

“The law is not something that you invent in a university – the law is something that you discover. Poor people already have agreements among themselves, social contracts, and what you have to do is professionally standardize these contracts to create one legal system that everybody recognizes and respects.” Hernando de Soto

First Pillar: Access to Justice and the Rule of Law

First among rights is that which guarantees all others: access to justice and the rule of law.

SOME EXAMPLES:

Legal Identity

- Worldwide, approximately 40 percent of children in developing countries are not registered by their fifth birthday, and in the least-developed countries, this number can be as high as 71 percent
- In several Argentine municipalities, some 15 percent of potential beneficiaries of an anti-poverty programme were unable to participate due to the lack of a valid national ID card.

Government Bureaucracy

- India reportedly has only 11 judges for every million people; over 20 million legal cases are pending and some civil cases take over 20 years to reach court.
- Around a million cases are pending in Kenya, over 300,000 before the High Court in Nairobi alone.
- The average judge in the Philippines has a backlog of 1,479 cases.³⁰ Laws that are vital to the poor are often unclear, contradictory, outdated or discriminatory in their impact.

Affordable, Inclusive and Fair Justice

- For those living on less than \$1 a day, the formal legal system is often financially out of reach.

THE CHALLENGE:

In many countries, the law is drafted and administered only in the national language, which many poor people may be unable to speak or read. In almost all African countries,

for example, the justice system operates solely in English, French or Portuguese, excluding the majority of the population that speak local languages.

Courts may be far away, underfunded and take years to decide cases. Bringing a case to court swiftly may require bribes. Judicial procedures may be inaccessible for those who lack legal representation, which is generally too expensive for the poor. Restrictions on who may practice law and provide legal services are other barriers that can limit more accessible forms of legal services such as legal clinics and paralegals.

Since poor people usually live in family homes that have not been formally documented and registered, the death of the head of the family throws into question who owns it and who has a right to live there. In addition, land is often prepared for farming and then used without formal rights to it ever being established. Such uncertainties are breeding grounds for conflicts.

The absence of formal rights leaves the poor vulnerable to eviction if the legal landowner changes, and makes due process and full compensation less likely during attempts at eviction by the public authorities. Without formalized rights, most woman who help build a business with a husband are likely to lose everything in case of divorce.

Without legal rights, when communities jointly own pastures, share water and use the same fishing grounds, it is almost impossible for people who move out to benefit from their assets, which limits their freedom to change their way of life. New arrivals may be denied access to collectively held resources.

JUSTICE – REFORM OPTIONS

Though not easy to achieve, equal access to justice can only be realized with the commitment of the state and public institutions. Legal Empowerment measures must:

- Improve identity registration systems, without user fees.
- Develop effective, affordable and accessible systems of alternative dispute resolution.
- Promote legal simplification and standardization along with legal literacy campaigns targeting the poor.
- Develop stronger legal aid systems and expanded legal service cadres with paralegals and law students.
- Promote structural reform enabling community-based groups to pool legal risks.

“Everyone has the right to own property alone as well as in association with others.” Universal Declaration of Human Rights, article 17 section 1

Second Pillar: Property Rights

A fully functioning property system is composed of four building blocks: a system of rules that defines the bundle of rights and obligations between people and assets reflecting the multiplicity and diversity of property systems around the world; a system of governance; a functioning market for the exchange of assets and an instrument of social policy.

When people’s rights over their land are insecure, they cannot leverage these assets and they have to devote valuable resources to physically protect it and get tied down in conflicts over plot boundaries. Secure property rights boost business investment and farmers plough more back into their land. The introduction of effective property rights, managed by functioning institutions, helps developing countries to progress.

The expansion of property rights to the poor allows them to use the law as a vehicle for the inclusion in the formal economy, and as a mechanism for upward social mobility. Secure of property rights allows for the poor to use property as collateral for obtaining credit for a business loan or a mortgage.

SOME EXAMPLES:

- Women, who make up half the world’s population and produce 60 to 80% of the food in developing countries, and own less than 10% of the world’s property. Women often face barriers to owning, using, and transferring or inheriting property and face forcible eviction from their homes and their land by family members, traditional authorities and or neighbors. (UN 1980; FAO 1999 Women’s Right to Land and Natural)
- Informal capital needs to be legalized to be leveraged. In Peru, informal capital is estimated to be worth US\$74 billion. In Haiti it is over US\$5.4 billion; Honduras, nearly US\$13 billion; Albania nearly US\$16 billion; Tanzania, over US\$29 billion; the Philippines over US\$132 billion; Egypt over US\$248 billion; Mexico over US\$310 billion
- Surveys in Poland, Romania, Russia, Slovakia and Ukraine show that businesspeople who believe that their property rights are secure reinvest as much as 40% more of their income than those who do not.
- In Ghana and Nicaragua, farmers with secure tenure invest more in their land.
- Rural land in Brazil, Indonesia, the Philippines and Thailand shot up in value by between 43% and 81% after it was titled.
- The value of urban land dramatically increased after it was titled: by 14% in Manila, by 25% in Guayaquil and Lima, and by 58% in Davao.

