

FINAL REPORT: SOUTH AMERICA REGIONAL CONSULTATION
SAO PAULO, BRAZIL, APRIL 19, 2006

The High Level Commission on Legal Empowerment of the Poor (HLCLEP) is a global, independent initiative that seeks to explore how nations can reduce poverty through reforms that make legal protection and economic opportunity not the privilege of the few, but the right of all citizens. In the first meeting of the HLCLEP in January, 2006, Commissioners expressed their support for a series of regional consultations which would put forth an agenda for discussion and help broaden the network of policy makers, technical experts and representatives from civil society contributing to the work of the HLCLEP. The consultations would ensure effective outreach in developing countries, and create opportunities for Commission and Board of Advisor members to develop platforms on a country or regional level. The consultations would also allow an examination of the enabling environment necessary for the success of future reforms, taking into consideration the regional political, economic and social context. The outcomes would help identify the impediments to reducing poverty and expanding social and economic inclusion through legal reforms, as well as clarifying the role of governments in ensuring the enforceability of law and access to justice.

The South America regional consultation was hosted by Commission Member Fernando Henrique Cardoso at the Instituto Fernando Henrique Cardoso (IFHC) in São Paulo on April 19th, 2006. Four panels addressed the key thematic areas that are the focus of the Commission's work. The panels included presentations from various experts who spoke from a Brazilian and South American perspective. The format included an open a dialogue with the attendees, who were invited to comment on the panelists' remarks, on the HLCLEP mandate, and on their own area of expertise and experience with regard to the issues being addressed within the framework of legal empowerment.

The presentations and discussions in Sao Paulo gave rise to several points of consensus as well as issues requiring further discussions. The following is a summary of the main points that emerged during the discussions, as well more detailed notes from the panelists' presentations.

Panel One: Land and Property Rights in Rural and Urban Environments

- Urban land occupation and irregularity in Brazil can be addressed under various existing legal and institutional frameworks. The Constitution guarantees the right to housing; a City Statute (*Estatuto das Cidades, Lei federal n. 10. 257 de 10 de julho de 2001*) addresses the issue, as does the Ministry of Cities (*Ministério das Cidades*); and a federal law is in place creating the National Social Housing System (*Sistema Nacional de Habitação de Interesse Social*).
- There are, however, problems in the implementation of these laws based on the following factors: a lack of local political will; segregation in housing; a large gap between the poor population and official regulatory mechanisms; a lack of complex social development programs; and the need of a global city plan on which to base sustainable urban planning and development projects.

- The regularization of occupied land should be a housing policy based on: acknowledgment of the real city; enforcement of the right to housing; implementation of the right to access the city; encouragement of the family economy; a fostering of community organization; and improvement in the urban management functions of the government.
- The problem of informal urban land holdings in Latin America comes mainly as a result of the huge increase of the urban population over the last 50 years.
- Good policies for urban property rights regularization include:
 - ✓ In the short term: identifying the political economy of reform, creating consensus on reforms, neutralizing interest groups fighting against reform, reforming the processes for the regularization of urban land and housing property rights, modernizing the property registries and creating a common physical information database with the cadastre, creating alternative mechanisms for dispute resolution, and empowering beneficiaries.
 - ✓ In the long term: improving urban land and housing planning systems, reforming processes for the allocation of land, completing installation of public services' and the construction of housing, and creating mechanisms to promote investment in public services and housing for poor sectors.

The following are specific points raised by the various panelists:

Luiz César Queiroz

In Brazil, urban land occupation and irregularity can be addressed under various legal and institutional frameworks. Article 182 of the Constitution, the City Statute, and the Ministry of the Cities reflect a great effort made from the bottom up to regularize illegal land holdings and decrease irregularity.

The main principle is that through regularization it is possible to take apart the existence of irregularity and illegality. Today there is a National Regularization of Urban Property Program (*Programa Nacional de Regularização Fundiária de Áreas Pública Ocupadas*). This program is being developed all over Brazil with success and failures.

What are those failures?

