

Integrating Legal Empowerment of the Poor in UNDP's work

A Guidance Note

July 2010

As recommended by the Legal Empowerment of the Poor (LEP) Project Management Board, this note conceptualizes an operational strategy to integrate LEP within UNDP's Practice Areas and programs and recommends possible means of implementation. It builds upon the (i) strategic direction envisioned for the program from its outset, (Fig. 1), (ii) lessons learnt from the regional consultations in the first phase¹, and (iii) feedback from a larger group of UNDP professionals from the country offices, regional centers and various bureaux. It has also benefited from the discussions and recommendations of the LEP Project Management Board (2008-2010).

1. INTRODUCTION

The High-Level Commission on Legal Empowerment of the Poor (hereafter, the Commission) was hosted and supported by UNDP from 2006-2008. The Report² of the Commission identifies some critical yet not adequately addressed causes for the persistence of poverty, viz., lack of effective protection of the law for the vast majority of poor and disadvantaged people, legal and institutional obstacles that diminish opportunities for them to leverage owned assets, if any and claim their rights and entitlements, and a host of policy and market failures. The Commission offered recommendations to address the scale of the problem and provided an agenda for change to stimulate poverty reduction and make the law work for everyone through interventions in the areas of Property Rights, Labour Rights and Business Rights³ underpinned by Access to Justice.

Approximately four billion people are excluded from the rule of law. Their lives and livelihoods are guided by informal systems that do not allow them to utilize legal frameworks to protect their assets, homes or businesses or benefit from global labour standards and an operating property rights and land tenure system. Consequently they do not have access to social protection and other opportunities to improve their quality of life by leveraging legal frameworks and institutions that fortify society. Accordingly, legal empowerment of the poor through its emphasis on social justice and equity is central to achieving the MDGs and addressing the structural causes of poverty and exclusion.

Recognizing that LEP is essential to eradicate poverty, the UN General Assembly has supported and endorsed the Commission's report and its recommendations by calling upon UN organizations and member states to undertake appropriate follow up action⁴.



Fig. 1 UNDP's 3 stages of LEP implementation

¹ The two-year timeframe provided for the LEP Project to foster understanding of LEP agenda in UNDP ends in December 2010.

² For more information about the Commission on Legal Empowerment of the Poor, see the final report "Making the Law work for Everyone" volumes 1 and 2, and visit www.undp.org/legalempowerment. The final report was launched in 2008.

³ Denote rights related to meeting the unmet demand for setting up business enterprises including the right to be registered as legal entities, principles of non-discrimination and equal opportunity to access capital and markets. It is not an established area of law or recognized as International Human Rights.

⁴ The UN General Assembly adopted two resolutions (A/RES/63/142 and A/RES/64/215) recognizing that Legal Empowerment of the Poor is essential for eradication of poverty. The UN Secretary General submitted his report to the General Assembly in July 2009 (A/64/133)

2. UNDP & LEGAL EMPOWERMENT OF THE POOR

Increasing poverty is an elemental reason for the growth of the informal economy. Informality and lack of access to economic and business opportunities, and to rule of law and justice constrain the poor and the disadvantaged populations to improve their quality of life. UNDP considers the LEP methodology - that builds on the recommendations of the Commission - as fundamental to its human rights based approach to sustainable human development and therefore to achieving the MDGs, breaking the vicious cycle of exclusion and poverty, and ensuring social justice and equitable growth.

While persistent poverty is the result of public policy failure as well as market failure, legal disempowerment and exclusion from the rule of law are important dimensions of vulnerability. Decent work is central to the human lives. A basic requirement to enrich human well being and quality of life lies in empowering the poor people by enhancing their capability to attain and sustain livelihoods. Although, both wage employment and self-employment create livelihoods in the informal economy, it is vital to ensure that the workers have access to labor rights and social protection, as well as legal rights, institutional support and governance structures to access markets and business opportunities.

Poor people rely heavily on natural resources (land, water, forests and fishing grounds) for subsistence. In the absence of effective means and abilities to enforce their rights they are unable to access these core resources or manage the necessary capacities to convert resources into assets to reduce vulnerabilities to social and physical shocks and stresses. Indigenous Peoples are often among the most marginalized and disadvantaged of any population group, with high incidences of poverty, malnutrition, illiteracy and infant and maternal mortality, and low levels of education, employment and general well being. And in many cases indigenous peoples are deprived of rights to their ancestral domains, which at best, are only partially recognized and enforced⁵.

