greater taxation and more obligations under laws and regulations, including labour laws? Why should State monopolies and public service providers agree to choice and reform of subordinate legislation if this reduces opportunities for rent-seeking? Why should the legal fraternity agree to making laws simple? Why should political elites agree to an inclusive LEP agenda, if part of the exclusion is deliberate? Had it not been for the perception that the status quo is anti-poor, the question of LEP would not have arisen. *Ipsa facto*, any reform is likely to be anti-rich in the short-run, even if growth and prosperity in the longer term more than compensates. Hence, in the short-run, at least some ingredients of LEP are likely to be zero sum, compounded by the problem that political objective functions often tend to be myopic, inevitable when there are electoral cycles.

6.3 Prioritize Access to Justice and Property Rights

Which of the four thematic areas (access to justice, property rights, labour standards, business rights) does one choose? Of these, business rights is the kind of agenda that has been driven by the World Bank in its doing business indicators and is also typically part of broader economic reform packages, unless it involves specific components that seek to reduce informality and integrate informal and formal systems. Labour standards is more of an ILO agenda and given the present climate of slowdown and resistance to moves that may be perceived to reduce competitiveness, isn't very promising. This reduces the domain to access to justice and property rights.

in charge of land management would have to issue 400 titles per working day for 10 years, just to cope with the existing demand." Palacio, *ibid*.

On the former, formal legal system reform is typically a World Bank/ADB and national government agenda.

- The following areas suggest themselves at a generic level.
- Informal dispute resolution mechanisms;
- Administrative law reform, using public interest litigation, right to information acts, citizens' charters;
- Reforms in public service delivery, using again public interest litigation, right to information acts, citizen's charters;
- Registration systems, for both individuals and enterprises;
- Land titling in urban areas;
- Issues connected with urban slums, since urbanization is on the increase;
- Improvement of land administration and public land management;
- Policies on land acquisition, compensation and rehabilitation;
- Integration of community rights into formal systems;
- Police reforms;
- Reforms of the criminal justice system.

6.4 Country Prioritization

As major countries within the region, where substantial numbers of poor are also located, Afghanistan, Pakistan, India, Bangladesh, Nepal, Sri Lanka, Burma, Laos, Thailand, China, Vietnam, Cambodia, Philippines, Indonesia and Malaysia suggest themselves. One should not forget a point made earlier, that there are significant disparities within countries too and this is not a phenomenon that characterizes large countries alone. Hence, the geographical choice is not only about countries, but also about locational choices within countries.

6.5 Mix Low Hanging Fruits with Others More Difficult to Reach

There is a fourth question that is even more difficult for any intervention. Does one handle the easy ones, where chances of success are high, since any external donor-driven intervention is likely to be more visible? Or should one handle the more difficult ones, where the probability of success is low, and this is also a function of the receptivity of national and local governments and the existence of civil society. In practice, this is not an either/or choice and any donor would probably like to have a mix of both in the basket of intervention.

6.6. Engaging with Civil Society

A LEP programme shouldn't be pushed without the active engagement of civil society. Even if governments are willing, the absence of civil society engagement, reforms will be perceived to be top-down and will have limited acceptance. Furthermore, such top-down reforms will be unrealistic and won't necessarily reflect the needs of the poor. Reforms are also often described as win-win, but they rarely are. There are always losers, even though welfare gains to those who gain may be much more than losses to those who gain from the status quo. These beneficiaries from the status quo are typically from the broader government system. Hence, countervailing pressure from civil society is useful in persuading governments to reform, especially when such reforms are not perceived to be revenue neutral and encounter resistance on fiscal grounds.

That virtually may exclude some countries Having said this, the expression civil society needs to be defined, since it can mean several things. Given the present context, civil society ought to be interpreted to mean law schools that undertake country-specific research in addition to train-

ing and NGOs that work in the law reforms area. With this end in mind, annex 4 provides a list for the specific countries. This annex is by no means comprehensive and one should add to it as more information is available. However, it does provide some kind of starting point.