- Lack of local political forces to engage the program and corruption in the political system, among other factors. At the same time, the political force necessary for this program to work has to come from the bottom-up.
- The program is not only about regularizing the ownership of the land. It is necessary to develop the process of urban transformation and regularization. It is necessary to reform these spaces, to realize urbanity and home reforms; if left neglected, the assets will continue not realizing their full market potential.



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- It is possible to regularize by simply giving individual titles, but a massive investment in those areas is also necessary. It is not possible to achieve full results with isolated actions, and a global city plan is needed.
- The high price of land and low salaries present additional difficulties in the change of the socio-territorial dynamic. They have forced the emergence of new slums, or favelas. It is necessary not to simply have focalized actions in poor areas but a global plan.
- There is a process of residential segregation that results in the stigmatization of certain communities and a lack of access to public services. It is possible to verify a relationship between school performance and a child's neighborhood. Children who live in the same slum ("favela") and that frequent the school of the "favela" have lower school performance than those who attend school in others areas. Those schools absorb the idea that they are there to attend helpless children, instead of pursuing a project to develop kids to live as full fledged citizens in their society.

Cibele Riva Rummel

The City Statute attempts to deal with the question of regularizing land occupation. It reflects a shift from speaking about illegality and the way and the velocity with which the city was settled, and realizes that until now, the public sector was not provided with viable options to formalize rights to the land they occupy. At the same time, it is necessary to emphasize bridging the gap between the poor population and the official regulatory mechanisms. The poor population is not even acknowledged in the official statistics. In general, there is a lack of good statistics and integrated policies.

How much State action is necessary in order to regularize the land situation? In São Paulo, there are 80 steps to formalize rights to the land one is occupying, and obtaining approval is virtually impossible. Therefore the expansion of the city occurs in an irregular and informal fashion.

Paulo Teixeira

In Brazil, there exists an institutional apparatus to address issues of irregular or informal land holdings. Article 6 of the federal Constitution recognizes the right to housing, and Article 182 guarantees the social function of the State. There is also the recent City Statute, an important land reform law, which permits the establishment of public-private partnership to regularize land occupation. The National Housing System (*Sistema Nacional de Habitação, SNH*), which was recently created, allows federal and states governments to elaborate policies related to social interest housing (*Habitação de interesse público*) and the municipal governments to execute the established actions.

The Regularization (Formalization) of Occupied Land as Housing Policy

Economic, Political and Social Bases

- Acknowledgment of the real city
- Enforcement of the right to housing
- Enforcement of the right to access the city

- Encouragement of the family economy
- Support of community organization
- Improvement in the urban management conditions of the government

Edgardo Mosquiera

The problem of informal urban land property in Latin America

- Urban population increased between the 1960-2000
- Main causes of urban population increase: migration from rural to urban areas due to poverty, lack of job opportunities and access to services
- New population occupied public and private lands through invasion and acquisition of non urban land. Houses were built gradually: savings were allocated to bricks, cement and iron

The Government Supply Failure: Common elements of failed policies

- Institutional failures
- Lack of adequate urban planning policies and systems
- Limited housing and credit supply

The response from the demand side: The Informal Social Contract

- New urban population was proactive in the creation of new conditions for informal urban development
- As formal legal conditions are difficult, they identify the “political economy of invasion”
- New urban population creates their own “social contract” to organize and execute land occupation

Negative impacts of the urban property system failure

- Cities expand without planning
- Physical conditions of housing are poor
- Legal conditions of housing are weak

Why policies do not respond to the housing demand-- the institutional factor

- The institutional and legal framework is centralized
- The impact is that rules contain conditions people cannot fulfill (expensive, unclear, unnecessary requisites), there are no clear responsible parties (people do not know who makes decisions in the different steps of the processes), and there is no predictability concerning the application of laws and regulations

How adequate institutions can provide adequate policies

- Law determines the conditions for the development of and efficiency (or inefficiency) of the urban land market
- Rule making needs a bottom up process