- Nearly 1/3 of the world's population suffers from a moderate to high water shortage. Land value often depends directly on the adequate water rights. Rising populations and economic growth will boost demand for water by half in the next 30 years: some 4 billion people will be severely short of water by 2025

THE CHALLENGE:

Because most of the world's poor lack effective property rights: they are without secure tenure, unaware of their legal rights, or unable to exercise them. Women and indigenous groups suffer most from a lack of property rights. This is true in the poorest states but also in more prosperous ones such as Brazil, China and Russia.

The poor's assets may be documented through informal local arrangements that provide some protection and liquidity. But frequently these are not recognized by national institutions and do not allow capital to be leveraged more widely to increase their incomes and improve their businesses. Owners cannot use their assets to get loans, enforce contracts or expand beyond a personal network of familiar customers and partners. Their property is often vulnerable to seizure through force or law.

Uncertainty over legal ownership of forests, pastures, swamplands, and sources of fresh water is a key concern. Customary tenure systems were once thought to provide insufficient security, however research shows that they can be flexible and responsive to changing economic circumstances. Never-the-less, extra safeguards are needed for women and the most vulnerable groups.

Efforts should be made to secure the property rights of urban shanty-dwellers and rural state land squatters by using a range of measures, including financial mechanisms, granting them adequate documentation to their already occupied lands, or by providing them suitable alternatives. Rental markets often provide the first step out of landlessness for the poor. More robust and transparent guarantees should strengthen the position of the rural and urban poor in rental arrangements.

PROPERTY - REFORM OPTIONS

- Institutionalize an efficient property rights governance system that systematically and massively brings the extralegal economy into the formal economy and that ensures that it remains easily accessible to all citizens.
- Promote an inclusive property rights system that will automatically recognize real and immoveable property bought by men as the co-property of their wives or common law partners, as well as clear inheritance rules.
- Create a functioning market for the exchange of assets that is transparent and accountable.
- Ensure that all property recognised in each nation is legally enforceable by law and that all owners have access to the same rights and standards.
- Reinforce property rights, including tenure security, through social and other public policies, such as access to housing, low interest loans, and the distribution of state land.
- Develop legal guidelines for forced relocation, including fair compensation.
- Recognition of a variety of land tenure, including customary rights, indigenous peoples' rights, group rights, certificates, etc., including their standardisation and integration of these practices into the legal system.
- State land audits with findings published to discourage illegal taking possession of public land.
- Simplified procedures to register and transfer land and property.

“The lives of each and every person living in the formal city are served directly or indirectly by thousands of informal workers who work long hours, often under terrible conditions, for incomes that hardly cover their food costs. They also live with the constant threat of eviction from their informal settlements.” Sheela Patel

Third Pillar: Labour Rights

The poor may spend most of their waking hours at the workplace, barely surviving on what they take from it. But labour is not a commodity. In the same way that property and the physical assets of the poor are recognized, so also must their greatest asset be recognized: their labour and human capital. A legitimate economy depends upon basic labour rights and the development of human capital to sustain growth. Ultimately, the aim of labour rights is to ensure freely chosen and productive work, carried out in conditions of freedom, dignity and equality.

SOME EXAMPLES:

- Nearly all of the almost 500 million working poor who earn less than \$1 a day, labour in the unofficial economy.
- Informal work accounts for over half of total employment in developing countries – and as much as 90% in some South Asian and African countries. Around half of informal workers are self-employed, often in disguised wage relationships. Informal enterprises or households employ another quarter; the final quarter is employed informally by formal businesses.
- Over 90% of India’s workers are in the informal economy (including agricultural workers), as contract and piece-rate workers, with little, if any statutory social security. The Government of India recently launched the Unorganised Sector Workers’ Social Security Scheme on a pilot basis in 50 districts to provides for three basic protections: old age pension, personal accident insurance and medical insurance. It is compulsory for registered employees and voluntary for self-employed workers. Workers contribute to the scheme, as do employers. Where self-employed workers join the scheme they pay worker and employer contributions. Government also contributes. Workers Facilitation Centres are being set up to assist workers
- In Kenya, both cash transfers and job programs help enhance people’s capabilities, particularly children’s. But a job program is likely to have a stronger multiplier impact than child grants. If such a program involves building health clinics and schools, for instance, it can boost the supply of social services.

THE CHALLENGE:

It is broadly accepted that labour is not a commodity. The labour market is different from other markets: it not only creates value, it also shapes the distribution of income and prosperity. While progress requires that competition weed out failing businesses, people cannot be thrown on the scrapheap.

To promote decent work, it is necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed, and promoting the protection of workers and economic units in the informal economy and their incorporation into the mainstream economy.

Giving workers secure labour rights encourages them – and their employers – to invest in new skills that enhance their productivity. It would give them more bargaining power and consequently higher wages, commensurate with their increased productivity. It would also enable them to obtain a fairer share of a business' profits. And it would protect them from exploitation and ensure they have decent working conditions.

