Chapter
FOUR

Business Rights

EXECUTIVE SUMMARY

"The opposite of poverty is not wealth – it is justice. The objective…is to create a more just society, not necessarily a wealthier one. And the great question is how do we do this?"

Leonardo Boff, Franciscan Theologian, Brazil

Work is central to our lives. Earning a livelihood is not only a basic need, it is a requirement for enriching our sense of well-being and the quality of life in general. Underpinning a system that contributes to employment generation and to the ability to earn a living are the savings, investment and innovation undertaken largely by businesses.[1]

Persistent poverty is the result of both public policy failure and market failure. The two are related as prevalent policies and the resulting system of governance, institutional structure and legal rights tend to characterize and limit the function of the economy, markets and businesses, and define what they can do and what they are allowed to do.

This report attempts to outline how legal mechanisms can empower millions of working poor who apply initiative and entrepreneurship to earn their living in the informal sector of economies across the world. It begins by outlining the barriers that entrepreneurs face in accessing opportunities in the formal economic system. Case studies are presented to illustrate some solutions and innovations; they are intended to be studied, adapted and scaled up. The report concludes by underlining essential principles and key considerations in moving reform frontiers towards more inclusive, gender responsive and integrated economies.

After examining current policy reform in private sector development as well as innovation in institutional design and business linkages, our working group for this chapter concluded that legal empowerment of informal businesses can serve to promote **rights-based economic empowerment**. Legal recognition of labour and commercial rights of business and its incorporation into governance institutions should be at the core of legal mechanisms to empower informal business.

Productivity and protection can and should be promoted together. This two-pronged approach could help to remove barriers in the wider legal/regulatory/market environment; it could do this by changing or simplifying registration and licensing procedures and extending greater legal rights to the working poor. This would serve to empower the working poor to know and demand their legal rights, negotiate with officials, bargain more effectively in market transactions, and enforce contracts or seek redress when contracts are violated. It would also permit them to be represented in relevant policy-making and rule-setting bodies.

Informal and formal businesses are inextricably linked. There are a variety of reasons for lack of adherence to legal and regulatory requirements by informal businesses. Non-compliance means greater profits for informal businesses, or it could be that the requirements are irrelevant, inappropriate, or non-existent for informal businesses. Possibly, informal businesses cannot afford to comply with the regulations. Also, many do not know what is required, or they may be unsure as to what advantages there could be under 'formal' status. Because of the uncertainties, informal businesses continue to chart out for their own operational support, building networks and informal contractual arrangements grounded more on social mores than on any legal basis. Legal, policy and regulatory reform and innovation, derived from what works for the poor and what would guarantee their fundamental rights, is long overdue. Millions of working poor men and women have no knowledge of what rights they are guaranteed under national and international law, or of government obligations to provide or facilitate infrastructure, as well as financial, technical, and business services. With support of civil society organizations, or through their own associations, they are beginning to demand some form of legal identity or protection for themselves and their livelihood activities.

The response is a reform agenda that prioritizes approaches to achieving the objectives, and determines the order in which the selected measures are to be introduced. This would serve to optimize the productive potential of informal entrepreneurs and facilitate the protection of their businesses. As for the objectives, they are broadly listed as follows: reducing regulatory burdens; removing unnecessary barriers to formal markets and institutions; increasing opportunities for business linkages; increasing benefits and protections for all working in the informal sector; strengthening the organization and representation of the informal entrepreneurs, and providing equal access of working poor women and men to all of the above.

Additionally, improvement in the quality of institutions in an economy has to proceed simultaneously with the transformation of the nature and efficiency of its informal economy. Learning from institution-building experiences of industrialized countries and those in transition as well from other developing countries, can be valuable. There are some good-practice examples from around the world that illustrate how the constraints of informal businesses have been successfully addressed through successful institutional and policy changes. At the same time, national and local level institutional changes can be initiated implicitly with the introduction of new economic activities that may well provide direct and measurable benefits.

The Informal Entrepreneur

Street vendors, rural milk hawkers, millers and ginners, small food cart pushers, shoe shiners, the itinerant fix-it technician, the roadside hairdresser and food caterer – these are the informal entrepreneurs who are vibrant visible economic players in the poorer countries of the world. As an observer suggests, they are "the true entrepreneurs - more flexible, efficient and resilient than the over-regulated and overprotected dinosaurs of the formal sector...."[2] These entrepreneurs are called informal because they operate to some extent outside the realm of formal legal regulation and protection, and without easy or full access to the advantages of formal financial and business support systems.

There are some 500 million working poor earning less than $1 per day (ILO 2004). The vast majority earn their living in the informal economy, occupying land they do not own, working in small, informal businesses, and relying on family or friends for informal money lenders for loans. Often, they have limited access to broader economic opportunities and are especially vulnerable to the uncertainties, the corruption and even the violence prevalent outside the rule of law. They have little or no access to settling disputes using the legal machinery. Without legal rights or protections, they are in a continual state of legal and political vulnerability. Informality, therefore, limits the opportunity for economic and social development for individuals, families, businesses, communities, and even entire nations.

The ILO defines the informal economy as accommodating "all economic activities that are –in law or practice- not covered or insufficiently covered by formal arrangements." [3] It includes wage workers and own-account workers and contributing family members. Informal entrepreneurs are the working poor who run very small enterprises. These include micro-entrepreneurs who hire workers and two kinds of own-account operators, namely, heads-of-family businesses and single-person operators.

Around the developing world, women tend to be concentrated in the low-end forms of own-account work, and they are under-represented among micro-entrepreneurs. On average, earnings in informal enterprises are low while costs and risks are high, particularly for own-account operators, but especially for women operators.

Legal Empowerment and Legal Identity

Legal empowerment of the poor, such that their entrepreneurship is linked to greater economic opportunity, means not only reform in legal codes but also policies to correct asymmetries in access to information, education and training, and access to financial, technical and business services. Additionally, the vast assortments of legal and regulatory rules and administrative systems, in which businesses are embedded, have to be examined. A fundamental premise to all change is that the legal identity of individuals as citizens and as entrepreneurs or workers must be clearly established. For example, identity verification is essential to commercial dispute resolution procedures and to local governance concerns. Similarly, property rights have "to be given to actual people, who themselves—in order to advance and defend their access to and possession of such rights—first must be able to formally verify their personal status and identity. A crucial pre-requisite, then, to enhancing the quality of property rights is ensuring that residents/citizens have recognized documents (such as birth, death, marriage and divorce certificates) verifying such basic information as their name, age, sex and marital status."[4]

Based on evidence, we argue that there is need for an effective and enabling environment, regulatory regime, commercial law and good economic governance for allowing business to operate with equitable economic rights and guaranteeing greater accountability in the government's ability to issue laws and the capacity to implement and enforce them. This process should empower the poor to use law and legal tools to prevail over poverty, while persuading the government to equitably enforce its policies and regulations and reinforce the role of the civil society in implementing greater accountability of all actors and at all levels. Sound economic governance is built upon principles of equity and equality of opportunities. Public policies and action therefore must support access to and distribution of assets, economic opportunities, and political voice participation in decision making that promote sustainable enterprises. In order to effectively address the challenge to "level the playing field," governance structures have to emphasize greater investment in the human resources of the poor, guarantees on business rights for all and fairness in markets. Countries with pervasive inequalities in wealth, resources, weak institutions, and power typically experience narrow financial sectors that meet the needs of the privileged and the influential. Among the many market failures in developing countries, notable are those in the financial markets including those for credit, insurance, land, and human capital. With the consolidation of market power in a limited number of large banks, lending tends to get biased in the favour of enterprises that are low risk and may exclude those with the highest expected risk-adjusted returns. Access to finance is essential for businesses; however businesses in the informal economy lack access to financial markets and the capacity to compete in product markets.

The higher the levels of inequities, the greater would be the propensity of the institutions and social arrangements to favour the interests of the influential and the privileged. Inequitable institutions generate economic costs, which are avoidable. It is therefore important to make sure that business rights do not provide exclusive benefits and are not enforced selectively so that, both middle and poorer groups end up with unexploited capacity.

An Integrated Economy Approach

Legal empowerment measures have to take place within a policy and regulatory approach which recognizes that the two parts of the economy – formal and informal -- do not exist independently of each other. There is a constant exchange of ideas, people, skills, goods and services between the two parts. At the base of the private sector are millions of small, micro, and mini entrepreneurs, who provide the bulk of the raw material for formal sector production, engage intermittently as labour in the formal enterprises, and use products made in the formal sector. Those who have been employees in the formal sector and have acquired new techniques, capabilities and business contacts, often move into the more flexible informal sector and set up their own businesses. If relationships between different levels of economic activity are to be anticipated, made strategic and optimized, policy and institutional change for sustained business linkages and skills development has to take place. Those who work in the micro-enterprises, and own-account workers within supply chains that lead into the formal sector, have to be accorded legal protection on a par with enterprises and workers in the formal sector.

Successful design and support of appropriate policies and institutions for an integrated economy must begin with analysis of innovations emerging at the interface between the informal and formal. Small producers and micro entrepreneurs are daily developing strategies for dealing with the demands of formal institutions, while the latter have also developed ways of managing their inevitable encounter with those who are the majority in the poorer countries of the world. These coping strategies hold clues as to what development interventions can and should build upon, within the context of particular cultures, economies and industries. Contextual specificity, and lessons from on-the-ground experience, are important principles for policy and institutional innovations for an integrated and inclusive economy.

Analysis of current practice could provide guidance for the move from a bifurcated to an integrated, cohesive approach to entrepreneurship and economic activity. First, in order to encourage greater engagement between established formal businesses and the smaller enterprises, transaction costs and risks of such engagement have to be reduced. Second, the public sector has to develop and implement participatory processes so that support is relevant to those on the fringes of formal activity. Third, change has to be negotiated through iterative dialogue and partnerships spanning across central and local governments, the private sector, domestic capital markets, producer groups and their social and economic organizations. Fourth, the function in micro and small scale entrepreneurial activity of "immediate and direct reciprocities"[5] has to be recognized; in many low-income communities, economic activities and arrangements are embedded in social relationships. How social relations and values, not just market forces, affect the modus operandi of millions of entrepreneurs has to be brought into economic reform considerations. How social and cultural norms condition the modes of production and overall situation of women entrepreneurs and indigenous peoples is particularly pertinent to this consideration.

The Reform Agenda

Our working group for chapter 4 of this report recommends the following as **key messages** in the legal empowerment of informal businesses:

1. Policy Stance

- Legally empowering small informal businesses run by poor individuals or households should be seen as a central pillar of a just society and a central strategy for reducing poverty and inequality.
- Most policies and the global economy currently accord privilege to large firms/enterprises over small firms/enterprises.
- Informality is here to stay and is an essential feature of the global economy.
- Poverty and exclusion go hand in hand. The poor have no choice but to accept insecurity and instability as a way of life. Our reform agenda reflects the realities of poverty and exclusion experienced by poor people, and therefore focuses on removing the barriers that hold the poor back, and building a framework of laws and institutions to provide genuine protection and opportunity for all. This will require wholesale systemic changes to all facets of the legal framework, including: the **political process, economic policy, law-making, public administration**, and **law enforcement**.
- While national governments and the international community should seek to create as many formal jobs as possible and formalize as many informal enterprises and jobs as possible, informality is not going to disappear. The real challenge will be to reduce the 'decent work *deficits'* of those who work informally, especially the working poor.
- Poor people's enterprise does play a vital role in the economies of many countries, and the poor therefore have a right to earn a living free from harassment, extortion, beating, wrongful eviction, expropriation and exploitation. They must be offered equal opportunity to access local, national and international markets.
- Commercial rights for informal entrepreneurs/operators should be seen as an essential part of a package of rights for the working poor in the informal economy. This would include property rights, labour rights, the right to social protection, and the right to organize and to be represented in policy-making and rule-setting institutions and processes.
- Other than social protection (property, health, life, disability, old age) that is relevant for wage

workers as well as the self-employed in the informal economy, commercial rights are relevant to the half of the working poor in the informal economy who are self-employed.

- Of the half of the working poor who are self-employed, the larger and more vulnerable group are own-account operators, including both single person operators and those who work in family businesses or on family farms.
- Productivity and protection can and should be promoted together.
- Economic policies should address issues of redistribution.
- Legal empowerment will stimulate growth which is on its turn a pre-condition to reduce poverty.

2. Policy Positions

- On basic commercial rights: right to work, including right to vend; right to a work space (including public land and private residences) and to related basic infrastructure (shelter, electricity, water, sanitation).
- On intermediary commercial rights: right to government incentives and support (including procurement, tax holidays, export licensing, export promotion), and right to public infrastructure (transport and communication).
- On advanced commercial rights: entity shielding rules, limited liability and capital lock-in rights, mechanisms for perpetual succession of the firm and transferring its value, mechanisms to allow the use of standardized accounting, mechanisms to establish firm, manager and employee liability rights, protect minority shareholders and default rules.

3. Policy Process

- Seeks to reduce the 'decent work deficits' of those who run informal businesses.
- Includes representative voices of the working poor in the informal economy.
- Recognizes and addresses bias in existing commercial policies, regulations, laws, and procedures that favour larger firms/enterprises.
- Seeks to extend government incentives and procurements to the smallest informal enterprises.
- Seeks to build backward and forward linkages on fair terms between larger and smaller firms.
- Promotes social protection for informal operators (property, health, life, disability insurance), and does retraining, life-long learning and other support to mobility.

4. Practical Strategies

Good practice examples from around the world could help in devising local needs-based models to address local issues and constraints.

5. **Policy Debates** on formalization of informal businesses. Formalization could take on different forms, including:

- Expanding formal employment opportunities.
- Creating incentives for informal enterprises to formalize, such as:
  - Simplified registration procedures and progressive registration fees.
  - Supportive investment climate.
  - Fair commercial transactions between informal enterprises and formal firms.
  - Appropriate legal and regulatory frameworks, including enforceable commercial contracts, property rights and use of public space.
  - Tax-funded incentives, including: government procurement, tax rebates, and tax-

funded subsidies and incentive packages.
  - Provision of financial, business and marketing services.
- Creating mechanisms and financial arrangements to provide social protection for informal producers.
- Promoting participatory policy processes and inclusive rule-setting institutions that involve representatives of associations of informal entrepreneurs.

The broad effect of reform in attaining legal empowerment will not only improve the well-being and livelihoods of individual entrepreneurs; it will also result in enhanced social protection, as well as increased productivity and asset base of poor people and of the nation as a whole.

I. Introduction and Framework

Since the phrase 'informal sector' was coined in the early 1970s [6] to describe the range of subsistence activities of the urban poor, there has been considerable debate about its definition. The informal sector is not homogenous; it encompasses different types of economic activities, different labour relations that range from the self-employed, paid and unpaid, to disguised wage workers and economies with different economic potential that includes survivalist economies and successful micro and small enterprises. In effect, the term 'informal economy' is more appropriate as it comprises the informal sector while not excluding possible linkages of informal operators with the formal sector.[7]

Generally speaking, informal economy encompasses the expanding an increasingly diverse groups of workers and businesses in both rural and urban areas, operating informally – i.e., they are not recognized or protected under the legal and regulatory frameworks. The national and local economies continue to be a continuum that ranges from informal to formal. The informal economy has been growing at a rapid rate throughout the world, including in the industrialized countries. In recent years, much of the employment potential within the developing countries has been found in the informal economies and, hence, in the informal enterprises. In these countries, a much higher proportion of those working in the informal economy are poor, with the share of women relative to men being much higher.

Accordingly, the legal empowerment agenda for business rights emphasizes reforms, creating mechanisms and financial arrangements to provide social protection for informal producers.

Good initiatives have been undertaken by ILO, the World Bank, USAID, among other organizations, to provide the poor and the disadvantaged with the legal and institutional environment and the rule of law in order that they might better develop their capacity to use their own talents, energy and initiative for accessing livelihood resources, and assets to generate efficient and productive enterprises. The ultimate goal is to guarantee sustainable livelihoods for all – along the continuum from the informal to the formal economy. The approach: reorienting gender-based development strategies to eradicate poverty. This requires (1) a better understanding of the informal businesses and enterprises within the context of the formal and informal continuum, and (2) an integrative strategy to design a system of business rights that provides solutions to the lack of social protection, lack of representation and voice, and leads to more efficient economic functioning, greater trust and reduction in conflict, and improved institutions with dynamic benefits for equitable investment and growth.

This chapter on Business Rights presents evidence to demonstrate that the inequality of business opportunities available to the poor is uneconomical and detrimental to sustainable development and poverty reduction. It will also provide policy and rule of law implications emerging from removal of bureaucratic and administrative inefficiencies in the life cycle of businesses and the study of market failures, particularly at the local levels, while building upon the broad concept of levelling the playing field - politically and economically – in the domestic and global arenas.

Why Business Rights? And why now?

We live in world of increasing inequities. The richest 2 percent of adults own more than 50 percent of global assets. The poorest half of the population holds only 1 percent of wealth.[8] Unprecedented affluence co-exists with astonishing deprivation, persistence of poverty and unmet basic needs, violation of fundamental political freedoms, and neglect or even absence of lawful privileges that uphold basic civil liberties for a significant proportion of the population. Nearly 40 percent of the world's 6.5 billion people live in poverty of which, a sixth live in extreme poverty.[9] The number of people living in extreme poverty in Africa has nearly doubled from 164 million in 1981 to 316 million in 2001. Even for the rest of the world, extreme poverty today has increased by nearly 3 percent from 1981.[10] While the deprivations indicated above are more common in the less wealthy countries, they exist in, one form or another, in rich countries too.[11]

Work, being central to our lives, is a basic requirement to enriching human well-being and the quality of life in general. Work empowers people to enhance their ability to attain and sustain livelihoods, while it is largely left to business to create savings, investment and innovation that contribute to livelihoods and to employment generation.[12] Persistent poverty may be blamed on both public policy failure and market failure. Interestingly, the two are related in that prevalent policies and resulting systems of governance structure and legal rights have largely served to characterize the function of the economy, markets and businesses, and to define what they can do and what they are allowed to do. Therefore, an integral constituent of poverty reduction must have to do with empowering the working poor to access opportunities that could be created by reducing economic, legal and social inequalities.

Businesses, generally speaking, constitute the private sector; they are usually led private individuals, communities and corporations. In many developing countries, however, informal enterprises overshadow the private sector and their number is increasing. Creation of good quality jobs is determined to a large extent by enterprise creation, innovation and expansion. Where the potential for entrepreneurship, creativity, dynamic and productive job creation is stifled, either through onerous legal procedures and institutions or through inequities represented by vested interests and inadequate enforcement, entrepreneurs will gravitate towards the informal economy.

Informal firms and enterprises account for more than 50 percent of all economic activities and some estimates conclude that over 30 percent of the developing world's GDP and 70 percent of it workers are outside the official economy.[13] The size of the informal economy is inversely related to economic development and, while, at the same time, there is a significant correspondence between working in the informal economy and being poor. However, a large number of informal businesses in an economy are not per se a sign of its underdevelopment; they are, rather, a reflection of the fact that these enterprises are confined to subsistence and insufficiently productive activities.

Informal Economy and Informal Businesses

The informal economy in Africa is estimated to have been 42 percent of GDP in 2000. While Zimbabwe, Tanzania and Nigeria were at the high end with the informal sector representing 59.4 percent, 58.3 percent and 57.9 percent of respective GDP, Botswana and Cameroon were at the lower end, with 33.4 percent and 32.8 percent respectively. At the turn of the century, 93 percent of the jobs created in Sub-Saharan Africa were in the informal economy,[14] with almost 80 percent of non-agricultural employment and over 60 percent of urban employment.[15] In Latin America, the average size of the informal economy was 41 percent of GDP with Bolivia as the largest informal economy at 67.1 percent, and Chile as the smallest at 19.8 percent. In Asia, the range varied from Thailand at 52.6 percent, to Singapore with 13.1 percent. In transition countries, by far the largest informal economy was in Georgia with 67.3 percent, and at the lower end were the Czech Republic with 19.1 percent and the Slovak Republic with 18.9 percent.

In the recent years, the lion's share of new employment in developing countries has been in the informal economy. Activities in the informal economy provide certain benefits to a marginal few. Also, while some activities in the informal economy provide viable livelihoods with reasonable incomes for some, most informal workers earn insecure incomes under conditions that are not on par with decent work standards.[16]They do not, for example, receive medical or other benefits.[17] In effect, the decent work deficits are most pronounced in the informal economy where most workers have little or no social protection and receive little or no social security. Also, poor respect and lack of freedom of association make it difficult for these workers and their employers to organize.[18] In addition, working conditions in the informal economy are often unsafe, uncertain, and poor in terms of remuneration. Other concerns are poor occupational health and safety arrangements, and real fears for sexual harassment and violence against women. Furthermore, wages are suppressed below adequate levels and fail to reward productivity or long service.[19] Finally, the lack of social protection measures, such as rights and representation, leave many in the informal work force trapped in poverty.[20] 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.[21] It is important to add that a larger proportion of women relative to men works in the informal economy and suffers from poverty.

Legal Empowerment and Business Rights

The informal economy includes a growing and increasingly diverse group of workers and rural and urban enterprises operating informally. While the informal economy comprises both production units of various kinds and elements of employment status, this paper will focus mainly on business rights relating to small entrepreneurs and the self-employed. Business rights are integral components of the strength of an economy. While millions in the informal economy may be wage labourers, consisting of paid, unpaid and disguised wage recipients in 'value chains', engaged in survival-type activities, there are nevertheless a significant proportion of poor people who are self-employed in micro-enterprises, operating their own business ventures, or contributing family workers, or employees.

