

WHAT WE NEED TO UNDERSTAND IN ORDER TO PROVIDE LEGAL RIGHTS TO THE POOR IN THE PACIFIC BASIN COUNTRIES

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Policy Problem

The Pacific Basin developing countries face a wide range of challenges to providing legal rights to the masses of the poor living in these countries. Addressing this issue has now become more urgent than ever in the face of decades of relatively high economic growth in several of these countries, in which the poor are not benefitting proportionately, with resulting increases in the gap between those who have and those who don't. This growing inequality is of grave concern to policy makers in many Pacific Basin countries which already experience or now face social instability and civil unrest. The governments of many of these countries have been addressing civil and political rights and while much more needs to be done, the situation is not as dire as in the areas of economic, cultural and social rights (ECSR). While it is recognised that human rights must be seen a single bundle, this paper will focus on ECSR and especially those domains of central importance to the poor, such as access to justice and property, labor and business rights. These areas are widely recognised as fundamental to economic growth and social stability in market democracies, and yet progress has been scant. Why?

The problem has been intransigent and progress slow because policy makers here face some of the most wicked of policy dilemma under laid by political and power relations minefields. These dilemmas include firstly, the need to work with the informal or extra legal sector where more than 80% of the population of the developing Pacific Basin countries make their livelihoods. This is where the poor survive almost beyond the reach of formal policy

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making processes. The challenges of informality will be described briefly below. Secondly the problem of pervasive corruption is now eroding even the judicial system in many of these countries; this is also briefly described below. Thirdly, the challenge of changing power relations between those who have and those who don't is not only difficult, it is dangerous, as many have lost their lives in the name of empowerment of the poor. Policy shifts and legal rights in the areas of access to justice, property, labor and business can undermine the status quo and position of the elite, who in many cases control the policy and political process. These issues are described later in the paper in the section on considerations for implementing reforms.

The informal sector is characterised by¹:

- Fear and insecurity. Squatter populations in big cities are highly vulnerable to dispossession. The consequence of these evictions is severe: besides destroyed property and lost assets, social networks are broken and access to essential services is absent.
- Environmental and sociopolitical repercussions. Urban migration is expanding the number and size of informal settlements, creating serious environmental and sociopolitical implications that affect not only the residents of informal areas, but the growing urban population as a whole. Informal settlements increasingly encroach on environmentally sensitive areas, near protected water reservoirs, on public land, and into terrain that cannot be made habitable at reasonable cost.
- Labor exploitation. Many of the world's poor are forced into the informal labor sector, including illegal spheres such as child labor, where they receive fewer benefits and lower wages than formal workers, as well as endure longer hours and more hazardous working conditions. They also have less bargaining power and representation than the formal work force achieves through unions and other labor organizations.

- Lack of healthcare. More and more of the world's poor — especially those in the informal sector — lack adequate access to healthcare. The poor who already bear the brunt of the world's worst maladies, from malnutrition to HIV/AIDS, are made more vulnerable by their inability to access and pay for medical care.
- Social-political alienation. Informality cannot be viewed only in terms of individual needs and rights. Security of individual property rights, for example, must be combined with a broader, collective approach as regards the need to promote socio-spatial integration. Informality also breeds gender inequality, corruption, and political disenfranchisement —all of which compound the position of the under-classes.
- Conflict. The poor are highly vulnerable to conflicts over scarce assets such as land. The poor living in the informal sector have developed informal justice systems in which they seem to have greater trust. Some of the strengths of informal justice systems include:

They are understandable and culturally 'comfortable';

They focus on consensus, reconciliation and social harmony;

They can be good partners with the formal justice system by reducing court congestion for non-serious offences;

They offer swift solutions to disputes;

They tend to enjoy social legitimacy, be trusted, and understand local problems;

Informal justice systems often survive violent conflict; and

They provide geographical and financial accessibility.

