

# The Legal Empowerment Commission's Anti-Poverty and Access to Justice Agenda

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**I**n 2005, an international group of influential policymakers and practitioners founded the Commission on Legal Empowerment of the Poor (LE). The LE's mission is to develop new and creative approaches to combating global poverty, focusing specifically on the role of law and legal institutions. To this end, the LE hopes to enlist lawyers and lawyers' associations from around the world to collaborate in its efforts to develop and implement new strategies for expanding access to justice for poor people. The Union Internationale Des Avocats (UIA) has emerged as a key leader and partner in these efforts. This article provides an overview of the LE's agenda, particularly as it relates to access to justice issues, in order to stimulate further discussion and debate among the UIA's membership about strategies for using law to empower the poor.

The problem of global poverty is staggering. According to some estimates, over half of the world's population - more than three billion people - subsist on less than US\$2 a day, and approximately one billion people struggle to survive on less than US\$1 a day. While the causes of global poverty are complex, an increasing number of experts believe that one reason so many people remain trapped in a cycle of poverty is that they are denied effective access to a well-functioning legal system. Most of the world's three billion poor people live without the basic legal protections that people in wealthier countries take for granted. Without secure property rights, poor people live in fear of forced eviction and expropriation. Without an adequate legal framework for business transactions, would-be entrepreneurs are locked out of economic opportunities in their own countries and in the global marketplace. Without effective legal protections for workers, many poor people are unable to maximize

the returns on their principal asset - their labor - to escape the poverty trap. Without legal recognition of their existence, poor people are denied access to basic social services, including education and healthcare, as well as access to the courts.

For many of the world's poor, the legal system creates more obstacles than opportunities. As a result, most poor people operate exclusively or primarily in the "informal" or "extra-legal" economy. This limits their economic horizons and renders them vulnerable to exploitation. For this reason, the legal system is one of the key fronts in the fight against global poverty. Yet the essential legal dimension of anti-poverty efforts has not received sufficient attention in high-level policymaking circles. The LE was founded to redress that problem. The LE's co-chairs are Madeline Albright, the former United States Secretary of State, and Hernando de Soto, the distinguished Peruvian economist. Commission members include Gordon Brown, Anthony Kennedy, Fernando Cardozo, Mary Robinson, Ernesto Zedillo, Shirin Ebadi, and Mike Moore. The LE has commissioned several working groups to study aspects of the legal empowerment issue. The Commission will deliver its final report, with policy recommendations, in January/February 2008. While the final set of recommendations are still being developed, the LE will emphasize reforms to the law and justice sector that will provide poor people with the institutional environment, protections, and incentives that they need to realize their full capabilities as individuals.

An integral aspect of the LE's agenda is ensuring that the poor can reap the maximum potential return on their existing assets. This, in turn, requires legal

protection for physical assets (property rights), human capital (labor rights), and the ability to engage in profitable market transactions (entrepreneurial rights). Poor communities also require basic services that cannot be supplied efficiently in the private market, such as a healthy environment, public security, and a social safety net. The LE recognizes, however, that reform of the “law on the books” is not, by itself, sufficient to change the “law in action” that poor people experience in their daily lives. Even the best-designed pro-poor legal rules are not worth the paper on which they are printed if poor people lack adequate access to a justice system that can make these abstract rights a meaningful social reality. Yet poor people throughout the developing world face innumerable barriers to securing redress of their grievances through the legal system. If these barriers are not reduced or eliminated, no anti-poverty strategy that relies on legal empowerment can be successful. Therefore, a key part of the LE’s reform agenda focuses on the problem of access to justice. The LE has therefore commissioned a working group, chaired by Dr. Lloyd Axworthy, the former Canadian Foreign Minister, to study this issue and provide bold but practical recommendations for reform.

The Access to Justice Working Group has not yet completed its work, but the basic contours of its report have started to emerge. While “access to justice” is a multifaceted and complex topic, the aspect of this problem that is most relevant to the UIA and its members concerns the provision of legal services to poor people. It is beyond serious dispute that many poor people who might otherwise avail themselves of the legal system do not do so because they lack the time, resources, and expertise necessary to navigate the system on their own, and they are not able to secure the assistance of a legal services provider who could help them. The development of strategies to improve the efficient and equitable allocation of legal services presents the greatest opportunities for collaboration between the LE and the organized bar.

