



*Empowered lives.
Resilient nations.*

Discussion Paper

SOCIO-ECONOMIC EXCLUSION IN LATIN AMERICA AND THE CARIBBEAN

POTENTIALITIES FOR PROGRAMMATIC ENGAGEMENT ON LEGAL
EMPOWERMENT AT REGIONAL AND COUNTRY LEVELS

March 2013

United Nations Development Programme

DEMOCRATIC GOVERNANCE



THE DEVELOPMENT CONTEXT

Introduction

Inequality and social exclusion are two of the most serious development challenges currently affecting Latin America and the Caribbean. Yet, legal empowerment programmes, - which seek to remove legal barriers and advance the rights and interests of the poor, and may therefore be regarded as a critical component of governance strategies to address inequality and social exclusion -, are hardly present in the rule of law programmatic portfolio carried out by UNDP in the region. This raises a number of questions:

- Is legal empowerment an appropriate approach to address the development challenges of Latin America and the Caribbean, in particular socio-economic exclusion?
- To what extent are these challenges already addressed by UNDP's work in practice areas other than democratic governance, primarily poverty reduction?
- Is it advisable to contemplate cross-practice work to inject legal empowerment approaches into existing work on governance, poverty reduction and social exclusion?

The present paper seeks to answer these questions, by drawing attention to the value of the legal empowerment approach for Latin America and the Caribbean and its complementarity with existing poverty and inequality reduction strategies. It highlights the most salient and relevant elements of legal empowerment, establishes connections with already existing UNDP programmes and strategies in the region and offers specific examples of successful legal empowerment strategies pursued and supported by UNDP in other regions of the world. The purpose is to identify opportunities for engagement at both the regional and country levels and examine ways in which programming and regional strategies initiated in other parts of the world may provide useful models.

Legal Empowerment: Origins and Concepts

The concept of legal empowerment is usually attributed to the pioneering work of Stephen Golub, who coined the term and has greatly contributed through his academic work to its popularity.¹ Its emergence stemmed from a critique of the so-called "Rule of Law Orthodoxy", that is the mainstream rule of law reforms that were viewed as essentially top-down and state-centric, and that had been for long the dominant paradigm for integrating law and development.

Legal empowerment was quickly embraced by grass-roots organizations and development agencies,² and gained unprecedented international prominence through the work of the Commission on the Legal Empowerment of the Poor (CLEP), established in 2005, for which UNDP offered institutional support.³

As far as UNDP is concerned, the LEP approach must be connected to its work to support democratic governance, including through support for the rule of law, for effective, responsive, accessible and fair justice systems and human rights-based access to justice (HRB A2J). It is also closely linked to its mission

¹ "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative," Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace (Washington: Carnegie Endowment, 2003), <http://carnegieendowment.org/files/wp41.pdf>

² See Global Legal Empowerment Initiative, <http://www.opensocietyfoundations.org/sites/default/files/glei-description-092712.pdf>; see also Namati Network, <http://www.namati.org/>; USAID, Legal Empowerment of the Poor: From Concepts to Assessment, March 2007, http://pdf.usaid.gov/pdf_docs/PNADM500.pdf; World Bank's Justice for the Poor, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTJUSFORPOOR/0,,menuPK:3282947~pagePK:149018~piPK:149093~theSitePK:3282787,00.html>; V. Maru, "Access to Justice and Legal Empowerment: A Review of World Bank Practice", September 2009, http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2009/11/25/000333038_20091125020239/Rendered/PDF/518430NWPoAcce10Box342050B01PUBLIC1.pdf

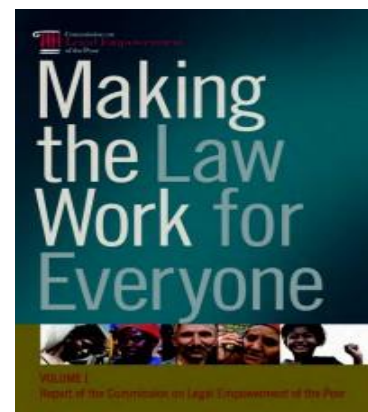
³ See Report of the Secretary-General: Implementation of General Assembly resolution 64/215 on legal empowerment of the poor and eradication of poverty, 6 September 2011, UN Doc. A/66/341, para. 5 (Secretary-General's Report 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/487/91/PDF/N1148791.pdf?OpenElement>;

THE DEVELOPMENT CONTEXT

to reduce poverty and promote inclusive development. The normative foundations of this work were outlined in the 2004 *Practice Note on Access to Justice*. One of the key features of the *Practice Note* was to use human rights as the basic normative framework and to differentiate thereby UNDP's approach to rule of law and justice from other development agencies. Thus, the international human rights framework and its principles of indivisibility, universality and inalienability, non discrimination, and equality offer a robust and UN-sanctioned conceptual underpinning to UNDP's approach. It validates the focus on access to effective remedies and to accountable justice and security services, on legally empowering people and on removing legal barriers to equal opportunity and inclusion. This approach undoubtedly constitutes one of UNDP's core comparative strengths in access to justice, particularly for the poor and marginalized, and should be regarded as intrinsic to its work on legal empowerment.

Making the Law Work for Everyone: The Report of the Commission on the Legal Empowerment of the Poor

The CLEP's Report, entitled, *Making the Law Work for Everyone*,⁴ defines legal empowerment of the poor (LEP) as "a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests". Legal empowerment thus seeks to contribute to development outcomes through enhancing people's capability to attain and sustain livelihoods. This includes institutional and legal reform that aims to empower individuals and communities to become agents of their own development, as well as to demand and secure political, social and economic rights. It is based on the premise that poverty results from social, economic and political inequality.



The CLEP report identified four pillars to advance LEP: access to justice and rule of law as the fundamental enabling pillar; land and property rights; labour rights; and rights related to business, particularly micro-enterprises. The connections with human rights were clearly spelt out and the first Report of the Secretary-General on Legal Empowerment recognized that the international human rights framework offers a comprehensive basis for legal empowerment of the poor.⁵ To advance legal empowerment in the last three areas, the CLEP Report also recommended under the first pillar to ensure the right to legal identity,⁶ to repeal discriminatory laws, to strengthen civil society, and to support Alternative Dispute Resolution (ADR) and the use of paralegals. The Secretary-General's Report added reference to environmental concerns, given the overreliance of the poor on natural resources.⁷ All of these pillars are presented as being inter-connected and mutually re-enforcing, in that an improvement in access to justice or an improvement in the legal protection of economic rights such as business and property rights may have a positive effect on strengthening the other pillars.