Despite informal justice systems being widely viewed by many communities as the most likely way of achieving an outcome that satisfies their sense of justice, there are situations in which they fall well short of realizing that ideal. The main weaknesses of informal justice systems include:

Unequal power relations and susceptibility to elite capture – where power imbalances exist between disputing parties the weaker party is vulnerable to exploitation;

Unfair and unequal treatment of women and disadvantaged groups;

Lack of accountability;

Arbitrary decisions;

Non-adherence to international human rights standards;

They are unsuitable for certain disputes that are important for security and sustainable development – informal justice systems do not work in cases such as dealings with government service delivery, companies, complex cases such as serious crimes, and inter-village, inter-community and third party disputes as the authority of the informal justice actors rarely extends beyond their own sphere of influence.

Corruption

Between 2006 and 2007, most regions experienced a decrease in the number of citizens who paid a bribe to obtain a service, whereas in the Asia-Pacific region this number increased by almost 7 percent. It is a well documented fact that even so-called ‘petty’ corruption can have a debilitating impact on low to middle income earners who experience corruption in many ways - from the most common, bribery, to theft and extortion – often resulting in threats or physical

violence. The continuous upward and outward flow of meager profits keeps disadvantaged groups in a cycle of poverty and injustice. It becomes more difficult for them to save for real needs such as growing a business, higher levels of education for their children, contributing to insurance or collective funds to build economic security for 'rainy days'. The vulnerable are then more susceptible to smaller shocks which spiral them further into poverty.

According to surveys by Transparency International (TI), the judicial system is perceived as being the third most corrupt institution in the Asia-Pacific region, rated 3.3 with 1 being no corruption at all, 5 being parties. TI also suggests that if the figures for the Pacific were separated, Asian perceptions of corruption in the judicial system would be much higher.

The foregoing challenges are compounded by the presence of anti-poor laws in several Pacific Basin countries in Asia and Latin America, for example in the area of rural land ownership which restricts the plot size that can be owned by the poor; or in Asia concerning street vending or ownership of rickshaws which impede growth of the poor's micro businesses. In many of these cases laws were introduced which were once intended to protect the poor but turned out to do more harm than good and are currently very controversial. The more important issue is, however, government's failure to acknowledge the presence of anti-poor laws and laying blame for lack of legal rights for the poor solely on judicial capacity deficits.

The next section on the policy context cites the relevant sections of the Universal Declaration of Human Rights which all Pacific Basin Countries have signed and committed themselves to uphold. It also expands on the challenges aforementioned and elaborates the relevant policy context. The following section outlines the legal empowerment of the poor approach, to providing legal rights to the poor. This is then followed by concrete

recommendations of what needs to be done in the areas of access to justice, and property, labor and business rights, based on the work of the Commission on Legal Empowerment of the Poor. The final section deals with the challenges of power relations, and political and administrative hurdles which is the minefield that must be successfully navigated for the provision of legal rights to the poor. The paper concludes with observation that while the provision of legal rights to the poor is not a panacea for eradicating poverty, it is difficult to see how to see we will get there without it. And while is it challenging for policy makers it could also be seen as good politics.

Policy Context

The provision of legal rights to the poor, indeed to everyone, is not only desirable for the greater good of all humanity, it is a commitment made by state parties to the Universal Declaration of Human Rights (UDHR) (United Nations 1948).²Over the years the commitment has been translated into law in the form of treaties, customary international law, general principles, regional agreements and domestic law, through which human rights are expressed and guaranteed. Based on the UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The World Conference on Human Rights (Vienna 1993) established some new consensus agreements on human rights including the indivisibility and interdependence of human rights, for example it established the interdependence of economic development, democracy and human rights.

Among the rights enshrined in the UDHR and of special relevance to people living in poverty are right to life, liberty and security of person. (Article 3), the right to recognition

everywhere as a person before the law, (Article 6), equality before the law and equal protection of the law(Article 7), the right to a nationality (Article 15), the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property, (Article 17), the right of equal access to public service in one's own country (Article 21), to social security and the economic, social and cultural rights indispensable for one's dignity and the free development of one's personality (Article 22), the right to work, to just and favourable conditions of work and protection against unemployment (Article 23) to a standard of living adequate for health and well being (Article 25), and the right to education, (Article 26).