A larger proportion of women relative to men works in the informal economy and suffers from poverty. Even though women are crucial contributors to the economic and social wellbeing of their children, families and communities, discriminatory practices in both formal and informal justice systems and absence of access to property and inheritance rights, they enjoy little protection including in case of death of or divorce from their husbands. This, in turn makes it more difficult to extricate themselves from the vicious cycle of poverty and crises.

Overall, integrated systemic changes that empower vulnerable groups and provide them with equal opportunities to reduce risk and sustain their livelihoods through access to property, labor, and business rights, and access to justice are vital to achieving the MDGs in a timely manner. LEP methodology provides such an integrated and cross cutting approach to address structural causes of poverty and exclusion by enhancing the access by the poor people to the rule of law, and equitable legislative, regulatory and policy reforms.

LEP methodology builds upon a political economy analysis of ownership of assets and access to resources and distributive justice at the local and national levels prior to designing programmatic interventions. This approach therefore offers an inclusive, equitable and effective means to poor and disadvantaged people to strengthen their livelihoods, entrepreneurship and improve overall quality of life. Also, by integrating sustainable livelihood opportunities with legal access to civil and political rights by the affected communities, LEP effectively links recovery from conflicts and disasters as an integral part of the national sustainable human development strategy.

⁵ In most South-east Asian countries there are no laws granting indigenous peoples the right to the land that they have inhabited from time immemorial. And not only is their land in urgent need of legal protection, but also their intellectual property rights because their traditional knowledge of the usefulness of a variety of natural products to human life are being increasingly appropriated and patented without any compensation to communities that have preserved natural species and have demonstrated their beneficial properties. HDR 2004 at p. 30

Legal Empowerment of the Poor – Defining Features

LEP builds upon the human rights based approach to development within the broad sustainable human development paradigm of UNDP. Accordingly, LEP:

- *Protects the basic rights that enable poor people to fully realize their economic potential and improve their livelihoods;*
- *Recognizes the importance and potential of the informal sector and ensures its inclusion in the economic cycle;*
- *Focuses on property rights, labour rights and facilitates the entrepreneurial spirit of poor people by targeting the legal conditions and enabling environment for setting up and running businesses;*
- *Supports and underscores concrete measures to empower women and children and protect their rights;*
- *Combines bottom-up with top-down approaches, and emphasizes the importance of identity, voice and representation of the poor;*
- *Translates access to justice as a basic public service and focuses on economic and social analysis and efficient delivery of justice services.*

LEP is not a substitute for other important development interventions; however it offers an integrated approach that can be contextualized across very diverse regions and countries.

3. EVOLUTION OF UNDP's LEP PROGRAMME

UNDP country offices supported several national consultations organized by the Commission. After the launch of the report UNDP supported regional launches, dialogue processes and discussions focusing on the development challenges in specific regions.⁶ In 2007 UNDP started the first global project on LEP with activities at the national level through the country offices.

The regional approach, recommended by the LEP Project Management Board in the 2009 meeting, has progressed. LEP presents an integrated approach that is driven by the national demand. While the regional demand builds upon the needs of its constituent countries the sequence of LEP activities at the national level are led by the respective priorities and requirements. For instance, the experience in Asia highlights the need for access to justice as the foundation for the work on LEP in the Region. The region comprising Arab states underscores the need to explore solutions to bringing efficiency in the informal economy and providing access to land rights. It highlights the demand for tools and mechanisms to empower poor people particularly women and children, and providing the migrants with voice and representation in the pursuit of economic inclusion. The adverse effects of unequal opportunities or lack thereof of representation, political voice and power for the poor and disadvantaged people on human development are particularly detrimental. This is because economic, political, and social inequalities tend to reproduce themselves over time and across generations setting in motion a poverty trap that does not allow the poor and the disadvantaged populations to improve their quality of life. In Europe, the programmes have mainly addressed issues around informality in the ownership of property and housing. The West-Africa region calls attention to property and inheritance rights particularly for women as key elements of the LEP agenda. (Annex 1)

