Progress Report
Working Group 1: Access to Justice and Rule of Law

1. Work Program

a. Objectives

The goal of the Commission on Legal Empowerment, as its name suggests, is to enable the poor to use law and the legal system to realize their full human potential. Many development theorists and practitioners, as well as the poor themselves, have recognized the important role that the legal and judicial system play. But all too often the poor experience the law only as an obstacle. The law, and the costs associated with using the legal system, can make it difficult or impossible to run a legitimate business, to secure redress for exploitation by the powerful, or even to participate as a full member of the community. Poor communities may only experience law and law enforcement as instruments of repression. But law can be a source of opportunities – for expanding access to economic benefits, for ensuring government accountability, and even for effecting broader social change. The challenge, as we in the Access to Justice Working Group conceive of it, is how to affect a transformation from law-as-obstacle to law-as-opportunity for the poor and disempowered.

We recognized that the main sources of added value for this Working Group are the Commission members themselves, along with the Advisory Board. The fact that this Working Group's report will benefit from the input and endorsement of this distinguished group of influential individuals means that the report may have a greater impact in high-level policy circles than would be the case for a typical development agency or government report on similar topics. Given this unique advantage, our objective should be to try to raise the profile of access to justice issues on the international development agenda. By doing so, we may be able to alter the way in which poverty alleviation strategies are discussed, so that issues of legal empowerment and access to justice are integrated with anti-poverty strategies more generally. Thus, we concluded that, while the Working Group's report must be solidly grounded and must include practical examples and recommendations, it must be more than a summary of "best practices" or of the existing findings related to this topic. Such summaries, while valuable, can be produced by other governmental and non-governmental organizations. Rather, it is essential that the Working Group's report construct a compelling narrative, built around specific issues and examples, which can be used to make a persuasive case to the policy community.

The members of the Working Group on Access to Justice and Rule of Law concluded that it is not advisable, given the time and resource constraints under which we will operate, to attempt to cover all the topics that might plausibly be categorized as access to justice or rule of law issues. If we try to cover everything, we will end up covering nothing well. It is therefore necessary to make a careful, considered decision about the topics that the Working Group will address. Although our mandate is to provide a global discussion of rule of law and access to justice issues, we must be sensitive to the extraordinary diversity in legal needs, challenges, and

constraints. This issue is partially, but not completely, addressed by focusing on the regional or sub-regional level. We decided that it made most sense to address specific issues in concrete contexts that appeared to have broader significance. A closely related consideration was whether we should focus only on poor or developing countries, or whether we should also consider the issues confronting legally disempowered groups in wealthier countries. Our conclusion was that, although our main focus would be on countries where the problems of poverty and legal disempowerment affect a majority of citizens, in many cases the lessons of the Working Group's research would have important applications to disempowered groups (particularly, but not exclusively, indigenous peoples) in wealthy countries.

b. Outputs

The principal output of our Working Group will be our report, which I will deliver to the Commission in November 2007.

c. Policy Questions

We have tentatively decided to organize our research around four fundamental barriers to access to justice: (1) Lack of legal identity, (2) ignorance of legal rights, (3) unavailability of legal services, (4) unjust and unaccountable legal institutions.

i. Lack of a Legal Identity

In many parts of the world, large numbers of people are entirely excluded from the opportunities and protections of the legal system. In the eyes of the law, these people – who may number in the millions – simply do not exist. They cannot vote, they cannot legally own property, and they cannot file a lawsuit. Their lack of a legal identity may make it impossible for them to receive basic services, like water, sewage, mail delivery, and garbage collection. For residents of wealthy countries, who take for granted that their identities are registered with the government, this may seem shocking. But the problem of wholesale legal exclusion may be more widespread than anyone has appreciated or publicly acknowledged.