Poor people everywhere including in the Pacific Basin states are generally unable to claim these rights either because of lack of awareness capability or organisation among themselves, state incapacity or unwillingness to meet their obligations, or deliberate and systematic exclusion of the poor in order to serve the vested interests of the elite.

The Asian Development Bank (ADB 2000),³ commissioned a study in seven of its member states (among them Indonesia, Philippines, Thailand and Vietnam) on how legal empowerment, (the use of law to increase the control that disadvantaged populations exercise over their lives) can contribute to good governance and poverty reduction goals. It found several constraints faced by the poor in accessing the legal system and participating in local and national governance structures. These constraints included:

- Lack of economic independence
- Minimal understanding of law and the right it confers
- Limited access to affordable legal services
- Lack of knowledge, incentives and resources among government officials

- Limitations in the outreach and capacity of civil society organisations to provide legal services to the poor
- Inconsistency between formal law and traditional values
- Poorly drafted or contradictory laws and regulations
- Failure to implement sound laws
- Traditional use of law as an instrument of control
- Corruption

According to the Asia-Pacific Human Rights Center (Osaka, Japan, 2010),⁴ poverty defines many communities in Asia and are a major cause of human rights violations. Serious violations of economic, social and cultural rights have become engraved in the actions of the state. Governmental institutions including the courts have alienated the poor with their inefficient and corrupt systems.

The situation is made even more complex by the existence of plural legal orders in several countries. For example, like many other Pacific Island states, Solomon Islands faces the challenge of governing and resolving conflict in the face of plural legal orders. (East-Asia Pacific-Justice for the Poor EAP-J4P Initiative; Ausaid-World Bank, 2008). According to a report⁵ by a mission for EAP-J4P “Legal pluralism in Solomon Islands does not simply encompass the contrast between state law and customary law but includes: 1) the interaction between diverse indigenous regimes, 2) the fact that state law itself is the product of outside influence, both historical and on-going, and 3) the direct impact on local law of forces emanating from outside the state, ranging from human rights norms to contractual dealings with foreign companies. These interactions play out through complex processes of accommodation, competition and hybridisation.

In trying to understand the challenges and opportunities of providing legal rights to poor populations in the countries of the Pacific Basin it is of course necessary to appreciate the widely varying social, political and economic realities in this bloc of countries. There is nevertheless room for improvement in all of them. In the advanced western democracies (Australia, New Zealand, Canada , USA, etc) the legal empowerment of the indigenous peoples is an on-going challenge. The rapidly growing, middle income and emerging economies (China, Chile, Indonesia, Malaysia, Singapore Thailand , and Vietnam etc) have some common challenges and opportunities. These are characterised by sustained high growth rates but increasing levels of inequality, with few notable exceptions many still have large numbers of poor people, complex interactions between attempts at democracy and open markets, and plural legal orders. Russia is almost unique in its current mixture of politics, market economics, oligarchies, and irregular business and property rights regimes. The low income Latin American countries have challenges peculiar to developing countries while the small island developing states have the usual problems of small open economies, vulnerability to natural disasters, but with a situation made more complex by plural legal orders in some of them.

The response at the global level and the lessons learned can be summed up in the OECD-DAC⁶ guidelines for increasing aid effectiveness and development cooperation: ensure local and national ownership of the development process; promote good governance including democracy, human rights, and the rule of law; turn from traditional development projects towards more policy-based approaches and direct budgetary support; and encourage the active participation of civil society.

While rule of law for development cooperation has been around for a long time many critical factors have been neglected. Most development initiatives still tend to focus on the

official economy, the formal legal system, and other established institutions, and are implemented mostly at a national rather than a local level. For instance, programs promoting access to justice and the rule of law generally emphasize formal institutions such as parliaments, the electoral system, the judiciary, and the executive branches of government. Economic assistance tends to focus on improving the investment climate for registered or foreign businesses. Yet most people in developing countries, particularly the poor, scarcely interact with national institutions and the formal legal system. Their lives are mostly shaped by informal local norms and institutions, such as the conditions of the slum in which they live or the degree of corruption of local officials. Big national reforms pass them by. This paper proposes that a bottom up civil society driven agenda be complemented by a top down state sponsored agenda in which the poor themselves are central actors. This legal empowerment approach is described below.