The problems and needs under each of these categories may be different, but they nevertheless fall into the 'informal' category because they lack recognition or protection under the legal, institutional and regulatory, judicial and dispute resolution frameworks. They also lack access to the advantages of formal financial and business support systems. In addition, they are excluded from, or have limited access to, public infrastructure and other benefits of the public goods as well as to markets and they are therefore unable to be competitive or efficient in managing their activities. This, in turn increases their vulnerability to natural, social and political shocks and stresses and places doubt on the sustainability of their livelihoods.

It is argued that prevalence and increase in informal business is a consequence of inequitable policies and discriminatory enforcement that fail to give support to those businesses and entrepreneurial opportunities in which tangible benefits might accrue to the poor. Accordingly, for most small entrepreneurs and self-employed people, working in the informal economy is a survival strategy rather than an option.

Balancing Human Rights and Market-Based Approach

Legal empowerment aims to address relative deprivation in all forms, including social, political and economic dimensions in the pursuit of a life of choice, freedom, respect and dignity. The issue of equity, in having rights and being able to enforce them, is critical, as it relates to the disparities in capabilities which reflects on access to wealth and resources as well as to ownership of assets. While the rich and privileged can protect themselves and their rights by legal means as well as by influence and connections, the poor must rely on legally enforceable rights. The recognition of human rights is therefore necessary. Equally necessary are the legal means and capacities to enforce those rights through accessible and effective institutions and processes that are transparent, participatory and accountable. At the same time, institutional reforms designed to eradicate poverty need to be put into place to ensure that state and public policies work, that regulation to create greater equity is in place, and that the system will work to help the poor and the disadvantaged to create wealth – even through entrepreneurship.

Public investments are crucial for developing that kind of 'private based economy' that could allow the private sector to create employment and sustain long- term economic growth. In the absence of the provision of adequate infrastructure, health services and education, market forces alone can accomplish little. Existence of markets is a prerequisite for survival and sustainability of businesses and entrepreneurs. While the freedom to enter a market[22] is a vital constituent of development, the level of access and representation in those markets determines the formal or informal character of an enterprise and what it can accomplish. Again, the markets cannot function in the absence of effective and equitable public policy, rule of law, regulation, social support and political freedoms. In principle, the markets, in addition to creating economic efficiency, can also encourage greater economic equity. This would, however, depend on the structure of markets, their governance and associated legal rights, and the nature and extent of their inclusiveness as reflected through active business enterprises.

Private institutions are willing to develop innovative partnership models to provide greater access to goods and services by the poor. But they require assistance through appropriate policies and strengthened capacities to remove barriers to the market creation and provide greater market access to the entrepreneurs in the informal economies. At the same time, governments should not hesitate to step in, possibly in the form of public-private partnerships, that would encourage private institutions to meet the demands of the poor and enhance market access in rural and underserved areas[23].

Economic success requires getting the balance right between the government and the market, in terms of who should provide the goods and services and how they should be provided. Any successful development strategy demands the existence of equitable access to markets by all and requires involvement of government, markets and the private sector, and the civil society.

Voice, Representation and Effective Economic Governance

It is essential to build upon and refine the above issues in the context of the work of the Commission on Legal Empowerment of the Poor (CLEP) and reform the development agenda by broadening the discussion of business rights and informal economy in a comprehensive manner that goes beyond formalization *per se*. It will emphasize that the legal empowerment of the poor to create and operate their enterprises and generate livelihoods sustainably requires them to have a voice in all aspects of policy making, implementing and enforcing, and to have the ability to work with governments and other stakeholders to create new rights, capacities, and opportunities.

The adverse effects of unequal opportunities of representation and political voice and power for the poorer people on human development are particularly harmful because economic, political, and social inequalities tend to reproduce themselves over time and across generations, setting into motion a poverty trap that does not allow for improvements in the quality of their lives.

Business rights should result in the creation of an efficient and inclusive private sector with a sound domestic macro environment, having trade policies, institutional foundations and adequate capacity for maximizing benefits from the macro global environment and promoting distributional equity.

There is evidence, we believe, to argue the case for an effective and enabling environment, for a regulatory regime and for commercial law, as well as good economic governance that would allow business to operate with equitable economic rights and guarantee greater accountability in the government's ability to issue, implement and enforce laws. This would empower the poor to use law and legal tools to prevail over poverty, while persuading the government to equitably enforce its policies and regulations and reinforce the role of the civil society in implementing greater accountability of all actors and at all levels. Sound economic governance is built upon principles of equity and equality of opportunities. Public policies and action, therefore, must support access to and distribution of assets, economic opportunities, and political voice participation in decision-making that works to promote sustainable enterprises. In order to effectively address the challenge of 'levelling the playing field', governance structures have to emphasize greater investment in the human resources of the poor, guarantees for business rights for all, and fairness in markets.

Greater Access to Markets, Goods and Services, and Infrastructure

It is vital to have functional legal principles and mechanisms that will enable entrepreneurs and businesses in the informal economy to have greater access to goods and services and markets so they can build productive and efficient business enterprises. At the minimum, this requires the existence of equitable opportunities for the poor to create, run and manage a business. In turn, it translates into strengthened capabilities of the poor to access and effectively use resources, infrastructure, and *constituent components*[24] of a business and factors of production. With such assurances, they could efficiently transform their labour into a successful business. They could manage it to obtain certain profit, and use the secure asset base to expand that business successfully. For a business to be sustainable, the entrepreneur should have the ability to manage a high level of personal, professional and financial risk, as well as the risk of physical, environmental and socially adverse impacts, in addition to the capacity to recover from those shocks.

In the presence of missing or imperfect markets, the distribution of wealth and power affects the allocation of investment opportunities. Achieving economic efficiency would necessitate the combination of actions relating to correction of the market failure as well as measures to provide greater access to services, assets, and political influence by the disenfranchised suffering from adverse impacts of inequitable development strategies.

Inclusive Financial Services

Countries with pervasive inequalities in wealth, resources, weak institutions, and power typically experience narrow financial sectors that meet the needs of the privileged and the influential. Among the many market failures in developing countries, the most notable are those in the financial markets, including those in the areas of credit, insurance, land, and human capital. With the consolidation of market power in a limited number of large banks, lending tends to get biased in the favour of enterprises that are low risk. This may exclude those with the highest expected risk-adjusted returns. Access to finance is essential for businesses; however businesses in the informal economy lack access to financial markets and the capacity to compete in product markets.

Over 4 billion people globally are currently irrelevant to the banking system. Normally, access to commercial banks by the low income and rural populations is limited in terms of physical distance to the closest branch of the bank and also because of thresholds in account fees or minimum required balances. While large companies are well served by existing banking system, low income and rural individuals, micro-entrepreneurs and small sector enterprises are particularly under-serviced by the financial industry. For instance, nearly 741 million Indians in rural areas are poorly served, despite a huge demand for financial services, including an estimated annual credit demand exceeding $10 billion.[25] Similarly, those in the informal economy are not covered by safety and health regulations and are not, therefore, eligible for social security benefits, pensions or other forms of social protection.

Enhanced access to basic financial services – savings, credit, insurance, pensions and tools for risk management – is a critical input for emerging and potential entrepreneurs to leverage economic opportunities and improve their quality of life. The ability and willingness of private financial institutions to provide access to inclusive financial services would depend on appropriate policies, existence of relevant human and institutional capacities that would remove barriers to the market creation, as well as incentives to partner with the private sector to provide broader market access to the entrepreneurs who require greater facilitation and empowerment. At the same time, the government should not hesitate to step in through policies, regulations and incentives to encourage private financial institutions to garner savings, long term credit and market-based social protection instruments in rural and underserved areas.[26] The regulatory structures, therefore, have to ensure broader access to financial services, particularly for the poor, as well as a deepening of the financial sector and establishment of greater accountability.

Institutional Changes

The higher the levels of inequities, the greater would be the propensity of the institutions and social arrangements to favour the interests of the influential and the privileged. Inequitable institutions generate economic costs, which are avoidable. It is therefore important to make sure that the business rights do not provide exclusive benefits and are not enforced selectively, which would leave both middle and poorer groups with unexploited capacity.

As the realms of institutional and economic development are reciprocally related, knowledge of national and local contexts is critical. Therefore, international comparisons of 'ease of doing business' need to take into account the reality of the nature, quality and experience of different countries. Although the private sector in developing countries is largely comprised of informal businesses, the character and attributes of the informal sector will most certainly vary from one country to the next. It would therefore appear that the effectiveness of recommendations on the convenience of doing business should be measured by the extent to which the proposed changes are mainstreamed and translated into improved performance of the institutions and their operating environment. Without such measure, the expected increase in foreign investment would be illusory.

Because the informal economy and informal businesses are predominantly local, the criteria determining ease of doing business must incorporate the needs of the informal businesses. Subsequent recommendations should therefore encompass and be judged by the ability of the macro-level changes to the business climate to impact local-level institutions and, therefore, businesses in the informal economy.

Improvement in the quality of institutions in an economy has to proceed simultaneously with the transformation of its informal economy. Valuable lessons can be learned from the institution-building experience of the industrialized countries and those in transition, as well as from other developing countries. There are good-practice examples from around the world that illustrate how constraints of informal businesses have been successfully addressed through institutional and policy change. At the same time, national and local level institutional changes can be initiated implicitly by launching new economic activities that provide direct and measurable benefits to those who will be influenced by institutional change. As the process continues, the ability of a population, impacted by institutional change, to realize tangible benefits will provide proof of their ownership. Over time, the economic activity becomes an agent for and a catalyst of demand for appropriate institutions.[27] For instance, economic empowerment based on economic activity is a step towards gender equality,[28] even if it is not synonymous with it. Linking creative economic activities with business rights in the informal economy has an added advantage in that it allows learning-by-doing in implementing institutional reforms. It also allows for synergistic linkages between reforms from above (including those initiated by governments or promoted by international organizations) with effective action from below (by civil society organizations and organizations of the poor themselves).

Pursuing the Agenda for Change

The emphasis of the document is placed on creating larger options and opportunities for entrepreneurs and businesses in the informal economies to operate proficiently and equipping them with capabilities, enabling environment and equitable governance systems to make correct choices to maximize their welfare.[29] The Legal Empowerment Framework does not look to formalizing economies as the desired outcome; instead, it urges the creation of circumstances in which the ultimate benefits of the development interventions will accrue in equitable manner to the poor on a sustainable basis.

An important focus of the paper on Business Rights is the use of an evidence-based approach. It is anticipated that the analysis will establish empirical linkages to illustrate legal rights and empowerment of the poor by tackling the intricacy of the informal economy and proposing a methodology and sequence of actions to address the underlying complex issues of informal businesses and poverty alleviation.

The 'agenda for change' proposes a comprehensive strategy to address three inter-related components that run the continuum from the informal to the formal end of the economy; they include:

- Creating more entrepreneurship and business opportunities by ensuring that those in the informal economy are legally recognized; they should have legal social protection and risk management options, equitable representation and voice, as well as and assurances that the new enterprises do not have an incentive to be in the informal sector simply because of lower cost.
- Enabling those enterprises currently in the informal economy to move upwards along the continuum, through a context-specific mix of legal policy frameworks that include incentives and regulations, as well as assurances that the entrepreneurs have the capacity and flexibility to do so.
- Improving productivity, efficiencies and conditions, and increasing the returns for the businesses in the informal sector.

It is obvious that the interventions under the three categories will have common characteristics. The guiding principle would be to tackle the root causes of informal businesses rather than negative manifestations of informal businesses and informalization. Also, the changes have to occur at the local level, which basically defines the informal economy. Successful mobilization of businesses at local level, whether by the efforts of government, private sector or NGO, is a great promoter of equitable economic growth. While such interventions would be local in nature, their implementation recognizes the global (universal) context that influences all development activities. In the end, the success and sustainability of any reform will depend on public recognition and ownership of evidence-based transformation within the cultural, social and political milieu.[30]

To sum up

This introduction provided an overall framework on the legal empowerment agenda for business rights and sets the stage for the sections that follow. We proposed that reforms can help the poor and the disadvantaged with the legal and institutional environment and the rule of law. People would then be encouraged to develop their capacities, energies and initiatives and to access livelihood resources, build assets and generate efficient and productive enterprises. The next section will look at informal businesses and enterprises within the context of the informal-formal continuum; it will examine the relationship between the informal economy, poverty and productivity, and it will map the informal economies that involve women and indigenous people.

2. Informal Economy and Informal Businesses

Informal-Formal Continuum

Even though any debate on 'informality' centres on the dichotomy between formal and informal, the concept is a lesser representative of dualism and embodies a continuum when viewed from any of the perspectives of activities, institutions or contracts. The definition of informality, however, is ambiguous and informal economy denotes a plurality of activities that are also contextual. The term 'informal sector' is inadequate because it fails to represent the inherent heterogeneity, complexity and dynamism of this economy and its constituent activities. Also, the gender bias in the informal economy is probably underestimated and women are more likely to be in those informal activities that are under-counted, including production for own consumption and paid domestic activities in private households. Based on ILO's classification,[31] 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 vulnerability.

The informal economy is differentiated in terms of production units as well as employment status. Informal may therefore refer to firm features of types of firms, or it may refer to employment. It may also be characterized as an activity or a type of activity. On the one hand, it includes own-account workers in survival type activities, ranging from street vendors, cobblers and shoe shiners, garbage collectors and rag pickers, to the self-employed entrepreneurs. On the other hand, the range of wage earners – from aid domestic workers employed by households, to ‘disguised wage workers’ employed by sweatshops in production chains – are also included as important constituents of the informal economy.

Not surprisingly, any discussion of the informal economy would include ‘small’ enterprises not regulated, as well as employment relationships that are not legally recognized and that leave much to be desired (in terms of providing social protection and reduction of vulnerability). We may note here that issues relating to employability, productivity and flexibility of the labour force and to their upward movement along the informal-formal continuum are the subject of Chapter 3 of this report on Labour Rights. The thrust of this discussion, therefore, will maintain the focus on informal businesses and enterprises which, for the purpose of analysis, include own-account operators. We examine legal measures that include the presence of, and equitable access to, effective judicial, political and economic, market and non-market institutions. These, we have observed, make it easier for micro and small enterprises to start up and grow in a manner that allows them to adopt ‘high road’ strategies to enhance efficiency and productivity and provide decent jobs for its employees.

Poverty and Informal Economy

Increasing poverty spurs growth of the informal economy. In turn, the informal economy promotes economic growth, serving to reduce poverty. The problem here is that any reduction in poverty is inefficient, and lacks legal recognition, regulation and protection. Studies of countries that have successfully delivered pro-poor growth suggest that even though economic growth is extremely important, it is unable, by itself, to address the eventual disparity in poverty reduction. It is necessary to address the nature of inequalities while accounting for the resulting change, if any, in inequality from this kind of economic growth.[32]

Information and data on the informal economy in developing countries is sketchy since very few countries undertake survey of employment and engagement in the informal economy on a regular basis. Even though nearly 75 percent of the poor people in developing countries live in rural areas and engage in activities which lie in the informal economy consisting of agricultural or non-farm activities, many countries exclude agriculture from their measurement of the informal economy.[33]

An informal sector survey carried out by ILO in 1995 found that 41 percent of the workers were in the informal economy because they could not find any other work (including those who became involved following their retrenchment), 30 percent because their family needed additional income, 10 percent because of the freedom to determine their hours or place of work, and 9 percent because of good income opportunities.[34] Although not all poor are in the informal economy, almost all those who are informal are poor. Urban areas of most developing countries expose the contemporaneous existence of informal workers’ shacks with the formal workers’ more affluent homes. In the name of economic development and enforcement of property rights, the former are first to be destroyed by government even though the services provided to the formal settlements by them are perfectly legal.

Informal Enterprises

Despite the fact that the self-employed and employers face many barriers to setting up and operating informal enterprises, they account for 70 percent of the jobs in sub-Saharan Africa and about 60 percent in the other developing regions. In India, nearly 93 percent of the workforce is in the self-organized informal sector, with nearly 10 million persons and their dependents relying on street vending for their livelihood.[35] Studies also indicate that in the absence of informal economies, a majority of private sector households would have fallen deeper into poverty.[36]

There is a prevalent assumption that informal enterprises exist by choice because of the owners' preference to curtail labour costs and avoid payment of taxes. While this is true, it is not the entire story. Many businesses in the informal economy have limited output, employment or income to even be at the level of taxable entities. The root causes of the manifestation of informal enterprises encompass the legal and institutional hurdles that make it difficult to become or stay formal. For instance, the regulatory environment may be excessively burdensome, overly punitive and especially, in the cases of crises countries, non-existent. In addition, informal businesses have little access to public infrastructure and depend on informal and unfair institutional arrangements for their essentials. Essentials could range broadly from credit, markets and non-market institutions, training, developing skills and knowledge, to social protection, and even information on demographic trends (including rural-urban migration and cross-border labour migration), and national policies that constrain or limit employment generation in the formal economy.

Lack of registration and regulation of informal businesses and enterprises prevents informal workers from enjoying the rights of the decent work that may be accorded under their national labour legislation. The use of the term 'informal' does not mean an absence of norms or rules for operations of the enterprises. Businesses in the informal economy have their own institutions, mechanisms, rules, financial arrangements, and systems for accessing technology and markets, but they lack a common framework and it is unclear if they observe the fundamental and human rights of the labour. Also a number of criminal activities – money laundering, human and drug trafficking, tax evasion, etc. – are in the informal economy, as they operate on the fringes of the law. This area, however, is beyond the scope of our chapter.

Informal Enterprises and Productivity

A large informal sector can be an indication of high regulatory costs on business, raising doubts on the value of the regulations themselves. Studies[37] have found that the size of the informal sector, also termed 'shadow economy', could be inversely related to Gross Development Product (See Figure 1). Informality restrains efficient use of resources and productivity. The inefficiency or sub-optimal productivity of the informal economy is therefore linked in part, to the absence of legal protection, inability to enforce contracts and the need for security that comes from the dearth of property rights and decent work attributes. Their ability to organize for social protection is weak, with little or no voice to make their business recognized or protected. The lack of voice and participation in decision-making leads to non-existence of economic rights or opportunities to achieve their full economic potential.

An economy with a large proportion of informal businesses functions below its potential, with a lower rate of economic growth.[38] It also serves to point up systemic inequities in the ability of entrepreneurs to access markets, resources, technology, information, public infrastructure and social services. However, the large number of small firms in developing countries is not in itself a sign of their underdevelopment, but, rather, a reflection of their confinement to insufficiently productive activities.

It is important to design policies and mechanisms

Figure 1 **GDP Per Capita and the Size of the Shadow Economy**

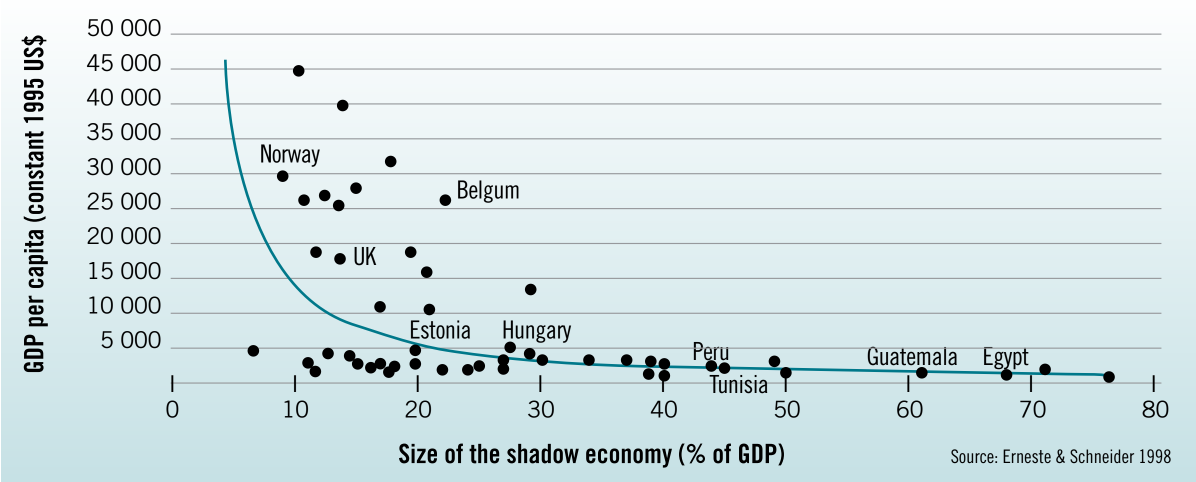
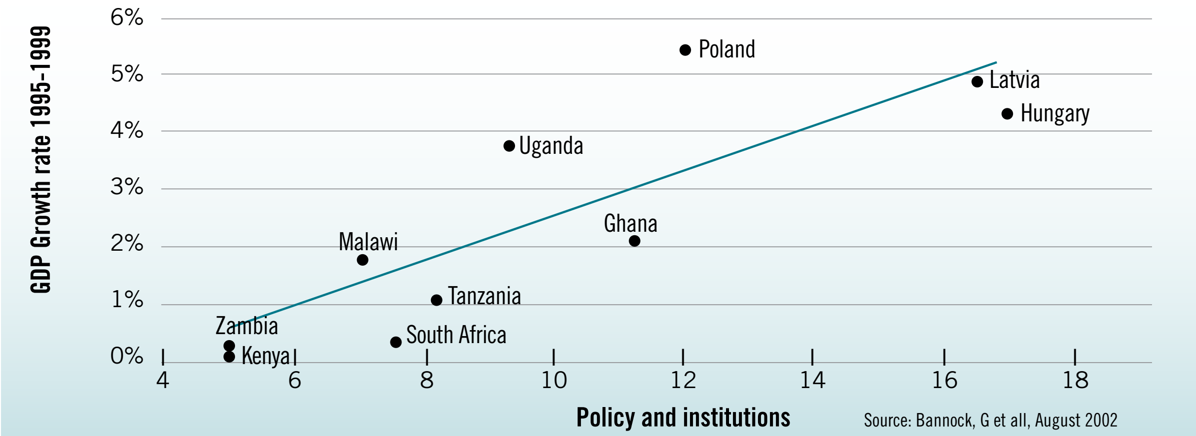


Figure 2 **Indigenous private sector development and regulation in Africa and Central Europe: a 10-country study**

GDP Per Capita growth rate against sum of policy and institutions to improve the enabling environment: 1995-1999



that enable the participation and access to benefits from growth by the poor people. This requires a conscious and sustained effort by governments to create necessary conditions for broad-based growth in regions and sectors where the poor live and work.[39] While it is not guaranteed that the adoption of the favoured institutional and policy mix will bring higher GDP growth, studies show that differences in policy and policy implementation are reflected in dramatically different rates of growth of GDP per capita achieved. Appropriate regulatory and institutional environment has been found to be the single most important element in an economic growth strategy. Even though a country's level of skills, especially technical skills, is also strongly correlated with *per capita* economic growth, interventions to improve the national regulatory and institutional environment within which business operates offer far more rapid impact scenarios than those based on longer term education and skills strategies

A Mapping of Informal Economies[40]

Although, the studies that describe country level patterns and changes have at best been sketchy, given the complexity of measuring the informal economies precisely, they are certainly indicative. Over the last fifteen years or so, the informal sector in sub-Saharan Africa has apparently increased from about two-thirds to nearly three- quarters of non-agricultural employment.[41] Street vending predominates, with women traders forming the majority in many of the countries in the region. Former retailing establishments often encourage informal economy operators to expand their markets to low income groups and rural areas who can be reached most easily by itinerant traders and street vendors.

