

Chapter
FIVE

Road Maps for
Implementation
of Reforms:
**Implementation
Strategies, Including
Toolkits and Indices**

EXECUTIVE SUMMARY

Existing power structures prevent poor people from taking charge of their lives and occupations and achieving upward mobility. To end poverty, those structures must be reorganized—a challenging task due to the many dimensions of poverty and disempowerment. Interchangeable solutions do not work across countries in exactly the same ways; practitioners must be inventive and experimental to produce more just relationships among the state, the marketplace and the poor.

Listening to the poor and learning by doing are critically important. Civil societies, non-governmental organizations, membership-based groups of employers and of workers, coalitions and networks have major roles to play in generating and articulating bottom-up demand for legal empowerment. Support of central authorities is also vital for sustaining progress in most countries. Policy champions are needed to bring other government actors on board to preclude policy spoilers from blocking implementation of legal empowerment.

Implementation of legal empowerment of the poor (LEP) in a country begins with contextual analysis, focusing on the social and cultural features that could affect implementation. Consideration must also be given to the economic context (which can be both a help and a hindrance), and to the openness and capacity of the state. Supplementing the inventory of these concerns should be a careful analysis of the reach and hold that informal institutions have on the poor. A full contextual analysis forms the basis for a feasibility review of various empowerment scenarios.

The most important constraints set by the national socio-political context are:

- The domestic social structure, especially its gender, class and ethnic makeup, as well as cultural attitudes toward participation and equality.
- The economic context—including the distribution of wealth and income, and the level and rate of economic growth.
- The characteristics of the state—both the political and the administrative system.
- The extent of economic and political informality and tensions with the formal and officially recognized systems.

Practitioners and policymakers can use the tool of contextual analysis within a country to determine: (1) if conditions appear ripe for legal empowerment reforms; (2) which implementation options seem most probable; (3) what sequencing and timelines for reform look doable; (4) how the reforms should be designed; (5) what tradeoffs need to be considered; (6) which risk-mitigating mechanisms are worth trying, and (7) what contextual variables need careful monitoring during implementation.

Following the contextual analysis – or perhaps simultaneously with it since implementation steps are never discrete – local activists and external change agents should undertake a stakeholder analysis of the constituencies concerned with LEP. The objective is to differentiate among the superficially homogeneous beneficiaries, to better understand the divisions, alliances and particular needs that exist among the poor. Other stakeholders who might oppose or assist the target group or groups also need to be scrutinized to see what motivates their behaviour and to reflect on how they could be brought into the process. The purpose of the stakeholder analysis is to get a firmer grasp of the probability of moving forward with various legal empowerment alternatives, and to begin serious thinking about what it might take to build a minimum winning coalition for legal empowerment in the country.

Stakeholders act out of regard for their own advantage, as they define it. Poor people are the target beneficiaries of legal empowerment and need to have as big a hand as possible in initiating and designing the relevant policies. Even though they lack physical, financial or organizational resources, and even social capital in many locales, the poor always have a passive capacity to derail legal reforms aimed at them. Because poor stakeholders are diverse, legal empowerment policies may have surprisingly uneven impact if officials are inattentive to the needs and preferences of the intended beneficiaries.

Legal empowerment also creates policy ‘losers’, no matter what the broader merits are. It often redistributes a right or benefit from one group of stakeholders to another, for example when there are mutually exclusive claims to a fixed resource such as fertile land or minerals. Policymakers may endeavour to minimize redistributive conflicts by expanding economic opportunities so

that different interests can be negotiated to meet every side's needs, but plenty of potential for confrontation remains because important stakeholders believe others' gains come at their expense. The mutual payoff to legal empowerment is in the future, but the individual sacrifices must be borne now.

Finally (though again the chronology would probably be overlapping), the internal technical features of the alternative courses of action must be reviewed. Policy characteristics analysis would focus on the complexities of the different policies, their ambiguity and their potential to sow discord – all of which may hinder implementation. Efforts would be made to find a simple, incremental and sustainable way forward, and to avoid as much as possible taking steps that provoke needless confrontation.

Obviously, what legally empowers the poor in one nation may be unsuitable in another country, where there would likely be a different social structure, economic environment and universe of stakeholder groups. The procedures in determining a suitable reform strategy might look alike in both countries, but the substance of the outcome would be sharply different. And in all cases, the process is messy and imprecise, yielding only what appear to be the best fitting policies, given the imperfect information available to policymakers at the time and under the political realities.

Development professionals must creatively seek to capitalize on the specific situation at hand, placing front and centre poor people's perceptions. While legal or organizational reforms may appear self-evidently empowering to outside experts, they should be cautioned that a poor community might see them as dangerous from their own perspective. It may be best to move forward selectively and not dissipate energy

on too many legal or regulatory initiatives at once. Empowerment policies seldom take effect quickly. Individual uncertainty about implementation encourages poor people to withhold support for reforms, which can create self-fulfilling prophecies of slippage. One should therefore look for interventions promising short-term rewards for beneficiaries. Design simplicity should be a key consideration to minimize conflict, uncertainty and other implementation problems arising from the procedural and technical traits of legal empowerment activities.

Roadmaps to Implementation

Effective implementation of policy reform takes a mix of experience, professional judgment, and willingness to take chances. Creative policymakers look to open up policy windows that create the space needed to move forward in solving particular problems even under difficult circumstances.

Six common sets of tasks are associated with developing specific national roadmaps for LEP. They follow a generalized (but not lockstep) pattern, conceived as an interactive cycle launched by a stream of issues, agendas and decisions that, over time, provide additional input and momentum to the process.

- *Issues, Agendas, and Decisions:* Advocate for change, develop policy issues, and make decisions to launch policy reforms. Although politicians and interest groups tend to take the lead, they will seldom succeed without pressure from below, and mobilization from among the poor themselves, including their demands.
- *Policy Formulation and Legitimization:* Address the technical content of reform measures. However, besides technical content, reform measures need to be accepted and be seen

as necessary and important. Through their representatives, the poor should be part of the reform design process.