Panel Two: Labor Informality, Business Regulation and Access to Finance

- With respect to labor informality in Brazil, the law should differentiate between different situations, and the protections should be linked to the person instead of the job. For the employed, the propositions include changes in the Constitution, reductions in bureaucracy and taxes, and simplification of tax procedures. For the “self-employed,” they include a special retirement regime and an identification card.
- In Brazil, there is a credit program called *Programa Nacional de Fortalecimento da Agricultura Familiar* (PRONAF) that attends to the poor rural population. Although it is a successful program, there is only one organization – CRESOL (a civil society organization) that reaches the poor in a fast and decentralized manner, offering training and technical assistance. The suggestion is to expand their experience in order to reach more of the rural poor and to follow the example in urban areas.
- The Brazilian Constitution of 1988 addressed the problem of informality and unemployment. However, a rise in the cost of termination of employees and retirement increased the number of people unemployed. How can the cost of formality be reduced and the cost of informality increased? One proposition is to establish basic labor rights that all companies are obligated to respect and allow additional rights to be negotiated through unions.
- The economies of Latin America are not able to create enough jobs: a unified approach is needed with one fiscal policy and job creation goals. This is not only an economic problem, but also a political one. There is a link between accountable and transparent democracy and poverty reduction.
- The population, specifically the poor, needs to be brought together, informed, and empowered to participate in these discussions. Strategies to achieve participatory governance must be formulated.

The following are specific points raised by the various panelists:

José Pastore

Work Informality: solutions

Work problems

- Unemployment: 9.5%
- Informality: 60%
- Employment: 80 million people

- Conflicts: 2.5 million

Determinant

- Anemic economic growth
- Low quality education
- Inadequate legislation

Impact of Labor Laws

- Strict legislation
- One size legislation
- No specificity/adaptability with the size of the companies
- Fear of hiring

Economic and social impact

- Lack of retirement and workers' protections
- Lack of social security (social "providence")
- Low productivity
- High turn over rates

Solutions for the employed

- Constitutional changes
- Simplification of tax system
- Reduction of bureaucracy and taxes
- Basic minimum labor standards
- Potential persons: 20 million
- Gradualism

Solution for the "self employed"

- Special providence regime
- Unique identification card
- Potential persons: 18 million

Basics requirements for reforms to work

- Focus: clear diagnosis and precise solutions
- Understanding of public opinion
- Government leadership
- Continuity with policies and actions

Juarez Brandão Lopez

The rural Brazilian reality is important to consider, even with the existing high levels of urbanization. The substantive difference between patronage and family agriculture is created by the law. The Brazilian national state credit program, *Programa Nacional da Agricultura Familiar* – PRONAF, reflects that distinction. It is a very successful program, but always has more resources available to lend than it utilizes. It has succeeded because 57% of family farmers had access to the credit through PRONAF.

However, the banks that operate PRONAF need guarantees and they can not reach the poorest of the poor. That is the challenge – how to reach these poor people.

CRESOL is a NGO with Belgium assistance that, in 2002, had 50,000 members. It has a fast and decentralized decision-making process, and gives technical assistance and training, as well as developing a presence close to the loan. The organization works in the southern part of Brazil, a region that has a more homogenous culture and a small poor population. Is it possible to expand its capillarity reach to others family farmers with lower incomes? It is possible to extend the solution of access to credit developed by CRESOL, with needed modifications, to poor urban areas (“favelas”)?

José Márcio Camargo

Informality is associated with the idea of cost-benefit. The issue is more complicated in a collective view but individually, the cost of informality is lower.

In Brazil, after the approval of the 1988 Constitution, unemployment and informality increased. The increase in the cost of dismissing workers and retirement raised unemployment levels. The unemployment wage also was a factor in increasing unemployment, as was increases in the retirement pension. From the point of view of the worker, it is often better to be unemployed.

How can the cost of formality be reduced and the cost of informality increased? How can the risks of formality be decreased and the benefits increased?

What does all that mean in terms of a solution? I provide one simple answer: the establishment of basic labor rights that all companies must respect, leaving all others rights to be negotiated by the unions.

Maria Helena Valenzuela

The informal economy is growing in Latin America as formal economies are not able to create enough jobs. A unified approach is needed; one fiscal policy with job creation goals. This is not only an economic problem, but also a political one involving the link between democracy and poverty reduction.

Latin America is not the poorest region in the world but is the most unequal. In this context, all policies have to include the perspective of gender. 48% of the women are working in Latin

America. In the 1990s, the portion of women in the labor market grew through self employment and small businesses. Access to land, credit, information, and technology are all important issues in regarding to empowering women workers.