Informal enterprises are small scale enterprises with 80 percent classified as a one-person business. Businesses with more that one person were mainly found to be in transportation and construction. For women in this region, the informal economy presents 92 percent of the total job opportunities outside of agriculture compared to 71 percent for men. Almost 75 percent of these jobs are performed as self-employed and own-account workers, and only 5 percent as paid employees. Most small scale enterprises are without a formal establishment: over 33 percent of the informal activities take place within or beside the home of the business operator; 20 percent are without a fixed location; 10 percent are at a market, and 10 percent are in the street or in an open space.

The major sources of livelihoods, especially for women engaged in informal activities (food processing, handicrafts, hawking and vending), have been affected by trade liberalization and by cross-border trading. Cross-border trading is very significant in the informal economy and is prevalent in South Africa and West Africa. For instance, a large number of temporary immigrants purchase goods in South Africa to take back to their own countries for sale. While normally the informal trade is within the region itself, traders from West Africa travel as far as Dubai and China to purchase higher quality goods that are cheap.[42] Also, vendors in Africa now have opportunities to link up with bigger enterprises and transnational corporations to become a part of their value chain.[43]

In Latin America, urban informal employment increased from 52 percent in 1990 to 58 percent in 1997 as a proportion of the total urban employment;[44] not surprisingly, the increase was also observed in employment in micro and small enterprises as well as growth in self-employment. A proportion of self-employment or own-account workers is an indicator of low job growth in the formal economy and a high rate of employment creation in the informal economy. Self-employment represents nearly 32 percent of total non-agricultural employment worldwide, with 44 percent in Latin America.[45] In poor countries like Bangladesh and Pakistan, the proportion of self-employment accounts for nearly 70 percent of the total employment.

In the transition countries of Central and Eastern Europe and the countries of the Commonwealth of Independent States (CIS), the informal economy ranges from subsistence farming, petty trade, undeclared and unregistered labour, unregulated and unlicensed enterprises, the shuttle trade with neighbouring countries, to tax evasion. With the transition of the region to a market economy, the informal economy has expanded rapidly because of economics and social transformations, closure of many state- owned enterprises, increased privatization, labour retrenchment and collapse of social insurance, and need for institutional, business and labour reforms that have lacked enforcement and failed to keep in touch with changing economic realities.

The expansion of manufacturing and industry has led to a relative decline in the informal economy in China, Japan, the Republic of Korea and Singapore. While the informal economy had also declined from 60 to 57 percent in Thailand from 1980 and 1994 because of the economic boom, with the effect of the economic recession of 1997 it grew again to 60 percent.[46] Although economic recession leads to an increase in 'survivalist' economic activities suggesting the poverty mitigating role of the informal economy, economic prosperity has also been directly related to an increase in the informal economy, as in Indonesia, because of increased opportunities and the ability of the informal enterprises to respond to new market opportunities. An expansion of the informal economy in the former circumstances reflects marginalization of economic activities characterized by low productivity, low incomes and low standards of living.[47] On the other hand, expansion of the informal economy during an economic boom is related to the expediency of bypassing over- bearing bureaucratic processes and business practices that can constrain firms in the formal economy from responding quickly to market signals and increasing demand.

Women in the Informal Economy

Worldwide, women's share of informal economy employment has remained between 60 percent and 80 percent. Moreover, the number of females in the labour force is continuously on the rise and women in the informal economy most probably number much more than reflected in available statistics. (Girls, too, would be among their numbers.) They comprise most of the unpaid labour, are often home-based workers, and thus fall easily through gaps in enumeration as data and statistics on household level is still difficult to measure. In many countries, women are also drawn to the informal economy because they lack the right to own and inherit property and are therefore obstructed from activity in the formal economy, as they do not have assets to use as security for credits, etc. A statistical snapshot of women in the informal economy around the world reveals:[48]

1) **Informal employment is generally a larger source of employment for women than for men in the developing world.** Other than in the Middle East and North Africa, where 42 percent of women workers are in informal employment, 60 percent or more of women workers in the developing world are in informal employment (outside agriculture). The comparative figures for informal employment, as share of non-agricultural employment by sex and region, are as follow: in sub-Saharan Africa, 84 percent of women workers compared to 63 percent of men workers; in Latin America, 58 percent of women workers, 48 percent of men workers, and in Asia, 73 percent of women to 70 percent of men.

2) **Although women's labour-force participation rates are lower than men's, the limited data available points to the importance of women in home-based work and street vending in developing countries**: 30-90 percent of street vendors, except in societies that restrict women's mobility; 35-80 per-cent of all home-based workers, including both self-employed and home workers; and 80 percent or more of home workers – - industrial outworkers who work at home).

3) **Although women's labour force participation rates are lower than men's, women represent the vast majority of part-time workers in many**

developed countries. In 1998, women were 60 percent or more of part-time workers in all OECD countries reporting data. Women's share of part-time work for specific countries was as high as 98 percent in Sweden, 80 percent in the United Kingdom, and 68 percent in both Japan and the United States.

Indigenous Peoples and Informal Businesses

Although the concept of social exclusion has gained wide currency, over 370 million indigenous peoples continue to be marginalized from the benefits of mainstream social and economic development. Indigenous peoples are over-represented among the poor in over 70 countries.

Lacking secure property rights hinders indigenous peoples in obtaining compensation from government in cases of eviction and displacement. Usually, this is due to lack of evidence to support their property rights. They also face huge barriers in obtaining legal protection (through enforcement opportunities), access to resources and wealth creation. Due to past experiences of bias and discrimination, many indigenous peoples forgo formal justice systems; also, legal aid services are often not provided to those living outside the mainstream justice system. Lack of title to property is another barrier to economic empowerment. Traditional property rights systems are being eroded as a result of neo-liberal, macro-economic policies. Indigenous peoples must therefore resort to finding employment in occupations that are not formally paid, as might be the case in rotational farming, fishing and weaving. Illiteracy and impoverishment further limit employment opportunities in low paid jobs. Indigenous women carry the burden of reproductive work, domestic work, child care and working in the field.

Distinct cultural identity and values: The indigenous people's perspectives on property, poverty and development are different from mainstream thinking and are not based solely on a market cash-based economy. Many indigenous societies exchange value (rather than money) by forms of barter, gift exchange, and other forms of reciprocal exchange. A better understanding of these 'principles of reciprocity' would be needed to underpin the work of the Commission. This may pose a number of binary oppositions, many of which may be challenged and contested, including: spirituality vs. rationality, collectivity vs. individuality (competition, intellectual property claims), sustainability vs. optimal productivity, traditional knowledge (e.g. trial and error) vs. empirical scientific methodology, subsistence vs. commerciality or markets, custom vs. state, rights vs. poverty, and inclusion vs. exclusion (or assimilation vs. integration).

Indigenous peoples often employ innovative methods to subsist, using traditional knowledge systems. With the onset of globalization, it at first appeared that a new environment would be opened to developing new approaches, but barriers to entrepreneurship remain.

Microcredit and microfinance institutions are often the only source of capital for indigenous peoples and women in the informal and home-based sectors. However, indigenous peoples' perceptions of credit and loans are often compromised in the interests of entering the global economy. Efforts to promote innovation and entrepreneurship in indigenous peoples' territories should seek to understand and assess the systems of exchanging value in the society, sometimes based on complex kinship, cultural and other social networks.

Box 1 **Empowering Indigenous people through Entrepreneurship**

The ILO-INDISCO Programme was launched in the Philippines in 1994 in collaboration with the Philippine Government. It is a multi-bilateral technical cooperation aimed at strengthening the self-reliance of indigenous and tribal peoples through entrepreneurial activity. It has facilitated the operation of 12 pilot projects in different parts of the country, which involve indigenous communities in various stages of development. Financial and technical assistance has been provided to indigenous communities to engage in entrepreneurship.

The main window of opportunity for income and employment generation opened to community members was the Revolving Loan Fund, which provides assistance to groups and individuals for their livelihoods activities. Together with skills training on a particular trade the community wanted to pursue, plus appropriate equipment bought from project funds, members of several indigenous communities managed to improve their market access and economic status. Twelve communities with a combined population of approximately 90,000 people have benefited directly or indirectly from these projects. An estimated 2,500 jobs in agriculture, traditional handicraft, fishery, weaving and community services were created. As a result of the new revenue-generating activities, the income levels of partner communities have increased by an average of 44 percent. In recent years, the ILO has been providing technical assistance to some projects funded through the Small Grant Fund from the Embassy of Finland. The fund has supported various projects proposed by the Indigenous communities.

Source: ILO

Empowering Informal Businesses

Clearly, the informal business economy also links formal sectors to consumers. In fact it provides many low and middle-income employees of the formal sector with goods and services and contributes to economic growth. Economic growth, while a necessary condition, is not a sufficient condition for creating productive employment and poverty reduction. As discussed earlier, an increase in economic growth does not usually result in the alleviation of an informal economy or the transition from informal to formal unless it also brings greater equity. A positive outcome would reflect an approach that regards people living in poverty as creators of growth rather than merely as recipients of benefits.[49] We should, therefore, focus on empowering the poor and the disadvantaged, whether as self-employed producers and entrepreneurs or as employees of a firm. It is important that these economic actors participate fully and on an equal basis in the economic development

Some of the critical barriers faced by firms in the informal economy include limited human and working capital, limited access to markets, goods and services and to financial and business support services, obsolete technology, complex and burdensome government regulations with poor enforcement, lack of economic infrastructure and a poor supply of public services. Given the impediments to operate businesses in most developing countries, the opportunity costs of informality appear to be much lower compared to operating formally. It is therefore not surprising that many transactions among the formal enterprises are also coordinated by informal networks. Emphasis must fall on improving the business environment, and in a manner that it is particularly beneficial for enterprise at local level, including the rural areas. For instance, India's economic reforms, which also cover the business environment, have generally focused on the corporate and the organized sector that provides employment to nearly 3 percent of the country's work force, with another 3 to 4 percent employed in the public sector and government. The balance, or roughly 93 percent of the workforce, which is essentially the self-organized informal economy, remains untouched by those economic reforms.[50]

Accordingly, it is important to improve the economic governance structure that could allow smaller formal enterprises to grow with greater efficiency, productivity and quality working conditions. It is equally necessary to facilitate the problems faced by informal enterprises in accessing products offered by financial institutions, such as the incorporation of security insurance and the establishment of limited liability institutions that might encourage high return-high risk investment. Informal enterprises also need to be sensitized to the requirements for improving employment and working conditions so that they are able to access dual labour regulations and safety nets in meeting part of their own labour contributions while sustaining the business and generating decent employment.[51]

Similarly, efficiency among the formal enterprises should be improved comprehensively and in an integrated manner by enforcing the rule of law. This would cover property rights and the reduction of corruption by lowering transaction costs of various activities. It would include reducing entry and operating formal costs, reducing growth barriers and implementing cost-efficient and proficient policies, guidelines and procedures for enforcement of compliance. If a one-stop shop is a solution for reducing registration procedures and costs, then it is vital that such facilities are organized and available at different levels (local, municipal, district, national and regional). This would not only facilitate the availability of relevant information, but would also be a disincentive to operate informally if cost was the sole rationale for such an action.

A well-structured tax system that is understandable and transparent would also dissuade firms from adopting the inefficiencies of informality simply to avoid taxes. Also, if local levies translate into fees for enhancing access to community resources as well as public services with greater accountability, the attractiveness and lower opportunity cost of informal sector would diminish significantly.

It would also be helpful to introduce property rights registration, contract enforcement mechanisms and clear policy guidelines to encourage market participation of street vendors, etc., in a manner that is participative, and incorporates informal and popular rules. By bringing diverse governance structures within the purview of the formal judicial system in a manner that is accessible and simple, it would increase the reach of rule of law to all business operators and encourage the efficient creation of informal-formal forward and backward linkages.

Given suitable conditions, including provision for capacity development, vocational training, and skill building, many informal enterprises may effortlessly glide into formal ones. This empowerment programme has to be an integral component of poverty reduction strategies using incentives based on participation, a level playing field of regulations, and enforcements thereof that, *inter alia*, enhances efficient, affordable and reliable access to public infrastructure services.

While legal identity has been linked to a greater access to basic goods and services and opportunities, it could catalyze inclusive development once it becomes a constituent of a larger reform agenda. So, legal identity must be internalized in policies and actions that target the integration of markets of the poor with other formal markets, thereby enabling them to meet the unmet demand for affordable financial services. But, in the absence of legal documents, it is very unlikely that emphasis on legal identity would reduce exclusion[52]Accordingly, the challenge to comprehensively address the inter-related components of the continuum from the informal to the formal end of the economy is not technological; it is in structuring institutions, capacities, incentives and regulations to provide certainty to economic exchange and therefore to equitable economic growth.[53]

Economic growth draws upon activities that are complex, fluid and geographically dispersed. They require an elaborate and ever evolving division of labour ranging from owners of formal and informal enterprises, producers, managers, and their employees, who are an integral component of the value chain. Such a large-scale division of labour requires state-like institutions for public enforcement of laws and contracts[54] and for its efficient sustainability. Although the government takes the lead in creating regulations, it is important to engage other stakeholders, including the poor people as economic actors, as well as NGOs, local public governance structures, and informal labour associations. This would ensure ownership by all relevant actors and create inexpensive approaches to enforce compliance with the regulations. It is the inclusive partnerships and a shared agenda between small and large firms, governments at all levels, civil society and the development agencies that will unlock new opportunities.[55]

To sum up

Increasing poverty is a key reason for growth of the informal economy and a main cause of the blossoming of informal enterprises struggling to overcome legal and institutional hurdles that make it difficult prevent for businesses to become or stay formal. These are some of the broad issues highlighted in this section, which also provided an overview of informal economies around the globe. The next section on legal identity and business rights discusses, among other issues, the need for an effective enabling environment, regulatory regime, commercial law and good economic governance that is required for business to operate with equitable economic rights and with guarantees of greater accountability in the government's ability to issue laws with the capacity to implement and enforce them.

3. Business Rights: Unlocking Barriers/ Constraints to Empower Informal Enterprises

The adverse effects upon the poor of living under a system of unequal opportunities of representation, political voice and power tend to reproduce themselves over time and across generations, setting into motion a classical poverty trap from which relatively few can escape. In this chapter, the position is taken that promoting business rights in the informal economy could help to unlock pent-up talents and energies among the working poor and create an efficient and inclusive private sector. The view is that a key to improving the quality of life of the poor and the disadvantaged is the creation of an efficient private sector with a sound domestic macro environment, and replete with trade policies, institutional foundations and adequate capacity to maximize benefits within a broader macro global environment. Such a creation would depend upon good economic governance, enforceable laws and regulations, effective institutions, practices and dedicated people to support inclusive and equitable development of the domestic private sector.

This chapter therefore argues for effective and enabling environments, a regulatory regime, commercial law and good economic governance. It is expected that this process will empower the poor to use law and legal tools to prevail over poverty, while persuading government to equitably enforce policies and regulations. This would reinforce the role of the civil society in implementing greater accountability of all actors and at all levels. Sound economic governance is built upon principles of equity and equality of opportunities. With public policies and supporting action, assurances could be given about access to and distribution of assets, economic opportunities, and political voice participation in decision-making – all of which can help to promote the creation of sustainable enterprises. This is the path to address the often-heard demands to "level the playing field."

It is therefore essential to build upon and refine the above issues in the context of the work of the Commission and reform the development agenda by broadening the discussion of business rights and the informal economy in a comprehensive manner that goes beyond formalization *per se*. In other words, the legal empowerment of the informal business can generate sustainable livelihoods only by first addressing the constraints and barriers that stifle their productive potential and encourage them to have a voice in all aspects of policy making, implementing and enforcing and have the ability to work with governments and other stakeholders to create new rights, capacities, and opportunities.

The core set of legal enforcement components are presented in Box 2, below.

Empowerment has to be specific to context, the social reality of different groups, location etc. Policymakers and practitioners must tailor the various elements from the framework to meet local circumstances. The example, below, demonstrates how LE could address the specific conditions of street vendors.

Different levels of commercial rights are appropriate to the circumstances of different types of informal businesses: notably, street vendors, informal manufacturers, informal transport providers, and small farmers. Commercial rights for informal businesses can be stratified as follows:

- *Basic commercial rights:* right to work, in-

Box 2 Unlocking Barriers: Legal Mechanisms to Empower Informal Businesses

1) Legal and bureaucratic procedures that allow informal operators or businesses to operate:

- simplified registration procedures
- simplified licensing and permit procedures:
- identification devices, including: ID cards for individual operators, and business identification
- legislation – e.g., municipal by-laws – that allow street vendors to operate in public spaces

2) Appropriate legal frameworks that enshrine the following as economic rights:

- access to finance, raw material, and product markets at fair prices
- access to transport and communication infrastructure
- access to improved skills and technology
- access to business development services
- access to business incentive and trade promotion packages: tax deferrals, subsidies, trade fairs

3) Legal property rights:

- private land
- intellectual property

4) Use rights to public resources and appropriate zoning regulations:

- use rights to urban public land
- use to common and public resources: pastures, forests, and waterways
- appropriate zoning regulations: where and under what conditions informal operators or businesses can operate in central business districts, suburban areas, and/or industrial zones

5) Appropriate legal frameworks and standards for what informal operators and businesses are allowed to buy and sell:

- appropriate laws and regulations re what are legal vs. illegal goods and services
- appropriate product and process standards: e.g. public health and sanitation concerns re street food
- marketing licenses for products and services

6) Appropriate legal tools to govern the transaction and contractual relationships of informal operators or businesses:

- bargaining and negotiating mechanisms/power
- legal and enforceable contracts
- grievance mechanisms
- conflict resolution mechanisms
- possibility of issuing shares, right to issue shares
- right to advertise and protect brands and trademarks

7) Legal rights and mechanisms to provide informal operators and businesses with:

- temporary unemployment relief
- insurance of various kinds, including of land, house, equipment, and other means of production
- bankruptcy rules and default rules
- limited liability, asset and capital protection
- capital withdrawal and transfer rules

8) Legal right for informal operators and businesses to join or form organizations, legal recognition of such and legal right of representation of such organizations in relevant policy-making and rule-setting institutions

- membership in mainstream business associations
- membership in guilds or other associations of similar types of entrepreneurs
- representation in relevant planning and rule-setting bodies

Street Vendors

Common issues and challenges face	What LE can do for them
Insecure place of work: due to competition for urban space.	Secure vending sites.
Capital on unfair terms: due to dependence on wholesale traders	Access to capital on fair terms: a loan product tailored to their daily need for working capital.
Uncertain quantity, quality, and price of goods: due to dependence on wholesale traders.	Bargaining power with wholesale traders.
Lack of infrastructure: shelter, water, sanitation.	Infrastructure services at vending sites: shelter, water, sanitation.
Ambiguous legal status: leading to harassment.	Licence to sell issue identity cards.
Evictions and bribes.	Freedom from harassment, evictions, and bribes.
Negative public image.	Positive public image.

cluding right to vend; right to a work space

- *Intermediary commercial rights*: right to government incentives and support including procurement and the right to public infrastructure
- *Advanced commercial rights*: those which are relevant for larger more advanced informal enterprises.

These rights would then apply in different ways to different types of street vendors:

- *Those who sell fruit and vegetables*: they need basic and intermediate commercial rights.
- *Those who sell cooked food*: they need basic commercial rights and intermediate commercial rights but also need to be regulated for public safety concerns.
- *Those who sell small domestically-produced manufactured goods:* they need basic and intermediate commercial rights and may also need to be regulated to ensure the goods are not pirated.
- *Those who sell more valuable imported manufactured goods:* they need basic and intermediate commercial rights and may also need to be regulated to ensure that the goods are not smuggled or pirated.