Secure workers are generally better motivated. They are more likely to invest in their future and that of their children. If they feel they have a stake in society, they will contribute more to it. So effective labour rights are not just about protecting workers; they also strengthen the economy and society.

A key challenge is to expand social protection for poor workers in the event of economic shocks and structural changes, and to guarantee access to medical care, health insurance, and pensions. Women - who have emerged as a major force in poverty reduction in poor communities – are particularly at risk.

LABOUR – REFORM OPTIONS

To strengthen emerging economies, the typical and tired pattern of low productivity, low earnings and high risks must be reversed. Here is how:

- Support fundamental rights at work, especially freedom of association, collective bargaining and non-discrimination.
- Improve quality of labour regulations and enforcement measures.
- Develop inclusive approaches to social protection, delinked from the employment relationship. Labour rights (health and safety, hours of work, minimum income) should be extended to workers in the informal economy.
- Ensure more opportunities for education, training and retraining.

“Legal empowerment is about opportunity: the poor can and do generate income, and are incredibly resourceful and ingenious in scratching out a living. In cities and villages around the developing world, they sell goods and services in the streets and organize markets that governments refuse to recognize.” Kumi Naidoo

Fourth Pillar: Business Rights

The poor are entitled to rights not only when working for others, but in developing their own businesses. Access to basic financial services is indispensable for potential or emerging entrepreneurs. Just as important is access to protections and opportunities such as the ability to contract to make deals, to raise investment capital through shares, bonds, or other means, to contain personal financial risk through asset shielding and limited liability, and to pass ownership from one generation to another.

When the laws regulating small businesses are unfairly drafted, implemented or enforced, or simply too weak and inefficient, they leave the poor little option but to trade in the informal economy. Obtaining a license, the first step to registering a business, is often prohibitively expensive and difficult. Costly and cumbersome regulations prevent poor people from bettering themselves through enterprise and stifle the economy’s development. Expanding access to legal rights gives many more local businesses the opportunity to benefit from trade both locally and internationally.

SOME EXAMPLES:

- India’s municipal laws prohibit street trading without a license, yet Delhi, with a population of over 15 million people, has issued fewer than 4,000. Around 99% of the country’s 10 million street vendors are forced to work illegally. Instead of being protected by the law, they are excluded from it.
- A recent study of 12 Latin American countries found that only 8% of all enterprises are legally registered, and that nearly 23 million businesses operate informally. The owners of these businesses cannot get formal bank loans,¹ nor can they enforce contracts or expand beyond a personal network of familiar customers and partners.
- An estimated 2 billion people are without access to basic financial services
- In Kenya, over 1,000 licenses govern entrepreneurial entry; over 130 separate laws regulate agriculture alone.
- In Mexico, only 7% of businesses have the legal status and documents needed to trade with the United States and Canada under NAFTA. For Peru, only 2 percent are able to trade internationally

1 Low-income and rural populations often have difficulty accessing commercial banks. They may be illiterate; the local branch may be too far away; fees and minimum balance requirements may be prohibitive. An estimated 2 billion people are without access to basic financial services. Figure based on DFID Press Release, 18 June 2007 (<http://www.dfid.gov.uk/News/files/pressreleases/bank-billion-benefit.asp>).

- Utility connections (water, electricity and telephone) require a legally recognized property title or lease as a form of security. Thus, informal traders are often deprived of these services.

The challenge:

Limited liability companies are among the most productivity enhancing legal institutions. They enable a business to legally separate entrepreneurs' personal finances from those of their businesses. If the business fails, an entrepreneur's family will not lose everything; if the entrepreneur falls on hard times, the business can still survive or be sold. Most informal businesses have to operate with no more than a limited amount of family capital. They can sometimes borrow small sums from informal creditors, but only for short periods and at punitively high interest rates. These credit constraints prevent informal businesses from expanding and expose them to greater financial and operational risks.

Formal companies can also better commit to contracts and hold others to them. They do not need to dedicate as much time and resources to monitoring their agents and find it cheaper and easier to trade with strangers, even distant ones. They do not need to rely on relatives, close friends and local contacts. New markets open up for them.

Informal businesses do not operate with clear hierarchies nor specialized roles. Hiring workers is costly and contracts are impossible to enforce, so tasks tend to be concentrated in the hands of family or close friends. Because legal companies can enforce contracts, they can hire strangers, they can access a much bigger talent pool.

Business - Reform Options

The success or failure of the informal economic sector will often spell the difference between economic progress versus stagnation, increased employment versus widespread joblessness, and creation of a broader society of stakeholders versus deeper inequality leading to a weakened social contract. Legal Empowerment measures in this domain must:

- Strengthen appropriate legal and regulatory frameworks, including enforceable commercial contracts, private property rights and use of public space.
- Promote fair commercial transactions between informal enterprises and formal firms. Including financial, business development, and marketing services for informal enterprises.
- Promote inclusive financial services so that micro entrepreneurs in the developing world can benefit from what many of their counterparts elsewhere take for granted: savings, incentives, tax rebates, credit, insurance, pensions, subsidies and other tools for risk management
- Support social protection for informal entrepreneurs.