- *Constituency Building:* Convince beneficiaries of the advantages of reforms, and demonstrate that long-term benefits are worth short-term costs.
- *Resource Mobilization:* Ensure flow of adequate resources by addressing incentives, and exercising leadership in galvanizing constituencies. Financial, technical, and human resource commitments are needed.
- *Implementation Design and Organizational Development:* Reformers need to create and nurture networks and partnerships for cooperation and coordination, and provide for the development of new organizational skills and capacities in the public, private and non-governmental sectors. Old procedures, operating routines, and communication patterns die hard; change is likely to be resisted within some quarters.
- *Action Planning and Progress Monitoring:* Set up systems and procedures for obtaining feedback so that implementation is related to learning and adaptation, so as to produce results and impact.

LEP may be perceived as a spectrum that provides opportunities, protection and security to beneficiaries. It establishes a minimum 'floor' of entitlements and safeguards to which everyone is entitled, by the simple fact of our common humanity. The task is to establish this floor using human rights law. For every facet of empowerment, therefore, one test is to identify a range of potential policy options from which nations and citizens can choose, depending on their national context and the different starting points of various groups of the poor within them. Finally, a spectrum approach explicitly recognizes the in-

cremental manner in which poor people improve their lives in practice.

Implementation of empowering policies at the national level should seek to integrate legal empowerment into existing processes, such as the preparation of national development plans or poverty reduction strategies, rather than seek to establish a 'legal empowerment program' as a stand-alone entity. Another important dimension of national level work will involve working closely with professional associations to create a new cadre of legal, engineering or other para-professionals to assist poor men and women.

The poor's base organizations must be engaged in the design of interventions of any kind. Information dissemination will be a central strategy for legal empowerment at the local level. In some countries with particularly weak or oppressive national governments, community empowerment activities may be the only feasible ones. Where social mobilization is strong, however, the legal empowerment agenda can be built, bottom-up, by supporting existing initiatives of the urban or rural poor.

Mapping Legal Empowerment beyond the Nation State

Implementation undertaken at the global level should support country-level activities. The important differences among countries and regions call for a flexible, demand-driven approach that is appropriate to local realities. The likely focus would be on two types of measures to encourage legal empowerment at the country level: advocacy and knowledge management. Advocacy activities would focus on getting key messages out to important target audiences through a variety of vehicles. A website, or a 'brand/logo' that can be added to existing websites, providing updates and progress reports on how the LEP agenda is being

implemented. An inventory of evidence on capacity development in domains similar to LEP would be compiled, and dialogue would be supported to disseminate global good practices.

Knowledge management activities should build on the initial inventories of good practice, on-going initiatives and actors engaged in promoting empowerment. A key element is to identify existing indicators and monitoring efforts that would further the LEP agenda. Similarly, and particularly in the case of the rights to justice and asset holding, evaluations for learning will prove to be valuable.

In addition, a range of measures should be undertaken to prepare for country-level dealings. Countries and international support organizations can be identified to support the process of change at the country level. Pro-poor toolkits and methods to support capacity-building can be inventoried and gaps identified. These would be made available through a variety of avenues, including websites and workshops, among others.

At the regional and sub-regional levels, activities should also likely focus on advocacy and knowledge management. The region and sub-region are critical for success of the legal empowerment agenda; at these levels global norms can be adapted to different socio-economic contexts. Building political will for change will occur through regional and sub-regional organizations, UN Regional Commissions, sub-regional bodies, and in partnership with regional development banks. A series of new 'Regional Social Contracts' could be an important mechanism to forge political consensus on the legal empowerment agenda.

Toolkits and Indices

Carrying out LEP takes a variety of different tools or specific techniques, developed by anti-poverty

workers, community organizers and reform advocates around the world. These techniques were designed to promote activities analogous to the poor person's empowerment agenda, and they include: advocacy/lobbying; collection and dissemination of best practices; community mapping; competencies assessment; conflict prevention and resolution; domestic resource mobilization; exchanges; focus groups; force field analysis; gender auditing; impact evaluation; influence mapping; institutional analysis; institutional twinning; internship programs; the logical framework approach; national symposia; opportunity ranking; media outreach, public hearings and study circles; participatory budgeting; participatory poverty assessments; translating laws into plain language; political mapping; political will and risk analysis; problem solving studies; problem tree analysis; social impact and opportunities assessment; stakeholder monitoring with household surveys and key informant interviews; strategic planning framework; technical assistance and training on leadership, group work and related management issues; travel grants/internships for officials; web-based support; and workshops.

These tools are general, flexible and easy to modify; development practitioners should reject the ones that don't apply to their particular country context. Critical tasks often include the following:

- Mobilizing stakeholders: Identify key stakeholders and agree on a process as well as a set of principles that will guide the legal empowerment agenda. This should help to build confidence among stakeholders. Key issues include coordination mechanisms, adoption of a protocol or agreement, clarification of roles and responsibilities, and agreement on a broad process for reform.
- Situation analysis or legal empowerment diag-

nostic: A detailed assessment should be made of the relevant issues to be addressed. The analysis will identify policy, legal and institutional concerns, as well as gaps in resources, capacity and tools.

- Action planning: Development of the goal, objectives, strategies, and specific interventions that contribute to the legal empowerment objective. Critical issues include sequencing and timing, resource constraints, establishing a monitoring and evaluation framework, and ensuring a balance between process and products required to maintain momentum.
- Pilot activities: These should be built around the idea of 'quick wins' in areas where these are feasible. In this way one can build the credibility of the legal empowerment agenda and demonstrate initial success.
- Scaling-up: Expanding the range of activities and taking on more complicated challenges. This stage can be supported by raising awareness of past successes, additional sensitization, and strengthening the consultation process.
- Institutionalizing change and the change process: Tackling some of the fundamental reforms by building on experiences in the pilot phase and scaling-up phase to reform the organizations and rules that shape the institutional context.