Provision of legal services is obviously not enough. Legal empowerment also requires substantive law reform - especially in the areas of property rights, labor rights, and legal support for small businesses - as well as reforms that ensure a well-functioning and impartial judicial

system, law enforcement apparatus, and related institutions. But, as practicing lawyers know, an effective scheme for providing legal services to those who need them, while not sufficient, is a necessary element of empowering the poor and building the rule of law.

Many discussions of the problem of inadequate access to legal services approach the issue with an “unmet needs” perspective. This approach starts from the observation that many poor people have legal needs that are not being met. The analysis then typically proceeds to propose filling the unmet need through some combination of government-funded legal aid, *pro bono* service, or other means. Without disparaging either the scope of the problem or the vital importance of legal aid and *pro bono* work, the LE’s Access to Justice Working Group has reached the tentative conclusion that the “unmet needs” approach to thinking about the issue does not adequately diagnose the problem, nor does it provide sufficient guidance as to the best solutions.

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Instead, the Working Group takes as its starting point the fact that legal services are scarce resources that must be produced and allocated efficiently. Thinking about the problem in this way suggests that reformers should approach the access to justice problem not from the perspective of a social worker who seeks to serve the immediate interests of a particular client in need, but from the perspective of an economist who seeks to identify and correct “failures” - distortions and inefficiencies - in the legal

services market. Using the market failure framework to consider the problem also opens up other potential strategies for improving access to legal justice. The market failure framework both offers more guidance on how to allocate scarce legal aid subsidies and suggests other sorts of structural reforms that can improve access to legal services in other ways.

Some examples of the sorts of reform this perspective on access to justice may entail are the following:

- Providing low-cost alternatives for legal dispute resolution, including small-claims courts and other forms of alternative dispute resolution that do not require the assistance of a lawyer;
- Developing and disseminating simple, standard forms that poor people can use for common legal transactions;
- Facilitating the effective aggregation of similar or related legal claims through class action or similar devices, and/or through liberal standing rules for representative lawsuits brought by individuals or organizations;
- Developing better-functioning private markets for emergency legal insurance, and supplementing where appropriate with targeted government legal insurance;
- Making it easier for poor people to finance the pursuit of their legal claims through market mechanisms, for example by expanding the use of contingency fees, conditional fees, one-way fee-shifting rules, third-party loans or direct investment in legal claims, and claim subrogation;
- Expanding access to legal education, especially for lower-income students and/or students interested in subjects of special relevance to the poor, in order to lower the barriers to entry in the market for legal services to the poor;
- Gradually liberalizing the regulation of the market for legal services, for example by weakening “unauthorized practice” restrictions that artificially limit the number of legal service providers, especially for simple transactions of special relevance for the poor, but making sure that such liberalization is accompanied by sufficient checks on abusive or exploitive practices;
- Relaxing restrictions on advertising and client solicitation that impede the private dissemination of legal information, and supplementing this

with targeted government or NGO information dissemination through accessible media, while retaining an appropriate regulatory framework to prevent abuse;

- Using a combination of user fees, subsidies, fee-shifting and special damages rules to target scarce legal and judicial resources at cases with broad public benefits, while diverting cases with primarily private benefits to various forms of alternative dispute resolution;
- Increasing the use of lower-cost legal service providers, such as paralegals and law students, in subsidized legal aid programs;
- “Bundling” legal aid services with other services, such as health, education, and microfinance, to lower the cost and increase the efficacy of legal services delivery..

For these and other reform strategies, the lawyers and lawyers’ associations represented by the UIA are vital collaborators. Indeed, the LE’s agenda

cannot move forward without partners in individual countries who have the energy, the knowledge, and the influence to translate the LE’s general recommendations into concrete action. We at the LE look forward to continuing to develop our relationship with the UIA and its members.

For more information about the LE and its work, please visit the Commission’s web site at [www.undp.org/legalempowerment/](http://www.undp.org/legalempowerment/).

If you have comments or questions specifically about the Access to Justice Working Group, or if you would like to become more involved in our work, you can contact me directly at [mstephen@law.harvard.edu](mailto:mstephen@law.harvard.edu).

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