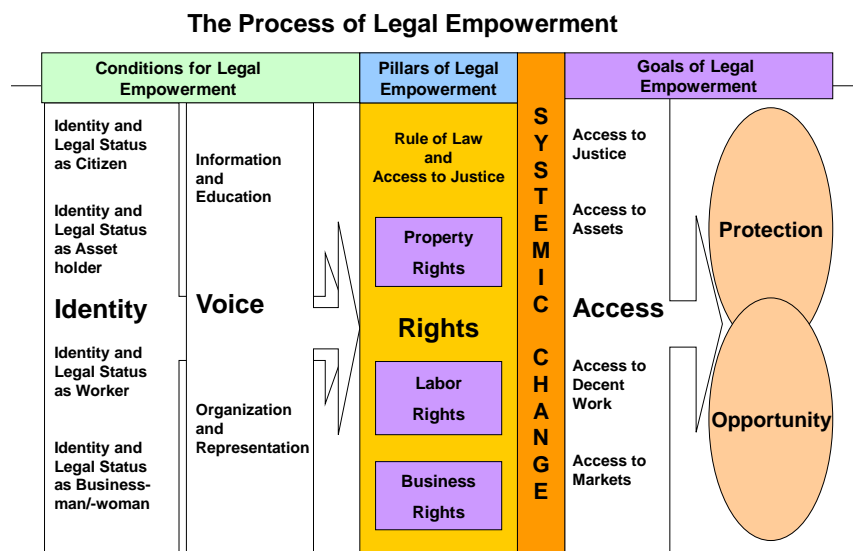
Policy Option

The ADB⁷ indicates that at the heart of their definition of poverty is the critical concept of empowering the poor to “to participate in decisions that shape their lives. They indicate that this requires citizens to have the knowledge and resources to interact in an informed manner with employers, the state, other citizens and with private and public institutions in relation to their legal rights and obligations. Legal empowerment they conclude is critically linked to the participation of the poor on issues that affect their livelihood, basic rights and security.

The Commission on Legal Empowerment of the Poor (CLEP)⁸ examined the extent to which people globally were able to use the law to protect their assets and create new opportunity to improve their livelihoods. It found that around 4 billion people, the majority of the world’s population are excluded from the rule of law. This figure included the 2.6 billion people living

on less than US\$ 2 a day, and another 1.4 billion slightly better off, but not able to use the law to obtain their rights or improve their livelihoods. At best they live with very modest, unprotected assets that cannot be leveraged in the market due to cumulative mechanisms of exclusion. The Commission declared that by design or by default, markets, laws, institutions, and politics often fail to serve the common good, excluding or discriminating against poor women and men. Democracy is often more of a mantra than a reality; the rule of law in practice is often rule *by* law, arbitrarily and unequally applied. While people in poor countries may have rights on paper, that is often where they remain. Frequently the only laws that people know are informal rules, some traditional, others more recent. Even the most developed countries are far from eradicating exclusion and legal disempowerment.

The report of the commission⁹ is perhaps the most comprehensive global treatment of legal empowerment of the poor agenda and its analytical framework and recommendations will be used here.



The schema above illustrates the analytical framework for legal empowerment of the poor as developed by the commission¹⁰. It comprises four crucial pillars: *access to justice and the rule of law, and property, business and labor rights*. These pillars reinforce and rely on each other and a lot depends on their convergence and their synergy. Legal empowerment can only be realized through systemic change aimed at achieving the civic and economic potential of the poor. But legal empowerment is not merely about legal reform. For legal *empowerment* to take place the poor must have identity and voice. Identity corresponds to proof of their civic and economic agency as citizens, asset holders, workers and business people. Without voice they will not be able to demand their rights and hold their governments accountable to their obligations. Crucially this voice needs to be based on education, information and awareness on one hand and on organization and representation on the other.