The illustrations shown above would suggest concerns about advanced commercial rights are essentially relevant only after the basic and intermediate commercial rights are taken care of.

Barriers and Constraints to Business Rights

Addressing the issue of legally empowering informal businesses is critical to unlocking the productive potential of individuals, communities and countries. There are significant barriers to basic business rights, including the cost of, and difficult access to, obtaining licenses or permits, the cost of forming legal entities or, in some countries, even of registering as a person engaged in commerce. And, and of course, there is also the weight of taxation.

Cost-benefit analysis is influenced also by non-legal costs. For example, if business people do not have their basic human rights respected, the cost of doing business rises. If the level of education makes counting difficult, that is a cost. If the level of healthcare prevents people from using their human capital, that, too is a cost. And outside the classic human rights rubric, if public transportation is inadequate or the roads are largely impassable, that too is an additional cost. And all these costs are effective barriers to exit from the informal economy, because they make all other costs, including legal costs, that much more onerous. Below is an elaboration of implications for those currently doing business informally.

Legal, Regulatory and Administrative Barriers

Regulatory barriers comprise inappropriate or rigid requirements and stem from a government policy-making environment that normally wishes to have a total control either for a political or socio-economic agenda. Many developing countries are emerging from a history of heavy-handed regulation, with approvals required for even the smallest activity, and authority overly centralized and inflexible. This means they are hampered by the legacy of a heavily regulated economy and a command and control approach to administration and enforcement. Years of poor quality law-making has created a tangle of complex and inconsistent laws that present a daunting regulatory hurdle to the would-be formal enterprise. As such, the regulatory systems of these countries are not well developed to support a flourishing market economy that will create growth and formal jobs. A study[56] carried out in 2002 found that the costs and barriers imposed by regulation in developing countries are not only higher than they were in the developed world when it embarked on industrialization, but are higher in some cases than in the advanced countries today. Taking business entry costs as a proxy for all regulatory costs, the report suggested that these costs in Africa (94 percent), in relation to GDP *per capita*, are much higher than those in other parts of the world – Central Europe (67 percent), Industrial South Asia (19.80 percent), and for many advanced countries (3 percent).

The World Bank study on doing business using indicators such as those in FIgure 3,[57] established clearly the correlation between the ease of doing business and the size of the informal economy. Two methods were used to produce the ranking – one involved averaging out a country's performance across the indicators, and the other used the raw values of indicators. Both regressions showed that there is a statistically significant correlation between a country's overall performance on the Doing Business indicators and the size of its informal

Figure 3 **Regulatory Burdens Impacting on Informal Enterprises (World Bank, 2005)**

Starting a Business	**Registering Property**
Number of Procedures	Number of Procedures
Time (days)	Time
Cost	Cost
Minimum Capital	
Hiring and Firing of Workers	**Getting Credit**
Difficulty of hiring	Cost to create collateral
Rigidity of hours	Legal rights of borrowers and lenders
Difficulty of firing	Credit information
Rigidity of employment	Public registry coverage
Firing costs	Private bureau coverage

Box 3 Most Difficult Places to Do Business (by specific category)

Starting a Business

- 17 Procedures in Uganda/Paraguay,
- 694 days in Suriname
- 1,194 percent of income per capita required as cost in Sierra Leon
- 4,233 percent of income per capita minimum capital required in Syria

Dealing with Licenses

- 186 Procedures in Egypt
- 668 days in Iran
- 5,869 percent of income per capita required as cost in Montenegro

Registering Property

- 16 Procedures in Nigeria
- 683 days in Haiti
- 28 percent of property value as cost in Syria

Employing Workers

- On difficulty of hiring index (100=worst) in Morocco, Nigeria & Tanzania
- On difficulty of firing index (100=worst) in Bolivia and Egypt
- 329 weeks of salary as firing cost in Sierra Leone

Trading Across Borders

- 16 number of documents required to export in Zambia
- 20 number of documents required to import in Rwanda

Getting Credits

- 0 Strength of legal rights in Cambodia, from an Index 0-10 (0 is the worst)
- 0 Depth of credit information in 48 countries, from an Index 0-10 (0 is the worst)

Paying Taxes

- 130 times payment per year in Uzbekistan
- 291 percent of profit as total tax rate in Gambia

Closing a Business

- Takes up to 10 years in India
- Cost (percent of estate): 76 in Lao PDR

Source: World Bank: Doing Business 2007 (prepared by Mahmood Iqbal)

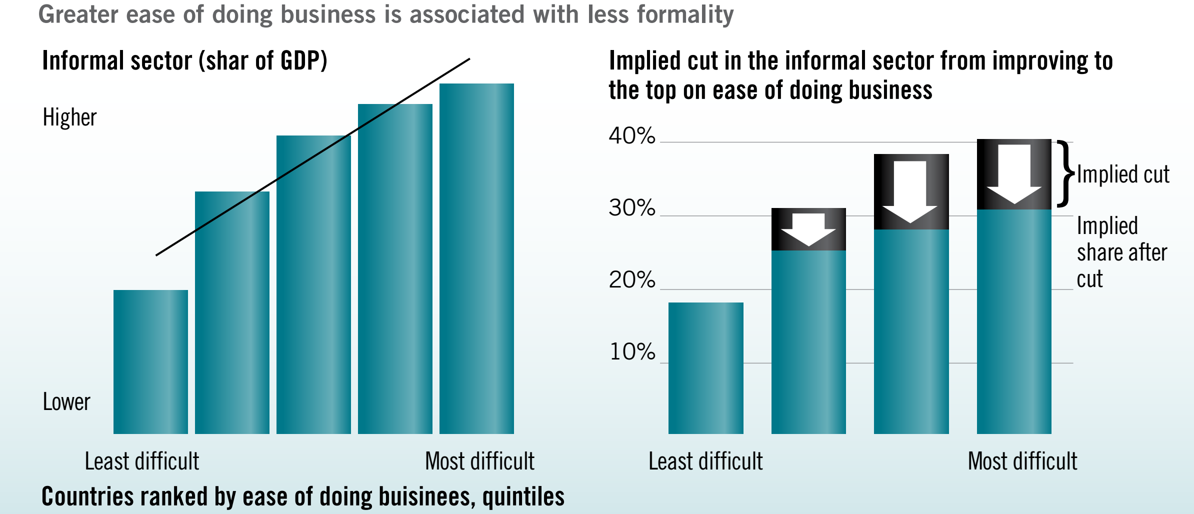
economy; a worse environment for doing business correlates with a larger informal economy. The analysis also examined the relationship between the individual measures of ease of doing business and the size of the informal economy.

The World Bank has further done a comprehensive study,[58] in identifying and quantifying the cost of barriers for all regions of the world and individual countries. The extreme cases are summarized in Box 3.

The World Bank study also shows that regulatory environment and informality are highly correlated: the greater the difficulty in business operation, the larger the size of the informal sector. In other words, barriers or extent of difficulties in doing business force many operators to take the informal route.

Administrative barriers are the bureaucratic requirements that flow from regulations, their implementation and enforcement. A regulation may be well designed, proportionate and efficient, but its true effect on enterprises comes from the way in which it is administered. Administrative barriers are the hassle that dissuades informal enterprises from wanting to interact with government officials;[59] they include excessive paperwork; civil service inefficiency leading to delays in decision-making; low levels of civil service capacity, i.e. poor skills levels so that mistakes are made, and too few people and access points providing services; inaccessibility, as when there is too little delegation to the front-line and decisions have to be referred up to the management chain; general bureaucratic obstruction (perhaps stemming from inherent distrust of the private sector by officials, contributing to delays), and abuse of position (linked to corruption).

Figure 4 **Regulatory Environment and Informality**



Note: Relationships are significant at 1% level and remain significant when controlling for income per capita.
Source: World Bank (2005)

The time and money spent complying with government regulations impose significant transaction costs on businesses. In addition, the direct cost of payments, such as licensing fees, also represents a significant cost of doing business. Conversely, payments made to avoid detection of non-compliance, or payoffs to government officials are the costs of operating in the informal sector. The regulations imposed on business fall into several categories. Some regulations governing business start-up raise the costs of entering the formal sector; others govern ongoing business activity, and additional regulations are dictated by the central authority or by regional or municipal governments. Furthermore, small businesses face government imposed costs in the areas of labour practices, payroll charges, health and safety standards, taxation, and foreign trade.

Governance Issues: In many developing countries, corruption and rent-seeking reduce information flows and weaken contract enforcement, reducing economic activity, especially foreign investment. Every major study on barriers to formalization and indeed on barriers to growth generally, refers to the problem of corruption.

Often it is not the financial cost itself that creates the largest transaction cost obstacle to setting up a small business, but rather the time and energy required to navigate the bureaucratic maze, along with the opportunity costs involved. A well-known example was provided by Hernando de Soto when he measured the cost of establishing a small garment manufacturing enterprise in Lima, Peru. He found that it required many different steps over an extended period of time to set up a small formal manufacturing company[60]. Although Peru has substantially reformed and simplified the process of setting up a small business, de Soto's overall conclusions remain as valid for many other Latin American countries today as they did in Peru in the late 1980s. This is why entrepreneurs frequently resort to bribes or professional 'fixers' in order to expedite the registration and licensing process. Fixers' fees range from $600 to $800 to establish a company in most Latin

Case Study:

Ukraine and Private Business Development

The dimension of the problem: A 1999 survey of businesses and households suggested that, there were 3.073 million businesses in Ukraine, of which 2.651 million (86 percent) had no employees. Comparing the official figures of small firms (with fewer than 50 employees) suggested that over 80 percent of these 2.651 million, or 2 million businesses were unregistered and informal, which is, strictly speaking,, illegal, in Ukrainian terms.

Key problem: Corruption and other rent-seeking behaviour:
It is widely agreed that the biggest issue for the regulatory environment for Ukrainian businesses is its unpredictability. Regulations are often confusing or unclear, many regulatory activities lack a comprehensive legislative basis, information is lacking and procedures are unnecessarily complex. Rules change frequently: for example there were 34 amendments to key tax laws in 2004. The lack of clear and accurate information for businesses on the current state of the law assists rent seeking behaviour by corrupt officials.

Inspections are still the biggest problem faced by Ukrainian business, but the problem appears to be decreasing slowly. In 2001 94 percent of firms were inspected at some time during the year (a figure which had declined by 20 percent since 2000) with the average firm receiving 11.7 inspections. In 2004 78 percent of firms surveyed were inspected. The typical small firm spent 22 days dealing with inspections in 2001, compared to 27 days in 2000. There is no comparable figure for 2004.

In 2001, 40 percent of all firms surveyed made unofficial payments to inspecting bodies, and 28 percent in 2002. In 2004, this figure appeared to have dropped to 20 percent.

Key problem remaining: Current legislative frameworks are too complex, confused and scattered. As a result of reform and donor assistance over several years, the 140 steps which businesses had to take for full registration are now decreased to 70. Needless to say that this number still remains very high.

(Source: A Review of the Development of the Private Sector in Ukraine since1998, and an Evaluation of the Contribution of DFID. DFID 2006)

American countries; they rise quite sharply as the size of the firm increases.

Corruption deters formalization as businesses stay off registries and tax rolls in order to minimize contact with corrupt public officials. One broad study of 69 countries found a direct link between decreasing corruption and an increasing formal economy.[61] In a study of the informal sector in Ukraine, 82 percent of businesses believed that bribes to officials were necessary in order to continue to operate.[62] The smallest businesses suffer most from paying bribes, because these sums decrease the paltry profits made by thm.

Financial Barriers: Financial institutions depend on the credibility of formal documentation to provide the security and enforceability necessary to extend credit. As informal businesses commonly do not possess land title or a standing relationship with a bank, the most prevalent forms of loan guarantee, real estate and fiduciary collateral, are generally unavailable. As formal lenders typically require borrowers to provide financial statements and credible documentation related to the lender's recent operations (bank statements, invoices, etc.). Informal entrepreneurs unaccustomed to separating their business and personal transactions or recording and maintaining the firm's information, or who use informal suppliers who are unable to provide documentation as solicited by the lender, will be required to make significant adjustments to their daily operations.

The greater the exposure to risk that a banking institution assumes due to lack of credible documentation or an unreliable legal framework, the more it needs to charge higher interest rates and guarantees to loan ratio requirements. Thus, in many developing countries, bank loan portfolios are often over-collateralized (guarantees to loan ratios of greater than one), which further limits credit access. In Honduras, creditors ask for a guarantee of 150 percent of the value of a loan. The low access to credit in the developing world also relates to limited competition in the financial services industries of many countries and the state's imposition of high licensing requirements on financial intermediaries. There are also fundamental problems of scale in lending that do not favour those with meagre assets.

Innovative lending schemes such as the group-lending schemes pioneered by the Grameen Bank, BRAC[63] in Bangladesh, and NGOs in some other countries, have been able to somewhat circumvent the problem of the poor's limited access to collateral. By tying each group member's ability to receive loans to the repayment of other members (i.e., one member's failure to make a loan payment results in the loss of credit for the other members), loans are essentially secured by peer pressure. However, such lending schemes should not be considered a replacement for traditional credit providers, as their small lending portfolios, often prohibitively high interest rates, and reliance on external funding limit the potential reach.

Costs of Informality

The barriers discussed above clearly establish the reasons why the poor opt to remain in informal businesses. Informal enterprises often have limited access to broader economic opportunities and are especially vulnerable to the uncertainties, the corruption and even violence prevalent outside the rule of law and have few means to settle disputes apart from bribery or violence. Without legal rights or protection, they are in a continual state of legal and political vulnerability.

Small informal businesses assume larger risks (than the larger and usually formal firms) and spend more time and resources to monitor their agents and partners (which explains why they usually hire relatives and close friends). They choose low-risk businesses that often yield low returns. They operate with a limited amount of capital and as a result, they are forced to do business at a very small scale. Since they hardly accumulate capital, it is very difficult to leave or sell the business to pass on benefits of both tangible and intangible assets.[64]

The relationship between poverty, informality and political alienation leaves the poor especially vulnerable to organized crime and other unscrupulous parties that rise up to fill the gaps. Making formality more accessible could legally empower the poor to grow their businesses, enjoy the appreciation of their assets in formal property markets, and access credit more easily. This is the vision of the Commission as a means to alleviate poverty.[65]

The benefits that a business person would obtain by going into the formal economy, would be that registration of ownership rights in property would

The Chart below captures broadly the costs and benefits to businesses of being formal vs. informal.

	Costs	Benefits
INFORMALITY	Fewer mechanisms for dealing with risk and uncertainty Bribe and Corruption Lack of identity Limited access to economies of scale and scope (markets are limited to family circles) Impossibility of diversifying risks and investments Higher transport costs Risk of losing family assets, unlimited liability Less access to market knowledge Difficulty to establish business hierarchies different from the family ones Difficulty to divide and specialize labour Enforcing contracts only by force Limited Access to capital Short-term firms and investment Losing the advantages of advertising because they have to hide their business Unpredictability (inspections, laws, etc) Higher credit costs	Avoiding the costs of formality (taxes, permits, regulations)

	Costs	Benefits
FORMALITY	Administrative Permits Taxes Product Regulations Labour Regulations	Limited Liability Shielding the firms from shareholders & creditors Enforceable rules and agreements among partners Predictable rules to withdraw capital from the firm The possibility of issuing shares that facilitate the perpetual succession of the firm, can be used to raise capital, transmit info about the business and represent rights over the enterprise Access to business identification mechanisms that transmit information about the national identity, address, the assets they own, their financial history, etc. Access to rules that establish enforceable standards of responsibility among partners, administrators and workers, allowing a more efficient division and specialization of labour and achieving economies of scale Enforceable contracts, Access to formal conflict resolution mechanisms Legally advertise and protection of brands and trademarks Predictable and speedy rules for closing of business, Default rules Membership of trade associations Permits to use public land, resources and utilities. Access to incentives packages such as tax rebates, exports licenses and trade fairs Flexibility

mean having capital to collateralize; there could be state support for collection of obligations; greater ease and record of transactions and hopefully, increased protection for intellectual property rights. Other benefits would include a potentially larger market, or at least easier access to larger markets. Although business persons in the informal economy routinely trade across borders, in Africa, only the people in the formal market are able to import or export through major ports or any other major transit areas, given the presence of customs and other border officials. A benefit of being in the formal market, therefore, is the potential to grow a larger business and to get out of poverty.

As discussed in the next section, this cost-benefit analysis highlights the areas where law can make the transition from the informal to the formal economies easier. The role for the law, then, is to reduce the cost and to enhance the benefits of entering the formal economy. Because the process may be long, and because the existence of the informal economy is an adaptive response rather than moral failure, the law should not seek to force the poor out of the informal economy by increasing costs or reducing benefits. The point is to empower the poor to leave the informal economy and to provide incentives for them to choose to do so.

Rights-based Legal Empowerment

Most people enter the informal economy not by choice but out of a need to survive. The decent work deficits are most pronounced in the informal economy, where the majority of informal businesses have little or no social protection and receive little or no social security. Poor respect for, or lack of freedom of association, make it difficult for workers and employers to organize in the informal economy.[66]

In 2001, ILO's Conference concluded that informality is principally a governance issue and it encouraged employers' and workers' organizations to extend their representation throughout the informal economy. The growth of the informal economy can often be traced to inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies, often developed without tripartite consultations among workers, employers and governments. Workers' representatives on the committee forcefully stressed that informality is not a solution to unemployment and the resulting report called on governments to provide conducive macroeconomic, social, legal and political frameworks for the large-scale creation of sustainable, decent jobs and business opportunities.

However a fundamental concern in the recognition of rights is the need for individual legal identity, as expressed by M. Woolcock:[67]

> To the extent there is now a broad scholarly and policy consensus on the importance of property rights for development—i.e., for encouraging investment by the poor (and others) in small business ventures; or, concomitantly, a recognition that endemic corruption, costly bureaucratic delays and weak contract enforcement all undermine capacities and incentives to make such investments—it is also important to appreciate that responding effectively to these concerns is not simply (or only) a matter of encouraging policymakers to "grant" property rights, "stamp out corruption" or make relevant line ministries "more efficient". In the most elementary sense, property rights must be given to actual people, who themselves—in order to advance and defend their personal status and identity. A crucial pre-requisite, then, to enhancing the quality of property rights is ensuring that residents/citizens have recognized documents (such as birth, death, marriage and divorce certificates) verifying such basic information as their name, age, sex and marital status.

To balance between rights and market based approaches, emphasis should be laid on programmes providing increased wages, government assistance, education, land reform, labour monitoring, and access to credit are good starts in helping the poor create wealth. However, institutional reform is needed to eradicate poverty, attain development, and successfully transition to free market economies. Reforms that reduce bureaucratic red tape and bring the cost of legal compliance under that of extra-legality are necessary to formalize those who were previously excluded. Such reforms should also create greater regulatory transparency, allow for citizen input, and aim at fighting corruption and inefficiency. When tailored to local circumstances, titling programmes that turn dead assets of the poor into useable capital are great tools for poverty reduction, development, and attaining legal inclusion for informals.[68]

To sum up

The constraints and barriers discussed in this chapter clearly establish the reasons why the poor opt to remain in informal businesses. Informal enterprises often have limited access to broader economic opportunities and are especially vulnerable to uncertainties, corruption and even violence prevalent outside the rule of law. They have few means to settle disputes apart from bribery or violence. Without legal rights or protection, they are in a continual state of legal and political vulnerability. Thus making formality more accessible could legally empower the poor to grow their businesses, enjoy the appreciation of their assets in formal property markets, and access credit more easily. This is the vision of the Commission as a means to alleviate poverty which has been the focus of this as well as the following section which highlights the importance of access to markets, goods and services and infrastructure.

4. Empowering Informal Enterprises through access to markets, goods and services, and infrastructure

Improving the functioning of markets

The close correlation between being poor and operating in the informal economy in the rural and the urban sectors is conspicuous. Also, high business costs and informal economy move in parallel in response to ill-designed, unstable and non-participatory rules and regulations, lack of secure property rights, inadequate government capacity and resources to enforce laws and regulations, a lack of transparency, accountability and autonomy of judicial process as well as high degree of macroeconomic instability and corruption. Inadequate access to markets, poor quality or non-existent basic public services and infrastructure further lead to low productivity, particularly for informal businesses.

Agriculture accounts for a large share of gross domestic product (GDP) and employment in sub-Saharan Africa. It is primarily a family activity, a component of the informal economy with the majority of farmers being small holders owning between 0.5 and 2.0 hectares. Women provide nearly 50 percent of the labour force and produce most of the food crops for the family. 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.

Given that poor households concentrate in agriculture, any improvement in their livelihoods would necessary entail in part in making agricultural activities more productive. Improved access to markets and technology are therefore important as is the need to strengthen property rights and creating better methods of risk management.

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[69] raising the urban population, including those living in poverty, well above that of rural areas. Additionally, 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, the informal economy would continue to expand.

Of the 3 billion urban dwellers today, 1 billion live in "slums" i.e. in areas where people lack access to key necessities such as potable water, sanitation, basic energy services or durable housing[70]. For the slum inhabitants disease and violence are threats faced on a daily basis and health care and education for the children are a distant hope. As the pro poor growth reform must increase the utilization of the marketable assets of the poor, it is vital to ensure that markets for the poor are better integrated in to the economy with efficient backward and forward linkages.