For example, in Peru, approximately one million indigenous Peruvians living in the highlands have no legal identity and no legal rights. In theory they can register with the government, but in practice registration is difficult, expensive, and discouraged by an array of formal and informal practices. Similar problems are present in other Latin American countries and in other regions of the world as well. The Roma in Eastern Europe, for instance, are often excluded from the recognition or full protection of the formal legal system. Many indigenous tribes in rural India are unregistered, making them ineligible for important government services, including, for example, emergency relief following natural disasters. Denial of a legal identity is also an important problem for non-citizens or internally displaced persons. Although this problem appears particularly widespread in certain parts of the developing world, it may also afflict some indigenous populations in wealthy countries.

The denial of legal identity to large numbers of people is a serious and neglected problem. Fundamentally, no attempt at legally empowering the poor can succeed if the poor lack a legal identity. Some existing programs have attempted to combat this problem, for example by facilitating registration and issuing birth certificates. In 1989, Peru introduced a plan to simplify registration, though it appears in light of recent evidence that this plan has

not been fully implemented or fully effective. This issue may be politically sensitive because the registration of large numbers of previously excluded individuals in democratic countries might alter the balance of political power.

The Access to Justice Working Group report could contribute to addressing the problem of lack of legal identity by undertaking the following activities:

- Defining more precisely the nature of the problem of legal exclusion, and illustrating the problem with examples of legal exclusion from a variety of countries and regions
- Attempting, within the limits of available data and evidence, to assess the scope of the problem
- Discussing possible strategies for redressing this problem, which may include:
    - Donor-funded registration efforts
    - Legal reforms to simplify registration and legal recognition
    - Finding ways to change the incentives of political leaders so that extending legal recognition to excluded populations is in their interest
    - Linking access to justice issues with other grassroots anti-poverty efforts though the use of "tie-in" strategies that promote registration through NGOs that are devoted to other activities (e.g., microfinance banks, women's associations, health clinics, etc.)

More generally and thematically, the Working Group report could discuss the extension of a legal identity to all people as the first, foundational step in effecting the transition from law-as-obstacle to law-as-opportunity. A person who lacks formal legal recognition can only experience the law as an obstacle. To the extent she encounters the law at all, it will likely be in the context of denying protection or refusing permission. Once this person acquires a legal identity, however, the law may become a source of opportunity. The legally recognized individual can invoke the law to assert her rights and demand protections. Registration thus becomes the critical first step in enabling excluded populations to experience the law, and to use the law, as a source of opportunity rather than as a source of oppression and exclusion.

ii. Ignorance of Legal Rights and Obligations

The acquisition of a formal legal identity may be necessary for the legal empowerment of the poor, but it is not sufficient. In many countries, an important barrier to access to justice is the simple fact that poor people do not understand their legal rights and obligations. Perhaps even more distressing is the fact that many of the people who are supposed to make legal decisions or provide representation also do not understand what the law allows or requires. Thus, any effective legal empowerment strategy will have to address the problem of lack of adequate knowledge of law and the legal system.

The problem of legal ignorance may result from inadequate dissemination of information, or deliberate obfuscation. A lack of legal knowledge may also arise

because of the inscrutable nature of legal jargon, particularly to poor and undereducated populations. Furthermore, in countries or regions characterized by linguistic diversity, certain groups may be disadvantaged because their language is not the official language of government and law. In South Africa, for example, individuals who speak neither English nor Afrikaans are often at a huge disadvantage when trying to understand their rights and navigate the legal system.

Certain strategies appear to have had success in improving legal knowledge among poor communities. Some of these strategies involve training legal advocates and service providers. Another approach is to train lay people in basic legal skills, like writing a valid will. Other strategies include broad-based popular education, including the use of popular entertainment (radio, television, street theatre, comic books, etc.) to convey important messages about legal rights and obligations. Also, in countries or regions with sufficiently high school enrolment and literacy rates, basic legal education can be integrated into the school curriculum, which can be an effective way to communicate legal understanding not only to school-age children, but to their families as well.

We recognize, however, that it might be a mistake to provide the poor with empty promises about what they can expect the legal system to do for them. If a country's legal system does not actually provide speedy, dependable justice for the poor, then encouraging greater reliance on that system through information campaigns may not do much good, and may actually do harm. Perhaps in some cases the poor avoid the legal system not because they do not understand how it works or what their rights are, but rather because they know all too well that the system is expensive, inefficient, and biased against them. In a world where development resources are scarce, dedicating time and money to change the expectations of the poor without sufficiently changing the justice system to make it fairer, more efficient, and more accessible is likely to be a counterproductive strategy.