As a reform process legal empowerment requires parallel and coordinated interventions. The whole process is to be understood as iterative and the relationship between the legal empowerment process and systemic change is mutually reinforcing. Poor people who are legally empowered will have increased voice and identity; they will have more influence on institutional and legal reforms and social policies, which in turn, will improve the realization of their rights as citizens, asset holders, workers, and business people. It is an advantage in practice and in principle that legal empowerment is less prescriptive to development than other approaches, having as its aim the increased capacity of the poor, including in the public sphere, so that decisions on the nature of development are theirs rather than being pronounced by others. Development depends on more than markets and economic policy; it also depends on how laws and institutions function and relate to citizens. That in turn reflects how power and influence are

distributed in society. We will now consider some substantive examples of policy change and legal reform, which will be required to provide legal rights to the poor.

Policy Recommendations

The suggested reforms in this section are based on the commission's report¹¹ and follow the four pillars of the legal empowerment agenda.

First Pillar: Access to Justice and Rule of Law

First among rights is that which guarantees all others: access to justice and the rule of law. Legal empowerment is impossible when, *de jure* or *de facto*, poor people are denied access to a well functioning justice system. Where just laws enshrine and enforce the rights and obligations of society, the benefits to all, especially the poor, are beyond measure. Ensuring equitable access to justice, though fundamental to progress, is hard to achieve. Even if the legal system is technically inclusive and fair, equal access to justice can only be realised with the commitment of the state and public institutions. Legal empowerment measures in this domain must:

Ensure that everyone has the fundamental right to legal identity, and is registered at birth;

Repeal or modify laws and regulations that are biased against the rights, interests, and livelihoods of poor people;

Facilitate the creation of state and civil society organisations and coalitions, including paralegals who work in the interest of the excluded;

Establish a legitimate state monopoly on the means of coercion, through, for example, effective and impartial policing;

Make the formal judicial system, land administration systems, and relevant public institutions more accessible by recognising and integrating customary and informal legal procedures with which the poor are already familiar;

Encourage courts to give due consideration to the interests of the poor;

Support mechanisms for alternative dispute resolution;

Foster and institutionalise access to legal services so that the poor will know about laws and be able to take advantage of them;

Support concrete measures for the legal empowerment of women, minorities, refugees and internally displaced persons, and indigenous peoples.

Second Pillar: Property Rights

Ownership of property, alone or in association with others, is a human right. 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. Each of these components can be dysfunctional, operating against the poor. When the system fully functions, it becomes a vehicle for the inclusion of the poor in the formal economy, and a mechanism for their upward social mobility. When the entire system or a single component is dysfunctional, the poor are deprived of opportunity or discriminated against.

As reforms of property rights are inherently risky, full attention should be paid to securing the rights of the poor. Women, who constitute half the world's population, own only 10

percent of the world's property. Indigenous people and others also experience active discrimination. To ensure group rights, imaginative legal thinking is required. Providing the absolute poor with rights and access to assets means direct social interventions.

To be fully productive, assets need to be formally recognised by a system encompassing both individual and collective property rights. This includes recognition of customary rights. Embodying them in standard records, titles, and contracts, in accordance with the law, protects households and businesses. Evictions should only be an option in circumstances where physical safety of life and property is threatened, where contract agreements have been breached, or under fair eminent domain procedures. It must be by due legal process, equally applicable, contestable, and independent, and where the cost of eviction is fully compensated. Property rights, including tenure security, should not only be protected by law, but also by connecting the property of the poor to wide societal interest (by increasing the range of validation of their tenure security). The possibility is opened for the poor to use property as collateral for obtaining credit, such as a business loan or a mortgage. It encourages compliance by attaching owners to assets, assets to addresses, and addresses to enforcement; that is, making people accountable. As such, property reform can strengthen access to legal identity and to justice. Property records unify dispersed arrangements into a single legally compatible system. This integrates fragmented local markets, enabling businesses to seek out new opportunities outside their immediate vicinity, and putting them in the context of the law where they will be better protected by due process and association of cause. Legal empowerment measures in this domain must:

Promote efficient governance of individual and collective property in order to integrate the extralegal economy into the formal economy and ensure it remains easily accessible to all citizens;

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;

Create a functioning market for the exchange of assets that is accessible, transparent, and accountable;

Broaden the availability of 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;

Promote an inclusive property-rights system that will automatically recognise real and immovable property bought by men as the co-property of their wives or common-law partners.