Accordingly, targeted public investments need to be stepped up in education, healthcare, water and sanitation and energy services, and infrastructure[71] for enabling entrepreneurship and generating sustainable livelihoods. Also public investments are crucial for the "private-based economy" to prosper and to allow the private sector to create employment and sustain long term economic growth. In the absence of adequate infrastructure, health services, education, inclusive financial services, etc., market forces alone can accomplish little.

Sustainable Livelihoods Framework

A livelihood is sustainable if it can recover from stresses and shocks while maintaining or enhancing the necessary capabilities and assets. The interventions for engaging the private sector would reduce the vulnerability of the poor and increase their resilience through investments in enhancing access to resources, building assets for them, and improving their skills and capabilities to support livelihood opportunities and design a living. Income generation is the foundation of a sustainable livelihood. Access to basic services like energy, water and sanitation, housing and healthcare is fundamental to enable people to seek, maintain and continue to work. For a livelihood to be sustainable, it must lead to a surplus beyond immediate consumption requirements to allow additional resources for overcoming shocks and stresses, when required.

However, these basic and necessary services represent "missing markets" or "incomplete markets." While the demand clearly exists, it is not communicated through conventional market characteristic elements because of asymmetric information and regulatory and transaction barriers to market access and market creation for new products and services. These, in turn limit the supply of these goods and services. Additional-supply side constraints include the reluctance of the private sector to invest in measuring the demand for new products and services because of new and relatively unknown markets that require innovative marketing mechanisms including multi-stakeholder partnerships.

Increasing Access to Goods and Services

Markets have to be created to target the groups that currently are excluded from them. For instance, well focused and participatory policies can lead to the evolution of markets for goods and services through improvements in production, distribution and storage components of the value chain and mitigating the risk of starvation.

As discussed earlier, lack of access to potable water, basic sanitation, energy services, and solid waste management services adversely affects the lives and livelihoods of the poor people directly and has a devastating impact on efforts to engage in trade and business. The poor pay many times more for water (of questionable quality) and other essential services than the rich.[72] While in the rich countries, public spending on health is nearly $3000 *per capita*, the poorest countries can afford to devote barely $10 *per capita* or so to public health per year[73]. At this level of investment, it is not possible to operate and manage a

Case Study:

New markets lead to new opportunities for rural informal businesses
– VegCARE, Kenya

Less than a year ago, Mutulu was living below the poverty line, along with three-quarters of the population of Makueni district in eastern Kenya. Now, he is one of more than 400 farmers selling vegetables in supermarkets in the UK such as Tesco and Sainsbury's.

"Before, I cycled 10 km each day to sell my produce to middle men and they gave me low prices and sometimes did not even buy my produce." Now Mutulu educates his children and is saving money thanks to VegCARE – a business partnership that has helped over 400 farmers gain access to markets and on average doubled their incomes in six months.

Their baby corn is sold in Tesco and Sainsbury's and their aubergines, chillies and okra are destined for the tables of the Asian community in the UK."When VegCARE came and said that they would market our produce for us, most people doubted them. I was one of the first in the Kwa Kyai scheme, which now has over 300 farmers who decided to join VegCARE."

The partnership's roots are in a project, initially piloted by CARE, which showed that if smallholders were given access to markets they could and were willing to invest in farming. The project was a success but not commercially viable, so CARE linked up with Vegpro - third largest vegetable buyer and producer in the region .As a result, Vegpro's supply to the market from smallholder farmers increased as their incomes and livelihoods improved.

Initially Vegpro bought the produce and did not get involved in production. CARE pre-financed the production and provided technical support to the farmers. Now a rural enterprise has been formed to take over the activities and is known as VegCARE. It is a new type of partnership, born out of an aid project that was aimed at helping farming communities in the long term – and giving them ways of making a sustainable living for themselves, their families and their communities.

Source: CARE Canada, 2007

primary health system. Similarly, it is estimated that achieving the Millennium Development Goals for water and sanitation would requires additional annual funding of $10-$25billion; an estimated $700 billion of investment is required to bring electricity to an additional 1.4 billion pople.

There is need across much of this world for greater resources to effectively deliver basic services to the poor. While increased financing is a necessary condition, it is not sufficient in ensuring that it fulfils the unmet needs of the poor and the vulnerable. In the case of education and health services, lessons learnt from a number of developing countries have shown that increase of funding in any given sector does not always lead to delivery of enhanced access and improved quality of service. Increasing public expenditures may not lead to anticipated outcomes if the institutions and professionals responsible for delivery of integrated services have inadequate capacity and are not accountable. Accordingly, capacity development, participation, transparency and accountability are mandatory to ensuring that funds allocated to public service reach their intended targets for equitable development.

Investments in health, education and basic services, like energy, water and sanitation, are increasingly involving both public and private sectors. In many countries, such services are in part being delivered through private initiatives that include cooperatives, communities and independent network providers. This in turn has given rise to experimentation with privatization of core functions of the state (services delivery, for example) and increasing participation of delivery through operators in the informal economy. Privatization has not yielded many positive results as it reduces the ability of the state to define an active social and economic agenda. Informal operators require regulation as well as capacity development, particularly form the perspective of quality control and also for consumer protection.

But, since the poor interact with the private sector, both as consumers and entrepreneurs, the private sector can play an important role in delivering goods and services for development and poverty alleviation. This would work best in partnerships that also include civil society organizations, because they are vital to bring out participatory and accountable approaches needed for improving the quality of life of the poor.

At the same time, governments are increasingly recognizing the benefits of decentralization in making the delivery of services more effective. For local communities to take advantage of the benefits of decentralization, it is critical to put institutions in place for enforcing accountability, reducing costs of varying kinds (for transactions, negotiations and enforcement of contracts), and for developing adequate capacity to facilitate coordination among public agencies, private enterprises, NGOs and civil society organizations. Multi-stakeholder partnerships in public service delivery involving state and non-state actors can contribute to mobilizing their competitive advantage in terms of capacity and resources from various partners and supplementing traditional direct public delivery of services.

Well-trained and motivated service providers, whether from public, private, or civil society communities, and adequate institutions with transparent procedures and responsive accountability systems, are important constituents of effective public service delivery. Involvement of the poor themselves in setting service delivery priorities, infrastructure investment planning, level of service and oversight, responsive feedback mechanisms and accountability, are critical to determining the quality of service provided.

Case Study:

Linking Markets: Promoting sustainable tourism development with indigenous and rural communities in Latin America

Aiming at supporting grass-roots initiatives and small and community based enterprises consolidation in the tourism sector, the ILO has been supporting a programme in Latin America whose main purpose is to assist rural and indigenous communities usually engaged in work in the informal economy, in gaining greater access to new markets and business development services.

Operating since 2000, REDTURS is now present in seven Latin American countries; it relies on a network of communities, institutions and resources devoted to encouraging the development of sustainable tourism keeping in mind economic productivity, social equity and cultural identity. REDTURS has encouraged the competitive advantages of these communities in fostering quality job creation and productivity increases mainly through three strategies: a) Improving the service supplied by making the most out of existing social capital and training the community's labour force; b) Gaining market shares by applying a five-point marketing strategy, and c) Establishing strategic cooperative alliances involving other networks and International Agencies. By promoting participatory mechanisms for dialogue and capacity building for local partners, REDTURS supported the creation of four national community tourism networks that have benefited several indigenous communities.

Source: ILO

The provision of efficient, reliable and affordable public infrastructure services should work as catalytic incentives encouraging enterprises in the informal economy to move upwards along the continuum towards greater formalization.

Inclusive financial services

Limited access to working capital and financial services including risk management services are responsible for holding back the growth potential of informal enterprises. Micro-entrepreneurs in the informal economy regard the need for finance as a top priority. The ILO's Global Agenda for Employment identifies the constraints on the development and growth of efficient and competitive enterprises as "a wide swath of policy areas particularly those arising from difficult access to credit and other financial markets."[74] Finance can be a dominant tool to initiate and reinforce self organization among those in the informal economy. It is often the monetary transactions that catalyze the formation of joint liability and solidarity groups, some of which develop multi-purpose self-help organizations.

Access to finance is essential for creating an enterprise and keeping it going. A considerable expansion of rural bank branches in India promoted non-agricultural output and enhanced economic growth. Additionally, the expansion of bank branches led, indirectly, to an increase in agricultural wages and reduction of rural poverty.[75]

But, it is often the case that access to credit in conjunction with macroeconomic policies relating to trade, may work to further strengthen the larger enterprises while preventing smaller ones from gaining access to global markets. For instance, export promotion policies favouring the coir industry in Sri Lanka directed a shift in the supply of coconut husks to mechanized units (owned by men with access to credit), and away from manual units owned by women who had little access to credit.[76]

While the availability of credit is a concern, what is equally important are the terms on which it is available and whether they are within the reach of the existing and potential entrepreneurs. Most micro, small and medium enterprises need small loans and small-scale deals that banks, in general, are either unable or sometimes unwilling to provide. At the same time, self-employed workers in the informal sector do not have collateral to offer as a guarantee. Most operators in the informal economy therefore look to informal financial sources.

Microfinance

"The poor are bankable" is the important les-

Case Study:

Alternate Model of Informal Credit: SMEs helping Informal Enterprises in Peru

Vincent Sanchez lives in the community of San Martin de Porres, with his wife, Ruth, and their two kids. This is a semi-formal settlement, where an association, rather than the city of Lima, provides electricity and water. Vincent has 15 years experience in the metal working business and lives in San Martin de Porres which means he is not able to qualify for a loan from the bank. As part of a credit programme operated by the medium sized enterprise, Promac, he was recently able to purchase a large metal working machine (valued at approximately $5000). Vincent and his wife, who is also a micro-entrepreneur, now make enough money to support their family, for their kids to attend school, and to pay off the loan on the machine. Before negotiating the loan for the machine, Vincent commuted an hour and a half each way to work. Now, he only travels once a week to the informal market to sell the metal pieces he makes, and market demand is now outpacing his production capacity. Vincent does not have a tax number, and he pays no taxes to the federal or local government.

Approximately 15 percent of Promac's clients have a private loan arrangement, similar to the one Vincent has. Segundo, Promac's founder, says that a typical growth path for a business like Vincent's would be to outgrow his home-based operation with two to three years, and to move into the industrial zone of the city. By this time, Vincent should be able to engage with a few larger clients who would no doubt insist on formal tax receipts, eventually warranting the expense of registering the business. Once he moves into the industrial area, Vincent says he will register the business with the appropriate local municipal agencies to avoid some of the current hassles and to access larger loans from the banks. Hassles include intermittent electricity loss within San Martin de Porras, which has the potential to affect Vincent's ability to re-pay his loan on time. In urban areas, 95 percent of households have electricity, however this drops to just 86 percent in the lowest economic quintile. (Sociometro, 2007).

Promac has a loan repayment rate of 100 percent. Some clients are late with their payments on occasion, but the company also offers a work-repayment option, where clients work in the Promac factory on an hourly basis as a way of paying off the loan. Promac credits their success to a hands-on approach and a keen sense for potential in their clientele.

son we have learnt after nearly three decades of microfinance activities. Microfinance plays a pivotal role in providing sustainable livelihoods by stimulating small businesses. Although microfinance[77] is becoming increasingly available to micro-entrepreneurs, frequently the only options for access to capital by them are through informal financial arrangements with priced transactions, rotating savings and credit associations (ROSCAs) or moneylenders who usually provide emergency loans, often on usurious terms. The latter may not be able to lend as per the needs of the growing enterprises. Furthermore, despite the positive response to the progress of microfinance, there has so far been little involvement by the world's largest financial institutions in microfinance successes. To be sure, there are currently examples of large private sector banks entering into risk-sharing partnerships with NGO microfinance institutions that merge the social mobilization skills and rural presence of NGOs with the capital resources and financial credibility of the bank. These efforts, however, need to be leveraged to enhance access to financial resources by micro and small enterprises. The commonality between informal finance and microfinance is in that they consider the households and the enterprise as a unit and are usually not concerned with how the loan is used – whether for consumption, productive investment or saving.

Related to the issue of exploring the integration of microfinance with the financial sector and the roles of the private and public sectors, it is important to analyze the impact of policies[78] that will encourage greater financial sector involvement with the markets and with demand by the poor and the disadvantaged. The microfinance institutions have induced more competition in the credit market and therefore lowered the credit interest rate that poor people have to pay. Currently these institutions are unable to meet requests for sums needed to take micro-enterprises to a larger scale.

Savings

It is now widely recognized that the poor have a high propensity to save and that there is a considerable demand for savings instruments and institutions. The creation over time of smoother flows of income can work to form the basis of a non-contractual insurance against natural, social and physical shocks and stresses. In West Africa, in most savings-based microfinance institutions (credit unions, village banks or savings, and credit cooperatives), nearly six times as many people make deposits as take out loans at any point in time.[79]

Micro-insurance

Even though there are important links between microfinance and micro-insurance, a related 'mantra' that the poor are uninsurable still persists. Increasingly micro-insurance is a part of the developing microfinance systems.

Most entrepreneurs in the informal economy, particularly micro and small entrepreneurs, do not have access to risk management and safety net mechanism tools that large private firms do. These tools include a range of savings and insurance products as well as more sophisticated products that minimize risks from macroeconomic variability, such as inflation, as well as shock and stresses from natural hazards and disasters. However, informal mechanisms such as savings and other traditional risk management structures,[80] have proven very expensive and therefore unsustainable as long-term coping strategies.[81]

Access to insurance by the poorer people reduces the vulnerability of households and increases their ability to take advantage of opportunities.

Even though micro-insurance is a nascent market, it provides protection to low-income people against specific risks and hazards in exchange for premium payments proportionate to the likelihood and costs of risks involved.[82] By reducing the impact of household losses that could exacerbate their poverty situation, micro-insurance can enhance the stability and profitability of households. However, these insurance instruments are not widely available for managing risks for populations with low incomes. If this kind of insurance could be delivered cost-effectively through microfinance institutions (MFIs), it could represent a profitable segment for the insurance industry. While previous attempts to launch such products have not been entirely successful they have pointed the way to eventual growth. There definitely is a need to be filled that would allow the poor people to alleviate the economic impact of natural disasters. Also, micro-health insurance schemes offer reasonable guarantees of loan repayment since the insurance would provide for adequate medical treatment to the borrower in the event of serious health problems. Additionally, micro-insurance also has the potential to be used as collateral for borrowing additional credit for business enterprises.

Herein lies an important tool for the promotion of equitable growth: enhanced access by the poor to inclusive and gender responsive financial products and services (like micro-insurance), and supported by policies, social institutions and new technologies that reduce market barriers and transaction costs. Additionally, these interventions together with capacity development at human, institutional and system-wide levels, show promise of reducing vulnerabilities among the poor by assisting them in creating assets, promoting entrepreneurship, improving service delivery and strengthening livelihoods.

The private and formal sectors are capable of providing micro-insurance products, as they can design and offer sustainable and long-term risk reduction strategies that are also profitable. This role is being explored comprehensively, both as a business model and as an intervention for social protection. In the process, it will be important to learn just how micro-insurance relates to government policies, role of government, and the public sector. For now, it is encouraging that a significant number of insurers are keen to explore the low-income market; in time, the viability of a micro-insurance product will be determined by the demand and attractiveness as well as by the number of potential clients. Currently, the ability to pay and incentives to fill the demand for the insurance products are common barriers for consumers and suppliers. There is anticipation that these barriers can be overcome, in part, by providing an operational linkage between micro-insurance and remittances.

Remittances

While the search for a better life and livelihoods drive rural-urban migration, the root causes of international migration derive from the major economic, demographic and social disparities as well as conflicts, climate change and environmental degradation or disasters. Remittances constitute the most tangible contribution of migrants to poverty alleviation. A better understanding of how remittances are used would inform public policy and development interventions for migration and financial services and for enterprise development, livelihoods strengthening and provisions of other basic services. Equally important is to ensure that the money reaches rural areas as well as other areas where large populations are still unbanked with no access to diverse financial goods and services that can improve their quality of lie.

Remittances – the transfer of funds from one place to another, from urban to rural areas or by developing country nationals sending earnings back home - can play an instrumental role in providing greater access to resources and to safety net mechanisms for entrepreneurs at the bottom of the pyramid. Remittances constitute the second largest capital flow to developing countries. It is less than capital invested directly by private companies but more than official aid. In 2006 remittances in the developing world amounted to about $206 billion. In many developing countries, amounts sent home by migrants supporting family and friends were many times the value of official government-to-government aid flows.

If the transaction costs of remittances can be reduced, formal channels will substitute informal transfers.[83] Fundamental issues involved in making this change range from accessible technology, hours of availability, efficiency of transaction and regulations, to the profit margins by the institutions engaged in the process.[84] While it is expected that the technology would play an important role in lowering the cost of remittances, new business models and regulatory environment hold the key to greater access to the services, and efficiency of the transfer process. Better service can provide greater profits by integrating remittances more fully into financial services offerings for migrants and their families. Although the issues are complex, remittance are important for developing countries as the amount can provide access to additional financial resources and ultimately to creation and sustainability of livelihoods.

There are several ongoing initiatives at this time undertaken by different countries, development agencies and institutions, and the learning is evolving. The governments of origin and destination have to work together with multilateral organizations, private sector, diaspora and other stakeholders to create options, tools and incentives to maximize the development benefits of remittances. These incentives and tools can be linked to the transfers themselves (e.g. through savings, credit, micro-insurance and micro-pension schemes) or focus on mobilizing savings generated by remittances towards productive investments (made by the migrant, the recipients or a local entrepreneur). This would buttress streamlined and gender responsive remittance policies and regulations, and strengthen capacity development at human, institutional and system-wide levels. These collaborative efforts can also catalyze public private partnerships (PPPs) that can lead to innovative demand based products and services for

Case Study:

Construmex (Mexico) – Helping Migrants with Remittances

Overview: Construmex helps thousands of Mexican migrants in the U.S. purchase and build homes for themselves and their families back in Mexico.

Constraint: Construmex recognized that its earlier model of serving low-income clients in Mexico would not work for migrants in the U.S., as the latter approached commercial transactions with extreme caution. The company lacked adequate market research to determine how best to proceed.

Solution: Construmex partnered with Mexican Consulates in the U.S. to conduct market research on the needs of the migrant population. Following these surveys, it developed a new 'cash-to-asset' transfer service that was offered through migrant associations.

Source: UNDP, "Growing Inclusive Markets – Business Works for Development- Development Works for business." June 2007 meeting the needs of the poor people.

To summarize, enabling environment, capacity and institutions that will enhance access to finance and safety net mechanisms are critical for the entrepreneurs at the bottom of the pyramid and require innovative approaches. Remittances can be an attractive business for microfinance institutions and a valuable additional financial service for current and potential microfinance clients. Also, micro-insurance can assist in increasing the demand for microfinance and potentially take microfinance activities to a larger scale.

Public Private Partnerships

The informal economy is particularly dynamic and demands a high level of responsiveness from the state. Even though globalization is significantly changing the traditional role of the State, the role of the government must remain central in the development choices. One compelling reason is that "in most reforming countries the private sector did not step in to fill the vacuum when the public sector withdrew."[85]

At the same time, developing countries are recognizing the importance of markets and they understand that markets have to be created and governed. And sometimes the private sector has to be motivated to do what needs to be done through the strengthening of the policy environment, and through incentives and removal of barriers for market creation. An efficient private sector depends on a sound domestic macro environment that fosters good trade policies and institutional foundations, and adequate capacity to maximize benefits from the macro global environment and to promote distributional equity. The private sector is keen to harmonize private interest with public interest because, *inter alia*, it has started recognizing the potential business opportunities. Accordingly, the private sector is actively promoting new approaches to alleviating poverty, opening opportunities for all concerned, including the poor people and the private sector companies. While private financial institutions are willing to develop innovative partnership models to provide access to inclusive financial services, they need assistance in formulating appropriate policies and strengthening capacities that would remove barriers to market creation and expansion of market access to entrepreneurs at the base of the pyramid. Governments, meanwhile, should be encouraging private financial institutions to garner savings, long term credit and market-based social protection instruments in rural and underserved areas.[86] Hence the emphasis on public-private partnerships. Also, partnership with the private sector is no longer simply about mobilization of resources; it is also about acting on knowledge gained from the wealth of collective experience about entrepreneurship, management skills and global networking.

The challenge to make the 'missing markets' play an economic role in job creation and service delivery lies less in finding technological solutions to production and distribution and more in structuring institutions, capacities, incentives and regulations. And, if sustainable, high quality and affordable basic services are actually to be delivered to the poor and disadvantaged, capacities must be built to engage the talents and energies of the greater community and to allow for real and meaningful ownership of the activities by the different stakeholders.

Public-private partnerships hold great promise in this endeavour, especially if they were given an enabling environment that removed barriers to the entry by the smaller and community-based enterprises. Developing effective skills for nurturing partnerships, enforcing transparent rule of law (including efficient contracting and procurement

Case Study:

Durban: A Heterogeneous Solution Through Public Private Partnership

The city of Durban, South Africa, took a non-restrictive approach to street vending. It demarcated sites throughout the city; changed the legal framework that governed street trading from criminal to administrative law; decreased the amount to pay for trading spaces; and guaranteed services such as basic shelter, solid waste removal, water, toilets, lighting, and storage facilities. The city also created an appeal committee of five members, of whom at least one was required to be a street vendor, where municipal decisions can be reviewed.

However, as the majority of informal businesses were in the traditional medicine sector, it was necessary to provide access to market. Over 30,000 people worked in this sector, most of whom were women. Through direct intervention, Durban built a dedicated market for traditional medicine traders with shelter, storage, water, and toilet facilities. It also trained gatherers on cultivating products and sustainable harvest techniques and is currently planning to establish a company to procure materials from growers, process them in partnership with a pharmaceutical firm, and market the products.