Both the formulation and monitoring phases of implementation look to indicators of democratization, good governance, human rights protection, and many other variables related to legal empowerment. There are numerous measures of different aspects of governance in the public domain; unfortunately, none is sufficiently developed to be of great value in measuring changes in the political or legal status of a country's poor men and women over time. Accordingly, legal empowerment programs and projects must develop and

use their own metrics for evaluating the socio-economic environment and gauging accomplishments, based on surveys and interviews.

Action planning and progress monitoring are especially important for outside agencies; among its tools are:

- A management information system based on targeted indicators endorsed by national stakeholders.
- Stakeholder monitoring to identify the responses of those that benefited or those that lost from the policy reform measures.
- Problem-solving studies to devise tailored and practical solutions to implementation issues.
- Process and impact evaluations to support learning over time.

The design of each component should respect some important principles: adaptation to user needs and availability of resources; user participation; parsimony (the least amount of information and cost required to accomplish the task), and simplicity. Monitoring of the implementation policy reform process will loom large over time, and a number of practical suggestions are offered here; they have been gleaned from lessons learned from country experiences:

- Define a list of steps, processes, targets and milestone events in the reform process. This will enable the breakdown of the policy processes into a series of components to enable an easier grasp of what needs to be monitored.
- Make use of qualitative rather than quantitative approaches in monitoring the system, as they offer a more complete and nuanced set of data that are numeric and narrative.
- Engage implementing parties and beneficiaries in drawing up of the monitoring systems and methodologies and acquire feedback. This

will simplify the process of tracking previously identified indicators. Focus group discussions, workshops and other similar methods can be used to ensure participation.

- Customize the choice of monitoring methods to the needs and constraints of the implementing agencies.
- Delegate the monitoring process to an external body, such as civil society organizations, think tanks and advocacy groups, to ensure greater independence, transparency and accountability.

Strategy and Tactics

Change agents must put aside preconceived or uniform approaches to empowering the poor and think creatively about how to make policies available, affordable and acceptable. The following core values belong front and centre:

- Since poverty reduction is the ultimate objective, every reform must be judged by the extent to which it imparts the freedom that allows poor people to gain more control over their futures and to improve their well-being.
- The peaceful struggle against impoverishment must be participatory and based on respect for human rights, with the poor playing active roles along the way.
- Gains of legal empowerment should be broad-based and take into account the diversity of disadvantaged groups, especially indigenous people who are often inadvertently overlooked by policymakers.
- Gains also must include women; hence another standard against which to measure LEP policy is whether it takes full account of gender-specific effects.
- Empowerment of the poor in the end means social transformation — not only a more just distribution of wealth and income, but a more

expansive sharing of power so disadvantaged people can begin bringing about significant change through their own actions.

A number of strategic options and considerations stand out. Although they are rich with paradox, it will be up to government officials, civil society members, and development practitioners to sort out the conflicting elements and determine the most promising strategic direction to take for their community, their country or their region. We list them as follows:

- LEP is easiest to implement where it is needed least.
- There is a rich base of comparative international experience, but no ready-made formulas for legal empowerment.
- Think systemically, act incrementally.
- Think long, go short.
- Start from afar, but change from within.
- Support associations of the poor, but do not compromise their independence.
- Work from the bottom up and the top down.
- Decentralize...except when it is better to centralize.
- Balance demand for change with the capacity to accommodate change.
- Put together informal and formal institutions.
- Look for cooperation, but anticipate confrontation.

While walking the tightrope of these strategic suggestions, change agents can call upon a variety of implementation tactics; they include:

- Be opportunistic.
- Use plain and local language.
- Work with para-professionals.
- Bring existing technical solutions up to date.

- Bring together technical expertise and grassroots experience.
- Dedicate resources to support participatory processes and coordination.
- Provide effective outreach.
- Provide access to information.
- Bundle service delivery.
- Support Alternative Dispute Resolution.
- Collaborate with professional organizations.

Change agents may consider employing these suggestions. While remaining true to the core values of the legal empowerment agenda, they may make it possible for many more poor people to improve their lives in the foreseeable future. Of course, these agents must be prepared to come up against countervailing factors, and there can be no guarantee of successful implementation; but steady and modest progress in fighting poverty with legal tools and rights is well within the realm of possibility in most countries.

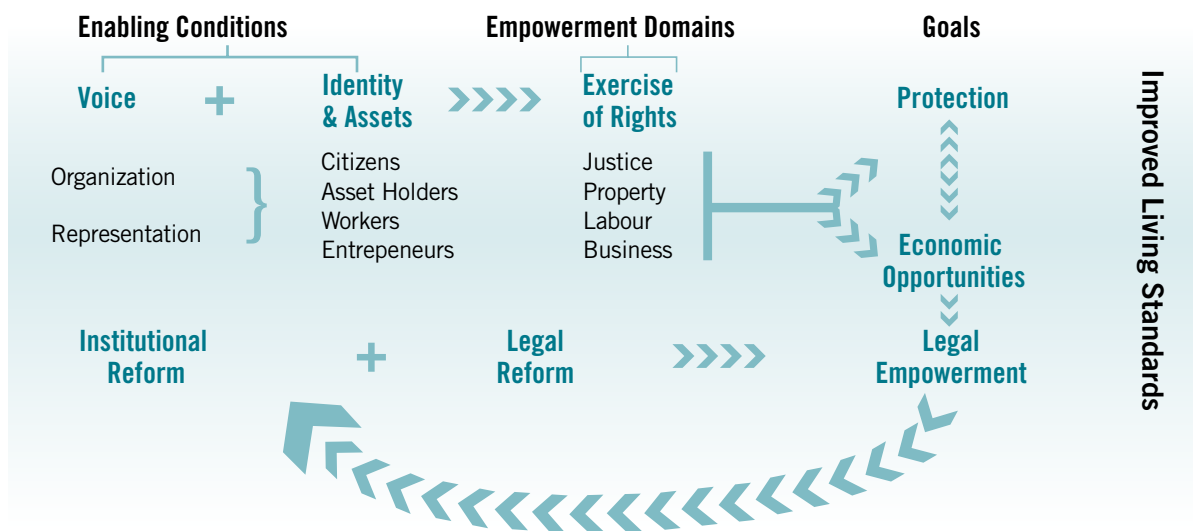
1. Introduction: Attributes of Legal Empowerment

A singularly promising means for empowering poor people, the Commission contends, is to establish lawful claims they can use to lift themselves out of poverty. The four interdependent domains of empowerment highlighted by the Commission are a coherent, accessible legal order; more secure rights to assets and possessions; stronger and clearer labour rights; and fairer, more constructive rules for small business and micro-enterprise. Each domain is meant to provide defences against exploitation and loss of assets; they fit together in a way that would work to emancipate the poor to become both more productive and better able to keep the surpluses they produce.