In addition, in rural areas, women are not reached by agrarian reforms; it is important to expand their opportunities in this regard. Urban regularization of land tenure also needs to consider new ways of integrating women into the labor market.

In regard to informal workers, their participation in governance is almost inexistent. It's very difficult for informal workers to participate in policy discussions and debates. They have to be organized so that they can have a voice.

Panel Three: Rule of Law, Legal Systems and Access to Justice

- The problem of public safety in Brazil is a very serious one. The more tangible face of the State to the poor is the police officer in the favelas, who often engages in behavior that violates their fundamental rights. One proposition is to rewrite the Constitution to allow for decentralization, allowing the states to regulate and define their own polices. At the federal level, the Single Public Security System (*Sistema Único de Segurança Pública*, SUSP) should be institutionalized, with minimal standards applied to ensure its proper functioning.
- The Rule of Law is a right of all humanity. What are the pre-suppositions of the Rule of Law in Brazil today? One is the idea of justice under the law. The other is the notion of the right to legal justice. The reality, on the other hand, is an absence of these presuppositions. It is necessary to create good alternative mechanisms; promote pro bono advocacy; and engage in a strategic fight for justice. Increasing people's knowledge of citizens' rights and civil society participation is also important.
- Justice reform is a long term process, and it is necessary to place judicial reform on the political agenda. Simplification of administrative programs, improvement of the quality of laws and legal judicial procedures, the strengthening and reform of the judiciary, and judicial independence are all key factors.
- The HLCLEP should stimulate the creation of permanent agencies to enforce legal empowerment inside the State and the society.

The following are specific points raised by the various panelists:

Luis Eduardo Soares

The situation of public safety in Brazil is a very serious one. Our 550,000 police officers, from all federative states, have been working in an inefficient and corrupt way. The treatment given to the more vulnerable segments of our population is marked by brutality. The more tangible face of the State to the poor is the police officer in the slums ("favelas") violating peoples'

fundamentals rights. The police institutions didn't follow the changes that occurred with the return to democracy. For many reasons, the police have been outside of the reform process.

It is necessary to comprehend that these questions will not be solved without implementing well-conceived social policy. Our problem is multidimensional and complex, so it requires multi-sectorial policies. The structure of the State is not adequate for these kinds of programs; it is necessary to deal with the reform of the State.

Brazilian polices are fragmented and centralized. The proposition is to withdraw police institutions from the constitution, allowing the states to regulate them and define their policy. At the federal level, the Single Public Security System – SUSP should be institutionalized, with minimal standards of functioning.

Joaquim Falcão

The rule of law is a right of all of humanity. The picture presented by Edgardo Mosquiera shows that the rule of law produces more illegality than legality. Is it possible for this rule of law to survive?

Which are the presuppositions of the rule of law currently in Brazil? One is the idea of justice under the law; only the stated rights are the law. The other is the legal justice.

The reality, on the other hand, show that these presuppositions are not based on reality. The suggestion is to illegalize some rights, bringing them out of the sphere of the formal legal system, because it is not possible to depend on public instruments alone. It is also necessary to provide alternative mechanisms to resolve conflicts, possibly promoting (or recognizing formally) Talmudic and other community judges, and making available the collective judgment of conflicts.

Oscar Vilhena Vieira

The rule of law is a right of all persons, but, at the same time, is not sufficient to regulate the actions of the world. Does that mean that the current State model does not fit in the modern world? I would ask when the rule of law works and when it does not.

The Right is still a good principle because the self interest prevails. If when the possibility of reciprocity construction does not exist, and there is much inequality, the Right should still be a principle to be followed.

There are modernizing justice reforms that are achieving good results. It is not possible to only depend on public instruments. It is necessary to create good alternative mechanisms, pro bono advocacy, and strategic fights for justice.