Source: Lund and Skinner, 2005.

Case Study:

Buy-back centres for waste collectors: A Public-Private-Community Partnership Model

Waste collectors are amongst the poorest of those working in the informal economy. In South Africa, since legislated racial segregation of urban areas was abolished, there have been increasing numbers of waste collectors operating throughout its cities. These are largely black women whose incomes are extremely low. In the mid 1990s the Self Employed Women's Union (SEWU) organised cardboard collectors in the inner city of Durban / eThekwini. The union found that these collectors were innumerate and often exploited by unscrupulous middle men, and it lobbied local government to assist them.

Through SEWU's activism, and the understanding by the City Council that waste collection provided a livelihood for many residents, a buy-back centre was established in the inner city.

This is a public-private-community partnership. The Council provided a small plot of centrally located land that was converted into the centre, and a large private sector recycler provided the scales, storage containers for the cardboard and trolleys for the collectors. SEWU worked alongside city officials to design the intervention and trained the cardboard collectors on how to weight their cardboard. Through this intervention, the collectors sold their cardboard directly to the recycling company. This has substantially increased the (albeit still low) incomes of these waste collectors. The success of the inner city buy-back centre has led to the Council establishing a number of similar centres throughout the city.

Source: Mgingqizana, 2002.

processes), and improving managerial capability could go a long way to encourage the creation and then to sustain such PPPs. Their energies could be tapped to meet the needs of the poor for basic services. For instance, it is estimated that the achievement of the MDG goals for water and sanitation will require enormous annual budgetary outlays. A very different and more manageable scenario is foreseen if efforts to achieve these targets were supplemented by service delivery through PPPs, particularly if the local communities were empowered to manage their needs through effective value-chain strategies. If effectively formulated, PPPs would generate benefits beyond the obvious ones of providing jobs and livelihoods. Health in the communities could be improved and children could have greater opportunities to attend schools.

Economic success requires getting the balance right between the government and the market in terms of who should provide the goods and services and how they should be provided. The balance of course is country-specific and depends on the level of development. While recognizing the critical role of governments in creating foundations for a healthy and dynamic private sector, it is vital to develop innovative models of PPPs both at the local levels as well as national levels, to harness resources, capacity and skills of the private sector to benefit national development.[87]

Successful mobilization of the communities, whether through the efforts of the government, the private sector or NGOs, represents collective action at the local level. Though the interventions involved in working for new economic growth outcomes reflect local interventions, their implementation recognizes a global context that influences all development activities. At the same time, assurance is needed that the supporting state and public policies are functioning, that the necessary regulation for creating greater equity is in place, and above all – that the arrangement works.

To sum up

The discussion in this section has focussed on sound economic governance that provides policies, laws, regulations, institutions, practices and individuals to support a strategic partnership of government, private sector and civil society for delivery of basic goods and services and access to markets. In addition, issues were explored concerning access to finance and safety net mechanisms which are critical for the informal entrepreneurs, particularly microfinance, micro-insurance and the matter of remittances and savings among various other financial services and portfolios. The next section focuses on solutions that authorities and businesses (i.e., bottom-up and vice versa) have developed based on real life problems and experiences. Experiences and solutions come from all aspects of business life and several different countries. An advantage of evidence based solutions is that measures successfully adopted by one country may be replicated in others with necessary modifications.

5. Institutional changes and legal tools making a difference for informal enterprises - an evidence-based approach

In the earlier sections of this chapter, we referred to constraints and barriers businesses have faced in their operations, as well as need to broaden access to markets, services and infrastructure. We now focus on solutions that authorities and businesses have developed based on real-life situations, problems and experiences. Experiences come from a number of countries and from all aspects of business life.

The main advantage of evidence-based solutions is that measures successfully adopted by one country can - with necessary modifications - be replicated in others. Instead of academic discussions, realities exist on the ground and can be borrowed and implemented.

The format we adopt for evidence-based solutions are the same - from business start-up to business exit - as described in our discussion of barriers and constraints to keep conformity and maintain the linkage. We also present cases of reforms that have taken place both from the perspectives of the top (due to sustained pressures from the bottom) as well as initiatives undertaken at the local/ grass root level or by the private sector.

Improvement in the quality of institutions in an economy has to proceed simultaneously with transformation of the nature and efficiency of its informal economy. Learning from the institution-building experience of the industrialized countries, and those in transition, as well as from other developing countries, can be valuable. There are several good practice examples from around the world to illustrate how constraints of informal businesses have been successfully addressed through institutional and policy changes. At the same time, national and local-level institutional changes can be initiated implicitly by introducing new economic activities to provide direct and measurable benefits to those who will be influenced by the institutional change. Ability of the population impacted by the institutional change to recognize the tangible benefits provides ownership. And, the economic activity becomes an agent for, and a catalyst of, derived demand for appropriate institutions.[89] For instance, economic empowerment based on economic activity is a step towards gender equality,[90] even though it is not synonymous with it.

Linking creative economic activities with business rights in the informal economy has an added advantage in that it allows for a learning-by-doing approach to implementing institutional reforms. It also allows a synergistic linkage between reforms from above, including those initiated by governments or promoted by international organizations with effective action from below – for example, by civil society organizations and the organizations of the poor themselves.

Legal empowerment entails making laws and regulations appropriate and relevant to the realities of the informal businesses. Some successful innovations are discussed below. It also requires a just and fair system of enforcement of laws. Specifically, it implies:

- A competent, independent judiciary, applying the law equally and evenly on all members of the community. Essential are education of the legal profession; full publication and dissemination of legal texts including judicial decisions.
- Transparent, coherent laws, including laws for the protection and facilitation of business.

Case Study:

"Tell us How to make legal mechanisms and tools work for informal businesses." *President Benjamin Mkapa, Tanzania*

In 2005 President Benjamin Mkapa of Tanzania proposed that the next government should speed up the process of bringing informal businesses within the legal ambit to shore up achievements recorded and spurs further the country's economic growth. The president made the remarks when he launched a report on the Diagnosis Phase of the Property and Business Formalisation Programme for Tanzania. Quoting the 2005 Global Competitive Report released by the World Economic Forum, Mkapa noted that Tanzania had climbed 11 places above last year's rating and overtaken Uganda and Kenya partly because of the contribution by informal businesses. In order to take Tanzania to next level of development, the President specifically sought answers to following:

a) How are we going to turn all this recognition into something accessible and beneficial to the 98 per cent of business operating outside the legal system?
b) How can we enable people to leverage their participation in this competitive environment when probably 89 percent of their assets are held in the extra-legal sector?
c) What legal reforms to be instituted to recognise, protect and 'formalise' of the informal operators' assets?
d) What needs to be done to include our people to benefit from the growing formal and market economy?
e) Due to lack of recognition legally, informal entrepreneurs have created their own mechanisms of documentation, registration, fungibility and collateral and testament.

These informal entrepreneurs have developed archetypes of business organisations and expanded markets outside the legal sector. How can we bring these organizations in the mainstream and provide recognition and the real challenge is to use these archetypes as a basis for a new system wherein people can relate to and access, and thus bring down the barriers that stifle entrepreneurship) How to remove those barriers that exclude them from participating in the markets we seek to create, and that retard our poverty reduction efforts. Mkapa said Tanzania continues to be excluded from the benefits of an expanded market economy, saying it was time to bring them in. He called for support from stakeholders and development partners, non-governmental organisations, financial institutions and others in the protection and formalisation of the hard-won assets and business of the majority of poor Tanzanians. *SOURCE: Guardian, 2005-10-06*

- Freedom of the press, and adequately paid journalists to shelter them from bribery.
- Enforcement officers who apply the law uniformly to all.
- Ease of entry into formal business so that various business forms are quickly and cheaply formed, some to limit the owners' liability to their investment in the business.
- Significant effort to reduce grand corruption and, ultimately, to reinforce social norms that constrain petty corruption.

Emerging business laws in some African countries, 91 are an example of an important step toward this kind of structure. They do not, however, fully protect transactions from distortions within the national judicial systems, and they have not yet generated the transparency they are designed to provide as neither the decisions nor the filings have yet been systematically computerized. The laws also do not address who controls the military. They do, however, create a vocabulary and a virtual forum for discussion of legal predictability and, generally, of the rule of law; in this way the laws have facilitated discussions among actors in the formal economy, including business people as well as lawyers, academics and judges. The same vocabulary and forum allow social norms underlying formal laws to influence the informal economy, too, for example when business people with one foot in each economy are vectors for transfer of information. The appearance in the informal economy of relationships and documents mimicking those in the formal economy suggests the power of such transfers from the formal economy.

Innovations which Demonstrate Business Rights and Legal Empowerment

While business regulations vary from country to country, and from municipality to municipality, they usually include most of the features bulleted below. Responses to the obligations that follow from such regulations are appropriate to the circumstances of the informal entrepreneurs and may be termed 'empowering'. Most countries would expect the following from a formally recognized business:

- Incorporation of the business as a legal entity.
- Inclusion in a business registry at the national, regional, or municipal level.
- Registration with the national tax authority.
- Registration of employees in pension/health/other national social security schemes.
- Acquisition of building permits, at the municipal level.
- Acquisition of operating and other licenses, at the municipal level.
- Approval of health officials upon inspection (especially for sales of food), at the national and/or municipal levels.
- Safety approval from local fire officials.

Starting a Business

Some of the best practices[92] adopted across the world to simplify business start-up formalities and registration are as follows:

1. Diagnose the problem:
Australia: A taskforce was created to measure the administrative burden, resulting in the establishment of a Business License Information Systems (BLIS) as a one-stop-shop service designed to deliver pertinent governmental information to small businesses regarding licenses, application forms and contact details. The results of BLIS are very impressive. They have reduced the administrative burden for business by reducing the information search cost incurred in trying to establish their regulatory compliance obligations. Furthermore, 15,000 people use this system every year; and in the nine months between September 1999 and May 1999, BLIS generated more than 13,500 fact sheets and reports for new and existing business via the Internet alone.

Mexico: a special deregulation unit was set up under the Ministry of Industry and Commerce to review all existing business formalities, including start-up requirements. The comprehensiveness of the approach led to a more fundamental reform than if the government had sought fast results.

2. Provide adequate training and resources to licensing authorities:
Australia: Training to licensing authorities on the

Case Study:

Business Registration Reform in Uganda

In Uganda, firms must apply for annual 'trade licenses', which combine basic registration of their status with other approvals. This process is a major deterrent to formalizing businesses. It takes an average of two days to obtain the license at an average compliance cost of about 20 percent of per capita GDP. Administration includes cashiers for fee payments, registrars for reviewing paperwork and issuing the license, a site visit by a health and safety inspector, and approval by the Local Chairman.

Little of this is really necessary, except for a few firms which pose significant risks to public health or security. The DFID project introduced a simplified trade licensing process in Entebbe municipality, involving only provision of basic information by the entrepreneur, payment of a fee, and immediate issue of the license document – all in one stop. This reform was found to have brought the following benefits:

A cheaper & shorter process: compliance cost dropped by 75 percent and is now estimated at 2 percent of per capita GDP. Average registration time is now 30 minutes, down from two days.

Better business-government relations: businesses feel that the attitude of the registration staff is much more positive and pro-business.

More businesses registered: registration levels have improved by 43 percent. In the first year, four times more businesses registered than in the previous year.

More government revenue: total revenue collection has increased by 40 percent through more registrations. Individual businesses pay less on average.

Reduced administrative costs for government: Entebbe municipality estimates a 10 percent reduction in administrative costs. Administrative time effort by staff is down by 25 percent. There are reduced waiting lines and hassles for businesses.

Health & safety inspections more targeted & prioritized: inspectors can now target their visits on high risk businesses.

Better knowledge of business profiles/sectors: a new computerized system and improved compliance gives the local authority better information. These reforms were implemented without changes to national level legislation which would have been very difficult and slow to achieve. Instead, other legal means were found to make change. In cases such as this, regulatory barriers to formalization can be reduced without large-scale legal change, but rather through small incremental change. The Entebbe experience is now being replicated in other local authorities in Uganda.

use of new technologies for business registration, having the greatest positive effect on small businesses and micro enterprises, which generally do not have resources to spend on legal assistance.

Ceará, Brazil: Technical assistance given to applicants, many of whom are illiterate or semi-illiterate. Government prepares material for SMEs, which explain their rights and responsibilities on key topics in simple and clear language.

Eritrea: Legal assistance provided to SMEs to make better use of their rights and instruments.

3. Business Help Centres (BHC) -Create single access point for business for entrepreneurs:
Turkey: launched in June 2003 a one-stop registration by combining seven procedures into a single visit to the company registry. The time to start a business was cut from 38 days to nine. In addition, application forms were unified and shortened and registry officers were trained in customer relations. The cost fell by a third and the number of registration shot up by 18 percent, almost halving the time to start a business – from 23 days to 13.

Portugal: at the Centro de Formalidades de Empresa all company registration procedures are performed in only 3 visits.

4. Introduction of standardized forms resulted in significant reduction in rejection rates:
In the *United Kingdom* by 8 percent, in *Malaysia* by 11 percent and in *Costa Rica* by 14 percent. These can cover all business forms: sole proprietorship, partnership, limited liability or corporation.

5. Electronic Registration, online forms and Registry data base Denmark, Italy, UK and Norway: electronic registration, an innovative and efficient procedure, has become norm.
Australia and Canada: internet can be used to file business registrations, which cuts the administrative cost by more than 50 percent.

Netherlands: the Ministry of Economic Affairs has launched a programme of 'Forms on Line'. Forms are unified under this programme. Registry database should be updated continually and accessible by Internet. A system should be in place for real time access to the database by inspectorates and others who need the information, such as tax, customs, pension, and social security authorities.

6. Cut the newspaper publication requirement:
Serbia and Montenegro: abolished the requirement to publish a notice in the official gazette. Instead, companies announce their formation on the registry's website.

7. Allow businesses to start activities immediately after registration:
Germany and Italy: allow companies to begin activities as soon as they file the required information (as long as it does not involve dangerous activities). This eliminates *ex ante* barriers to start ups.

México: the government created the Sistema de Apertura Rápida de Empresas (SARE), which reduced the number of federal formalities to open a low-risk business for individuals (tax registration) and for business (tax registration and enterprise registration). Under SARE system, it takes one working day to comply with federal start-up formalities for low-risk activities (specified in annex to the decree). As of November 2002, more than 226 000 individual and 1400 legal entities have received their tax and enterprise registration under this scheme.

8. Impose a 'silence is consent' rule:
This means that once the deadline had passed, the business is automatically considered registered. This approach, pioneered in *Italy*, is currently enforced in *Armenia, Georgia and Morocco.* All four are among the world's fastest 20 percent for registering a business.

9. Reduce or scrap the minimum capital requirement for private limited liability companies:
In *Bosnia and Herzegovina* (capital requirement reduced to half).

In *France*, the requirement is abolished.

10. Establish a single business identification number to expedite and track the processing of official requests:

Oregon: the single business identification number is used when reporting, paying, making enquiries about employment-related obligations, such as withholding, unemployment, and transit taxes and worker's compensation assessments.

Ireland: brought tax registration details for income, social security, and value-added taxes together under a single registration number. This practice has been introduced also in other European countries.

11. Involve the Private Sector in Registration:
Serbia: the independent agency registers business through a network of service centres strategically located around the country and through on-line and mail registration.

Italy: recently eliminated the role of the courts altogether and enjoys substantial efficiencies as a result. The trend in Europe is toward administrative management of registries and away from legal process involving courts and notaries.

(A recent study[93] for the European Commission found that key drivers of good registration are improvements in internal efficiency in public bodies through better management techniques and performance measures, accountability and user consultation which implies a client-orientation focused on business needs. The study found that reduction in the involvement of courts notaries and other legal bodies were associated with substantial efficiency improvements.)

12. Licensing Reforms – rationalization:
Russia: the new law on licenses significantly reduced the number of activities subject to licensing, reduced the license fee and extended the term of validity of a license to at least five years (from three years). After the adoption of the new law, the percentage of the enterprises that applied for licenses and permits dropped by a third.

13. "Get out of the Courts." Eliminate the need for mandatory use of both notaries and judges from registration:
Bosnia-Herzegovina: will make registration an administrative process, without resorting to the courts. Also eliminates the need for judges.

Italy: registration was taken out of the courts, saving three months.

Serbia and Montenegro: adopted legislation to do the same in May 2004. The benefits are large. Entrepreneurs in countries where registration requires a judicial process spend 14 more days to start a business.

Operating a Business

1. Reduce the number of inspections by government authorities:(with the exception of those areas where regular inspections are needed due to the nature of transactions). Inspections, in general, are based on ad hoc system in terms of document requirements, interpretation of documents and intention of inspectors. They usually lead to bribes and corruption:

Russia: According to a new Inspection Law, any one state agency can carry out no more than one inspection of one and the same firm in two years; the number of inspections dropped by a third.

2. Private inspections and certification – alternatives to administrative regulation:
Australia: a model involving private and third-party certification of building compliance by competent building professionals has been incorporated at the national level. It involves the development of a model of rational building legislation developed as part of a long-term regulatory harmonization process in this area.

Dubai has implemented this system, while *Japan* and *Malaysia* have expressed considerable interest.

Finland introduced several types (such as for foundation, steelworks and electrical work) of private inspection in 2004. All Nordic countries as well as *Australia, Canada, Ghana, Kenya, South Africa, Uganda, the United Kingdom and Zambia* have adopted risk-based inspections.

3. Simplified and transparent taxation system:
Uzbekistan: which used to have a complex and frequently changeable tax system, recently introduced a fixed simplified taxation system for SMEs - a great benefit to individual entrepreneurs, micro-firms, and small enterprises. Instead of various national and local taxes, they pay either a fixed or a unified tax.

Russia: the new Taxation System Law gave firms incentives to use a simplified tax system. Instead of VAT, profit, sales, and property taxes, small enterprises can pay one unified tax. (According to the old (1995) Russia law, SMEs had to pay 10 percent of profit for federal and 20 percent for regional budgets; 3.3 percent of revenue for federal and 6.7 percent for regional budgets, if revenue was below 7.5 million roubles and employment below 20 people. The new Russia law requires 15 percent of profit or 6 percent of revenue, if revenue is below 11 million roubles and employment below 100 people.)

4. Tax Identification Numbers:
Australia: introduced it in real estate transactions and banking and financial activities. The aim is to reduce tax evasion and unreported activities by employing computerized tax offices and management information systems, setting up regional information and audit centres and establishing a system to track unpaid taxes.

5. Electronic Tax declarations:
Mexico: using instruments such as electronic funds transfer, submission of declarations through the internet instead of paperwork. The results of this practice have been astonishing: reduced paper; expanded customer service coverage; easier for the Ministry of Finance to identify the origins and the destination of payments; and less time spent in tax compliance.

Egypt: started in 2003, a Model Tax and Customs Centre. The Centre houses the three revenue generating departments in one building. One tax and customs file for every tax payer. Efficiency in collection and avoiding double taxation were evident in tax payers' compliance to the new system.

6. Establish a flat tax and cut back special exemptions and privileges:
Estonia: 1994 reform replaced concession-laden system with a single flat tax offering no exemption. The country's tax base broadened, and revenues have not suffered.

Slovakia: in 2003 streamlined its convoluted incentive schemes into a single flat tax, with similar results.

Colombia, El Salvador, Indonesia, Jamaica and Mexico: eliminated distortions by cutting ineffective incentive schemes – and increased revenues in the process.

7. Increase revenue by keeping rate moderate:
Russia: reduced corporate tax rate from 35 percent to 24 percent in 2001, resulting in an annual average revenue growth of 14 percent over the next 3 years. Lower rate resulted in increased tax compliance.

Egypt: reduced corporate tax rate from 40 percent to 20 percent in 2005. Indications show that there is an increase in tax compliance.

Expansion

1. Distribute both positive and negative credit information in the registry sharing credit information:
There is a need to put more emphasis on posi-

tive information like outstanding loans, assets, payment behaviour on accounts in good standing. The public registries in *Belgium, Brazil and Turkey* began sharing more positive information. Backed by new laws, the *Greek and Hong Kong* private bureaus did the same. In Greece, the number of consultations to the bureau grew by more than 50 percent and several new products for lenders were launched. In addition, negative information should also be displayed: defaults and arrears.

2. Improve data quality (reforms on registries):
Bangladesh: public registry raised the penalty for banks that withhold data from 2000 takas to 500 000 takas and the penalty for disclosing credit information to unauthorized parties from 2000 takas to 100 000 takas. As a result, the share of banks submitting data on time jumped from 25 percent to 95 percent.

Mozambique: quality shot up after new regulations allowed the registry to fine banks for providing incomplete information. More than a dozen countries are improving data protection laws, which include incentives and safeguards for quality.

3. Make credit registry electronic:
Pakistan: an online system has been implemented to improve credit registries. Providing online access is associated with more credit. In addition, this system might help spur commercial banks to adopt credit-scoring technology, which both speeds up the lending process and reduces opportunity for gender bias. Creditors can now obtain information instantly.

4. Introduce universal security for debtors and creditors:
Slovakia: permitted debtors to use all movable assets as collateral – present and future, tangible and intangible, abolished the requirements for specific description of assets and debts. Since then, movables and receivables secure more than 70 percent of all new business credit.

5. Permit out of court collateral enforcement:
Spain: introduced out of court enforcement through notaries execution, allowing debtors and creditors to agree on enforcement methods. Time to enforce was cut from more than 1 year to 3 months.