In determining UNDP intervention in LEP, one should bear in mind synergies that exist with other forms of UNDP intervention – enhancing accountability mechanisms, electoral cycle strengthening and anti-corruption institution building are instances. Quite obviously, UNDP programmes should only be pushed in countries where such civil society engagement is possible. While many forms of intervention are appealing, UNDP resources, or any resources for that matter, are scarce. They should be channeled into areas where other external donor funds, or internal public and private funds are not available and where there is a vacuum. Successful use of UNDP funds can act as a catalyst to trigger other LEP-type initiatives. This suggests that one should stay away from land titling programmes, as these tend to be inordinately expensive. But this apart, focusing on property rights and access to justice seems to be indicated.

Annex 1: Recommendations of the Final Report of the Commission for Legal Empowerment of the Poor

Thematic issue	Recommendation
Access to justice	Simplify processes connected with registration, offer the poor multiple channels (choice) for registration services, bundle registration with other service delivery and customary practices, involve civil society to assist with registration, waive financial costs of registration, disseminate information about registration, create incentives for registration.
Access to justice	Neutralize politically-motivated legal exclusion through legislative changes, human rights machinery and community involvement.
Access to justice	Simplify substantive law, translate the law into local languages and ensure dissemination, develop standard form documents for common transactions.
Access to justice	Bundle legal aid with other social services, encourage local communities to pool risk for legal insurance, target legal aid and subsidies to cases that have public good characteristics, charge user fees for other cases, reform content of legal education, ease supply constraints in legal service providers, remove barriers to information dissemination about quality and availability of legal service providers.
Access to justice	In dealing with governments and public agencies, involve local communities in decision making, improve internal adjudicative, monitoring, appeal and redressal procedures, introduce education about rights, provide legal assistance, introduce external monitoring of public administration, change the bureaucratic incentive structure, use right to information, offer choice in service delivery
Access to justice	Accept legitimacy of informal systems, but introduce institutional linkages between formal and informal customary systems, introduce safeguards (such as for gender biases) in informal systems, extend legal aid to cover informal systems, use dissemination to remove biases in informal systems
Property rights	Recognize customary tenure, reaffirm and codify customary rules in participatory ways, explicitly provide for women's rights, ensure transition of customary forms towards more formal systems of tenure, but only when benefits from individual ownership exceed the costs
Property rights	For land-related disputes, offer more options for conflict resolution, increase accessibility, transparency and documentation of land administration, make land administration financially self-sustaining, eliminate institutional fragmentation of service delivery
Property rights	Establish inventory of government land, if possible, transfer control rights to the non-State sector, make land-use planning transparent and participatory, eliminate inappropriate planning regulations, improve public land management
Property rights	Reduce administrative controls and transaction costs of land sales, strengthen land sales and rental markets
Labour rights	Establish legal identity, especially in situations where an employer-employee relationship doesn't exist, create a minimum form of standards, pay attention to women and indigenous people, address geographical mobility by removing regulatory barriers, address occupational mobility by focusing on skills, access to capital and risk management, work towards a new social contract and work on the processes
Legal mechanisms to empower informal businesses	Reduce transaction costs for formalization, create incentives for formalization, create disincentives for remaining informal

Annex 2:

