

CONCEPT PAPER

**HIGH-LEVEL COMMISSION ON
LEGAL EMPOWERMENT OF THE POOR
Poverty Reduction through
Improved Asset Security, Formalisation of Property Rights and the Rule of Law**

PROJECT PROSPECT.....	2
I. RATIONALE: THE GLOBAL COMMITMENT TO FIGHTING POVERTY.....	3
II. THE HIGH-LEVEL COMMISSION ON LEGAL EMPOWERMENT OF THE POOR.....	5
III. STRATEGY FOR ENSURING EFFECTIVE IMPLEMENTATION AND FOLLOW-UP.....	7
IV. FINANCING AND BUDGET. LOCATION	10
ANNEX 1.....	11

6 September 2005

This proposal is being launched by: the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), Canada, Egypt, Guatemala, Tanzania, the United Kingdom, and elaborated in co-operation with UNDP and the UN Economic Commission for Europe (UNECE).

Project Prospect

Duration:	Two and a half years
Structure:	Multi-donor facility to support High-Level Commission and supporting Secretariat and working groups
Proposed start date:	September 2005/January 2006
Secretariat:	Independent secretariat hosted by UNDP. Working groups may be served by various UN agencies like the UNECE, the UN-Habitat, the World Bank, etc.
Implementing partners:	Governments supported by multilateral organisations, donor agencies and non-governmental organisations
Launching partners:	The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), Canada, Egypt, Guatemala, Tanzania, the United Kingdom.
Deliverables:	<ul style="list-style-type: none"> • Survey and inventory of main issues and problems of linking informal and formal sectors, including asset security through property rights • Declaration of policy principles • Policy and strategy options, including a Tool Kit for Policy Makers and checklists • Alternative regimes for strengthening the rule of law and the legal empowerment of poor women and men, poor communities and marginalised groups

I. Rationale: The Global Commitment to Fighting Poverty

"Yes, the rule of law starts at home. But in too many places it remains elusive. Hatred, corruption, violence and exclusion go without redress. The vulnerable lack effective recourse and the powerful manipulate laws to retain power and accumulate wealth."

Kofi Annan, Secretary General of the United Nations, address to 2004 General Assembly

"Our resolve, and the aspirations of all those who are struggling to convert the assets they hold into valuable properties, must not be left in doubt."

Benjamin William Nkapa, President of the United Republic of Tanzania

The international community has agreed that poverty is the key strategic challenge facing the world today. Through the Millennium Declaration of 2000 and the associated Millennium Development Goals (MDGs), all members of the United Nations have agreed to cut extreme poverty worldwide by half by the year 2015. This is a noble and necessary commitment as well as a tremendous challenge. It even goes far beyond the task of reaching out to the more than one billion people living in extreme poverty. Governments of developing countries have committed themselves to taking responsibility for their own development, to implementing reforms and to creating favourable domestic conditions for development. Meeting the eight MDGs would mean significant improvements for many of the other three billion people that today live below the poverty line.

Poverty manifests itself in multiple ways. 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. Poor women and men generally lack effective legal protection and recognition of their economic assets and transactions. They often have poor access to formal policy and welfare systems that make security available to all and complement informal systems of local security and care. The consequences are significant for individuals, families and communities. This often means insecurity and constrained opportunities for participating in and benefiting from economic development. The consequences are no less significant for nations as a whole. When the majority live their lives in the informal sector, and the formal economy is dwarfed by the informal, the result is lower growth, less revenues and less room for investing in health, education and infrastructure, and sometimes more instability and armed conflict. In the final analysis, this also has serious global repercussions in the form of a more unequal and unstable world.

This initiative to establish a commission on legal empowerment of the poor is built on the assumption and conviction that the fight against poverty can only be won and the MDGs only achieved if governments succeed in rendering legal recognition of the assets and institutions of poor people and democratising the rule of law. It is inspired by the contributions made by the Peruvian economist Hernando de Soto (1989, 2000) and the growing body of analysis in their wake. This establishes that

legal exclusion, in the sense that the assets and transactions of the poor are not legally protected and recognised, produces and reproduces poverty throughout the developing world and in former communist societies. The Commission will base its efforts on this perspective, but also on other contributions, other historical experiences and ongoing work on the informal sector around the world, including that being done in international organisations and financial bodies.