This concern, though serious, may not always apply. Promoting the ideal of the rule of law through popular education projects, even if naïve in some respects, may be valuable precisely because these efforts promote higher expectations for the legal system, thereby engendering greater demand for high quality legal services. These hypotheses seemed to merit further investigation.

Another important dimension of information provision and legal education concerns the transparency of the legal and judicial system. Here, it might be interesting to explore various "naming and shaming" mechanisms to improve the performance of the judicial system, and also to provide poor people and others with better information about how well the system is functioning. Greater transparency might also include efforts to disseminate more broadly statutes, regulations, and judicial opinions to legal advocates and decision-makers.

In light of the above, the Access to Justice Working Group could contribute to addressing the problem of ignorance of legal rights and obligations by:

- Discussing, in the context of specific case studies and examples, how lack of legal knowledge can present a serious barrier to access to justice, and illustrating how improving legal information can improve access to justice
- Illustrating, again with specific examples, various creative strategies for improving legal knowledge in poor countries, and considering how these approaches can be integrated with a broader anti-poverty strategy
- Addressing the issues surrounding the heightened expectations that popular legal education can create about the legal system, and in particular the degree to which such heightened expectations help (by increasing demand for the rule of law) or hurt (by fostering a naïve and overly optimistic view of what law can accomplish)
- Considering the degree to which the need for information and transparency implies a need for both greater clarity (including, for example, simplification and translation of legal language) and substantive legal simplification (that is, making the laws themselves less complicated, so that less specialized knowledge is required to understand one's legal rights, obligations, and opportunities)
- Considering strategies to increase the transparency of the legal and judicial system, in order that the poor, the donor community, and others have better information about how well or poorly the system is operating.

A discussion of strategies to increase legal knowledge fits comfortably into an obstacles-to-opportunities narrative for pursuing the legal empowerment of the poor. In an information-poor environment, the law is more likely to seem distant, arcane, and hostile. In such an environment, the poor are unlikely to rely on legal mechanisms to enforce their rights, and they are more vulnerable to exploitation if they do become enmeshed in legal proceedings. When the poor become more knowledgeable of their legal rights and obligations, they may begin to see law as presenting opportunities for protecting themselves from exploitation and for furthering their own interests. Insofar as the poor recognize that the law-in-action falls short of the legal system's professed ideals, they (and others) may create more pressure for improving the system.

iii. Unavailability of Legal Services

One of the most serious barriers to access to justice for the poor is the unavailability, or expense, of obtaining legal representation or other forms of legal assistance. Even when individuals are not formally excluded from the legal system, and are generally aware of their legal rights, in practice they may be unable to rely on the legal system because they do not have access to legal services. Several members of the Working Group agreed that this problem is widespread.

The unavailability of legal services has several dimensions. First, important institutions critical to providing legal services to the poor may simply not exist. Second, the necessary legal services may be prohibitively expensive for many people. Third, legal institutions and services may be geographically distributed in such a way that, for practical purposes, they are inaccessible to poor and rural populations. The physical absence of legal institutions and services means that the only contact many poor individuals have with the legal

apparatus of the state is through the (often repressive) police, which further undermines confidence in the legal system and allows non-state actors to assume a dominant role in providing dispute resolution and other services typically associated with the justice system. Therefore, a successful strategy to provide the poor with adequate legal services must take all these considerations into account.

One cluster of suggestions concerned for overcoming barriers with access to justice involves greater reliance on non-lawyers, such as paralegals or other non-lawyer professionals and volunteers. Many donors have supported such legal services organizations. The Open Society Institute, for example, has supported groups providing paralegal services in African countries. Some of these programs, such as a pilot program in Sierra Leone, appear to have been successful in improving access to justice for the poor. Other forms of legal assistance provided by non-lawyers include work done by law students in clinics.