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 recognised, so must the greatest asset of the poor – their labour and human capital – be effectively recognised. The legitimacy, even the acceptability, of the economy depends upon basic labour rights, as does the development of human capital necessary for sustained growth. In turn, the continuous improvement of labour and social rights depends on a successfully functioning market economy. The typical and tired pattern of low productivity, low earnings, and high risks must be replaced by the fulfilment of the *Fundamental Principles and Rights at Work* and the *Decent Work Agenda*, and the strategy to provide protection and opportunity to workers in the informal economy, a coalition described as an emerging global social contract. Here is how:

Respect, promote, and realise freedom of association so that the identity, voice, and representation of the working poor can be strengthened in the social and political dialogue about reform and its design;

Improve the quality of labour regulation and the functioning of labour market institutions, thereby creating synergy between the protection and productivity of the poor;

Ensure effective enforcement of a minimum package of labour rights for workers and enterprises in the informal economy that upholds and goes beyond the *Declaration of Fundamental Principles and Rights at Work*;

Increase access to employment opportunities in the growing and more inclusive market economy;

Expand social protection for poor workers in the event of economic shocks and structural changes;

Promote measures that guarantee access to medical care, health insurance, and pensions;

Ensure that legal empowerment drives gender equality, thus meeting the commitments under ILO standards that actively promote the elimination of discrimination and equality of opportunity for, and treatment of, women, who have emerged as a major force in poverty reduction in poor communities.

Fourth Pillar: Business Right¹²

The poor are entitled to rights, not only when working for others but also 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. These rights may not be equally relevant to every entrepreneur but they are instrumental in poverty eradication and economic development. They must be accessible to all the many micro, small, and medium enterprises in the developing world – many operated by women - that employ a large portion of the labour force. The success or failure of this 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:

Guarantee basic business rights; including the right to vend, to have a workspace, and to have access to necessary infrastructure and services (shelter, electricity, water, sanitation);

Strengthen effective economic governance that makes it easy and affordable to set up and operate a business, to access markets, and to exit a business if necessary;

Expand the definition of ‘legal person’ to include legal liability companies that allow owners to separate their business and personal assets, thus enabling prudent risk-taking;

Promote inclusive financial services that offer entrepreneurs in the developing world what many of their counterparts elsewhere take for granted — savings, credit, insurance, pensions, and other tools for risk management;

Expand access to new business opportunities through specialised programmes to familiarise entrepreneurs with new markets and help them comply with regulations and

requirements, and that support backward and forward linkages between larger and smaller firms.

Considerations for implementing reforms

To kick-start as controversial and deep-seated a change as legal empowerment — an approach that threatens many vested interests — the positive role of national political leadership cannot be overstated. Pursuing a particular policy, such as expanding access to justice, requires a handful of leaders who agree on what the problem is and how to solve it. Some of these individuals may emerge as *'policy champions'* who drive reform forward by marshalling a broader coalition for change within government, and by overcoming objections and obstacles.

Before proceeding very far with legal empowerment activities, a contextual analysis must be done to establish what reforms are most in demand and which have the greatest likelihood of success. Such an analysis would also give guidance to the implementation process, and tell reformers which risks need to be mitigated, and which challenges must be addressed. This improves the likelihood of success. The focus should be on social and cultural factors potentially affecting implementation, on the economic context — which can also both help and hinder — and on the openness and capacity of the state. Supplementing the inventory of these concerns should be a careful analysis of the reach and hold that informal institutions have on the poor. The full contextual analysis is the basis for a feasibility review of various empowerment scenarios.

The distribution of power and wealth also matters for legal empowerment. If ownership of land, capital, and other productive assets are highly concentrated, reformers have to be cautious about regularising the system of economic rights. Entrenching existing inequalities in ownership will negate the value of reform for the poor and can even lead to further

marginalisation. On the other hand, perpetuating exclusion from formal ownership due to unequal distribution of land and other assets may be an even worse option. Judgement must be married to context.