The interaction between government legislation and the informal activities of people covers a broad range of issues such as formalisation of real assets and enterprises, land titling, user rights, customary rights, common management of property, employment and labour markets, social security, access to credits and women's legal rights. A central question in poverty reduction is how best to unlock the potential of local assets, entrepreneurship, and institution-building. The Commission will draw on research on such issues.¹

As stated by the World Commission on the Social Dimensions of Globalisation, the outcome of formalisation should be to make the informal activities part of the growing formal sector that provides decent jobs, access to markets, incomes, social protection and security, and gives access to the international trade system. The Commission called for concerted international efforts to make globalisation more inclusive by reforming laws and institutions to allow the poor access to secure property rights, among other things. This initiative also builds on the contribution of the Commission on the Private Sector and Development established under the auspices of UNDP, which in March 2004 called for new approaches to unleashing the potential of the domestic private sector and entrepreneurship in developing countries. This Commission noted that the informal sector asset base of economies, for example land value, is far greater than either cumulative FDI or private portfolio flows, not to mention transfers of development assistance. It further recognised the importance of property rights as a key element in sustainable economic development success.

The High-Level Commission will take into consideration the recommendations of the two Commissions and other relevant processes by developing an action-oriented Tool Kit for formalising poor people's rights to land and other assets. Multiple approaches to formalisation and legal empowerment that are adaptable to a variety of country conditions and local traditions will be sought. The Commission will pay close attention to the interests and needs of women, indigenous peoples and other vulnerable groups in this regard. It will also focus on risks, such as the risk that formalisation processes will "cement" uneven structures of land-distribution that are to the disadvantage of the poor, or delay necessary land reforms.

The Commission will also consider past and on-going work by the financial institutions, in particular the World Bank, which has made important contributions in this area.

In response to slow progress in meeting commitments to reduce poverty, the 2004 G8 summit called for a special effort to promote formalisation as part of economic

¹ See for example papers presented at an EGDI/UNU-WIDER conference in September 2004, e.g. "Unlocking Human Potential - Linking the Informal and Formal Sectors".

development, by establishing mortgage and banking facilities for increasing the use of land for financing development in poor countries. Finally, but most importantly, a growing number of governments in the developing world and emerging markets are asking for constructive assistance in advancing this demanding reform agenda.²

The informal sector is in itself multi-sectoral. A commission with a specific focus on issues of asset security, including aspects of formalising assets and institutions, is therefore deemed an appropriate device for identifying general principles and concrete measures for achieving real progress.³

II. The High-Level Commission on Legal Empowerment of the Poor

The Commission's Objective

The overarching objective of the Commission is to contribute significantly to achieving the Millennium Development Goals with respect to reducing poverty by half by 2015. This challenge will become even more urgent in the months leading up to the Millennium + 5 Summit in September 2005, and will probably culminate in strong calls for innovative and more concerted efforts. It is important that the Commission see its role in the light of this political process.

To this end, the Commission has a six-fold agenda:

1. To galvanise political support and commitment to a broad reform agenda for legal inclusion and empowerment of the poor.
2. To examine ways to secure broader access to legal, fungible property rights over real and movable assets –thus replacing, supplementing or improving existing local or national arrangements for the purpose of expanding and improving their utility for bottom-up economic and social empowerment and poverty reduction.
3. To examine ways to provide broad access to legal organisational forms suited to the poor and enhance opportunities for growth so that poor people can combine labour, technology and investment in order to raise productivity, limit risks and protect economic and social achievements, and use their assets to access credit and capital.
4. To investigate any conceptual gaps in linking asset security, property rights and access to the rule of law to wider development issues. These include conflict prevention, gender equality, economic inclusion, governance, administration of justice, legal enforcement, identification systems, capital formation, access to credit, provision of infrastructure – especially land, energy, water and affordable housing – and other issues that will benefit poor and indigenous peoples.

² It is also worth mentioning that UNHCR and UN Habitat recently held a meeting in Geneva to discuss the possible development of a joint UN policy paper on housing, mortgage and property in the context of conflict and post-conflict situations. The proposed Commission on Legal Empowerment of the Poor would be set up in close co-ordination with these efforts to ensure synergy.

³ The UN Economic Commission for Europe (UNECE) has played an important role in preparing this initiative, drawing on its considerable experience and expertise in formalisation processes in Central and Eastern Europe, e.g. by establishing guidelines and best practices in land registration.

5. To draw up an inventory of reforms to promote asset security, and other efforts to link the formal and informal sector, that are based on global experiences to date and contributions from relevant expertise and stakeholders from governments, civil society, the private sector and international organisations from around the world.

6. To produce a Tool Kit for policy makers as a basis for solid, demand-driven support programmes for reform at the country level.

Work Programme and Deliverables

The Commission will work to achieve these goals by setting in motion a comprehensive effort involving analysis, extensive consultations with relevant stakeholders, workshops for policymakers and civil society in all regions of the world, technical and high level dialogues with relevant international institutions and a broad public communications effort.