⁴ Commission on the Legal Empowerment of the Poor, *Making the Law Work for Everyone*, 2 vol., October 2008, <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/Lep/making-the-law-work-for-everyone---vol-i---english.html>; Secretary-General's Report 2011; Secretary-General's Report on Legal Empowerment of the Poor and Eradication of Poverty, 13 July 2009, UN Doc. A/64/133, (Secretary-General's Report 2009) <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/Lep/report-of-the-secretary-general-on-legal-empowerment-and-poverty-eradication-a-64-133/>

⁵ Secretary-General's Report 2009, paras 7-14; UNDP, *Integrating Legal Empowerment of the Poor in UNDP's Work: A Guidance Note*, July 2010, p. 3, http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/local-development/integrating-legal-empowerment-of-the-poor-in-undps-work-/Legal_Empowerment_of_the%20Poor_Guidance_Note.pdf; see also Commission on the Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Vol 1, p. 29 where the human rights analysis is limited, however, to property rights, business and labour rights as human rights.

⁶ The right to recognition as a person before the law is indeed one of the fundamental rights recognized under the International Covenant of Civil and Political Rights (art.16). This right continues to be overlooked in many countries where large swathes of the population, the poorest and most vulnerable, continue to lack legal status and recognition before the law.

⁷ See also UNDP, *Integrating Legal Empowerment of the Poor in UNDP's Work: A Guidance Note*, July 2010, p.2; Secretary-General's Report 2009, paras 15-16.

THE DEVELOPMENT CONTEXT

The LEP approach as presented in the report of the Commission proposes a methodology for formulating programmatic work, which incorporates an assessment and diagnostics process to identify institutional bottlenecks constraining the poor from accessing and exercising legal rights to improve their lives and livelihoods. It suggests legal and policy instruments⁸ with appropriate enforcement mechanisms and capacity requirements. It also includes a political economy analysis that serves to mobilize allies and manage stakeholders.⁹

Advocating a Broader Conceptualization of Legal Empowerment

Legal empowerment is a multifaceted concept and knows diverse definitions and understandings.¹⁰ The Commission's approach, while bearing many commonalities with the original concept, is nonetheless different in important ways.

In terms of its scope, the Commission primarily focused on livelihoods issues and on the poor with less emphasis on the access to justice dimension, which was presented only as a pre-condition for the realization of these rights. While addressing livelihood concerns makes eminent sense in the global UN context, where much of rule of law work has continued to focus on criminal justice and judicial reform, it is important to assert that legal empowerment does not necessarily and exclusively demand attention on livelihoods. In its broadest and original conception, it is also meant to enhance accountability and access to public services more generally, such as health and education, which are equally important to tackle poverty and social exclusion.¹¹ A project to support the provision of legal services by paralegals, for instance, could certainly qualify as legal empowerment, notwithstanding the fact that it does not specifically focus on any of the aforementioned livelihood concerns.

The use of the term "poor" rather than "disadvantaged" has also raised some questions to the extent that social exclusion may not always and exclusively be based on income, but also on ethnic, national and racial origins, affect certain castes, criminal defendants and other populations facing discrimination or other injustices.¹² It should be noted, however, that the concept of poverty and of who is included in that category, has also undergone radical transformation since the 1960s and 1970s and is now recognized as having both income and non-income elements. A distinction is thus often made between income poverty and non-income poverty. A recent evaluation of UNDP's poverty reduction strategies noted that social exclusion is in fact a "broad concept that encompasses a wide range of forces that tend to keep significant segments of the population outside (or at best tangentially attached to) the mainstream of economic activities. These exclusionary forces may emanate from many different sources – for instance, discrimination against particular ethnic or religious or linguistic minorities, gender based discrimination,

"Despite widespread and growing recognition of and adherence to human rights standards and the rule of law, many people, particularly people living in poverty, women, indigenous peoples and disadvantaged groups, still lack access to justice and protections guaranteed through national and international legal frameworks. Access to justice requires not only legal rights but also awareness of those rights and reasonable access to the mechanisms by which grievances can be redressed."

Report of the Secretary General on Implementation of GA resolution 64/215 on legal empowerment of the poor and eradication of poverty (A/66/341)

⁸ UNDP, *Integrating Legal Empowerment of the Poor in UNDP's Work: A Guidance Note*, July 2010, p. 4.

⁹ Commission on the Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol 1, p. 79, http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-i---english/Making_the_Law_Work_for_Everyone.pdf

¹⁰ For a list of definitions, see S. Golub, "What Is Legal Empowerment? An Introduction", in S. Golub (ed.), *Legal Empowerment: Practitioners' Perspectives*, 2010, p. 10; M. Stephens, "The Commission on Legal Empowerment of the Poor: An Opportunity Missed", (2009) 1 *Hague Journal on the Rule of Law*, 132-157.

¹¹ See Secretary-General's Report 2009, para. 41.

¹² S. Golub, "What is Legal Empowerment, note 10, p. 13.