Slovakia: The gains from reforms were even larger. It took 560 days to enforce a mortgage through the old system. Now it is possible to enforce it in 45 days.

India: where state-owned banks account for 90 percent of lending, were permitted to enforce settlement out of court. On default the bank must notify the debtor. After a 60 day grace period the bank can seize the assets directly and sell by public auction. Creditors can expect to enforce within 9 months.

Ukraine: also expanded the scope of assets that can be used as collateral, and gave secured creditors first priority to their collateral and its proceeds. In addition, it gave creditors the ability to enforce collateral privately, bypassing the lengthy court procedures required before.

Croatia: cut several months from enforcement by making it harder for debtors to delay the enforcement process. Movable collateral can now be seized and sold not just by the courts but also by authorized private firms.

Poland: changed its bankruptcy laws in 2003. Previously, employees and taxes were paid before the secured creditors upon liquidation. Now, secured creditors have priority to the proceeds from the sale of their collateral.

Armenia: since March 2004, the debtor automatically loses control of its property to an administrator on bankruptcy, increasing creditor rights.

6. Introduce a new Leasing law:

The development of leasing as a complementary tool to bank loans provides an alternative solution, which can significantly expand access to capital for business.

Benefits are: (a) an effective tool where capital markets are less developed; (b) security arrangements are simpler as it is provided by the leased asset itself; (c) little cash is required, allowing the lessee to conserve cash or use it as working capital; (d) tax incentives often make it possible for SMEs to reduce income before taxes, and (e) leasing promotes investment in capital equipment, increases competition in the financial sector, and facilitates the transfer of new technology.

Serbia and Montenegro: since passing a new leasing law in May 2003, nine new leasing companies have opened for business. They expect to issue $170 million in leases this year, roughly half of all SME finance in the country.

Uzbekistan: the level of leasing transactions was extremely small, now there are 23 leasing companies financing SMEs.

Kazakhstan: after amending the tax law in 2003, six new lessors opened: leasing deals grew from $57 million to $89 million within three months of the introduction of new legislation, and the average deal size fell from $190 000 to under $90 000, bringing leasing within reach of more SMEs.

Egypt: lease law introduced in 2000. Seven leasing companies cover most sectoral activities and more than $5 billion of financial leasing activities were introduced in the financial market.

7. Repeal the normative acts, which authorize banks to carry out functions, which are not appropriate for financial intermediaries:

Uzbekistan: banks act regularly as tax agents: to track timely tax payments and other mandatory returns by SMEs, to withdraw the outstanding amount of taxes and other payments owed to the authority. Obviously, SMEs do not view banks as effective financial intermediaries. As a result, there is a need to repeal the normative acts, which authorize banks to carry out functions, which are not appropriate.

Enforcing Contracts

1. Summary proceedings:

Russia: the most popular reform in 2003 was introduction of summary proceedings for the collection of small debt and other smaller commercial disputes. In late 2002, 60 percent of debt collection cases in *Moscow* used this procedure. A summary procedure typically takes two months from start to finish, 9 months less than a general procedure.

2. Introducing case management:

Case management can be described as a procedure in which the judge follows the case from start to end, reduces delays and increases user satisfaction. In addition, this is very important for collection of debt. The average duration of debt collection is five months in rich countries where judges actively manage the case, and nearly 18 months in rich countries where judges don't.

Finland: electronic system of recording was part of the case management. A judge can follow each case at any moment, reducing the time it takes to reach resolution.

Slovakia: this system has been implemented successfully without much additional cost. The average time between filing and the first hearing was cut from 73 days to 27 and the average number of procedures from 23 to five, as judges were randomly assigned and could schedule the hearings without the need for consultation with court clerks and other judges.

3. Privatize enforcement process and make it competitive:
Private enforcement or specialized public collection agencies to collect debt are more effective. The best way to speed the recovery of overdue debt is by allowing competition in enforcing judgments.

Colombia: in 2003 scrapped the monopoly of the courts to enforce judge's ruling. Private companies quickly moved into the business. As a result, time was cut by nearly two months.

Hungary and Slovakia: also introduced private enforcement.

Exit

With higher recovery rates, banks are more willing to lend and more money goes to new business ventures. The freedom to take new ventures, and do so through an efficient process, ensures that a country's people and capital are put to their most productive uses.

1. Specialized expertise:
Provide specialized judges who deal with foreclosure or bankruptcy cases. In developing countries this can be achieved by establishing a specialized commercial section in the general court or in an administrative agency.

Peru: Its clerks and judges deal only with bankruptcy and debt recovery issues and not with divorce or criminal cases.

2. Limit appeals:
Appeals are needed to resolve legitimate disputes. But too often they are abused and invoked for frivolous reasons and delaying an efficient outcome. Limiting appeals, both at the outset and during the procedure, increases recovery rates.

Australia, New Zealand and the United Kingdom: In foreclosure proceedings, the creditors need only to prove that a payment is overdue. Appeal is not possible.

El Salvador: in contrast, the debtor can appeal foreclosure and delay its start by up to 16 months. Appeals delay liquidation or reorganization.

Romania: reduced each appeal from 30 to 10 days. In addition, appeal can be limited only on legal grounds, not on the case facts, which are already established and accepted by the judge at the start of the case.

Estonia: allows the case to continue during appeal, avoiding disruption while providing for disputes to be resolved. Allowing the foreclosure or bankruptcy case to continue on appeal is associated with 20 percent less time in closing a business. And it almost doubles the chance of keeping it operating.

Successful Initiatives taken by Businesses

This section focuses on the initiatives taken from the private sector including informal businesses perspectives to entail their business rights and ensure that opportunities and markets are taken full advantage of.

1. Appropriate legal frameworks that enshrine the following as economic rights:

- access to finance, raw material, and product markets at fair prices
- access to transport and communication infrastructure
- access to improved skills and technology
- access to business development services
- access to business incentive and trade promotion packages: tax deferrals, subsidies, trade fairs
  Examples:
  Fair Trade examples

Vegcare, Kenya
Grameen Bank, Bangladesh
Social Fund, Egypt

2. Legal property rights:

- private land
- intellectual property
- *Examples*:
  Land rights for rural women in Mozambique
  Intellectual property rights for indigenous people in southern Africa

3. Use rights to public resources and appropriate zoning regulations:

- rights to urban public land
- rights to common and public resources: pastures, forests, and waterways
- appropriate zoning regulations stipulating where and under what conditions informal operators or businesses can operate in central business districts, suburban areas, and/or industrial zones
  Examples:
  Warwick Junction in Durban/eThekwini
  Dedicated Built Market for Traditional Medicine Vendors in Durban/eThekwini, South Africa
  Buy-Back Centre for Waste Collectors in Durban/eThekwini, South Africa.
  Street Vendors Zoning in Bangkok and Manila

4. Appropriate legal frameworks and standards for what informal operators and businesses are allowed to buy and sell:

- appropriate laws and regulations on what are legal vs. illegal goods and services
- appropriate product and process standards: e.g., public health and sanitation concerns about street food
- marketing licenses for products and services
  Examples:
  Appropriate standards for handling and processing of milk in Nicaragua, Kenya
  Market license for gum collectors in India

5. Appropriate legal tools to govern the transaction and contractual relationships of informal operators or businesses:

- bargaining and negotiating mechanisms/power
- legal and enforceable contracts
- grievance mechanisms
- conflict resolution mechanisms
- possibility of issuing shares
- right to issue shares
- right to advertise and protect brands and trademarks
  Examples:
  Brand name and advertisement for packaged cashew nuts in Senegal
  Brand name and fair prices for Ghanaian chocolate in UK
  Use of IT to market fish products in Senegal, India

6. Legal rights and mechanisms to provide informal operators and businesses with:

- temporary unemployment relief
- insurance of various kinds, including of land, house, equipment, and other means of production
- bankruptcy rules
- default rules
- limited liability
- asset protection
- capital protection
- capital withdrawal and transfer rules
  Examples:
  Limited liability devices (ILD)

Asset shielding devices (ILD)
Capital locking-in devices (ILD)

7. Legal right for informal operators and businesses to join or form organizations, legal recognition of such organizations, and legal right of representation of such organizations in relevant policy- making and rule-setting institutions:

- membership in mainstream business associations
- membership in guilds or other associations of similar types of entrepreneurs
- representation in relevant planning and rule-setting bodies

Examples:
SEWA in India
StreetNet International
Ghana Trades Union Congress
Catalunya affiliate of national trade union confederation in Spain

An Integrated Economy Approach

Instead of considering the formal and informal economies as a dichotomy, practice is beginning to recognize them as a continuum. Slowly but surely, the more enlightened policymakers are beginning to understand that legal empowerment in the form of reduced regulatory burden makes sound business sense. New models, some of which have been illustrated above, are emerging which recognize that economic policy has to promote an integrated approach to maximize social and economic opportunity and well-being of all social and economic strata. The integrated and inclusive economy approach recognizes that if relationships between different levels of economic activity are to be anticipated, made strategic and optimal, policy and institutional change for sustained business linkages and skills development has to take place. To design and support the development of appropriate policy and institutions for an integrated economy, innovations emerging at the interface between the informal and formal have to be analyzed. Small producers and micro entrepreneurs are daily developing strategies for dealing with the demands of formal institutions while the latter have also developed ways of managing their inevitable encounter with those who are the majority in the poorer countries of the world. These coping strategies hold the clues to what development interventions can build upon within particular cultures and economies.

Analysis of current practice offers several observations that could guide movement from a bifurcated to an integrated, cohesive approach to entrepreneurship and economic activity.

First, in order to encourage greater engagement between established formal businesses and the smaller enterprises, transaction costs and risks of such engagement have to be reduced.

Second, the public sector has to develop and implement participatory processes so that support is relevant to those on the fringes of formal activity. Third, change has to be negotiated through iterative dialogue and partnerships which span across central and local governments, the private sector, domestic capital markets, producer groups and their social and economic organizations. Fourth, the function in micro and small scale entrepreneurial activity of ‘immediate and direct reciprocities’[94] has to be recognized; in many low-income communities social groups and economic groups are synonymous. How social relations and values other than material affect the *modus operandi* of millions of entrepreneurs has to be brought into economic reform considerations.

Finally, the private sector has to be defined as incorporating all entrepreneurial activity in any

Case Study:

Identity, Voice And Association In The Informal Economy
– A Long Journey Of Self-employed Women's Association (Sewa), India

SEWA, established in 1972, is a trade union of low-income working women who earn their livelihoods by running small businesses, doing subcontracting work or selling their labour. With over 700,000 members in 2003, SEWA is the first trade union of workers in the informal economy not only in India but around the world. It is also the largest trade union in India. SEWA's objectives are to increase self–reliance as well as economic and social security of its members. SEWA members fall into four broad occupational categories:

- *hawkers and vendors*, who sell a range of products including vegetables, fruit and used clothing from baskets, push carts or small shops;
- *home-based producers*, who stitch garments, make patchwork quilts, roll hand-made cigarettes (bidis) or incense sticks, prepare snack foods, recycle scrap metal, process agricultural products, produce pottery or make craft items;
- *manual labourers and service providers*, who sell their labour (as cart-pullers, head-loaders or construction workers), or who sell services (such as waste-paper picking, laundry services or domestic services); and
- *rural producers,* including small farmers, milk producers, animal rearers, nursery raisers/tenders, salt farmers and gum collectors.

Over the years, SEWA has built a sisterhood of institutions, as follows:

- SEWA Union (the primary membership-based organisation to which all SEWA members belong and which provides overall governance of the organisation);
- SEWA Bank (which provides financial services, including both savings and credit);
- Gujarat Mahila Cooperative Federation (which is responsible for organising and supporting SEWA's membership in several types of co-operatives);
- Gujarat Mahila Housing SEWA Trust (which provides housing services);
- SEWA Social Security (which provides health, childcare and insurance services);
- Rural and Urban Branches of SEWA (which oversee, respectively, its rural and urban activities, including the recruitment and organising of members);
- SEWA Marketing (which provides product development and marketing services);
- SEWA Academy (which is responsible for research, training and communication).

The first three are democratic membership-based organisations, governed by elected representatives. The others are support institutions that provide services of various kinds to SEWA members.

Source: SEWA, 2003.

country and should be seen as inclusive of both 'entrepreneurship inspired by opportunity' and 'entrepreneurship inspired by necessity'. [95] The latter was always known as the social welfare approach; it now needs to be looked at through a business and wealth creation lens. Within an inclusive economy, entrepreneurship, whether formal or informal, would be supported by:

- Removal of regulations which unduly inhibit private sector development.
- An integrated perspective on micro, small, medium and large enterprises.
- Linkages between various sizes of businesses.
- Increased efficiency and productivity of the labour force.
- Enhanced competition.
- Expanded markets. [96]

In making profitable markets more inclusive of the poor, risk mediation is a fundamental concern. Formal institutions and large firms as well as small and micro enterprises are all equally risk averse, given the absence of adequate investor protection or social safety nets in many countries. Acceptable risk is central in developing and sustaining trust.[97] So far, successful mediation between large and small businesses has usually been provided by guarantees through contractual and financial arrangements facilitated by credible intermediaries such as donors, governments and NGOs. These models can be scaled up to become mainstream if there is political will towards pro-poor policy and institutions which can move current practice towards greater parity and fairness in access to opportunity and assets.

Another example of integration is the prospect of large numbers of micro-enterprises, living precarious lives in the informal sector, coming together to form large corporate entities, and competing in national and global markets. This could provide a new perspective on the role of the informal sector, in the national economy. These corporate entities of micro-enterprises can become the natural partners of larger corporate entities that might outsource many of their operations and component inputs to these entities. The problems of dealing with large numbers of such enterprises, scattered across the country, and maintaining quality control has discouraged what might otherwise have been a most cost-effective partnership between the formal and informal sector. Larger corporate entities of micro-enterprises would eliminate both the cost and managerial problems associated with building this linkage and could open new horizons of opportunity that might lead the informal sector to become formally integrated with the macro economy.[98]

To Sum Up

There are rich, real life examples of 'business right' successes from all over the world that can be borrowed and implemented, with necessary improvements and modifications to suit local environments and priorities. What is needed on the part of both the authorities and business participants is openness in critically evaluating real-life cases, and in adopting and adapting as necessary those with potential for successful implementation.

6. Pursuing the agenda for change

Over the last two decades, much attention has been paid to legal and regulatory institutions and to their influence on economic outcomes. It is recognition of the importance of good governance in advancing economic development initiatives. As a result, much development assistance is being directed towards reforms of national legal codes, public institutions, and bureaucratic processes. The anticipated result is a legal infrastructure conducive to market-led economic growth. However, the reform movement has not fully (perhaps only marginally) addressed the multifarious issues of informal economic activity. Deregulation was expected to result in significant shifts of entrepreneurial activity from informal to formal. But, as pointed out earlier the scale of informal economic activity is actually growing, not decreasing. The informal sector is here to stay. At the same time, policy reform, which strengthens what works for the working poor and responds to what does not, is long overdue.

Laws, regulations, and institutions governing commercial relations need to reflect the reality that most economic units are very small with few hired workers and that many of the working poor operate on their own account. Also, biases in existing laws, regulations, and institutions that favour large enterprises over small ones, and men over women, need to be addressed. Meanwhile, in the absence of new and more appropriate laws, regulations and institutions, most informal businesses will remain unprotected, insecure, and vulnerable.

Business-related reforms are now really coming under closer securitization.[99] In fact, there is an increasing demand for reforms to contain "value based policies, strategies and institutions" that will bring long-term sustainable benefits to the poor in general and to informal enterprises in particular.

What is needed at this juncture are policies regarding formalization that not only simplify formalities or improve the quality of regulation, but also increase the value of information provided by public registers to their users, both public and private. This is because business formalization is an ordinary productive process that incurs costs but also provides valuable public and private services. The private services reduce firms' transaction costs in many of their contracts, and the public services facilitate the work of the administration in its dealings with firms. In other words, "the main priority should not be to reduce the cost of business formalization—a cost paid only once—but rather to reduce transaction costs in all business dealings. . . . The re-structuring of formalities is in itself insufficient for reducing total transaction costs. It may also be a costly distraction. It is necessary, rather, to enhance the value of formalization."[100]

Addressing informality, therefore, is a multifaceted proposition requiring a thorough understanding of the factors that create and drive informality. Reform initiatives may also require that the formal sector be re-defined to accommodate many of the principles and values which characterize the vibrancy and resilience of the informal sector. Clearly, there is no single approach to reform but there are essential and common principles which must be observed. Three key ones are: context specificity; a participatory and gendered approach, and recognition of legal empowerment of informal businesses as a governance issue.

This section sums up our discussion on what the promise of legal empowerment holds with respect to unlocking the productive capacities of the millions who operate poor micro informal businesses.

Changes have to be Context Specific

Although development interventions tend to favour reform through standardized, 'best practice' institutional forms,[101] what is required is an empirically grounded perspective using context-specific research, organizational innovation and political entrepreneurship rather than the importation of institutional templates ('toolkits') forged elsewhere.[102] Because rules are at once constituent elements of cultural norms and values as much as they are embodied in commercial codes and constitutions, attempts at 'legal empowerment' need to engage if not with that full spectrum then at least with a more complete awareness of the spectrum's existence and importance.[103]

Therefore context-specificity is a fundamental requirement in moving towards change. This specificity must also extend to the reality of different categories of informal businesses in specific locales and industries. Any policy or institutional reform has to recognise and support both the self-employed (differentiating between micro-entrepreneurs and own-account operators) and wage workers in the informal economy. The lack of recognition and understanding of these basic components of the informal economy often hinders the development of appropriate policy.

Reform Processes must be Participatory and Gender Responsive

Policy and institutional reform should be *participatory and inclusive* and allow for policies to be developed through consultation with informal businesses, and through consensus of relevant government departments, the organisations of informal businesses and other appropriate social actors. In order to have a voice, those who are in the informal economy must be organized and their efforts to organize into association and cooperatives at every level should be encouraged. In order to organize, the working poor have to be allowed the space and resources to associate for a common economic purpose and without political manipulation.

Of course, formulating appropriate policies and strategies is not an easy task. However, with the involvement of the organisations that represent informal businesses it is likely to succeed. The way forward has to be one of negotiated solutions, and these negotiations have to be about rights and responsibilities. While the inclusion of the voice of all stakeholders in making policy is essential to its success, the input of informal workers and their organisations, based on recognition of their right to organize, is crucial.

The voice of women has to be clearly heard in this process. In most regions of the world, a larger share of the female than of the male workforce is in the informal economy and, within the informal economy, women tend to be concentrated in lower-return segments than are men. As a result, even within the informal economy, there is a significant gender gap in earnings and in the benefits and protection afforded by work. Understanding relations between men and women, their different positions in the economy and their access to and control of resources, is crucial to understanding the informal economy, where a gendered approach is a pro-poor approach. Supporting women's work will, in effect, lead to support for poor households and poor children.

Legal empowerment of informal business should be prioritized as a governance issue

The reform process should be based on an informed understanding of the economic contribution of informal businesses and serve to *main-*

Case Study:

Technology and the Informal Sector: Fishing with Mobile Phones

A Fisherman at the coast of northern Kerala (south of India) faces the dilemma: in a situation of good catch, should s/he sell the fish (sardines) at the local beach or head off the coast? If s/he stays at the local beach, prices could be low due to over supply. If heading away from the coast, it would be a costly decision in terms of transportation cost and time it takes to reach the market. Moreover, each market remains open for only a couple of hours before dawn. Fish is also perishable; any that cannot be sold will have to be dumped into the sea.

According to a research by Robert Jensen, fishermen until 1997 (before the advent of mobile phones) used to stick with their home markets all the time. This was wasteful: on average, 5-8 percent of the total catch was wasted. He noted, for example,that on January 14th 1997, "Eleven fishermen at Badagara beach ended up throwing away their catches, yet on that day there were 27 buyers at markets within 15km (about nine miles) who would have bought their fish."

After the introduction of mobile phones in 1997 and its spread in coverage, there was remarkable change in fishermen's behaviour, the price of fish, and the amount of waste. Fishermen started to buy phones and use them to call coastal markets while still at sea. Instead of selling their fish at beach auctions, the fishermen would call around to find the best price. In one coast, the proportion of fishermen who ventured beyond their home markets to sell their catches jumped from zero to around 35 percent. At that point, no fish were wasted and the variation in prices fell dramatically. "The 'law of one price'—the idea that in efficient market identical goods should cost the same—had come into effect, in the form of a single rate for sardines along the coast..This more efficient market benefited everyone. Fishermen's profits rose by 8 percent on average and consumer prices fell by 4 percent on average. Higher profits meant the phones typically paid for themselves within two months. And the benefits are enduring, rather than one-off."

This shows the importance of the free flow of information to ensure that markets work efficiently, which in turns improve welfare.

stream the concerns of the informal businesses in those institutions that deal with economic planning and development. In the past, the management or regulation of informal activities has often been relegated to social policy departments or, in urban areas, to those departments (such as the police or traffic) that deal with law and order issues. Locating governance of the informal economy in traffic, health, policy or social departments ignores its economic aspects. Institutions that govern the informal economy should be those dealing with economic planning and development. That is why this report has emphasized that reform has to be couched within an integrated economy approach where informal and formal are seen as equally important economic players, each demanding equal attention in national governance laws and institutions.