The Commission will consolidate its findings in a comprehensive report constituting a declaration of broad policy principles, comprehensive analysis of the types of obstacles standing in the way of the legal empowerment of poor women and men and poor groups, and a Tool Kit for policymakers for international dissemination to governments, civil society and the international development community. The partners launching the Commission will take part in these dissemination and advocacy efforts, pending their approval of key outputs of the Commission.

The Structure of the Commission

The **High-Level Commission** will be composed of women and men from all regions of the world. They should have experience as policymakers, operational executors or intellectual leaders in designing, building support for and carrying out complex reform processes for the purposes of economic and social development, improvements in governance and democracy or reducing poverty. Most of the commissioners will have top-level government experience, particularly in introducing new paradigms or complex policy reforms in a political setting. There will be commissioners representing relevant social movements and intended beneficiaries in the South.

The Commission will ultimately decide on its own mandate, while stakeholders will have the opportunity to comment on the present concept paper and other material forming the basis for the Commission's mandate. It will be supported by **working groups**, to be identified by the Commission, that will provide key inputs into the work of the Commission. The working groups could cover the following topics, among others:

- Mapping the policy, legal and institutional building blocks for an inclusive system of effective asset security, including user and property rights for both women and men
- Examining conceptual gaps in linking the formalisation agenda more closely with the wider issues of enhancing the rule of law for poor women and men and poor communities

- Examining the links between informal and formal employment and labour market functions
- Examining under what circumstances and in what ways strengthened asset security could contribute to improved protection of human rights, gender equality, prevention of armed conflict and advancement of human security, including the rights and security of particularly vulnerable groups (e.g., the customary rights of indigenous people, safeguarding and restoring the asset security of people displaced by conflict, etc.)
- Examining the ways and means to link provision of financial services to reforms intended to advance poor people's asset security
- Reviewing potential risk factors to be managed in formalisation processes, including gender aspects of poverty and development, environmental sustainability, vulnerable communities (e.g., indigenous peoples, ethnic minorities), the potential for conflict over access to scarce resources, the adverse effects of land reform, etc.
- Developing standards and capacity building approaches to improve land and property-related services and enhance the ability of citizens, both women and men, to defend their assets and interests

Each working group should encompass professionals and policy-makers from developing countries and could be linked to specific UN agencies, the regional commissions of the UN, the World Bank, etc. The working groups will have a chair and a secretary. Working group members will be specialists in the relevant subject matter and will be drawn from the relevant stakeholder groups, including government, social movements, civil society, the private sector (including the informal sector itself), relevant academic institutions and various international agencies. The working groups are expected to include developing and transition country policy makers, professionals and researchers and to consult widely with representatives from poor and marginalised populations as part of their work.

The Commission will interface with an **Advisory Body** made up of experts from different disciplines, senior officials from multilateral institutions and agencies, representatives of intended beneficiaries in the South and launching partners.

The **Secretariat** of the Commission will be staffed by a small group of highly qualified co-ordinators with the necessary background for supporting such a complex endeavour. It will be hosted by UNDP in close partnership with UNECE and other UN agencies and international financial institutions.

The Modalities

It is proposed that the Commission should meet at least four times between 2006 and 2008. The working groups will support the Commission by producing reports on aspects of informal asset control and legal recognition, and the inclusion of assets held by poor individuals and groups as a means to improve their livelihoods. Their work programmes will be laid out in terms of reference (TORs) for each of the groups. These TORs shall be approved by the Commission and then placed on its

website. The contributions of the working groups will in turn be incorporated into a consolidated proposal for a reform Tool Kit based on the Commission's deliberations.

A substantial number of High-Level Commission and working group meetings will be held at venues in developing countries or in countries expressing a particular interest in the work being discussed. These meetings will both allow input from the relevant stakeholders (private sector, local academics, government officials, representatives of social movements and the informal sector) and provide an arena for dissemination of (and feedback on) drafts of reports.

The Commission will produce a synthesis report on the Commissioners' recommendations by December 2007. This report will be produced through careful evaluation and analysis of the working groups' findings.

Funding

The Commission will be supported financially by the governments behind this initiative and supporting multilateral agencies. Voluntary contributions from other parties will also be accepted with gratitude. The launching partners will be invited to the High-Level Commission meetings as observers and will have the opportunity to follow the work of the Commission.

III. Strategy for Ensuring Effective Implementation and Follow-up

The starting point in defining an effective implementation strategy is to determine what is wanted and required by the target recipients of the key outputs. This will include the representatives of: governments, the intended beneficiaries (poor communities where extralegality is a predominating phenomenon), the donor community, relevant professional groups, the private sector, media and civil society organisations.