THE DEVELOPMENT CONTEXT

being at the wrong end of grossly unequal power relations, deep rooted historical animosities, geography and so on.”¹³

The CLEP Report refers to the additional and overlapping vulnerabilities related to exclusion including, under the “first pillar”, to the need to focus on the legal empowerment of specific groups such as women, refugees, indigenous and Afro-descendant populations and internally displaced persons.¹⁴ It also focuses on informality as a one of the major scourges faced by the poor, noting that

*“nearly all of the almost 500 million working poor earning less than one dollar a day, labour in the unofficial economy. Informal work accounts for over half of total employment in developing countries, and as much as 90 percent in some South Asian and African countries. (Footnote omitted) Roughly half of all informal workers are self-employed, often in disguised wage relationships; informal enterprises or households employ another quarter; and the final quarter is employed informally by formal businesses”.*¹⁵

The focus on informality as the main hurdle towards prosperity and greater equality and the tendency to see free market reforms as one of the primary means to achieve development is undoubtedly one of the more contentious elements of the CLEP’s approach. The report nevertheless acknowledges that customary tenure systems can be flexible and responsive to changing economic circumstances and that in many settings, they represent an appropriate and cost effective way for the rural poor to secure access to land.¹⁶

The legal empowerment movement had always advocated that it should not be limited to legal concepts and institutions, and instead strive to ensure full integration within broader development strategies. According to Golub, legal empowerment is intended to “put [...] community-driven and rights-based development into effect by offering concrete mechanisms, involving but not limited to legal services,¹⁷ that alleviate poverty, advance the rights of the disadvantaged, and make the rule of law more of a reality for them”.¹⁸ In a commissioned report for UNDP, Stephen Golub highlighted that legal empowerment work will often not consist of stand-alone legal operations, but rather entail integration of law and justice considerations with other development fields and activities - for example, community organization, group formation, media, public health and water resources management. The potential benefits of poverty alleviation, better service delivery, improved accountability and other development goals make it worthwhile to promote and pursue integration. MacLennan and Perch adopt a similar understanding, noting that “non-legal mechanisms can play a complementary role, by acting as a source of social pressure, building capacity, expanding action entry-points and enhancing societal roles in the development process.”¹⁹

Finally, Golub emphasizes the roles of local, national and international civil society in implementing legal empowerment because of their greater flexibility and creativity than government agencies. One of the most critical features of legal empowerment is that it is not only supposed to be provided “for” the poor

¹³ UNDP, Evaluation of UNDP Contribution to Poverty Reduction, January 2013, p. 16.,

<http://www.undp.org/content/dam/undp/library/corporate/Executive%20Board/2013/English/Evaluation%20of%20UNDP%20Contribution%20to%20Poverty%20Reduction.pdf>

¹⁴ CLEP Report, 5-6, 31-34.; Secretary-General’s Report 2011, para. 16.

¹⁵ CLEP Report, Vol.1, p. 37.

¹⁶ CLEP Report. Vol. 1, p. 52.

¹⁷ Emphasis added.

¹⁸ *Ibid.*, p.3.

¹⁹ M. MacLennan and L. Perch, “Legal Empowerment of the Poor and Environmental Justice in Latin America and the Caribbean: Issues and Challenges”, paper presented for the mini-forum on legal empowerment, p. 31.

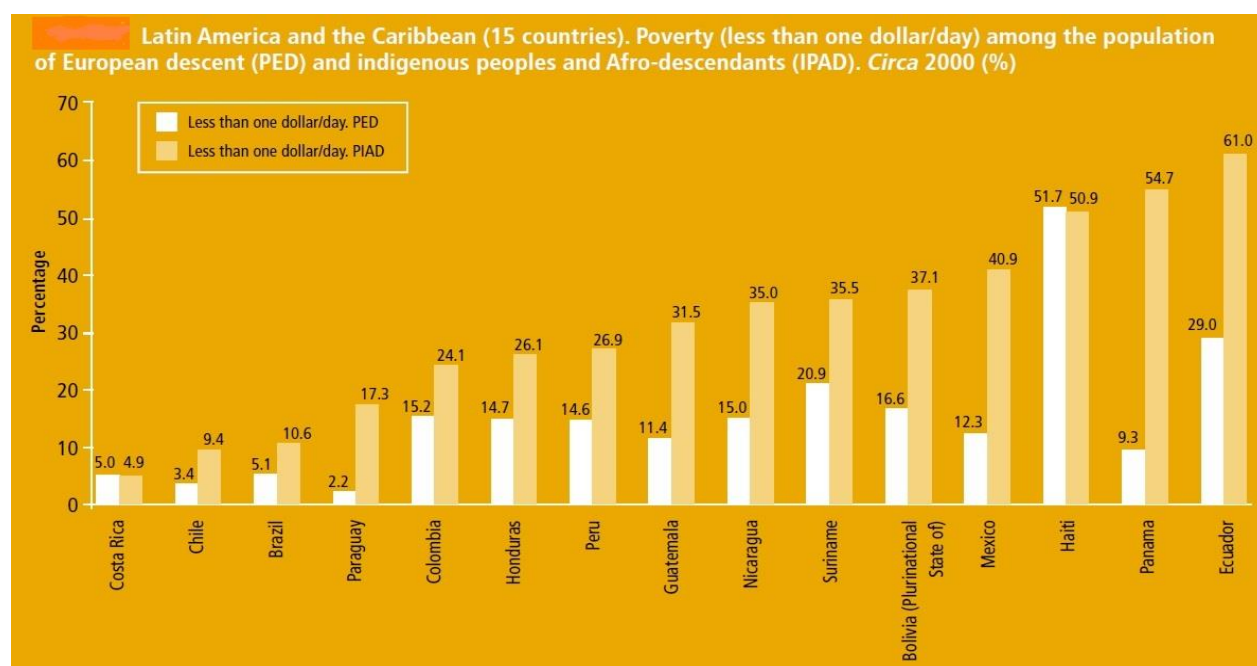
THE DEVELOPMENT CONTEXT

but also “by” the poor.²⁰ In other words, grass-roots initiatives and advocacy are quintessential to legal empowerment, and may run counter government priorities. In this perspective, there may be an inherent contradiction in the attempt of international actors to institutionalize legal empowerment.

In assessing the value of the legal empowerment agenda to address inequality and social exclusion in Latin America and the Caribbean, it is crucial to adopt a holistic understanding of legal empowerment that encompasses the approach adopted in the Commission’s Report yet is not limited by it.

Why is Legal Empowerment Relevant to Address the Region’s Development Challenges?

Latin America and the Caribbean is a middle-income region but it is known as the region with the most unequal income distribution in the world. According to the 2010 Human Development Report for Latin America & the Caribbean,²¹ 10 out of the 15 countries with the highest levels of inequality worldwide are in Latin America, making it the most unequal sub-region of the world.²² These high levels of inequality have persisted notwithstanding the major political transitions experienced on the continent and the change of social policies that ensued.²³



Source: UNDP, *Regional Human Development Report for Latin America and the Caribbean 2010*

The prevalence of social exclusion and inequality may be attributed to a number of factors. First the region’s labour markets are characterized by informality and limited social coverage. According to a recent World Bank Study, 56 percent of jobs in urban areas are informal.²⁴ The CLEP report also refers to

²⁰ S. Golub, “The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice” (2009) 1 *Hague Journal on the Rule of Law*, 101, 105.