The conceptual framework can be depicted graphically in Figure 5.1. Due to insecure land tenure systems, and to the unequal distribution of other factors of production, as well as of economic and political power, the poor are shut out from economic opportunities. Voice, identity and

assets are the key enabling conditions that offer space and leverage to the poor to bring their legal rights to bear in changing their socioeconomic status. Using voice and taking on stronger identity require both bottom-up and top-down institutional reforms. Membership-based organizations must be built and strengthened, and state policy-making institutions must be made more inclusive and accountable to the poor. Strengthened by voice and identity in their roles as citizens, asset holders, workers, and entrepreneurs, the poor can begin to use their rights in the corresponding empowerment domains to keep hold of and grow the resources at their disposal. If things go by design, institutional restructuring and legal reform will furnish society's least advantaged members the capability to raise their stature, meet their basic needs, and eventually move into the economic mainstream. Figure 5.1 also shows that the link between the enabling conditions and empowerment goes in two directions, and that the legal setting both shapes and reflects power relations. Existing political, administrative and juridical institutions have not been fashioned with the rights

Figure 5.1 Legal Empowerment of the Poor



of the poor in mind as a major consideration, so the Commission is advocating radical changes in the existing distribution of public (and private) power. As the poor gain income, assets and power, they will be in a stronger position to call for additional institutional reform, and so on in a virtuous cycle of empowerment. Changing policies in just one or two legal domains represents a start to empowering the poor; however, fulfilling the possibilities of legal empowerment will eventually require establishing more open, inclusive and accountable institutions system-wide.

This is a bold vision. Making it reality means implementing a host of specific public policies around the world to tackle the everyday humiliations of powerlessness and destitution. Many legal covenants have been proposed and ratified by the world community that are reasonable starting points for building inclusive domains of power;¹ the weakness is in adapting the broad principles of institutional and legal reform to real life circumstances so they mean something to the multitude living on the edges of society. Implementation seldom goes as planned, or as the English proverb has it: “There’s many a slip ‘twixt cup and lip.” This report discusses why those slips systematically occur and how development practitioners can work with poor people to sustain momentum during implementation despite the tendency for pro-poor policy to be diluted and delayed while being carried out.

Reports from the working groups for Chapters 1 through 4 have analyzed the way rights-expanding policies in the four domains of empowerment can blunt impoverishing forces. Legal recognition is a fundamental step so that even the poorest citizens can invoke the law to assert their rights and demand protections to which they are lawfully entitled. For that to occur, judicial institutions must be made responsive, transparent, and answerable

to all, not just to the privileged few. Property rights are central to the fight against poverty: they are a means for poor people to transform limited assets into secure, productive resources, which they can then use to enter the marketplace and claim a fairer share of gains from exchange. Eventually, they could build their asset base to support a better quality of life. Labour rights are another mechanism by which disadvantaged groups can obtain decent and productive work. Such rights enable the poor to claim their rightful share of the wealth they have helped to generate and to achieve their human potential. Many poor people are caught in ambiguous employment relationships where their rights as workers are ill-defined and their ability to make occupations safe and non-abusive is limited. Business rights round out the anti-poverty approach taken by the Commission, in view of the fact that a significant share of the poor are either self-employed or that they are already in charge of micro-enterprises. These entrepreneurs are burdened by unnecessarily complicated procedures and regulations, and they lack legal instruments providing access to the credit markets that would allow them to expand their small business activities and to take more risks with new investments.

It may be evident that the interdependent domains of empowerment are vital to ending poverty, but we must ask if, and to what extent, the underlying rights are realizable. The question has prompted our working group to address ways of putting rights-expanding policies in place so they actually reach the poor. In Section 2, we discuss the numerous obstacles that policymakers must face and overcome in efforts to implement rights-conferring programmes. Understanding these obstacles is the first step to overcoming them.

2. Implementation: Challenges and Opportunities

Implementation refers to the carrying out of public policy. A public policy can be thought of as a course of action (or purposeful inaction) chosen by public authorities to confront a given problem or set of problems. Implementation thus involves government or quasi-government organizations setting aside resources and organizing specific activities to improve society in line with announced plans. For legal empowerment of the poor (LEP) the relevant policies may include citizen registration drives, land titling schemes,

labour rights for workers, whether in enterprises or home-based, juridical recognition of informal businesses, and many other concrete activities.

Table 5.1 lists representative specific reforms identified by the different working groups that have been involved in preparing this volume. They are only illustrations, and may not necessarily be the most pressing required for a particular country in achieving legal and institutional change. (For the complete record of recommended possible reforms, we refer the reader to the groups' separate papers exploring the four domains of empowerment.) It should be self-evident that the policies suggested in Table 5.1 are not all equally needed or feasible for every country.

Table 5.1 Sample LEP Reforms

Justice
<ul style="list-style-type: none"> • Effective, affordable and accessible systems of alternate dispute resolution. • Improved identity registration systems, without user fees. • Legal simplification and standardization and legal literacy campaigns targeting the poor. • Stronger legal aid systems and expanded legal service cadres with paralegals and law students. • Structural reform enabling community-based groups to pool legal risks.
Property
<ul style="list-style-type: none"> • Legal recognition of joint registration of land rights and reform of discriminatory inheritance and divorce laws and practices. • Legal guidelines for forced relocation, including fair compensation. • Recognition of a variety of land tenure, including customary rights, indigenous people's rights, group rights, certificates, etc. • State land audits with findings published to discourage illegal taking possession of public land. • Simplified procedures to register and transfer land and property
Labour
<ul style="list-style-type: none"> • Fundamental rights at work, especially freedom of association, collective bargaining and non-discrimination. • Improved quality of labour regulation and its enforcement. • Inclusive approaches to social protection, delinked from the employment relationship. Labour rights (health and safety, hours of work, minimum income) extended to workers in the informal economy. • More opportunities for education, training and retraining.