These programs seem to hold a great deal of promise, but they also raise a number of concerns. One problem has been the opposition, in some countries, by the organized bar to any effort to expand the ability of non-lawyers to provide legal services. Some of this opposition may arise because of a guild-oriented protectionist impulse. The bar's objections, however, may also sound in more creditable concerns about ensuring quality, preventing exploitation, and promoting accountability. Efforts to expand provision of legal services by paralegals and other non-lawyers will have to take the objections of the organized bar seriously, both on the merits and as a matter of political strategy.

A second cluster of suggestions for improving access to legal services involves ways that the bar and the government can increase the amount of legal assistance provided by lawyers to the poor or other disempowered groups. Many governments provide broad rights to legal aid that are not enforced in practice, and some countries have professional conduct rules that actually discourage the pro bono provision of legal services. The legal community in many poor countries lacks a robust "pro bono culture," a problem attributable in part to the modest financial circumstances of many practicing lawyers in most countries, and in part to resistance from some bar associations. More generally, it is important to enlist the sustained support of the organized bar in efforts to improve access to justice to the poor. Too often, the organized bar has been a bystander, or even a liability. But it has the potential to be an enormous asset, and governments, donors, and NGOs should explore ways to engage the organized bar more fully in the access to justice project.

There are also other reform strategies that could improve provision of legal assistance to the poor. For example, in Nigeria, all graduating law students are required to spend one year in public service. The Open Society Institute has sponsored a project that assigns these students to police stations, to make sure that individuals are not detained indefinitely simply because they have fallen through the cracks of the bureaucratic system. The Nigerian Bar and the Nigerian Police have been supportive of the program, and it appears to have been successful. Another approach is for governments and international donors to provide greater financial and institutional support to legal aid societies, public interest law firms, and other NGOs that provide basic legal services to the poor. Other suggestions along these lines might

include the expansion of law school legal aid clinics or using pre-bar admission training or apprenticeship programs to provide legal services to the poor.

A third cluster of suggestions for improving access to justice focuses on market mechanisms: potential changes in the rules of professional conduct, advertisement, compensation, and remedies that make the provision of legal services to the poor more profitable for lawyers. This approach to improving access to justice fits well with the broader approach of the Commission to the problem of poverty, which emphasizes unlocking the power of private initiative by eliminating inefficient barriers to private enterprise. There are a number of possible market-oriented strategies for improving access to justice for the poor. For example, one might consider whether restrictions on advertisements and prohibitions on contingency fees, which are common in most countries, disadvantage the poor. One might also look at other aspects of compensation arrangements, such as the effects of rules that require a prevailing party to pay the attorneys' fees of the losing party.

A related set of issues are the advantages and disadvantages of expanded opportunities for private enforcement of public law, including liberal standing rules, so-called "qui tam" actions and other forms of public interest litigation, and class action devices. Brazil provides one possible illustration of the power class action devices to improve access to justice. A recent amendment to the Brazilian Constitution (the "City Statute") allows squatters residing in the same irregular settlement to file collectively for squatters' rights, rather than pursuing their claims individually. Allowing groups of individuals to pool their resources makes it possible for these groups to pursue their claims in the court system. It may be possible for international organizations, such as the International Commission of Jurists, to help mobilize or support class action suits to promote and protect the rights and interests of poor people when they are threatened by unlawful activity.

The Access to Justice Working Group could raise and discuss these various methods for addressing the lack of access to legal services by:

- Discussing, with specific examples and illustrations, the potential role of paralegals, students, and other non-lawyer professionals in providing legal services to the poor
- Considering methods for encouraging lawyers to provide pro bono services and expanding the use of government or donor funded public interest law firms and legal aid societies
- Expanding government commitment to subsidizing legal services to the poor – in reality, not just on paper
- Exploring legal reforms that would enhance private incentives to provide legal services to the poor
- Considering, in the context of all of the proposed approaches, the appropriate role of the organized bar, and the appropriate relationship between the bar, the government, and various non-lawyer groups. The Working Group recognized this general topic as among the most sensitive and important issues for the Working Group to address.