²¹ UNDP, *Regional Human Development Report for Latin America and the Caribbean 2010* (hereafter, HDRLAC 2010), *Acting On The Future: Breaking The Intergenerational Transmission of Inequality*, <http://www.idhalc-actuarsobrefuturo.org/site/eng/index.php>

²² HDRLAC 2010, p. 37.

²³ *Ibid.* p. 19.

²⁴ G. Perry; W. Maloney; O. Arias; P. Fajnzylber; A. Mason; J. Saavedra-Chanduvi: *Informality: Exit and Exclusion*, World Bank Latin America and Caribbean Studies, 2007.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:21345369~pagePK:146736~piPK:64909335~theSitePK:258554,00.html>

THE DEVELOPMENT CONTEXT

an Inter-American Development Bank study of 12 Latin American countries, which found that only eight percent of all enterprises are legally registered, and that nearly 23 million businesses operate informally.²⁵ The question of civil identity and registration and the fact that many of the more disadvantaged groups are often not registered with the state and are, as a result, facing intractable problems when seeking to ascertain certain rights, is actually relatively common in the region.²⁶

Another important dimension of the regional context is the reliance on natural resources, which has always been important but has become in recent years the main engine of the region's economic growth.²⁷ According to Perch and Khoday, Mexico, Peru, Chile, Argentina and Brazil alone receive 22 percent of global mineral sector investments.²⁸ In the Caribbean, natural resources are key as well, particularly to attract tourism, which represents 50 percent of GDP in many countries of the sub-region. There is also heightened awareness about the linkages between social justice, environmental protection and ecological sustainability, as a result of the increasing impact of climate change on the region's low-lying small island developing states (SIDS).²⁹ These issues have critical implications in terms of land management and land and property relations throughout the region. . The extreme concentration of land in the hands of a very few is an expression of the deep inequalities that affect the poor, primarily in rural areas, although this is more so in the case of Latin America than it is in the Caribbean.³⁰ Land and Property issues also tend to be particularly complex and sensitive due to the presence of large numbers of indigenous communities whose customary rights over ancestral land are recognized in both international instruments and in the domestic laws of many countries. One good example is Guatemala, where land distribution remains highly unequal and is under the control of large-scale farming minorities, which have recently focused their activities on the production of biofuel. Land conflict has escalated recently, leading to the eviction of 300 indigenous families and 12 indigenous communities in the region of *the El Valle del Polochic* in 2011.³¹ Given the historically unequal property relations in the region, access to justice and legal empowerment could have a significant impact in expanding economic empowerment, civic engagement and greater social and political equality.

Inequality is not only reflected in wide income disparities. It also affects access to fundamental public goods and human rights, such as access to health care, education, and water³² as well as access to an equal share of development benefits, especially when those come from subterranean resources technically owned by specific groups within society. Access to credit in Latin America and the Caribbean is also highly unequal. Small and medium businesses only receive 5 percent of authorized credit by financial institutions. A more recent dimension of inequality operates in terms of access to technology. Only 3 percent of the population is connected to the internet, as compared to 20 percent in Spain and 40 percent in the United States.³³

Furthermore, there is ample evidence of the reproduction of intergenerational poverty and inequality. According to the 2010 Human Development Report for Latin America and the Caribbean, "[e]vidence shows that poverty in households whose head has a low level of schooling is correlated with lower levels of schooling attained by the children. Therefore, the earnings of the children in adulthood will also be low, and inequality will thus find a mechanism to be transmitted from one generation to another. In the

²⁵ CLEP Report, vol. 1, p. 15.

²⁶ See e.g. W. Ardito Vega, *La Promoción del Acceso a la Justicia en las Zonas Rurales*, 2011, Poder Judicial de la Republica de Perú, p. 30.

²⁷ M. MacLennan and Perch, note 19 above p. 1, 8.

²⁸ *Ibid.* p. 3.

²⁹ *Ibid.* p. 6.

³⁰ B. Kliksberg, "América Latina: La region mas desigual" in: *Democracia/Estado/Ciudadanía: Hacia un Estado de y para la Democracia en América Latina*, UNDP, 2007, p. 357, 361.

³¹ Perch, L., C. Watson and B. Barry, "Resource Inequality: Moving Inequalities from the Periphery to the Centre of the Post-2015 Agenda", November 2012,, p. 13.

³² See Secretary-General's Report 2009, para. 7.

³³ B. Kliksberg, note 30 above, p. 365.

THE DEVELOPMENT CONTEXT

region, education and income generation have a high influence on the living conditions that may be reached by the next generation.”³⁴

Women, indigenous and Afro-descendant peoples are the groups that continue to be most affected by socio-economic exclusion. Women are paid less than men for the same work, they have a greater presence in the informal economy and they face a double workload.³⁵ In all countries for which there is comparable information, there is a greater proportion of women involved in the informal sector than men. This means that many women are missing out on the social security benefits that employees in the formal sector receive, face greater vulnerability,³⁶ are more vulnerable to job loss, experience inherently greater income volatility and often own less assets. When compared to those of European descent, twice as many members of indigenous and Afro-descendant populations, - who represent roughly 33 percent of the population, - live, on average, on US\$1 per day. They tend to live in rural areas, where access to health, education and other infrastructure is limited and more than a third works in the primary sector, which is characterized by low productivity and limited social benefits.³⁷

Given its multidimensional nature, inequality cannot be exclusively addressed by focusing on economic growth but is also a sign “of a lack of political and social inclusion” and is conducive to social conflict.³⁸ It was noted in this respect that “[w]hatever the source of social exclusion, the end result is that even when general economic growth opens up new opportunities for improving one’s life prospects the excluded groups find it hard to seize those opportunities. A broad range of socio-political reforms will be needed, in addition to economic growth, in order to address the problem of persistent poverty that emanates from social exclusion.”³⁹ In situations where both income and access to power are fundamentally unequal, “powerful interest groups entrench themselves within the state and block social, economic and political reforms necessary for development.”⁴⁰ In other words, high levels of inequality weaken the regulatory capacity of the state and increase the likelihood that state institutions are being captured and misused by economically powerful elites, which in turn will undermine democracy and delegitimize the institutions of the state.⁴¹

The existence within the region of a robust regional and domestic legal framework recognizing a wide range of human rights, including indigenous people’s rights⁴² and women’s rights, has not yet led to significant and tangible changes for the most disadvantaged. In this perspective, the legal empowerment agenda offers a specific methodological framework to put these norms into effect and truly empower the most marginalized groups. As noted by MacLennan and Perch, “legal empowerment ... can provide critical support ... by widening the scope of social justice efforts and framing the justice question as an issue of access to key resources and services for development”⁴³.