⁶ Regional Dialogue, Bangkok, Thailand (Mar. 2009); Regional Launch, The Hague, the Netherlands (May 2009); Regional Conference, Cotonou, Benin (Dec. 2009); Regional Roundtable on Legal Empowerment in Cairo, Egypt (Dec.2009); Regional Launch and Second Regional on Legal Empowerment in Amman, Jordan (May 2010); High-level roundtable discussion on LEP during the European Development Days (Stockholm, 2009) jointly organised by UNDP and the Govt. of Sweden.

4. TRANSLATING LEP INTO ACTION

Given the many and often country-specific and contextual basis for legal exclusion it is useful to augment interventions by a working rationale that clearly explains the value added by LEP programming. While providing the necessary coherence to UNDP's work at the global, regional and country levels, this approach will allow necessary flexibility to tailor actions to specific contexts, conditions and requirements at the national levels.

LEP is an integrated approach that draws upon and reinforces the principles of democratic governance, poverty reduction, environmental sustainability, gender equality, private sector development and capacity development to achieve MDGs and sustain equitable development beyond 2015. It entails a cross practice methodology that is mainstreamed in UNDP's practices and supports innovative programming by focusing on critical and often interrelated root causes of persistent poverty that have thus far received inadequate attention. By presenting a systemic methodology that connects bottom-up with top-down approaches, LEP interventions tend to reinforce and enhance UNDP Practices and programmes.

The LEP programming would accordingly include a situation analysis based on diagnostics of social, political and economic assessment that

- (i) identifies legal and institutional bottlenecks constraining the poor from accessing and exercising legal rights to improve their lives and livelihoods;
- (ii) proposes policy instruments with appropriate enforcement mechanisms and capacity requirements to empower the poor people by providing them voice, representation and capabilities to enhance and optimize the benefits of access to goods and services delivery; and
- (iii) implements appropriate reforms to achieve MDGs and equitable economic growth.

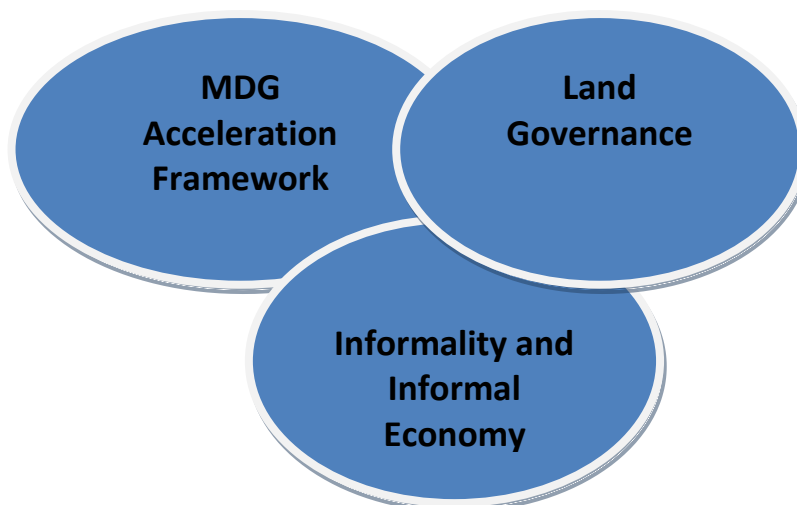
4.1 Mainstreaming Legal Empowerment in UNDP - the way forward

LEP and UNDP's Practice Areas have clear complementarities. LEP agenda is about systemic change through legal reform, institutional strengthening as well as by endowing the vulnerable with voice and representation to accelerate the achievement of MDGs. Mainstreaming⁷ LEP in the Practice Areas would be an effective starting point that, if implemented appropriately would synergistically add value to accelerate the achievement of the MDGs. In order to translate LEP interventions into the service areas of the Practices, it would be helpful to identify and activate a few UNDP-wide focus areas that call for an integrated methodology to generate fair outcomes necessary to advance the quality of life of the poor and the vulnerable population sustainably. The feasibility and sustainability of LEP strategic activities will be determined in part by their depth vs. spread based on UNDP's comparative advantages.