An effective and results-oriented strategy for implementation and follow-up will include the following key elements:

High level: The Commission will engage policy makers at the highest possible levels of government for the purpose of building a coalition for action committed to implementing reforms for legal empowerment of poor women and men as well as poor communities.

Commonly shared platform: The difference between the countries and regions in the world is clear; however there is a need to develop some common principles for moving the agenda forward in each country and region. Once this has been achieved, there is a need to add specific local, national and regional requirements. The latter part of the work can be achieved through holding workshops, special consultative events and, most importantly, through linking the initiative to ongoing national efforts in developing countries.

Promoting adaptable and flexible approaches through the Tool Kit: Developing a comprehensive but practicable reform Tool Kit is a key element. It should contain different policy and strategy options, including a checklist, and thus a broad but detailed and varied menu of practical steps that a country can follow, charting the various stages that may be required.

The Commission will remain sensitive to the fact that every country must find its own way based on its own tradition, faiths, culture and economic history. Taking this into consideration, policy makers will be enabled to seek information on the best practices for delivering legal inclusion for the poor in the local context. Best practices should be presented throughout as policy options that can inspire and guide national policy makers in finding their own solutions.

Many governments are not starting from scratch but in fact already have programmes in place. The Tool Kit is meant to complement such programmes and/or give ideas on how they can become more effective.

Consultations with all relevant stakeholders: It is important to hear the views expressed by the groups and individuals who face the problems of working in extralegal sectors around the world and their day-to-day experiences, and to better understand their needs and requirements, their hopes for the future, how they think their governments or local authorities or other local leaders can strengthen their political voice and what economic and social opportunities and the sort of policies are required to implement real change. To achieve this it is proposed that the Commission should:

- Make use of existing interactive dialogue mechanisms through websites in Africa, Asia, the Middle East, Europe and Latin America that record the everyday experiences of ordinary people in relating to the formal structures of government (laws, regulations, national and local institutions, etc.), especially in terms of factors that affect asset security. The problem of Internet access will be addressed by working with NGOs and other institutions that have such access.
- Establish mechanisms under the working groups to further consult with civil society to ensure that their views are adequately reflected in the work of the High-Level Commission.
- Contribute to the financing of the participation of social movements, civil society and representatives of the poor/intended beneficiaries in the consultative process (e.g., the Commission, the Advisory board, relevant working-groups and consultative meetings).
- Ensure that the views and perspectives of women as well as men are heard and reflected in the work of the Commission
- Make sure that the perspectives of marginalised groups (e.g., indigenous peoples, ethnic minorities) are reflected.

Working with the bilateral donor community, the UN system, and the international financial institutions: Ensuring effective delivery of the message will involve consultations with the OECD/DAC, UN agencies, bilateral donors and the international financial institutions. The High-Level Commission must learn from the

respective experiences of these agencies and at the same time strive to develop an agenda for action that can be supported by them. The High-Level Commission will take account of what is being done by these bodies. It will suggest how this work can achieve a greater impact on poverty reduction, with the intention of strengthening their mandate and improving the co-ordination and effectiveness of various regional and international efforts. Thus the Commission will invite the agencies/institutions to appoint:

- senior officials of the relevant agencies to serve in an ex-officio capacity on an advisory body to the Commission to ensure continuous dialogue and exchange
- relevant professional staff to join the working groups under the Commission
- relevant professionals/experts to assist the Secretariat as necessary

In addition, the Commission will consult with its implementing partners on key aspects such as TORs for the working groups, and present its findings to them before finalising its work.

Mobilising the international and national private sector: Private sector involvement (including relevant finance and investment actors) is key to success. This applies to getting private sector perspectives on the problems and challenges involved in formalisation as well as drawing on their resources and expertise with regard to practical solutions and approaches. The private sector can also be a key constituency in pushing for the reform of institutions and policies. The Commission will thus:

- Establish a business community advisory body to give support and advice to the working groups and to the work of the High-Level Commission.
- Seek experts from different international and national business areas for the relevant working groups.

Targets and benchmarks: The overall goal of the High-Level Commission is to achieve real impact. The Commission will, in accordance with its terms of reference and through dialogue with implementing agencies, the launching partners and the Advisory board, decide the precise modalities for implementing its message, establish precise targets and benchmarks, and prepare for an independent assessment of the impact of its work, i.e., whether and to what extent it has led to success.