Reformers need look at the menu of possible LEP reforms to find the policies that are applicable to given situations and to particular problems of poverty and disempowerment.

Implementation sometimes conjures up erroneous impressions of a chain of command for public policy, but this regimented image hides the disorderly element of the true process. It is best to avoid getting locked into a vision of public policy as a hierarchy of separate stages (one of which is implementation), and to think instead of interacting spheres of policy activity all of which contribute to implementation. We will navigate this loosely ordered process more carefully with the policy roadmap in Section 3 of this chapter.

Because it is an overarching set of aspirations, covering four mutually supporting domains of empowerment, LEP itself is not something that is usually ‘implemented’ in the narrow sense of the term being used here. Implementation entails identifiable projects and programmes in different sectors, and many of these specific courses of government action might be empowering in different ways without ever bearing the official label LEP. Seldom is constructive pro-poor policy possible if the poor are the passive targets of state-centred reform; a balanced legal empowerment strategy is community-driven and grounded in local needs, which, however, can be translated into national level reforms for wider impact on upward mobility (Golub 2003).

In some cases, the positive outcomes for the poor depend upon government establishing new procedures or institutions. (An example from the Andes countries is given in Box 5.1.) In other cases, the task is to revive an existing policy that was never fully or fairly enforced – for instance, a bill of rights that calls for treating everyone in society equally. A third possibility for aiding the

Box 5.1 Removing Barriers to Public Works Contracts

The development of public investment policies that promote the use of labor-based technologies has improved access of small local contractors to public procurement processes for services and works in Andean countries. Activities range from contracting of micro-enterprises for routine road maintenance in rural areas, to involving micro-enterprises in waste collection and street cleaning in urban areas. An ILO study shows, however, that access of small local contractors to public procurement is still very limited due to the existence of a series of legal and institutional barriers. For example, countries may restrict contracts to enterprises recorded in the national contractor register or to recognized civil engineers or architects.

A transparent information system about tenders needs to be implemented to facilitate the participation of small contractors in public works. Two alternatives have proven workable: A “small contractor card” and a register for local contractors, enabling small contractors to carry out small and medium-sized works in the local area after passing certain prerequisites and minimum qualification criteria. Other possibilities include subcontracting consortiums and associative contracts for contractor collaboration; special contracting arrangements in projects receiving donor funding; preferential treatment of micro and small enterprises in public procurement in Peru; and direct contracting (i.e., one bidder) for small contracts.

See: José Yeng and Serge Cartier van Dissel, Improving access of small local contractors to public procurement – The experience of Andean Countries, ASIST Bulletin #18, ILO (September 2004).

poor is to change or eliminate existing policies that have outlived their usefulness or that have come to serve new purposes now at variance with their original intent. Examples of the latter are colonial era statutes regarding vagrancy, trespassing and forced labour, many of which survive on

the books of many countries. Whatever their original function, these relics of colonialism have the effect of criminalizing poor people. Archaic laws of this nature need to be rewritten or abolished to encourage broad-based legal empowerment.

Policy Initiation

Where a public policy originates is therefore a leading factor to consider with implementation. There is also the question as to who proposes such a policy and who formulates the approach. The degree of domestic enthusiasm and support is what matters most for implementation, though external donors and international agencies are a useful source of ideas for policy reform. Often, a crisis such as a natural disaster, or warfare, may act as a powerful stimulus for introducing new policies; but it is neither a necessary nor a sufficient condition for implementation. In the wake of the Asian financial meltdown in second half of the 1990s, for instance, Indonesia enacted a series of important labour law reforms that began with guaranteeing the fundamental right of freedom of association. The first legislative change repealed provisions that limited representation to a single government-controlled trade union national federation, and put into place a framework offering workers the chance to form federations as they wished. These reforms might well have been shelved under normal conditions.

Building on earlier work analyzing political will for anti-corruption activities and on policy reform (Brinkerhoff 2000; Brinkerhoff and Crosby 2002), the following initiating scenarios for legal empowerment can be identified:

1. Grassroots groups, social movements, membership-based groups of workers or of small business owners mobilize and demand change. Some decision makers in the government respond favourably. This option provides motivation for insiders who can potentially champion change.
2. Choice of LEP reform is based on country actors' consideration and analysis of options, anticipated outcomes for various groups, and cost/benefits. When country actors choose policies and actions based on their own assessments of the likely benefits to be obtained, the alternatives and options, and the costs to be incurred, then one can credibly speak of independently derived preferences and willingness to act.
3. Government initiates LEP reform. Commitment is questionable when the initiative for reform comes largely from external actors. Some degree of initiative from country decision-makers must exist in order to talk meaningfully of political will.
4. Government mobilizes key stakeholders in support of LEP. This set up concerns the extent to which government actors consult with, engage, and mobilize LEP stakeholders. Do decision-makers reach out to members of civil society and pro-poor groups to advocate for the changes envisioned? Are legislators involved? Are there ongoing efforts to build constituencies in favour of new LEP reforms?
5. Government publicly commits and allocates resources to LEP reform. To the extent that country decision-makers reveal their LEP policy preferences publicly and assign resources to achieve announced policy and programme goals, such actions indicate commitment to change. When countries commit to changes funded by outside donor resources, the presence of political will becomes unclear.
6. Government supports continuity of effort. Another situation is the assignment of resources and effort over the long-term to achieve LEP goals. One-shot or episodic efforts would signal weak or wavering ownership. LEP reforms, by

their very nature, are long-term undertakings.