Based on the lessons learnt from the first LEP Project, learning from the service areas of DGG Practice⁸, and the action agenda that resulted from UNDP's international assessment of the MDGs, this strategy (i) appears to be achievable; and (ii) it provides an opportunity for UNDP to implement LEP as an innovative problem-diagnostics based operational methodology that is equipped to assist countries in accelerating the achievement of equitable development and achievement of MDGs. Accordingly, the following areas are proposed as a starting point.

⁷ Mainstreaming is not an easy process; to make it effective it must be addressed by including them in UNDAFs, CPDs and national strategic plans.

⁸ Managers of the three service lines in the DGG Practice area viz., Access to Justice, Human Rights, and Public Administration & Local Governance are already integrating LEP within their respective global programs. Other service lines in DGG e.g. Anti-Corruption, Elections and Parliamentary Development are also strategically linking LEP with the ongoing and planned work while exploring budgetary implications.



i. Breakthrough strategy for the Millennium Development Goals (MDGs)

UNDP's core message is that achieving the MDGs is possible. Despite the significant challenges, the development and international communities have the knowledge, experience and resources to close the gap. LEP provides a fresh methodology to sustain and accelerate progress to achieve MDGs by better aligning development interventions for the poorest with national MDG priorities, plans and strategies. For instance, UNDP's learning from the MDG assessments clearly shows that each country's situation is different and there cannot be a standard formula for action that applies to all. It is important to learn from experiences of the past, viz.; evidence shows that investing in expanded opportunities for women and the girl-child and advancing their economic, legal and political empowerment has strong multiple benefits for all MDGs; increasing access to energy, water and sanitation for poor people has a fundamental impact on MDG measures related to poverty, health and education. And, investing in broad access to clean energy options is critical for a more sustainable, low-carbon future for all.

Effective governance at the country level can accelerate achievement of the MDGs and capacity development is fundamental to achieving and sustaining progress beyond 2015. Robust social protection and employment programmes reduce poverty and reverse inequality. LEP approach can effectively contribute to the above areas and therefore the *MDG Acceleration Framework* (MAF) by identifying bottlenecks to MDG progress at the country-level, as well as near-term solutions to overcome them. In line with UNDP's Breakthrough Strategy the pillars of intervention under the LEP methodology will support scaled-up implementation of proven and innovative initiatives in key areas: gender, energy, water and sanitation, education, health and sustainable agriculture (including sustainable environmental management).

ii. Improving land governance and natural resources management

Land is the single greatest resource in most countries and a critical constituent of food production, provision of housing, and a basic factor of economic production and sustenance of livelihoods. The poor people and especially the indigenous communities suffer the most from unequal access to land, insecurity of tenure, and weak institutions for dispute and conflict resolution. Land rights of women are particularly weak, both qualitatively and quantitatively. Therefore, tackling women's access to land and inheritance rights, if addressed as a priority would break down barriers to achieving a number of MDGs.

Agriculture accounts for a large share of gross domestic product in many developing countries. It is primarily a family activity, a component of the informal economy with the majority of farmers being small holders. Women provide nearly fifty percent of the labour force and produce most of the food crops for the family⁹.

At the same time, well over half of the 1.1 billion people projected to join the world's population between now and 2030 may live in under-serviced slums making urban population including those living in poverty well above the rural areas. In addition these problems are further exacerbated by the often interlinked adverse impacts of climate change, violent conflicts and natural disasters, population growth, and informal settlements and urbanization.

Land governance is crucial in ensuring a viable adaptive response including efficient management of natural resources to the adverse impacts of climate change for the poor and disadvantaged people. The urgency to act decisively to address the challenge of climate change¹⁰ will consign the poorest 40% of the world population to a future of diminished opportunity.