IV. Financing and Budget. Location

The Commission should be a multi-donor facility financed by both the public and the private sector. Funding will cover the following types of activities and products: meetings, workshops and interactive consultations, task forces, travel by members of the Commission, the participation from countries, studies, reports, civil society participation, presentation material, etc. The funding is benchmarked against the funding that has been required for similar initiatives organised by UN agencies.

Besides donations, contributors may also help through secondments and other arrangements.

The working groups may be served by various UN agencies, the World Bank and other actors. For example, the UNECE has established guidelines on best practices in land registration and has been prominent in making the link between secure property rights, viable real estate markets and poverty reduction in Central and Eastern Europe. The UNECE has offered to actively support the work of the Commission, co-ordinating the inputs from the regional commissions of the UN worldwide.

V. Commitment to Action

In the light of the potential of formalisation for contributing to broadly based empowerment of the poor and reduction of poverty, and considering the need for practical reform programmes in this area, a group of governments from South and North strongly supports and endorses the launch in 2005 of a High-Level Commission on *Legal Empowerment of the Poor*. It will be established as an independent unit in close collaboration with various relevant multilateral agencies.

The Norwegian Government has offered to service a follow-up function until the Commission has been formed.

ANNEX 1

Important Deliverables in Support of the Commission's Report

The Commission will oversee the production, in the working groups, of the following deliverables, which will provide the basis for its own report.

- **Policy research papers** on key issues for each of the five working groups that are of relevance to the larger questions of the relationship between legal exclusion and poverty, and the dynamics between strengthening user rights, customary rights and property rights and other means.
- **Discussion papers** providing key input to the deliberations of the Commission. These papers may cover the following ground, among other things:

- An examination of remaining conceptual gaps in linking the formalisation agenda more closely to the wider issues of enhancing the rule of law for poor women and men and poor communities, including existing development approaches and post-conflict situations
 - A review of existing policies aimed at securing the assets of the poor, formulation of policy directions which could integrate such approaches better into the international development agenda, and which could guide efforts at the national level to facilitate the establishment of linkages between informal and formal sectors, including the integration of informal sector assets into the formal economy
 - A review of existing legal, institutional and financial mechanisms with a view to proposing steps at the international level that could assist individual countries in carrying out programmes for the legal empowerment of poor individuals and groups
 - A review of potential risk factors to be managed proactively in formalisation processes, including gender aspects of poverty and development, environmental sustainability, vulnerable communities (e.g., indigenous peoples, ethnic minorities), the potential for conflicts over access to resources, risks related to land-reform and unequal land-distribution, etc.
 - A programme that could enhance awareness in the media and general public about the benefits that could be gained by formalisation approaches, including better legal protection of the assets of the poor, etc, and to propose steps that could bring such approaches higher up on the international agenda
- **Surveys** providing an overview of the nature and extent of legal exclusion in different regions of the world and with regard to different kinds of assets, and an overview of the implementation of legislation and the performance of institutions seen from the perspective of those living their lives in the extralegal sector. Literature surveys can provide a benchmark for the work of the Commission in providing new information and data on barriers to access, new threats, successes, the situation in particular countries, the work of NGOs and CSOs and those lacking a voice in these issues.
 - **Information from interactive dialogue mechanisms**
 - **Modules for the Tool Kit**
Modules may be developed on the basis of the following stages:
 - i. Encouraging governments to take the initiative further
 - ii. Assessing how many people are operating in the extralegal economy and/or without the benefits of the rule of law and why
 - iii. Drawing up strategies for putting the legal framework and necessary organisations/institutions in place
 - iv. Implementing reform and sustaining success

- v. Documenting experiences in countries that have successfully established the rule of law and systems that have broadly distributed legal property rights in the past
- **High profile demonstration projects:** Five projects, one in each of the following regions: Sub-Saharan Africa, Eastern Europe and Central Asia, Asia, the Middle East, and Latin America. These projects, identified by governments of developing countries in collaboration with the Commission, should demonstrate formalisation in practice. Examples of such demonstration projects may be:
 - i. A community-wide redevelopment scheme linking newly created small businesses and shops, new housing and community centres using local security and mortgage financing
 - ii. An effective system for dispute resolution related to land and property that can support peoples' access to rights in affordable, locally appropriate and gender sensitive ways.
 - iii. A public and/or private scheme to provide electricity, water and sanitation to poor neighbourhoods through the formalisation of title deeds and property rights
 - iv. A financial organisation for providing affordable mortgages
 - v. Co-ordinating arrangements for the development of affordable housing supported by property development and financing for the purchase of private homes
 - vi. Developing, in close collaboration with interested communities of indigenous people, mechanisms and solutions that increase legal recognition of their key assets