Recommendations Extracted from the National Consultations Worldwide

Thematic issue	Recommendation	Country
Access to justice	Increase expenditure to improve physical infrastructure in courts, improve geographical spread of courts, have better case management, simplify procedures, make judicial appointments less subjective and arbitrary, improve human resources	Indonesia, Uganda, Philippines, Ethiopia, Kenya, Tanzania, Pakistan, India, Bangladesh
Access to justice	Since access to justice is a public good, subsidize it for the poor	Indonesia, Uganda, Philippines, Ethiopia, Kenya
Access to justice	Train the poor about legal rights, remove asymmetry in information, improve the language of the law	Ethiopia, Tanzania, Philippines, Pakistan, Uganda, Kenya
Access to justice	Resolve conflicts between customary and formal law, do not import Western (colonial or otherwise) implants, reform archaic laws	Philippines, Kenya, Uganda
Access to justice	Reform the police, the prison system and the lot of under-trial prisoners, introduce gender sensitization	Pakistan, Uganda, Kenya, India
Access to justice	Introduce alternatives to the court system	India, Uganda, Tanzania, Philippines, Kenya, Bangladesh
Property rights	Improve efficiency of land titling and registration, reduce State control over land resources, improve land rights of slum-dwellers	Kenya, Pakistan, Philippines, Uganda, Tanzania, Pakistan, Sri Lanka, Uganda, India, Bangladesh
Property rights	Remove conflicts in land law between customary law and modern law, reduce multiplicity in authorities	Philippines, Indonesia, Kenya, Uganda, Ethiopia, Tanzania
Property rights	Remove gender biases in land laws	Pakistan, Philippines, Ethiopia, Uganda, Indonesia, Sri Lanka, Bangladesh
Property rights	Introduce a clear policy for acquisition, compensation and rehabilitation in instances of land acquisition by the State	Uganda, Bangladesh
Property rights	Make privatization decisions concerning natural resources transparent	Indonesia
Labour rights	Extend core labour rights to the informal sector and enforce those rights, disseminate information about those rights, promote collective bargaining ³⁷	Philippines, India, Uganda, Sri Lanka, Ethiopia, Indonesia, Tanzania, Kenya, Bangladesh

³⁷ Other than dissemination of information about rights and promotion of collective bargaining, the national consultation papers aren't very clear on how greater enforcement going to happen and there are several problems. First, what is the definition of core labour rights? Does it include social security and if so, in what form? Second, who funds the social security, however defined? Third, how does one promote core labour rights in situations where a clear employer-employee relationship is missing?

Legal mechanisms to empower informal businesses	Reduce harassment of self-owned street enterprises by local authorities and police	India, Kenya, Ethiopia, Uganda
Legal mechanisms to empower informal businesses	Simplify procedures for registration, land usage and taxation, reduce corruption, decentralize law and policy formulation	India, Sri Lanka, Uganda, Ethiopia, Philippines, Kenya, Indonesia, Tanzania, Bangladesh
Legal mechanisms to empower informal businesses	Make government procurement transparent	Pakistan, Sri Lanka
Legal mechanisms to empower informal businesses	Introduce financial sector reforms (credit, insurance)	Philippines, Uganda, Indonesia, Kenya, Ethiopia, Sri Lanka
Legal mechanisms to empower informal businesses	Provide training and information to small enterprises	Kenya, Ethiopia, Tanzania, Sri Lanka, Uganda, India, Philippines

Annex 3: Asian Examples of Success

Thematic area	Country	Details
Access to justice	India	Law students providing legal aid
Access to justice	India	Class action suits, including PILs
Access to justice	India	External monitoring of public services in Bangalore, presumably meaning Public Affairs Centre
Access to justice/legal identity	Bangladesh	UNICEF-supported birth registration and registration spliced with vaccination
Access to justice	Bangladesh	Legal aid spliced with reproductive health programmes
Access to justice	Bangladesh	Local mediation councils
Access to justice	Cambodia	Mobile and mandatory birth registration
Access to justice	Nepal	Non-formal legal education spliced into an empowerment programme
Access to justice	Philippines	Homeless People's Federation as self-help group that has used countervailing pressure to improve governance
Property rights	India	Computerization of land records in Karnataka
Property rights	India	Regularization of unauthorized settlements in Delhi in the late 1970
Property rights	India	<i>Pattas</i> to the poor, with limited land rights, over government land
Property rights	India	National street-vendor policy
Property rights	India	Private real estate development, with a percentage earmarked for the poor
Property rights	India	Government as a broker to ensure sharing of land rights between owners and low-income occupiers
Property rights	Pakistan	Conversion of informal urban settlements in Hyderabad
Property rights	China	Granting of patents to traditional medicines
Property rights	China	Rural land titling programmes
Property rights	Indonesia	Rural land titling programmes
Property rights	Philippines	Rural and urban land titling programmes
Property rights	Philippines	Recognition of land rights for indigenous people
Property rights	Singapore, Indonesia, Malaysia, Philippines	Granting apartment owners partial rights in collective housing
Property rights	Singapore	Public housing, linked with provident fund