The REDD¹¹ initiative provides an opportunity that links mitigation – including bio-fuels potentially to adaptation activities. While it can contribute to improving the quality of life of the poor and the indigenous people by providing additional livelihood opportunities, it is possible that that REDD-related activities and benefits might never reach them. The political interests and the technical complexities of implementing these systems are likely to prevent poor countries and poor people from taking advantage of the opportunity, unless major efforts are devoted to making REDD work for the poor. LEP methodology can contribute towards strengthening concerted efforts to ensure equitable benefit distribution; robust systems of land governance and accountability; effective conflict resolution; and making small-scale REDD feasible.

iii. Strengthening livelihoods and entrepreneurial opportunities in the informal sector

A livelihood is sustainable if it can recover from stresses and shocks while maintaining or enhancing the necessary capabilities and assets. Strengthening business rights would reduce the vulnerability of the poor and increase their resilience through investments in enhancing access to resources, building assets, and improving their skills to support income generation and design a living. For a livelihood to be sustainable and contribute to achieving the MDG 1, it must lead to a surplus beyond immediate consumption requirements to allow additional resources for overcoming shocks and stresses, when required.

In most of the developing countries the informal economy is large and it is increasing. The size of the informal economy is inversely related to economic development and there is a significant correspondence between working in the informal economy and being poor. Income generating activities for majority of the women in the developing countries take place in the informal sector. However, a large number of informal businesses in an economy is not a sign of its underdevelopment; it is rather a reflection of the fact that these enterprises are confined to subsistence and insufficiently productive activities. Also, conflicts and natural disasters are causing migration from those areas to developing countries with relatively greater economic strength in order to seek out entrepreneurial and business opportunities. These migrants glide into the burgeoning informal economy of the countries of destination and in the absence of inclusive development processes, informal economy would continue to expand.

⁹ The recent review by the Independent Evaluation Group of the World Bank assistance to agriculture in sub-Saharan Africa makes a pressing case for the necessity of access to credits and markets, roads, fertilizers, seeds, water, etc. by the impoverished farmers to sustain their lives and livelihoods.

¹⁰ UNDP. (2007) Human Development Report 2007. *Fighting Climate Change: Human Solidarity in a Divided World*, Palgrave Macmillan

¹¹ Reduced Emissions from Deforestation and Forest Degradation

Nearly all informal workers are among the poorest citizens of their respective countries, and they lack education, money and the ability to obtain formal, permanent work. The gender bias in the informal economy is probably underestimated and women are more likely to be engaged in those informal activities that are under counted including production for own consumption and paid domestic activities in private households. The term informal economy has come to be widely used to include the expanding and increasingly diverse group of workers and enterprises in both rural and urban areas operating without recognition under legal and protective frameworks and characterized by a high degree of vulnerability¹².

Informal economy is differentiated in terms of production units as well as employment status. Informal may therefore refer to features of types of firms or it may refer to employment. It may also be characterized as an activity or the type of an activity. Informal economy includes “small” unregulated enterprises and employment relationships that are not formalized and leave much to be desired in terms of providing social protection and reduction of vulnerability.

The decent work deficits are most pronounced in the informal economy with suppressed wage levels and little or no social protection¹³ leaving informal workers trapped in poverty not to mention child labour and exploitation of unregistered migrants. Working conditions in the informal economy are often unsafe, uncertain, and poor in terms of remuneration and occupational health and safety, including sexual harassment and violence against women. Furthermore, wages are suppressed below adequate levels and fail to reward productivity or long service.

Most entrepreneurs in the informal economy do not have access to risk management and safety net mechanism tools. Even though, social protection contributes to inclusive growth, social stability and enhanced productivity, only twenty per cent of the world's population has access to adequate social security benefits. Social protection, including large scale employment and conditional cash transfer programmes, when backed by legal empowerment, will enable poor and vulnerable persons to better manage economic and social risks, such as unemployment, exclusion, sickness, disability and old age.

Enabling environment, capacity and institutions that will enhance access to finance and safety net mechanisms are critical for the informal entrepreneurs and require innovative approaches. The challenge to make the “missing markets” play a economic role in job creation as well as service delivery does not lie as much in technological solutions to production and distribution but in structuring institutions, public private partnerships, capacities, incentives and regulations to provide certainty to economic exchange and thereby promote economic growth. The provision of sustainable, high quality and affordable basic services to the poor and disadvantaged people needs capacity development support for greater engagement of the communities and ownership of the activities by the different stakeholders. These are critical constituents of generating entrepreneurship/livelihoods and well within the LEP domain.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_13166