³⁴ HDRLAC 2010, p. 57.

³⁵ See also data provided in UNDP, *Políticas Sociales en Respuesta al Impacto de la Crisis Internacional en América Latina*, Foro Virtual de los Ministerios Sociales de América Latina, 2010, p. 31.

³⁶ HDRLAC 2010, p. 32.

³⁷ HDRLAC 2010, p. 34.

³⁸ UNDP, *Discussion paper: Responding to Trends in Democratic Governance: Towards a New Strategic Vision for DGG*, September 2011, pp. 9-10. <http://www.gaportal.org/sites/default/files/un.pdf>.

³⁹ Evaluation of UNDP Contribution to Poverty Reduction, note 13, p. 16.

⁴⁰ HDRLAC 2010, p. 101.

⁴¹ B. Kliksberg, note 30 above, p. 396.

⁴² *Ibid.* p. 25-27.

⁴³ M. McLennan and Perch, note 19, p. 20-23, 31; see also Secretary-General’s Report 2009, para. 10.

UNDP Programmes to Address Exclusion and Poverty in Latin America and the Caribbean

UNDP's poverty reduction approach is multidimensional, recognizing poverty as a phenomenon much beyond low income, and having at its core the notion that effective poverty reduction should be promoted by paying attention to a wide variety of areas in people's lives. UNDP's approach in Latin America and the Caribbean seeks to address the deep seated inequalities and social exclusion that continues to generate poverty and lack of human development.⁴⁴ UNDP has focused on advocacy initiatives and the use of technical tools and policy indicators and has contributed to bringing about important policy shifts and move the emphasis on shaking the dogma of economic growth towards a nuanced understanding of poverty and inequity.⁴⁵ The concept of human development and the use of the Human Development Index have now permeated the public discourse in many countries of the region including Bolivia, Brazil, Colombia, Chile, Argentina, Honduras and Ecuador. Other examples can be found in UNDP's work to support countries in their efforts to achieve the Millennium Development Goals (MDGs) through its MDGs Acceleration Framework, which has led to significant progress in areas such as the provision of housing in Belize or attention to people suffering from disabilities in Costa Rica.⁴⁶

The realization of the multidimensional nature of poverty and the importance of engaging with marginalized groups to ensure their participation in the design of social policies converge in important ways with the aims and methodologies of the legal empowerment movement.⁴⁷ There are examples where the linkages with the legal empowerment agenda are particularly clear. In Nicaragua, the rights of indigenous people to their ancestral lands are recognized in statutory instruments that



Photo: Consejo de Pueblos Indígenas del Pacífico, Centro y Norte de Nicaragua - UNDP Nicaragua

produced autonomous regions in the coastal Caribbean areas of the country.⁴⁸ UNDP has played an important role in supporting titling processes between 1994 and 2001 and has more recently taken a facilitating role and assisted the National Titling Commission, which found itself paralyzed due to the highly contentious nature of property and land relations.⁴⁹ In the same country, UNDP has supported programmes to ensure access to adequate housing for the poor in urban areas.⁵⁰ UNDP Nicaragua has also initiated a joint programme of support to indigenous and Afrodescendants peoples and Access to justice, with a view to enhancing the living conditions of the targeted populations in accordance with international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 on Indigenous and Tribal Peoples.

⁴⁴ UNDP, Evaluation of UNDP Contribution to Poverty Reduction, note 13,, p.32..

⁴⁵ *Ibid.*, p. 37.

⁴⁶ UNDP, "Management response to the evaluation of the UNDP contribution to poverty reduction", document prepared for the Executive Board of the United Nations Development Programme, the United Nations Population Fund and the United Nations Office for Project Services, First regular session 2013, 28 January to 1 February 2013, New York, p. 7-9

⁴⁷ See also UNDP, Evaluation of UNDP Contribution to Poverty Reduction, note 13, p. 99.

⁴⁸ M. McLennan and Perch, note 19, p. 17. Note, however, that questions have arisen as to the gender dimension of these questions, <http://blog.cifor.org/14150/new-rights-to-nicaragua%C2%B4s-forests-are-women-included/#.UVzgtFcus>.

⁴⁹ UNDP, Assessment of Development Results Nicaragua: Evaluation of UNDP's Contribution, 2007, p. 26.

⁵⁰ *Ibid.*, p. 22-23.

ISSUE ANALYSIS

In Paraguay, UNDP has supported government programmes for the development of micro and small enterprises⁵¹ while in Colombia, it has developed a series of knowledge products addressing, *inter alia*, social protection and labour markets.⁵² Likewise, UNDP Costa Rica is implementing a programme to support the adoption and implementation of minimum wage legislation. One can readily see that such a programme would easily fit under legal empowerment, and there would be value in including an access to justice element in this line of programming, which is not currently present.⁵³ Another relevant example is Honduras, where, as a result of the work of the Truth and Reconciliation Commission, UNDP is supporting organizations representing indigenous and Afro-descendant peoples.⁵⁴ Finally, in Bolivia, technical assistance has been provided by the Country Office on the legislative process including normative analysis of environmental and socio-economic rights.⁵⁵