7. Key actors monitor LEP progress for learning and adaptation. Commitment is revealed when country actors establish a system for tracking LEP reform progress, and actively manage implementation by adapting to emerging circumstances over time. However, learning can also apply to country decision-makers who have been able to observe LEP policies, practices, and programmes from other countries and who can selectively adopt them for their own use.
8. Donors club together into a joint-programming strategy or multi-donor group (e.g., through the Harmonization Alignment and Coordination approach). This option provides another possibility for outsiders to assess the possibility for change. While external support can be a strong catalyst for change, outside micromanagement can also easily render the process too burdensome for reformers and policy champions within government. It is important that the donor role in LEP be supportive and not self-defeating.

Before adopting any of these options, thought should be given as to whether to engage in several LEP domains, or sectors, at once, or to proceed with one and then transition to others. Also, one must be on guard to ensure that a policy chosen does not simply increase state power and patronage in ways inconsistent with pro-poor objectives. Agrarian reform has often gone wrong, with the supposed beneficiaries becoming victims. The best guarantee against such perverse developments is to bring the poor themselves into the policy initiation process. Civil societies, NGOs, membership-based organizations of employers and of workers, coalitions and networks all have a major role to play in generating and articulating bottom-up demand. The participatory objective often goes hand-in-hand with decentralization.

But the advantage of community engagement and decentralized structures is not a universal law. In some cases, central authorities may be the best allies for the poor, because they can potentially sidestep local spheres of interest in support of marginalized and disadvantaged communities. They could serve as counterweight for the poor and minorities against what may be entrenched control of local government by anti-poor factions. A concrete example is the key role played by the federal government of Brazil in combating forced labour in remote rural areas of the country (ILO 2001: 25).

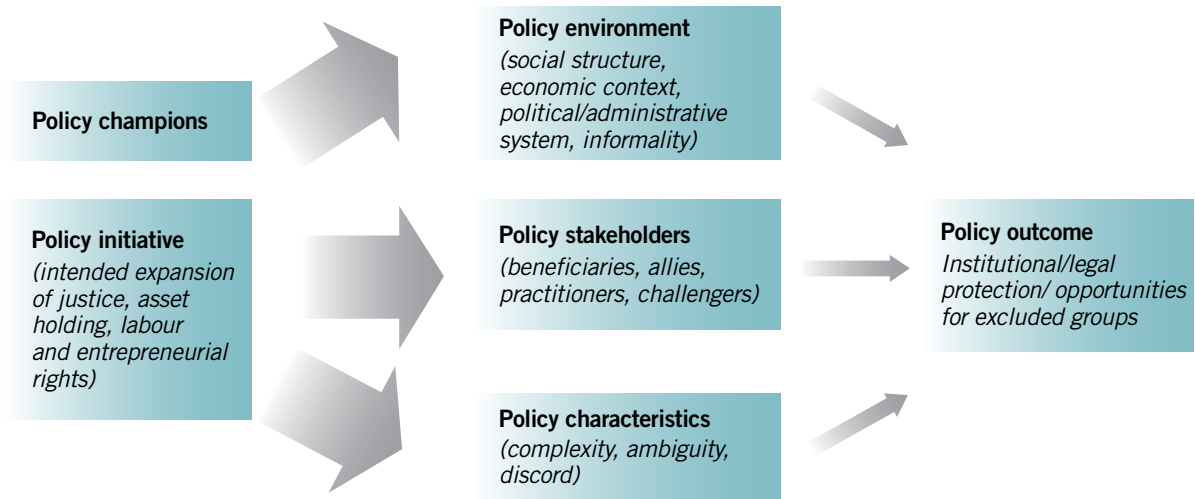
Policy Champions

The degree of initial government support for any policy derives from domestic leaders who share a perception of a problem and who have agreed on how to solve it. One or a few of these people may emerge as policy champions, or entrepreneurs, who make a policy their signature issue and drive it forward over time. Securing political will for any new course of action needs champions to bring other government actors on board and preclude policy spoilers from blocking introduction of the policy. Having strong advocates at high levels of government is vital to getting the legislative and executive arms to cooperate and follow through on policy reform.

Policy champions within government may be emboldened by backing and pressure from civil society within the country. To start a controversial policy such as LEP, which threatens many vested interests (see below), domestic policy advocacy is especially important. That is another reason why organizing by the poor and their representation rights are basic to the Commission's empowerment agenda.

A policy champion can come forward at any level of government. Many LEP policies start out not at the national centre, but emerge from the periph-

Figure 5.2 Influences on Policy Implementation: Empowering the Poor



ery via local or regional governments. A mayor or town council, for example, may want to take care of problems at an irregular housing settlement, an open air market or a waste disposal site. Acting proactively, the local government may try to include the people who live or work in these areas in finding the solutions. Perhaps more commonly, the local government may simply go ahead with reforms devoid of popular participation, sometimes triggering an empowering reaction as poor men and women move legally to protect themselves from the harm caused by the policy. In either scenario, the national government may be on the sidelines of implementation.

Protagonists dedicated to the task of implementation may emerge out of other stakeholder groups (see below), as well, not just from the public sector. Any individual with leadership skills, initiative, and commitment can play the role of policy champion, though they may be most effective if they also have technical knowledge about the subject at hand. Having several policy champions is generally better for implementation.

Forces Affecting Implementation

Once a policymaking process has been started, several common factors have been found to facilitate or impede reaching the desired policy conclusion, notwithstanding the content. Some of the general influences on implementation concern the people affected by the policy, or the policy stakeholders. Another set of influential factors reflects attributes of the context in which the policy exists, or the policy environment. A third set is distinctive features or policy characteristics of the proposed course of action. We can think of these three categories of significant forces as the ‘who’, the ‘where’, and the ‘what’ of policy implementation. (The ‘how’ will be dealt with in Sections 3 and 4, on implementation roadmaps and pro-poor toolkits.) Figure 5.2 presents a schematic summary of these influences on implementation in the specific context of empowering the poor. The arrows in Figure 5.2 are shown as diminishing in size during the implementation venture, to convey the idea that these tend to be frictional forces that reduce the probability of fully attaining projected policy outcomes. The large initiating arrows also assume there is strong

political will for the policy, which may or may not be true. The frictional influences on implementing LEP will test the resourcefulness of policy-makers seeking to carry out the Commission's agenda. Legal empowerment of the poor requires continued vigilance to push back against inertia and the status quo.