Again, the topic of improving access to legal services can be framed as part of a larger obstacles-to-opportunities narrative. Without adequate legal assistance and representation, the poor cannot hope to use the legal system to advance their welfare. The law instead becomes a barrier, rife with snares for the unwary. If the poor have access to legal expertise, however, they will find it easier to navigate the law, and to use the legal system for their protection and benefit. The obstacles-to-opportunities narrative is also apt, in this context, from the perspective of the prospective providers of legal services to the poor. It is too often the case that offering legal services to the poor involves great risks and difficulties, with little possibility of substantial benefit. If this situation can be changed so that offering legal services to the poor is easier and more rewarding (financially or otherwise), the prospects for legal empowerment may expand dramatically.

iv. Unjust and Unaccountable Legal Systems

Improving access to the legal system does not improve access to justice unless the legal system actually provides justice. Thus, any discussion of access to justice is incomplete if it omits consideration of the problems that plague many countries' legal and judicial systems, and how those problems might be redressed.

This issue is especially challenging for this Working Group because of the potential breadth of the topic. There is an enormous amount of work – both scholarly and practical – on judicial reform. It is probably not feasible to try to cover, even cursorily, that extensive body of literature and experience in the Working Group's final report. At the same time, if the issue of the quality of the justice provided by a country's legal system is not addressed, our report might be dismissed as an irrelevant to what many perceive as the most fundamental barrier to access to justice and the rule of law in poor countries.

The approach that seemed most appropriate, in light of the foregoing concern, is for the report to provide a brief summary of the general issues related to legal and judicial reform, and then to consider the problem of unjust and unaccountable legal systems in a small number of specific contexts. The hope is that these more focused discussions will implicate more general issues.

One thematic issue related to the justice and accountability of the legal system concerns the relationship between the formal legal system and the informal (non-state) justice system. (As used here, "formal" means "formally recognized and administered by the government" rather than "in accordance with elaborate, detailed rules and procedures." Many non-state, customary systems of law and adjudication are in fact quite "formal" in the latter sense.) This issue is critical for poor populations in many contexts, given the centrality of the informal system (e.g., "customary law") for poor people, particularly the rural poor, in a many developing countries. This issue also exists – though perhaps not quite as visibly – in wealthy countries, especially those countries that have substantial indigenous populations with deeply-rooted traditions of non-state justice.

Too often, the tendency has been either to romanticize customary law or to vilify it. In the last generation, however, more nuanced perspectives on the appropriate role of customary law, and its relationship to the formal state legal system, have begun to emerge. Customary law and

informal norms are important because they often play a more central role in the lives of the poor than formal state institutions, and they also may better reflect poor people's actual practices, values, and lived experience. At the same time, customary law and informal norms can be a vehicle for oppression, the perpetuation of dominance by local elites, and an obstacle to legal empowerment, especially for marginalized or disempowered groups within the relevant community. The challenge for reformers is to find ways to capitalize on the advantages of the informal justice system while minimizing its disadvantages.

Among the most promising efforts in this direction are approaches that do not treat the formal and informal systems as wholly separate and competing systems, but instead as presenting an opportunity for productive cross-fertilization. Such cross-fertilization can work in both directions. First, there may be effective strategies to transfer progressive norms from the formal legal system into the informal justice sector. For example, in Bangladesh, extreme poverty and other barriers to access make it impossible for most of the population to use the formal court system to resolve disputes. So, the rural Bangladeshis overwhelmingly rely on an informal system administered by local leaders. The Asia Foundation initiated an innovated project targeted at reforming this informal system, rather than trying to shift more disputes into the formal system. The Asia Foundation found that sometimes just informing the local leaders of the provisions of the Bangladeshi Constitution, such as the prohibition on oral divorce, had a substantial effect on the outcome of disputes in the informal system. Other reforms were more substantial, such as trying to ensure that the informal tribunal that heard disputes would include at least one female lawyer.