Several of the region's recent Country Programme Documents also highlight concerns that fall within the LEP purview and would potentially benefit from LEP components. Brazil's Programme Document emphasizes, for instance, support to national and sub-national governments and civil society partners in capacity development for policy formulation, implementation, monitoring and evaluation, focusing in particular on indigenous and traditional communities, women, ethnic and racial minorities, and other vulnerable groups. More specifically, with respect to energy and environment, the document indicates that UNDP will facilitate the articulation of the overarching goals of poverty eradication, productive inclusion and reduction of inequalities.⁵⁶ In Honduras, UNDP is supporting the creation of new work opportunities in rural areas with a focus on small producers, in particular women and the youth. The development of local capacity and the promotion of cooperative enterprises will also be addressed, as well as access to credit.⁵⁷ Honduras provides also a good illustration on the ways in which efforts to address inequalities and regulate land and water rights can be integrated into climate change policies.⁵⁸

It is worth noting that in the implementation of poverty reduction strategies, UNDP has often partnered with ILO, whose mandate on labour standards and labour rights have proven fully complementary to UNDP's work. In 2007, UNDP and ILO entered into an agreement to strengthen their collaboration and partnership to bolster UN actions designed to reduce poverty and create more decent work. This partnership has primarily been a country driven process, focusing on collaboration in skills training; decent work in the formal and informal economy; the care economy; social protection; and women's rights and access to decision making positions.⁵⁹

The evaluation report of UNDP's poverty reductions strategies notes, however, that there had been many missed opportunities in harnessing the potential for more integrated practice programming combining poverty reduction and democratic governance approaches and this certainly seems to be the case for the LAC region.⁶⁰ For instance in Ecuador, UNDP and the United Nations Human Settlements Programme (UN-Habitat) worked together to strengthen institutional capacities for urban development management in the city of Guayaquil, by linking land survey maps with land registers, creating greater certainty regarding land and property, legalizing properties in urban areas and increasing municipal

⁵¹ UNDP, Assessment of Development Results Paraguay: Evaluation of UNDP's Contribution, 2011, p. 40.

⁵² UNDP, Assessment of Development Results Colombia: Evaluation of UNDP's Contribution, 2007, p. 22.

⁵³ See RBLAC Democratic Governance Cluster, Survey of UNDP Country Offices Programmes Supporting the Rule of Law, Access to Justice, and Citizen Security in Latin America and the Caribbean

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ See http://home.undp.org/cpd/programme_detail.cfm?vu=CO,RBLAC,BRA&plan_id=145¤t_section_id=3

⁵⁷ See http://home.undp.org/cpd/programme_detail.cfm?vu=CO,RBLAC,HND&plan_id=158¤t_section_id=3

⁵⁸ http://www.adaptation-fund.org/sites/default/files/AFB.PPRC_2.7%20Proposal%20for%20Honduras.pdf and <https://www.adaptation-fund.org/project/1330-addressing-climate-change-risks-water-resources-honduras-increased-systemic-resilience->

⁵⁹ See Evaluation of UNDP Contribution to Poverty Reduction, note 13, p. 49.

⁶⁰ *Ibid.* para. 185-186, 189.

ISSUE ANALYSIS

revenues from property tax.⁶¹ While it shows that the issue of land and property has been addressed, the report noted that it was not fully clear whether this had actually led to increased social investments, reduced urban poverty and improved service delivery for the poor.

Efforts to put legal empowerment into effect through specific programmatic approaches have been undertaken in a number of countries throughout the world, and some of them have been showcased in a 2009 UNDP publication entitled *Envisioning Empowerment*.⁶² The Annexes to this paper offer a selection of country and regional cases illustrating through a series of specific projects how legal empowerment has been used to remove legal barriers and enhance opportunities for the most disadvantaged, in some of the key areas of legal empowerment, including access to justice and legal aid, land and property, labour rights, and civil identity, with a view to showing their relevance for the Latin America and Caribbean Region.



Photo: Consejo de Pueblos Indígenas del Pacífico, Centro y Norte de Nicaragua - UNDP Nicaragua Country Office

⁶¹ UNDP, Assessment of Development Results Ecuador, p. 26.

⁶² Note, however, that not all of the projects described in this document are UNDP projects, http://www.undp.ro/download/Envisioning%20Empowerment_full%202009.pdf

Opportunities and Challenges for Regional Engagement on Legal Empowerment in Latin America and the Caribbean

Through its focus on social inclusion and social justice, the legal empowerment agenda proves to be highly relevant for the region and could bring value added through engagement at both the regional and country levels to develop new strategies and initiatives on legal empowerment, in partnership with the poverty reduction practice. The regional architecture of UNDP may have an important role to play in generating interest for this area of work by sponsoring activities at the regional level and pilot programmes at country level, and by generating synergies between poverty and democratic governance practices. Precedents from the Asia-Pacific and Arab States regions are particularly instructive in this regard.

In Asia-Pacific, the Legal Empowerment Asia Partnership (LEAP) was created in 2010, and includes civil society representatives and governments from selected countries in the region. The LEAP brings together these players on a regional level annually, hosted by a contributing government or organization with the aim to share experiences and promote learning and also provide seed funding to support legal empowerment programmes working with UNDP Country Offices and national counterparts to formulate pilot programmes focused on legal empowerment.⁶³

In the Arab States, the Regional Service Centre in Cairo facilitated round table discussions with experts from civil society, governments, academics and international partners to develop a regional legal empowerment programme. The development context of the Arab States bears some interesting similarities with LAC, in that some of them are middle-income countries where poverty and inequality are still important, and informality and lack of social protection, in particular for non-citizens, are commonplace. National initiatives have been spearheaded in Egypt, Morocco, Jordan, Syria and Palestine in partnership with ILO, UNIFEM, IDLO and CSOs, to 1) develop policy networks to explore options for institutional and legal reforms and enhance the capacity of governments; 2) strengthen strategic partnerships with key regional players to coordinate approaches, tools and resources for better aid effectiveness and domestic accountability; and 3) establish a web-based knowledge bank to enhance access to global and regional practical information and networking of stakeholders.⁶⁴

In addition, for the LAC region, the fact that much of the substance of legal empowerment is to an important extent already addressed through poverty reduction and social exclusion strategies should be borne in mind and offers the potential for further strengthening this work. There is the opportunity to scale up poverty reduction and social exclusion strategies which already incorporate legal empowerment dimensions to a broader level across countries and the region. In this perspective, regional and national cross-practice work between the poverty and democratic governance clusters would be extremely valuable. Also critical for the LAC region is the solid grounding of socio-economic concerns within a human rights-based framework, thanks in large part to the robust regional human rights framework in place. It is clear therefore that any legal empowerment effort must be underpinned and explicitly based on relevant universal, regional and domestic human rights norms.