Policy Stakeholders

A logical place to start when trying to understand influences on pro-poor policy implementation is to enumerate the stakeholder groups and apprehend their stand on the issue being considered. Stakeholders are people with an interest in a policy, and who have the capacity to move the policy forward or stop it in its tracks. Some of these groups may be set up as formal entities, while others may be unorganized collectivities with shared interests but no official representation or recognition. Stakeholders act out of regard for their own advantage, as they define it.² To implement policy requires a critical mass of supportive constituencies and minimization or neutralization of the unsupportive groups.

The important thing to bear in mind in looking at stakeholders is that they act in response to economic and political incentives. At its core, legal empowerment is about changing incentives to induce poor people to be more creative and productive by allowing them greater autonomy and freedom. Change agents are nevertheless cautioned to be on guard against perverse incentives that could lead some constituencies to act in ways detrimental to poverty reduction.

Accordingly, it is advisable to conduct a stakeholder analysis and to plot stakeholder interests and intentions regarding the problem that a particular policy seeks to address.³ There are many possible formats to use with stakeholder analysis, but the usual practice is to start by enumerating the

possible constituencies. Examples from the land sector might include the following:

- Individuals: landowners, landlords, tenants, shareholders, squatters, refugees, as well as beneficiaries of specific programmes.
- Public sector: politicians, line ministries, provincial/municipal/district departments.
- Private sector: land developers, estate agents, notaries, lawyers, surveyors, planners, bankers, media.
- Civil society: business associations, NGOs, CBOs, CSOs, faith-based groups, public policy research institutes, universities.
- Traditional authorities: chiefs, elders.
- International development partners: multilateral institutions, bilateral agencies, private foundations, international NGOs.

The next step, typically, is to estimate each constituency's position on an issue, the intensity of its interest in the outcome (or policy salience), and the group's relative power to affect the outcome. This may be tricky because any given set of stakeholders need not have monolithic interests. Policy cleavages are important because they affect the possibility of building alliances across groups. Also any one member of these groups may belong to several stakeholder categories, and this may also present opportunities for communication, bargaining and coalition-building among the groups. In general, it must be remembered that the configuration of stakeholder interests and policy positions is not static.

Sometimes the importance of the issue to the group and its potential influence on implementation might be rated on a rough zero-to-ten scale (from no importance to vital). The priority to be accorded the group could also be quantified. Table 5.2 shows a generic stakeholder matrix, similar to the kind of tool policymakers might

Table 5.2 Illustrative Stakeholder Matrix

Stakeholder	Interest in the Policy (Pro/Neutral/Con)	Saliency of the Policy (0-10)	Influence on the Policy (0-10)	Priority for Policymakers (Hi/Medium/Low)
Group 1				
Group 2				
Group 3, etc.				

develop to identify potential alliances and implementation strategies for an LEP policy initiative.

Archon Fung and Erik Wright (2003) suggest two generic strategies to contend with stakeholders: top-down adversarial strategies and participatory collaboration. Building alliances across stakeholder groups is vital, which will turn on the networks and coalitions to which they belong. Support for LEP will arise from stakeholders who view it as good politics and a means to build political support and legitimacy. Donors can assist, but the driving forces for change must come from within the country. National leadership in debating the difficult issues is crucial.

With regard to participatory collaboration, agreement may be absent about who should be involved in decisions. Some stakeholders will not have a prearranged structure. Also, there may be no approved inter-stakeholder process for developing common policy positions. Such an institutional arrangement will therefore need to be expressly brought together for purposes of implementing LEP. The challenges of establishing commonly agreed upon definitions of problem situations and identifying the relevant stakeholders must be overcome as a first step.

Adversarial situations are even riskier for the poor. Most of the time, disfavoured, disenfranchised stakeholders stand to lose in confrontations with better endowed groups. Resolution of the conflicting interests ranges along a continu-

um from negotiation to mediation, to third-party adjudication or arbitration, to refusal to compromise at all. Adversarial stakeholders ordinarily enter into negotiation when they see that is the best alternative compared to what they could obtain “away from the bargaining table” (Ramirez 1999). Where conflict already exists, a strategic starting point for development professionals is to understand stakeholder preferences for how to deal with the clash of interests.

In thinking about stakeholder preferences, there are four stylized stakeholders (shown in the middle box of Figure 5.2, above) to consider: the policy’s beneficiaries, obviously, but also its allies (who support the policy even though they may not benefit directly), practitioners responsible for the policy, and challengers of the policy. Some of the possibilities are sketched out below; these are illustrative categories and, needless to say, the cut-out descriptions may not accurately depict any actual group in any given country. As noted, real groups may straddle the generic categories or switch back and forth among them, for example from being LEP challengers at one point in time to being LEP allies at another period.

Beneficiaries

Poor people are the target beneficiaries of LEP policies. They are the majority of the population in many countries. The term “the poor” is a convenience, of course, for this multitude is far from a monolithic constituency despite sharing hunger,

ill-health, inadequate housing and other pathologies of poverty. They live in remote rural villages and in urban shantytowns. They work as subsistence farmers, agricultural labourers, domestic workers, street vendors, and trash recyclers. They are members of underrepresented ethnic minorities—often internal or external migrants seeking improved opportunities in a new area where they lack clear legal status. They have been displaced by war and civil unrest, and they are indigenous people who have been left out and left behind by the dominant society. A lopsided number of the poor are women, who usually have home and family responsibilities on top of any work they have found outside the home. It is useful to have a segmented census of the poor as a starting point for LEP work in any country, to know who they are, where they are located, and to what extent their interests are aligned.

Beneficiaries of legal empowerment need to have as big a hand as possible in initiating and designing the relevant policies. Even though they lack physical or financial resources, and organizational resources and social capital in many locales, the poor always have a passive capacity to derail legal reforms aimed at them. If the poor are afraid of or averse to playing their designated role in implementation, the best intended policy will come to nothing. It is critical that their views be aired and taken into account by policymakers to make sure the proposed course of action fits what poor stakeholders are prepared to do.