At the same time, the formal system may benefit from greater sensitivity to, and integration of, informal norms that emerge outside of the formal legal system. This suggestion, far from being radical, is in fact an endorsement of the classical common law approach of deriving, or "discovering," legal principles by examining actual norms and behaviours. Indeed, the formal legal system may have much to learn from the operation of the various informal norm-creating and dispute-resolution institutions that exist in the non-state sector. Thus, one potential contribution of the Access to Justice Working Group's report to the dialogue about improving the justice and accountability of the legal system is to focus on facilitating the productive interchange between the formal and informal legal systems.

Although there are a variety of contexts in which one could consider this topic, one of the most promising concerns the adjudication of disputes over land (including use, sale, and inheritance). This is in part because of the importance of land and disputes over land to the world's poor, in part because of the close relationship between land issues and the concerns of the Legal Empowerment Commission's other Working Groups, and in part because dispute resolution in the land context is one of the most important areas where there is substantial overlap (or potential overlap) between the formal legal system and informal or customary law regimes. A productive topic for exploration, then, is how the justice and accountability of the methods for resolving disputes over land rights might be improved by considering more explicitly how to blend the best elements of the formal and informal legal systems.

In addressing this topic and considering potentially productive hybrids of formal and informal institutions for resolving land disputes, it is important to be sensitive to context, and to power imbalances. For example, there is some evidence that the semi-formal adjudication centers that Brazil introduced into some shantytowns have enabled residents to pursue small claims without having to rely on the slow and Byzantine formal legal system. But when similar semi-formal dispute resolution systems were introduced to handle conflicts between squatters and wealthy landowners, the results have been skewed heavily in favor of the wealthy – perhaps even more so than would have been the case under the formal legal system.

A second topic that seemed promising to explore is the use of legal mechanisms to improve government accountability in the delivery of public goods and social services. In order to promote sustained economic development, national and local governments often commit themselves to provide a variety of services, including law enforcement, education, health services, infrastructure, water and electricity, and so forth. The proper scope of government involvement in the provision of such services is contested and implicates issues well beyond the scope of this Working Group's expertise. That said, it is apparent that in many countries the goods and services that governments (in many cases supported by the international donor community) have pledged to provide are not, in fact, being delivered. In many countries, formal rights to property are meaningless in the face of organized and disorganized crime, which the government cannot or will not stop. In other cases, government law enforcers are themselves the problem: instead of protecting the poor from threats to their life and property, the police and army are themselves the primary threat. Corruption and absenteeism are rampant in many parts of the world. For example, a recent study concluded that in rural India close to a quarter of all public school teachers, and approximately 40% of health care providers at government clinics, simply fail to show up for work. These numbers, alas, are not unusual throughout the developing world. Similarly, the government often fails to ensure adequate access to clean water and to protect natural resources from pollution and excessive depletion.

These problems obviously implicate issues well beyond the legal and judicial system. Nonetheless, the appropriate role for legal and judicial institutions in fostering government accountability needs to be considered more fully. In the context of criminal law enforcement, we need to consider how to give government law enforcers enough flexibility for them to protect people from private violence, while at the same time imposing sufficient constraints so that the enforcers do not themselves become the threat. This is not simply a matter of putting the correct rules in place, but also of designing institutions that render law enforcement effective and accountable.

In the context of public service delivery, private legal remedies are not a panacea or magic bullet, but they may be an important element of a larger strategy to combat the serious problems that arise from lack of accountability. Again, part of the legal reform strategy may involve specifically legal reforms – including expanding the availability of private remedies, liberalizing standing rules, expanding the scope for superior officer liability, strengthening whistleblower protections, etc. – while part of the strategy may entail institutional reforms designed to improve responsiveness.

More broadly, litigation and the subsidization of legal services may be an important mechanism for effecting institutional change. In the United States, the federally funded Legal Services Corporation, particularly in the early years of its existence, brought numerous lawsuits that served as the catalyst for important institutional reforms. Public interest law firms in South Africa, such as the Legal Defense Fund and the Legal Resources Center, have also served this role. Institutional reform litigation brought by public interest groups has been particularly salient in the countries of South Asia. It is worth considering whether and how to encourage and improve institutional reform litigation in other poor countries.