⁶³ See UNDP, *Integrating Legal Empowerment of the Poor in UNDP's Work: A Guidance Note*, July 2010, p. 11-12.

⁶⁴ *Ibid.*

POLICY OPTIONS AND ACTIONS

<i>Taking on a LEP understanding that works for the region's development needs</i>	The legal empowerment approach is most appropriately understood as holistic and comprehensive, addressing not only economic livelihoods through land and property rights, labour rights and business rights but also gender equality, environmental rights and climate change, and any legal barriers to equal opportunities and access to public goods (including health and education for instance). It favours bottom-up approaches and proactive engagement with civil society. This broad understanding of legal empowerment is most appropriate to address the full range of social exclusion challenges existing in the region.
<i>LEP would bring added value for the region's development</i>	Given the ongoing challenge of social exclusion and inequality in Latin America and the Caribbean, and the multifaceted nature of inequality (informality of the labour sector, reliance on extractive as well as resource-intensive industries, presence of large groups of indigenous and afro-descendant peoples who have been historically disadvantaged in social, political and economic terms), the legal empowerment approach offers a valuable framework for proactive engagement on social exclusion within the governance realm, grounded, as is Access to Justice, in the international and regional human rights normative framework.
<i>Create opportunities to build on current approaches that address LEP dimensions</i>	Some of the core areas covered under the legal empowerment approach are being addressed through poverty reduction programming in the region. In addition to scaling up these activities more broadly, there could also be value in integrating within these programmes activities more specifically aimed at addressing the legal dimension of social exclusion and poverty. This would not exclude as such the possibility to design stand-alone legal empowerment programmes. Synergies within democratic governance with local governance, anti-corruption, and parliamentary assistance should also be contemplated.
<i>Balancing state centered approaches with a focus on civil society and community empowerment</i>	In its work on rule of law and access to justice in the region, UNDP has primarily been engaging with state institutions. To fully meet the objectives of the legal empowerment approach, greater attention to grass-roots and civil society groups should be encouraged, as well as support for more activities that seek to empower the poor and marginalized groups, in particular indigenous people, women, Afro-descendants and youth so that they become knowledgeable about their legal rights and more actively involved in shaping the development policies that affect them.
<i>Catalyzing enhanced engagement through regional support</i>	Based on experiences in other regions, the Regional Bureau for Latin America and the Caribbean, in cooperation with the Bureau for Development Policy, could play an important role in promoting the legal empowerment agenda at the regional level, fostering knowledge and practice exchanges and sponsoring pilot programmes at the country level.
<i>Enhance regional knowledge sharing</i>	UNDP should examine good practices and lessons learned by other actors including through the establishment of regional partnerships with other UN agencies (e.g. UN Habitat, UN Women, UNFPA) and regional actors (Inter-American Development Bank, OAS) with a view to enhancing knowledge sharing and dissemination.

UNDP Legal Empowerment Programming: Selected Experiences from Across the World

Legal Empowerment, Legal Aid and Legal Awareness in Indonesia

Budget	USD 9,699,800
Project Period	2007-2010
Implementing Partner	National Development Planning Agency
Donors	Norway, the Netherlands, SIDA (Swedish International Development Agency) and UNDP
Website	http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/legal_empowerment/projects_and_initiatives/access_to_justiceforthepeopleinindonesia/

Numerous barriers to access to justice existed in Indonesia, including overly long delays within the formal justice system; lack of free legal representation for vulnerable and marginalized groups; abuse of authority and corruption; weak law enforcement; deficits in legal and human rights knowledge and lack of awareness across formal and informal justice delivery systems, legal community and the general public; biases and discrimination against women and other vulnerable and marginalized groups; and lack of available legal and human rights information.

The Legal Empowerment and Assistance of the Disadvantaged (LEAD) project aimed to help make access to justice a reality at the community level and addressed primarily the “demand side”, by enabling people to claim rights through legal awareness and legal aid projects. However, because the programme was based on a national strategy formulated by the government that guided all of the different players to work on access to justice, it also had an impact on the institutions entrusted with the provision of justice services. Key steps in accomplishing these objectives included: (i) establishing a grant-making facility focused on civil society organizations representing the rights and interests of the poor and their capacity development; (ii) ensuring legal and human rights empowerment at the grassroots level; (iii) fostering a human rights-based approach with regard to grantee activity development and implementation; and (iv) engaging state authorities at local and regional levels.

At the national level, LEAD supported the Government of Indonesia in working towards the development of a comprehensive National Access to Justice Strategy for inclusion in the National Medium Term Development Plan. At the provincial level, LEAD worked with Indonesian civil society to support the legal and human rights empowerment of vulnerable and marginalized individuals and communities by improving access to information and free legal assistance. The programme has had promising results, and a recent survey indicated increased awareness on rights to government services (63.9 percent, compared to 43.1 percent of the non-beneficiaries), land and natural resources (62.2 percent, compared to 56.9 percent), and the rights of marginalized groups to participate in politics and cultural activities (87.8 percent, compared to 73.6 percent).¹

For more information:

United Nations Development Programme
Menara Thamrin Building, 8th Floor
Jalan MH Thamrin Kav. 3, Jakarta 10250
Phone: (62-21)3141308. Fax: (62-21)3145251
Email: media.id@undp.org, Website: www.undp.or.id

Addressing housing, land and property in Ukraine

Project Budget	USD 300,000.00
Project delivery as of 27.12.2012	USD 298,836.31
Donors	UNDP DGTTF.
LEP Project Beneficiaries	<p><i>Direct Beneficiaries</i></p> <ul style="list-style-type: none"> - State and non-state legal aid providers that will receive targeted capacity development support; - Small land owners/farmers and their associations in selected regions, with focus on vulnerable individuals and households and at-risk-of-poverty groups (large families, single-headed households, and other disadvantaged groups) <p><i>Indirect Beneficiaries</i></p> <ul style="list-style-type: none"> - Rural population at large as a result of potential scaling up and policy advocacy – indirect beneficiaries
LEP Project partners	<ul style="list-style-type: none"> - Ministry of Justice of Ukraine; - Local State and Non-State Legal Aid Centers - Gromadski Priymalni, NGOs and associations working in the field of land reform and property rights; - International Renaissance Foundation; - Coordination Council of Young Lawyers within the Ministry of Justice of Ukraine; - Centre for Legal Reform and Legislative Drafting within the Ministry of Justice of Ukraine