Strategies and Institutions to Support Informal Businesses

In developing and promoting new approaches, some considerations and innovations outlined below could be considered.[104]

Market based institutions for the poor

The capacity of informal businesses to operate on more equal terms in the market place depends greatly on their capacity for collective action. The weakness of the poor in the market place originates in their isolation. Here, investments in institutions, whether sponsored by NGOs or representing collective action by the poor in the form of marketing cooperatives, or corporate bodies of the poor, remain crucial interventions. The issue therefore remains, posed as a challenge: to invest the poor and informal businesses with capacity to develop the financial and organizational strength to sell products and services, at a time and in a market which offers them the best terms, or to simply watch as they continue to sell their goods out of distress or just the need to subsist. Taking up the challenge positively demands interventions in the macro-credit market to underwrite such marketing ventures, the designing of institutions which aggregate the market power of the poor, and the deployment of professional management skills especially trained to assist the poor in up-scaling their participation in the market economy.

Adding value and supply chain to the labour of the poor and informal businesses

Many NGOs around the world provide marketing services to the poor, for particular commodities, in particular markets. The best service that can be provided is to help the poor and informal businesses add value to their labours by moving up-market through either agro-processing or providing inputs to the corporate sector. The pioneering role of Amul Dairy in India and, more recently, BRAC, are instructive model-examples. They enable small dairy farmers, or just poor households who own a cow bought through a microcredit loan, to become part of a milk processing chain, enabling the poor to share in the profits from selling pasteurized milk or cheese in the metropolitan market. Such initiatives may be taken one step further by financially empowering the vast body of small farmers servicing the private agro-processing sector, as well as handloom weavers, to become equity stakeholders in the upstream enterprises which could add value to their produce or abour.

Taking microcredit out of the ghetto[105]

Nowhere is there a greater need for developing a macro-perspective for poverty eradication than in the area of monetary policy. The instruments of monetary policy appear to be exclusively targeted towards ensuring macroeconomic stability, moderating inflation and meeting the credit needs of the corporate sector. The financial needs of the poor, once left to the informal sector, have now been segregated in the microcredit market. This apartheid within the monetary system remains a major anomaly.

Indeed, it can however be argued that by its very nature, microcredit can never aspire to eradicate poverty since it only addresses one component of the various markets which condition the lives of the rural poor. It is arguable that by locking the poor into the microcredit system, based on the fiduciary responsibility of the household, they have been excluded from participating in the macro economy, isolated from collective action, and condemned to live on the fringes of the poverty line. It is, therefore, not surprising that countries with the most substantive exposure to microcredit, remain mired in poverty. However, it is not the aim to diminish the enormous contribution of microcredit in alleviating poverty and distress, as well as enhancing the self-worth of the poor. There is, today, no reason why such organizations, of the maturity of Grameen Bank, should not graduate into the macro finance system by accessing the deposits of the public and even marketing its assets at the global level, through such financial instruments as securitization, that are in widespread use in more advanced financial systems.

A number of commercial banks are already using NGOs and community-based organizations to retail banking services to the poor. Other examples include Scotia Bank in the Caribbean and ANZ Bank in the Pacific Islands, who have ventured into 'Banking for the Poor' and 'Mobile Banking for Villages'. In Egypt, the Social Fund, Credit Guarantee Company and Microfinance NGOs are not only successful providers of credit to informal businesses but also organisers of permanent exhibitions for MSMEs' products, offering entrepreneurial training and outreach services to poor enterprises.

Mutual funds for the poor

Apart from the issue of redesigning monetary policy to deliver credit to the poor, the monetary system also needs to design special financial instruments to attract these micro-savings into the corporate sector, particularly where it can be structured to serve the poor. The mutual fund is but one institutional mechanism to link the poor to the corporate sector. The underlying premise of the mutual fund is the notion of creating possibilities for the poor to own corporate assets. Opportunities are therefore opening for linking the farmers to the agro-processing corporate sector by giving them an equity stake in such enterprises. At the same time, the agro-corporations should be motivated to invest in improving productivity and capacities of their rural partners. An interesting possibility of enabling the poor to own corporate assets is provided in Bangladesh.

Box 4 Largest Multi-National Company has 2.3 million rural poor women as shareholders

The largest single foreign corporate investment in Bangladesh is manifested in the GrameenPhone experience. GrameenPhone is a commercial joint venture to provide cellular phone services. The company currently has 2 million subscribers which covers two-thirds of all phone subscribers in Bangladesh.

Telenor, the largest mobile phone company in Norway holds a 51 percent ownership stake in GrameenPhone and has so far invested over $600 million in the joint venture making it the largest single foreign investor in the country. Thirty five percent of GrameenPhone is owned by Grameen Telecom, a sister organization of Grameen Bank which, in turn, is owned by 2.3 million poor rural women in Bangladesh. As and when GrameenPhone goes public it will be possible for these rural women to become direct stakeholders in the largest private enterprise in the country. The goal of Grameen Bank is to make these poor women into the majority owners of the company as Telenor meets their commitment to gradually divest their equity stake in the company to local investors. The prospect of poor rural women in Bangladesh owning one of the largest corporate enterprises in the country could have a transforming effect on how the poor perceive their role in the national economy.

Financial policy need not limit itself to ownership of corporate assets but could also be restructured to ensure that all assets, from urban land, to real estate development, and from banks to corporate trading houses, could be redesigned to accommodate the poor as equity partners. The two institutional instruments to make this possible remain the mutual fund and the need for private limited companies to transform themselves into public limited companies. Here monetary and fiscal policy can provide incentives to encourage the corporatisation of private wealth along with the reservation of space for equity ownership of this wealth by the poor.

Institutionalizing the collective identity of poor and informal businesses[106]

Suggestions about building a collective identity for the poor and informal businesses through specially constructed institutions derives from the need for the poor to claim a place in society that is more commensurate with their numbers. The poor remain disempowered because they are isolated; bring them together and they emerge as a major force in the economy, in society and, eventually, in the political arena. Institutional arrangements that can add value to the reform agenda are:

a) Corporations of the poor and informal businesses: Community-based or self-help organizations (CBOs) of the poor, cooperatives and activity-based organizations, that bring groups of the poor together, should aspire to forge an institutional identity. Corporatizing the CBOs will provide the legal foundations for collective action, to enable these bodies of the poor to access credit, enter into contractual relationships and deal with international organizations. The precise legal persona of these corporations may vary from limited liability companies, with the poor as equity owners, to cooperatives with the poor as partner members. But the common feature of all such corporate entities of the poor is that they must operate in the market place and generate income rather than limiting themselves to survive as savings and loan associations.

b) Corporatizing micro-enterprises: The prospect of large numbers of micro-enterprises, living precarious lives in the informal sector, coming together to former large corporate entities that would compete in national and global markets, provides a new perspective on the role of the informal sector in the national economy. These corporate entities of micro-enterprises can become the natural partners of larger corporate entities which could outsource many operations and component inputs to them... The larger corporate entities of micro-enterprises would eliminate both the cost and managerial problems associated with building this linkage and open up new horizons of opportunity to the informal sector to formally integrate with the macro economy.

Bangladesh provides technology upgrading, quality control, credit and marketing services to large numbers of handicraft enterprises across the country. However it still deals with these enterprises as clients who are helped by access to credit, markets and skill development. BRAC has to take the next step of aggregating these producers into a larger corporate entity where they acquire an equity stake in the final profits of the enterprise. Such a corporate entity has been developed in India with the *Papad* cooperative where around 100,000 small household enterprises producing the spicy snack condiment, the *Papad*, have been aggregated to become the largest single supply source of quality *papads* to grocery stores across the country.

c) Micro-insurance – Protecting Informal businesses: Micro credit can help the poor rise above poverty. Micro-insurance can help by providing protection against certain perils; micro-insurance complements other financial and social services. Because they often live and do business in risky environments – in urban shanty towns with unsanitary conditions, in rural areas prone to droughts or floods – the poor and informal businesses are more vulnerable than the rest of the population to perils such as illness, accidental death and disability, theft or fire, agricultural losses, natural or manmade disasters. They are also the least able to cope with crisis when it occurs. Micro-insurance with the use of technology has been successfully been introduced in a number of countries:

In Uganda and Malawi, some insurance providers issue smartcards to poor policyholders to confirm that they are who they say they are, and can instantly provide information on their level of coverage and whether the premium has been paid.

In the Philippines, insurers have minimized the transaction costs of collecting many small premiums by allowing people to pay via their mobile phones.

In India, a barcode system is being tested as a way of managing client information. The barcode stickers are especially useful for illiterate clients who can attach them onto pre-addressed envelopes to identify themselves.

Business Rights - provides value based change process.

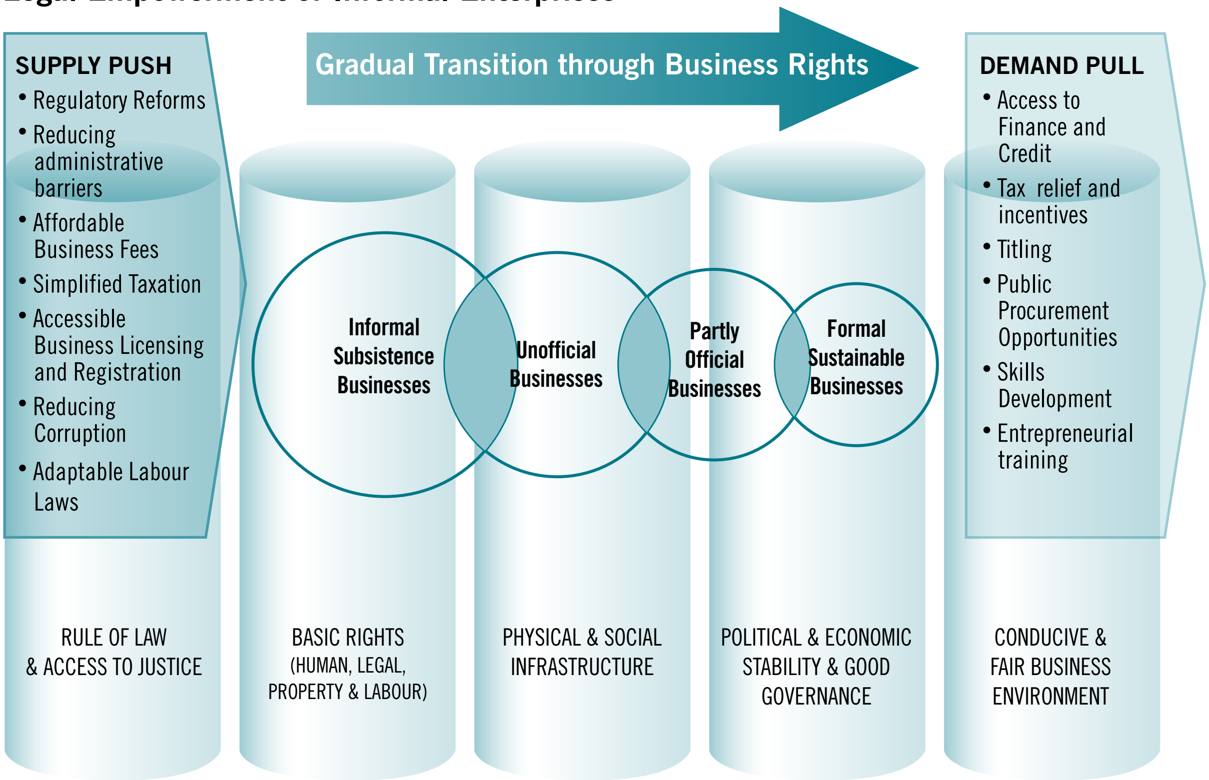
The rationale for changes in the informal businesses such that some elements and advantages of formalization are incorporated is rooted in a wider appreciation of how both individuals and businesses can be disadvantaged by operating outside the formal economy and the recognition that there are benefits to formalization. Nevertheless micro entrepreneurs make an economic calculation along the lines of a cost-benefit analysis, which determines a minimum threshold of participation in formal arrangements for which the costs remain lower than the benefits. Some firms will therefore choose to participate in only a subset of institutions at any point in time. In addition, benefits and costs of participating in a formal context vary for firms of different size and expected lifetime. It would for instance seem that young, inefficient and small firms are disproportionately informal.

The Chart below illustrates the phases an enterprise might hypothetically go through before it becomes an official formal enterprise. The chart also illustrates that the transition from an informal to a formal status is gradual and that it is important to initiate the relevant processes that could assist enterprises to reach a more formal existence. Any interventions in support of moving enterprises towards a more formal existence should be prioritized and concentrated on where the maximum effects can be reached. The way that the informal enterprises themselves rank the problems that they are facing would indicate how to prioritize interventions.

In order to make a smooth transition from informal to formal there needs to be a strong foundation of: 1) Rule of Law and Access to justice; 2) Good Governance and protection of basic rights (human, legal, property and labour); 3) Strong Physical and Social Infrastructure; 4) Political and Economic Stability, and (5) Conducive and Fair Business Environment.

Additionally, the causes of informality are complex and defy simple explanations. Consequently, the transformation can only be tackled successfully by a linking set of policy initiatives that deliver both pull and push pressures. The Demand Pull and Supply Push measures are briefly highlighted in Chart 1. Demand 'Pull' initiatives include: access to finance, capital and credit; tax relief and incentives, titling, public procurement opportunities, skills development, entrepreneurial training, etc. Supply 'Push' initiatives

Legal Empowerment of Informal Enterprises



PILLARS OF FOUNDATION FOR FORMALISATION

are regulatory reforms, reducing administrative barriers, affordable business and licensing fees, accessible business and licensing and registration procedures; reducing corruption; adaptable labour laws, etc. The chart further highlights that the number of informal enterprises moving towards formal sustainable enterprises is small compared to the huge size of subsistence informal enterprises.

Formalization may therefore be seen as an incremental process that begins by introducing appropriate incentives and benefits of formality, then progressively enforces compliance with the costs and regulations associated with operating formally – which would depend on the size, output, or location of the enterprises. Once conditions are met, the working poor in the informal economy would be entitled to the benefits of formality and, at the same time, they would be enabled to comply with the duties of formalization

Pillars of Change

The sustainability of any proposed reform to a country's governing institutions depends on public recognition of the changes to be made. Recognition will thus depend on the capacity of the reform to be legitimized within the public's cultural and social milieu. Failure may prevent the successes of legal reforms that are otherwise cognizant of larger policy aims to promote market-driven economic growth. For sub-Saharan Africa, for example, failure to incorporate widely-accepted customary forms could mean outright rejection by the private sector. Therefore, in determining what can be done to legally empower informal businesses to better access the opportunities, finances, services and facilities of the formal sector, one would have to take into account that which already works.

The recommendations of the working group for Chapter 4 of this report may be summarized in descriptions of five proposed pillars of reform:

Pillar 1: Adopt an inclusive and integrated approach to economic development so that there is legal recognition and empowerment of informal businesses.

Legally empowering small informal businesses run by poor individuals or households should be seen as a central pillar of a just society and a central strategy for reducing poverty and inequality. This means that policies and global economic privilege, which is geared at present to the elites and large enterprises, have to change to become inclusive of the billions at the bottom of the economic pyramid. These billions are the producers and consumers who make markets profitable for the privileged. Their share has to be duly recognized through much greater public and private sector cognizance and support to small firms and enterprises. Informality, with its flexibility and space for millions to engage productively in economies, is here to stay. Official and legal response needs to recognize what works in this sector and strengthen and integrate these innovations into an inclusive integrated approach to wealth creation.

Pillar 2: Support legal empowerment through a package of commercial rights underlined in policies and instituted and enforced through regulatory bodies.

Commercial rights for informal entrepreneurs/operators include, but are not limited to, property rights, labour rights, right to social protection, right to be organized and represented in policy-making and rule-setting institutions and processes, and the right of access to justice in a transparent and equitable manner. The rights of the more vulnerable groups – the own-account operators, including single-person operators and those who work in family businesses or on family farms – must also be addressed. These commercial rights should address all categories of informal enterprise, and include the following provisions:

a) *Basic commercial rights:* right to work, including right to vend; right to a work space (public land, private residences), as well as related basic infrastructure (shelter, electricity, water, sanitation).

b) *Intermediary commercial rights:* right to government incentives and support (including procurement, tax holidays, export licensing, export promotion); right to public infrastructure (transport and communication).

c) *Advanced commercial rights:* relevant for larger, more advanced informal enterprises

Pillar 3: Reduce Decent Work ‘deficits’ of those who work informally.

This means support to informal businesses in the form of:

- Participation in policy processes of a representative voice of the working poor in the informal economy. Recognition and correction of the bias in existing commercial policies, regulations, laws and procedures favouring larger firms and enterprises. Extension of government incentives and procurements to the smallest informal enterprises.
- Facilitation as appropriate of backward and forward linkages on fair terms between larger and smaller firms.

- Promotion of market access and fair trade for smaller firms and enterprises.
- Social protection of informal operators through property, health, life, disability insurance.
- Adequate and relevant retraining, life-long learning, and other support to labour mobility.

Pillar 4: Broaden access of informal business to financial services and support innovation in financial products and processes. This requires that there be:

- Awareness in both formal and informal credit systems of the way the working poor use credit and the barriers and often inappropriate rules in formal lending procedures.
- Legal and administrative processes in place which make the processing of collateral including social collateral cheaper, transparent and faster.
- Legally recognised and mutually negotiated risk mediation processes in place for both the lenders and borrowers from informal business .
- Support to innovation in financial products and services with a view to deepening their outreach.

Pillar 5: Engage in evidence based reform.

There are now hundreds of good practice examples that illustrate how the constraints of informal businesses have been successfully addressed around the world. These examples should be studied and the lessons learnt should be grouped according to what constraint or need was being addressed and the policy lesson drawn from the experience. The policy reform which ensues should be participatory and targeted to the realities of the different sub-sectors in the informal economy.

Conclusions

This report has outlined how the process of achieving greater legal empowerment (through business rights and access to the advantages of formalization) can and should take different forms. Incentives to encourage informal entrepreneurs to actively engage in the change process must show actual benefits to their livelihoods and their well-being. These incentives are essentially what would result if the barriers to entry into and/or interaction with formal and legal economic activity were addressed. Incentives could be in the form of

- Simplified registration procedures and progressive registration fees.
- A supportive investment climate and a business enabling environment.
- Fair commercial transactions between informal enterprises and formal firms.
- Appropriate legal and regulatory frameworks, including: enforceable commercial contracts; private property rights; more equitable use of public land; tax-funded incentives, such as government procurement, tax rebates, tax-funded subsidies, and incentive packages.

These incentives would have to be supported at the same time by appropriate and customized financial, business development, and marketing services. Mechanisms and financing arrangements to provide social protection to informal producers have to be put into place and policy and institutional reform undertaken in a participatory manner. The participation of informal entrepreneurs, both women and men, would be best ensured through proactive and iterative dialogue – on an ongoing basis – with representatives of associations of informal entrepreneurs.

Recommendations and Key Messages

Objectives of Empowerment Process

Legal empowerment of informal businesses should seek to promote an appropriate mix to different types of business rights, and the pursuit of the following sets of objectives:

Broad Objectives

- Reducing regulatory burden.
- Reducing barriers to formal markets and institutions.
- Increasing assets, including property rights.
- Expanding market access.
- Improving terms of doing business.
- Extending legal and social protection.
- Increasing organization and representation.

Specific Objectives – Depending on their size and potential for growth, informal businesses need some combination of the following business rights:

- *Basic business rights:* right to work, including right to vend; right to a work space (including public land and private residences), and related basic infrastructure (shelter, electricity, water, sanitation).
- *Intermediary business rights:* right to government incentives and support (including procurement, tax holidays, export licensing, export promotion); right to public infrastructure (transport and communication).
- *Advanced business rights:* ILD set of legal tools, such as bankruptcy rules, relevant for larger, more developed, informal enterprises.

Means to Meet Objectives

Different Instruments – Policies and laws, regulations and procedures, business development infrastructure, and organization and representation of informal business.

Policy and Regulatory Environment - Legal empowerment of informal business requires a policy and regulatory environment that:

- Provides legal identity to the working poor as producers or traders
- includes representative voice of the working poor in the informal economy
- Recognizes and addresses the bias in existing commercial policies, regulations, laws, and procedures that favour larger firms/enterprises.
- Seeks to extend government incentives and procurements to the smallest informal enterprises.
- Seeks to build backward and forward linkages on fair terms between larger and smaller firms.
- Seeks to promote market access and fair trade for smaller firms and enterprises.
- Promotes social protection for informal operators (property, health, life, disability insurance) plus retraining, life-long learning, and other support to mobility.

The Formalization Debate:

In response to the question of whether and how to formalize informal businesses, the Commission should highlight the point that formalization has different dimensions:

- Expanding formal employment opportunities.
- Creating incentives for informal enterprises to formalize, including
    1) Simplified registration procedures and progressive registration fees.
    2) Supportive investment climate.
    3) Fair commercial transactions between informal enterprises and formal firms.
    4) Appropriate legal and regulatory frameworks, including enforceable commercial contracts, private property rights, use

of public space, tax-funded incentives (including government procurement, tax rebates, tax-funded subsidies, and incentive packages).

- Providing financial, business development, and marketing services to informal enterprises.
- Creating mechanisms and financing arrangements to provide social protection to informal entrepreneurs.
- Promoting participatory policy processes and inclusive rule-setting institutions that include representatives of associations of informal entrepreneurs.

Chapter 4 Endnotes

1 A business has been defined as an organizational entity designed to sell goods and/or services in an effort to generate profit or a financial return. They can be also be a source of employment for others – in addition to the owner and operator - and provide wealth and livelihoods to the owners as well as the employees. Informal Businesses and Informal Enterprises are used interchangeably in this report.

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