Of course, these reforms are unlikely to be effective if the legal and judicial system is itself unjust and unaccountable. But, as noted above, tackling that topic is probably unrealistic for this Working Group. We can nonetheless make a contribution to this general set of issues by considering, first, how the formal and informal legal systems can be integrated most effectively, and, second, how the legal and judicial system can be reformed to as to enhance government accountability for the delivery of vital goods and services.

To summarize, the Access to Justice Working Group could raise and discuss these issues by:

- Summarizing, as concisely but also as accurately and comprehensively as possible, the state of knowledge on legal and judicial reform and related topics
- Considering, primarily in the context of land and land-related disputes, how reformers can use norms derived from the formal legal system, as well as innovative institutional reforms, to improve the functioning of the informal or customary legal system
- Considering, again primarily in the context of land and land-related disputes, how reformers can improve the performance, relevance, and responsiveness of the formal legal system by incorporating or accommodating informal norms and practices developed outside the formal system
- Discussing the importance of a just, effective, and accountable criminal law enforcement system to any project for sustainable economic development, and exploring methods for better achieving this goal
- Evaluating the prospects for expanding legal and judicial mechanisms for ensuring government accountability in the delivery of public goods and vital social services, and considering how the legal reforms in this area might empower the poor to combat the government corruption, inefficiency, and apathy that threaten their lives and livelihoods.

Again, the themes developed in this section fit comfortably in an obstacles-to-opportunities narrative, in that these topics all involve methods by which the poor can use the law more effectively to protect their rights and advance their interests.

2. Research and Support Resources

In addition to the independent work of the Chair, the Rapporteur, and the Working Group Members, the Access to Justice and Rule of Law Working Group will draw on the following resources to enhance its work.

a. Regional and National Consultations

The Commission is organizing National and Regional Consultation Processes on the topics to be addressed by each Working Group. These consultations have several objectives, including galvanizing support for the legal empowerment agenda at the national and regional levels. As part of the national consultation processes, working papers are prepared on the four thematic topics being addressed by the Working Groups. These papers will provide the Working Groups with concrete country level information and case studies, as well as proposed strategies for reform.

Based on the lessons learned from the consultations that have already been held, we have concluded that it is important to strengthen the relationship between the authors of the regional consultation working papers and the Working Groups themselves. In the remaining regional consultations, the Working Group's draft work plan will be distributed to the working paper author in advance, and the working paper author will provide a preliminary outline to the Working Group for comments and discussion.

b. On-Line Discussion Forum

In order to solicit insights and information from a wider range of experts around the world, the Access to Justice Working Group has created an access-controlled web site for discussion of the Working Group's preliminary work plan and related issues. The Working Group invited approximately 100 experts from around the world – in government, academia, non-profit organizations, donor institutions, and the private sector – to contribute to the discussion. This process has already yielded a number of useful contributions.

c. Institutional Linkages

The Access to Justice Working Group includes members from a number of organizations that have been deeply involved in legal and judicial reform work in poor countries. Institutions and organizations represented include the World Bank, UNDP, the American Bar Association, the Open Society Institute, and the International Senior Lawyers Project. These organizations will provide support for the Working Group's research. The World Bank in particular has offered to provide dedicated research assistance once the work plan is finalized and we move into the primary research phase of the project. The Rapporteur of the Working Group has also established contact with a representative of Lex Mundi, an international association of law firms from around the world. We hope to use the Lex Mundi network to acquire more specific information on legal institutions and the legal profession in poor countries.

d. Linkages with Other Working Groups

The work of the Access to Justice Working Group may overlap to some degree with the work of the other Working Groups – especially, but not exclusively, the Working Group on Property Rights. We also recognize that the Access to Justice Working Group may have a special role to

play as a resource for the other Working Groups, given that their work is likely to raise issues of how the legal system can provide an effective framework to implement effective reforms in the areas of property rights, labor rights, and entrepreneurship.