Engagement on HLP issues in Ukraine stemmed from the importance to tackle economic exclusion in a country where 30 percent of the population lives in poverty, and 80 of the poor live in the countryside. The launch of the LEP project in July 2011 coincided with important government initiatives on land and legal aid reform in Ukraine, through the adoption of the Law on free legal aid and the Law of Ukraine on state land cadastre. The approach adopted in the project consisted of supporting public awareness campaigns targeting rural land owners as well as capacity-building related to land titling in partnership

with community-based groups, and of linking up this intervention with the fragmented work on legal aid in order to ensure more sustained engagement. The approach was three-pronged and included:

- an assessment of legal needs – both addressed and unaddressed - to determine the most pressing legal problems faced by the rural low-income population and to prepare recommendations on how best to address those needs.
- a legal literacy campaign and enhancing legal aid promoting dissemination of legal information related to land and property rights amongst landowners and legal aid providers at community and village level. The campaign also informs and includes the provision of legal counselling to the population about existing options to either obtain land titles and/or profitably use them (such as different types of contractual clauses on lease market, types of lease agreements, different set of conditions etc.), within the current regulatory framework and supports the capacity of legal aid centres to effectively respond to the needs and demands of the population.
- The findings of the Project were presented and used to advocate for comprehensive, pro-poor land market and legislative reforms, feeding the “voice of rural communities” into the ongoing policy debates in the area of land reform and rural development.

The project had very interesting results in that it opened up a space to engage on a number of interconnected issues namely, legal aid, which was then expanded; the establishment of a transparent land registry; the importance of building the capacity of the judiciary with respect to housing, land, and property issues, and of protecting the judiciary from state interference and backlog; and the need to address low levels of enforcement of court decisions.

For more information:

Natalia Stupnytska, Project Manager

UNDP Ukraine

Email. natalia.stupnytska@undp.org

Tel. +38 (044) 584 34 74

Legal Empowerment and Economic Exclusion in the Arab World

The Arab region is the region where the three MDGs which continue to offer the most challenges in terms of implementation are poverty reduction, women empowerment and environmental sustainability, demonstrating thereby the particular relevance of the legal empowerment agenda. Furthermore, in that particular region, poverty is more heavily linked to the inability to exercise rights as opposed to a sheer lack of financial resources. By way of illustration, many residents in the region make a rational choice to operate in the informal economy to avoid the over-bureaucratic and sometimes corrupt procedures of formal institutions. In several countries, limitations imposed on labour unions have seriously impeded social dialogue and led to low wages and poor working conditions. The end result is a very slow rate of decrease in income poverty, and increased informalization of work. Also, in spite of the economic reforms implemented in the 1990s, the control of the justice system by politically well-connected economic agents made it impossible for many small and medium enterprises to operate due to their inability to access their rights. The political transitions underway in these countries have offered unprecedented opportunities and entry points for engagement, through constitution-drafting processes and legislative harmonization. These processes have highlighted the importance of closer collaboration between UNDP's governance and poverty practices in order to develop strategic interventions with higher impact. UNDP is also currently collaborating with ILO, OHCHR and the Arab Organization for

ANNEX

Human Rights, to develop a training manual on the protection of economic and social rights, targeting legal professionals and also civil society.

For more information:

Mitra Motlagh, Human Rights and Justice Specialist
United Nations Development Programme
Regional Centre in Cairo for the Arab States
Mitra.Motlagh@undp.org
Tel: (+202) 245 649 73

Civil Identity Registration in the Dominican Republic

Start and end Date of the Project	October 2007 – December 2012
Implementing Partner	Central Electoral Committee
Funding	Central Electoral Committee and Spanish Agency for International Cooperation (AECID)
Budget	US 573,938
Project Document	http://www.pnud.org.do/sites/pnud.onu.org.do/files/Prodoc_00056561.pdf

The objective of this programme is to strengthen the institutional capacity of the central electoral committee to provide a birth registry and identity documents for citizens by supporting the committee in expediting the establishment of birth certificates for minors identified by the Ministry of Education. As noted by the UNDP Country Office, such recognition entails a capacity to demand improvements in living conditions, to demand accountability and transparency from the state, and offers opportunities of successful integration into the economy. The programme has two main components, namely, promotion and dissemination work to ensure that residents understand the benefits and initiate the process of 'late' declaration of birth; and secondly, capacity building of the committee. The results of the programme have been significant, and led to the establishment of over 9,000 birth certificates for children of school age and to the sensitization of 500 persons, primarily parents, tutors and potential beneficiaries. It is to be noted however, that the conceptual underpinnings of the project are clearly human-rights based and that no reference is made in any of the documents related to the project to the Legal Empowerment of the Poor approach, which generates important questions as to the value added of LEP in this specific area of work.

For more information:

Anyarlene Bergés Peña
Oficial de Gobernabilidad Democrática
Programa de las Naciones Unidas para el Desarrollo
Avda. Anacaona #9, Mirador Sur. Santo Domingo, DN. 11109
República Dominicana, Email. anyarlene.berges@undp.org



Cover Photo: *Women in the Programme make Chicha De Jora, A traditional Peruvian Beverage, to sell. UNDP Peru Country Office*

Acknowledgements: Agnès Hurwitz (author), Timothy Dolan, Shaima Hussein, Shelley Inglis, Nora Luzi, Leisa Perch (reviewers).

Contact Information: Gerardo.Noto@undp.org and Shelley.inglis@undp.org

The report is a partnership of the Bureau for Development Policy and the Bureau for Latin America and the Caribbean.

UNDP Disclaimer: The views expressed in this publication are the author's and do not necessarily represent those of the United Nations, including UNDP, or its Member States.

For more information: www.undp.org/
United Nations Development Programme
One United Nations Plaza • New York, NY 10017 USA