Edgardo Mosquiera

Good practices to improve poor access to legal and judicial systems

The problem

- Poor people can not use their legal rights
- Access to formal justice is difficult

Reform objectives

- Reform institutions
- Areas of reform

Regional trends and patterns

- Justice reform is a long term process
- Placing Judicial reform in the political agenda
- Extensive assessments are required

Regional trends and patterns

- Simplification of Administrative procedures
- Improve quality of laws and legal/judicial procedures
- Strengthen and reform judiciary
- Increase people's knowledge their rights
- Create mechanisms to facilitate access to justice:
- Civil Society participation
- Judicial independence
- Strengthen legal education
- Reliance on promised or anticipated changes in laws and creation of institutions has led to negative results

Panel Four: Legal Empowerment in a Regional Context-- An Enabling Environment for the Success of Future Reforms

- To generate reforms in the structures, processes and systems of incentives in a systemic manner, it is necessary to have integrated structures and process, inter-sectorality, and to utilize both formal and informal mechanisms (including decentralization and citizen participation). Monitoring and evaluation is also important.
- The issue of putting in place and maintaining policies for the poor is an institutional one. At the same time, is very difficult to implement institutional reforms in Latin America. It is only possible to alter the situation if we are able to create a new future, not produce a copy of the past.
- Rights exist in the law; but the work of civil society organizations in the area of civism, and the "right to have rights," is very important.

- How can the Commission create the understanding that legal empowerment is a public good? How can it help create incentives for civic participation? How can it stimulate bottom up demand?

Wanda Engel

How can we promote reforms in structures, processes and systems of incentives in an integrated manner?

Why reform?

- Promote the right to identity: existential legality
- Promote opportunities to equal and inclusive development
- Promote access to a social protection system
- Promote access to economic opportunities

Integrated structures and process

- Participative, decentralized management
- Social protection, human development, social development, economic development programs, focalized in geographical areas, on poor or vulnerable families, with priority for high poverty groups.

Many sectors working together

- Creation of institutional space for dialogue between sectors
- Clear definition of the organism responsible for the coordination
- Creation of a common data base for all sectors involved
- Creation of integrated systems of monitoring and evaluation

Ivo Imperato – Cities Alliance

The Cities Alliance program is dedicated to localizing urban policies for the poorest. It has existed for seven years and has managed to support investments in urban development dedicated to the reduction of poverty.

Regularization is important but we must also consider the factors that generate informalities. Peru has an IDH situation similar to Brazil, but Brazil is a far richer country than Peru. Urban development in Peru was stable in 1961, and a formal development law with minimal rules was established. This did not prevent informal occupations, but they the rules facilitated the later improvement of these occupations. Urbanization in Brazil in the last 50 years was the most violent and fast-paced in the world. Instead of adopting occupation processes suitable to this occupation, we adopted a process that resulted in a large scale of informality.

In México, there are 15 million informal urban homes. Annually, 1.5 million new homes are built, 70% of those being informal. The production of informality has to be disarmed. It threatens to dissolve the successes reached by the rule of law.



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Liliana De Riz

Argentina is ending a political, social and economic crisis with 50% of its population in informality. Poverty in Argentina is a societal problem, it is everyone's problem.

There is a lot of suspicion among the population towards public institutions; what is public is not seen as of the society. How does one break down that suspicion? It is necessary to enforce political power control through citizen participation.

How can we implement successful policies? We have good programs that do not achieve good results. It is necessary to develop public debates about policies to combat poverty.

André Urani

It is necessary to implement institutional reforms in order to reduce poverty. Why is it so difficult to make those institutional reforms in Latin America? Many groups believe that these reforms are prejudicial, and that they are the ones that lose with the reforms. The middle class, those who managed to insert themselves into modernity, perceive themselves to be the losers with the reforms, losing some rights they have previously gained.

There is the phenomenon of the island of development; the improvements are occurring out of the "metropolitan region." The big metropolitan regions lost their reason of being. There is a serious problem of identity. How to reinvent the future? Other cities of the world lived the same challenge; they made their home work and found new identities. To begin to solve the problem, we have to acknowledge the crises.

It is not possible to overcome the problems faced by metropolitan regions with the existing mechanisms. It is only possible to face these challenges with new agreements, with a territorial base, without following administrative and bureaucratic criteria. The redesign could be done in many different ways; the important thing is to create mechanisms that are capable of answering the demands.