We therefore recognize the importance of cultivating linkages with the other Working Groups. The Rapporteurs of the different Working Groups had a conference call in November 2006 in which preliminary areas of overlap were discussed. Since that time, no specific plans have yet been made for formal coordination between the Access to Justice Working Group and the other Working Groups, but we hope to look for areas of productive collaboration as the project moves forward.

3. Outline of Final Report

The preceding discussion of the issues we plan to address suggests the following tentative outline of what the final report might look like:

V. Overview: From Legal Obstacles to Legal Opportunities

- A. Summary of the problem of legal disempowerment of the poor and its impact on economic and other aspects of human development
- B. Summary of the link between legal empowerment and access to justice (including a general overview of the access to justice literature)
- C. Relationship between access to justice and the work of the other Commission Working Groups
    1. Access to justice and property rights
    2. Access to justice and labor rights
    3. Access to justice and the expansion of business opportunities
- D. Overview of the main findings and recommendations

II. Ending Legal Exclusion

- A. The scope and nature of the legal exclusion crisis
    1. Unregistered people (especially indigenous populations)
    2. Stateless or displaced people
- B. Strategies for ending legal exclusion
    1. Registration drives
    2. A right to legal identity
    3. Political advantages for embracing the excluded

V. Overcoming Lack of Legal Knowledge

- C. The causes and implications of legal ignorance
- D. Knowledge about the law: popular legal education and legal empowerment
    1. Community activists and educators
    2. Popular media
    3. The promise and perils of raising expectations

E. Knowledge about the legal system: transparency and information-sharing
    1. Improving diagnostic and evaluative tools for legal performance (note overlap with Working Group #5)
    2. Publishing and disseminating information about legal performance
    3. Publishing and disseminating legal materials (statutes, regulations, interpretations, judicial opinions, standardized contracts, etc.)

V. Expanding Access to Legal Services

F. The barriers to access to adequate legal services

G. The role of paralegals and non-lawyer professionals
    1. Examples of successful pilot paralegal programs
    2. The quality-control problem
    3. Compensation and support for paralegals
    4. Overcoming opposition from the bar

H. Expanding the provision of legal aid
    1. Discuss the gap between government promises of legal aid, and "absolute" rights to access to justice on paper, and the reality
    2. Need to hold governments accountable for failing to follow through on their promises of legal assistance
    3. Need to reform professional conduct rules that actively discourage provision of pro bono services
    4. Promote reforms that make it easier for non-governmental civil society organizations that represent, or litigate on behalf of, the poor to organize and pursue their agendas

I. Making the provision of legal services to the poor profitable
    1. Expanding private rights of action: public interest litigation, liberalized standing, qui tam actions, liberal class action rules, etc.
    2. Expanding compensation opportunities: Comparison of various fee shifting arrangements (one-sided v. two-sided "loser pays" rules), contingency fees, claim subrogation, "bounties," etc.

V. Improving the Quality of Justice

J. Summary of the problems and challenges of substantive legal and judicial reform, and a concise overview of existing literature on legal and judicial reform programs, their promise and limits

K. Integrating the formal and informal justice system: land rights and land disputes
    1. Reforming the informal justice system
    2. Integrating informal justice norms into the formal legal system

L. Using law to facilitate accountable, effective delivery of government services
   1. Criminal law enforcement
   2. Public service delivery

Conclusion

Annexes

1. **Additional Reports or Papers**
   Our Working Group is not planning to produce additional reports or papers at this time.

2. **The Next Working Group Meeting**
   As the timeline indicates, our next physical Working Group meeting will be held in April 2007. The exact date and location have not yet been set.

3. **Participants at the First Meeting**
   Participants at the first meeting of Working Group #1 (including contact details):

WG CHAIR: Lloyd Axworthy (Canada)
President & Vice-Chancellor
University of Winnipeg

WG RAPPORTEUR: Matthew Stephenson (Boston)
Assistant Professor of Law
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Chief Counsel
Justice Reform Practice Group
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James Goldston (New York)
Director, Open Society Justice Initiative

Robert Kapp (Washington, D.C.)
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Clotilde Medegan Nougbode (Benin)
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