Legal empowerment will in some cases also create policy ‘losers.’ One example is redistribution of a right or benefit from one group of stakeholders to another when there are mutually exclusive claims to a fixed resource such as fertile land or minerals. Landlords, shopkeepers, moneylenders, and other local elites may see a threat from disenfranchised people exercising new rights or reviving latent ones. Professionals may also have a stake in maintaining the disempowering status quo, such as lawyers who would lose out if laws were translated into everyday language or if inexpensive means of conflict resolution spread. Policymakers may endeavour to minimise redistributive conflicts by expanding economic opportunities so that different interests can be negotiated to meet the needs of every side, but plenty of potential for confrontation remains as long as important stakeholders believe others’ gains come at their expense. This may be linked to the fact that the mutual payoff to legal empowerment is in the future, and not now.

Resistance may also come from government officials, court officers, and others who interpret and administer laws, statutes, and regulations. Permits, business licenses, tax assessments, and the like are sources of power and potential illegal income through bribes, kickbacks, and other ‘rent-seeking’ behaviour. Government officials who gain from these policies and legal instruments may sabotage reform. Where possible, they should be given positive incentives to support legal empowerment policies instead of resisting them — for example by offering civil servants promotions, interesting new responsibilities, training opportunities, or other perquisites if they help with implementation.

Instead of trying to block reforms outright, powerful economic actors may subtly manipulate them to their advantage — a phenomenon known as ‘elite capture.’ In many countries, for example, speculators pre-empt prospective titling programmes by buying up land from squatters at prices slightly higher than prevailing informal ones. Squatters benefit in the short term, but miss out on the main benefits of the titling programme, which accrue to the people with deeper pockets. The sequential and conditional release of funds is one strategy for countering the persistent problem of elite capture.

Collective counteraction by the poor, to secure their rights in the face of resistance, is difficult. Even if potential policy losers are a minority, such as a handful of large landholders or government bureaucrats, they will tend to organise effectively to defend their vested interests. Prospective winners may not be aware of what they might gain and may rightly fear that they will lose out if change does not happen quickly. Hence, mobilisation of allies and supportive stakeholders, and finding ways to manage the critical ones, is fundamental. Success is most reliably won when one delivers measurable and meaningful benefits to the beneficiaries.

Conclusion

Most of the poverty reduction programs in place today whether they are water and sanitation, welfare, legal aid clinics, health centres or adult literacy programs address the symptoms of poverty, because they fail to challenge the structural causes of poverty. These include the lack of fundamental rights such as access to justice, and property, labour and business rights, which are all biased in favour of the elites. While an agenda on legal empowerment of the poor will not be a panacea, and must be complemented by health and education programs, for example, sustainable poverty eradication will never be achieved without these rights and a rebalancing of the playing field. While the task is challenging, however, it has the potential of

attracting the largest section of the electorate in most Pacific Basin countries, the poor. And so in the long run could be good politics, good for the economy and good for democracy.

Notes

¹ Regional Dialogue on Legal Empowerment of the Poor in Asia-Pacific region. www.snap-undp.org

² United Nations. 1948. Universal Declaration of Human Rights.

² ADB. Empowering the Poor. www.adb.org.

³ Asia-Pacific Human Rights Centre (2010).

⁴ Sage, Caroline et al. EAP-J4P, Report of Mission to Solomon Islands.

⁵ OECD-DAC (2006) Harmonizing Donor Practices for Effective Aid Delivery. Vol 2.

⁶ ADB. (2000) Legal Empowerment: Good Governance and Poverty Reduction. www.adb.org.

⁷ CLEP. (2008) Making the Law Work for Everyone. Vol 1. Pg 19.

⁸ Ibid.

⁹ Ibid., 1: 27.

¹⁰ Ibid.,1: 5-9.

¹¹ 'Business Rights' need not yet be regarded as a new term in law but rather as derived from existing rights related to an individual doing business newly bundled together under this term on the basis of the vital instrumentality of businesses in the livelihoods of the poor.