Labour rights/business rights	India	Rights to informal female workers through SEWA
Labour rights	India	Legislated social security for unorganized workers
Labour rights	China	Minimum levels of social security
Labour rights	Philippines	Universal social security
Labour rights	Thailand	Extension of labour law to home workers
Labour rights	Philippines	Judicial ruling for ambiguous employer-employee relationships
Business rights	Bangladesh	Micro-finance, Grameen Bank, BRAC
Business rights	Bangladesh	Credit information reforms
Business rights	Pakistan	Electronic credit registries
Business rights/access to justice	India	Out of court settlements for bank defaults
Business rights	Philippines	Empowering indigenous people through entrepreneurship
Business rights	Malaysia	Standardized forms for business registration
Business rights	Indonesia	Tax reform to reduce compliance costs

Annex 4: Law Universities and NGOs by Country

	Law universities	NGOs
Bangladesh	(1) Law faculty, Northern University (Dhaka); (2) Department of law, Stamford University (Dhaka); (3) Law faculty, University of Chittagong; (4) Law faculty, University of Dhaka	(1) Grameen Bank; (2) Building Resources Across Communities (BRAC); (3) Making our Economy Right (MOER); (4) Bangladesh Rural Improvement Fund; (5) Bangladesh Centre for Advanced Studies
Cambodia	(1) Royal University of Law and Economics, Phnom Penh	(1) Cambodia Institute of Development Study (CIDS); (2) Street Children Development and Assistance Programme; (3) Children and Women Development Centre in Cambodia
China	(1) Anhui University School of Law (Hefei); (2) Central University of Finance and Economics Law School (Beijing); (3) China University of Political Science and Law (Beijing); (4) Chinese University of Hong Kong, School of Law (Hong Kong); (5) City University of Hong Kong, School of Law (Hong Kong); (6) East China University of Politics and Law (Shanghai); (7) Fudan University School of Law (Shanghai); (8) Hong Kong University, Faculty of Law (Hong Kong); (9) Renmin University of China, Law School (Beijing); (10) Tsinghua Law School (Beijing)	(1) Hong Kong Centre for Economic Research
India	(1) Law faculty, University of Allahabad; Amity Law School (Delhi); (2) Law faculty, Delhi University; (3) ICFAI Law School (Delhi); (4) ILS Law College (Pune); (5) NALSAR (Hyderabad); (6) National Law School (Bangalore); (7) National University of Advanced Legal Studies (Cochin); (8) Symbiosis Law School (Pune); (9) WB National University of Juridical Sciences (Kolkata); (10) Indian National Judicial Academy (Bhopal)	(1) SEWA; (2) Manushi; (3) Centre for Civil Society; (4) Liberty Institute; (5) M.S. Swaminathan Foundation; (6) Public Affairs Centre; (7) Loksatta; (8) Jana-Aagraha.
Indonesia	(1) Universitas Indonesia, Fakultas Hukum (Jakarta); (2) Universitas Airlangga, Faculty of law (Surabaya); (3) Universitas Andalas, Fakultas Hukum (Padang); (4) Universitas Katolik Parahyangan, Fakultas Hukum (Bandung); Universitas Udayana, Faculty of law (Den Pasar)	(1) Taman Siswa; (2) Dian Desa; (3) Bina Swadaya; (4) CD Bethesda; (5) Yayasan Alfa Omega; (6) Yayasan Indonesian Sejahtera; (7) Bina Desa; (8) Lembaga Studi Pembangunan
Malaysia	(1) Law Centre, International Islamic University Malaysia (Kuala Lumpur); (2) Faculty of law, Universiti Kebangsaan Malaysia (Selangor Darul Ehsan); (3) Faculty of law, Universiti Malaya (Kuala Lumpur)	(1) Business Council for Sustainable Development in Malaysia; (2) Centre for Orang Asli Concerns; (3) HAKAM; (4) Kumpulan Aktivistik Media Independen; (5) Malaysia Crime Prevention Foundation; (6) Malaysian Youth Council
Nepal	(1) Nepal Law Campus (Kathmandu); (2) Faculty of law, Tribhuvan University (Kathmandu)	(1) The Prosperity Foundation; (2) Backward Society Organization; (3) Center for Human Rights and Democratic Studies; (4) COPPADES; (5) Didibahini; (6) Informal Sector Service Centre; (7) Legal Aid and Consultancy Centre; (8) Nepal Participatory Action Network

Pakistan	(1) Faculty of law, University of Punjab (Lahore)	(1) Alternate Solutions Institute; (2) Center for Sustainable Development Actions; (3) Al-Mehran Rural Development and Welfare Organization; (4) Pakistan Council for Human Rights; (5) Association for Human Development; (6) Basic Urban Rural Services and Training; (7) Criminologists' Association for Reform and Education; (8) Centre for Equal Justice; (9) Centre for Research and Equitable Development
Philippines	(1) Arellano School of Law (Pasay City); (2) Ateneo de Manila Law School (Makati City); (3) College of Law, Saint Louis University (Baguio City); (4) San Beda College of Law (Manila); (5) College of Law, University of San Carlos (Cebu); (6) College of Law, University of the East (Metro Manila); (7) College of Law, University of the Philippines (Quezon); (8) College of Law, Xavier University (Cagayan de Oro)	(1) Homeless People's Federation; (2) Centre for Research and Communication; (3) Freedom from Debt Coalition; (4) Action for Economic Reforms; (5) Philippines Centre for Policy Studies; (6) Philippines Rural Reconstruction Movement; (7) Antique Integrated Area Development; (8) Centre for Migrant Advocacy; (8) Center for Legislative Development
Singapore	(1) Faculty of Law, National University of Singapore	(1) Singapore Council of Women's Organizations; (2) Association of Women for Action and Research
Sri Lanka	(1) Faculty of Law, University of Colombo; (2) Department of Legal Studies, University of Sri Lanka (Colombo)	(1) Law and Society Trust; (2) Sri Lanka Women's NGO Forum; (3) Center for Human Rights and Development; (4) Center for Policy Alternatives; (5) Human Rights Resource Center
Taiwan	(1) Department of law, Chinese Culture University (Taipei); (2) Department of law, National Chengchi University (Taipei); (3) College of Law, National Taipei University (Taipei); (4) School of Law, Soochow University (Taipei)	(1) Awakening Foundation; (2) Taiwan Alliance for the Advancement of Youth Rights and Social Welfare
Thailand	(1) Faculty of Law, Chulalongkorn University (Bangkok); (2) Faculty of Law, Kasem Bundit University (Suanluang); (3) Faculty of Law, Krirk University (Bangkok); (4) College of Law, Siam University (Bangkok); (5) School of Law, Sripatum University (Jatujak)	(1) Community Organizations Development Institute (CODI); (2) Pitaya Suwan Foundation; (3) Camillian Social Centre; (4) Santisuk Foundation; (5) Population and Community Development Association; (6) Kenan Institute
Vietnam	(1) Faculty of Law, Vien Dai-Hoc Can-Tho (Phong Dinh)	(1) Research Centre for Entrepreneurship Development; (2) Vietnam Women's Union; (3) Consultancy on Development