Because poor stakeholders are diverse, legal empowerment platforms may have surprisingly uneven impact if officials are inattentive. An illustration comes from South Africa. Residents of extra-legal settlements in South Africa can be given individual deeds to their homes. Yet, for some inhabitants the result is a decrease in security of tenure. Ownership is registered in the

name of only one member of each household, to the disadvantage of women and members of the extended family. The new property owners also become liable for paying local taxes and service charges, forcing some to sell because they cannot afford to pay. A few people who, by statute, come to own dwellings cannot live in them because informal street committees decide other people should take possession of the properties (Cousins et al. 2005). Thus an apparently equitable policy to expand asset-holding rights ends up having an unequal impact on poverty, because even within these very poor residential areas, material goods and power are not distributed equally. Policymakers might have minimized this outcome by differentiating among beneficiaries and paying greater attention to existing social practices that have widespread legitimacy (see the later discussion of informal institutions).

Poor women present a particular challenge for LEP because in some cases their advantage can be to the disadvantage of the male half of the poor population. In East Africa, for instance, women tend to enjoy “use rights” to land (see further discussion of the spectrum of land rights, below) as wives and mothers, but lack transfer rights due to customs that reserve these for men. Women therefore are without secure claim to a natural resource they use for daily supplies of fuel, water and food. Legal insecurity inhibits economic progress because women cannot make decisions on expanding or developing land (UNEP 2004:99). Their fathers, husbands and sons are likely to balk at efforts to implement expanded women’s rights in this important economic realm, because they would compromise men’s rights to the same assets. Women’s community based organizations may be the answer. These have proven somewhat effective in preserving women’s land access in Mexico, though effective land control does not necessarily follow (Radel 2005).

Poor indigenous people, who represent 15 percent of the world's poor but only 5 percent of its population (ILO 2007: 27), are another special test for LEP due to physical or social isolation from the influence of the governance claimed by a nation-state. Some indigenous people are nomadic; some have been dispossessed *de jure* or *de facto* of their ancestral lands. They may speak a separate language. Indigenous people often live in remote sites with high economic potential for water, timber, or medicinal plants, but lack legal

instruments to prevent over-extraction of natural resources by outsiders. All these characteristics make it all the more important for government to reach these would-be beneficiaries. (See Box 5.2 for an example of a participatory approach that helped indigenous people in Philippines assert claims to their ancestral realm.)

At the national level, a society's failure to provide opportunities to all in an ethnically diverse population (poor and not-poor alike) is found in some

Box 5.2 Ancestral Domain Sustainable Development and Protection Plan of the Bago and Bugkalot Tribes.

The Philippines Indigenous Peoples Rights Act (IPRA) of 1997 consolidated bills related to ancestral domains and lands, and international agreements on the recognition of land/domain rights of the indigenous peoples. Metagora (a project funded by OECD) in the Philippines developed evidence-based assessment methods and tools combining quantitative and qualitative approaches. The study measures four aspects of the rights of indigenous peoples to their ancestral domains and lands: the indigenous peoples' perceptions and awareness of their rights, the enjoyment or violations of these rights, the government measures and customary laws for the realization of these rights, and the availability of mechanisms for redressing violations or fulfilling rights.

Metagora's method of work is based on a bottom-up approach consisting of:

- identifying in pilot countries, together with the stakeholders, issues in human rights, democracy and governance for which evidence-based assessment is highly relevant;
- applying statistical methods and tools to that particular context;
- assessing these methods for their capacity to provide policy relevant results;
- providing stakeholders with a shared knowledge on the policy issues at stake; drawing universal lessons from the local experiences;

- formulating recommendations for further application of the tested methods elsewhere.

Three tribes covering public ancestral domains in three regions of the Philippines were covered by the survey. Major respondents were representative samples of the tribal population stratified according to selected criteria that are in consonance with the customs and traditions of the target population. Non indigenous people respondents, especially the governance stakeholders, also comprised the secondary respondents of the survey.

This is a case of objective survey data having policy force on account of the involvement of an international project in partnership with the Commission on Human Rights of the Philippines, its Regional Offices, the National Commission on Indigenous People, and National Statistical Coordination Board (NSCB).

The data and evidence gathered had the positive consequence of making the national and regional government authorities take the implementation of the provisions of the Philippines Indigenous Peoples Rights Act seriously, so that the rights of indigenous peoples are settled, a proactive public policy approach is taken, and funds provided under the law are allocated properly to benefit the indigenous people.

Source: Metagora Training Materials. Ref: <http://www.metagora.org>.

studies to be a drag on economic performance, making it harder for a country to grow its way out of poverty (ILO 2007: 9-10). Policymakers need to consider how ethnic and religious cleavages within a country, along with traditional caste or gender-based exclusions and oligarchic traditions of domination, affect the distribution of wealth and income, and the projected likelihood of empowering reforms. These power relations may have a significant impact on the chances of implementing LEP. We return to the questions of the economic and social context later in Section 2.

Allies

The main allied stakeholders of LEP policies are pro-poor community associations and activists of civil society. Some of these stakeholders will be local social action or advocacy groups, such as the Indonesian Legal Aid Foundation whose mission is to defend poor people in court and expand their rights. Allies may also include professional associations sympathetic to the plight of the excluded and have-nots. For example, Ecuador's Association of Law School Deans supports legal assistance for the indigent in that country. National bar associations are engaged in similar activities in many nations.

Certain politicians may come out as allies. It is not uncommon, for example, to find even somewhat disreputable politicians offering to use public land to woo voters' support in slum areas. Such persons may not be reliable allies, however. More dependable will be the genuine policy champions, who have emerged from among the national or local political leadership to make a progressive name for themselves as friends of legal empowerment.

Some commercial enterprises, and particularly larger companies and multinational corporations, may fall into the camp of policy allies on certain occasions. Over 3,000 corporations in more

than 100 countries have joined the UN's Global Compact, which commits them to support high standards in the areas of the environment, human rights and labour rights (UN 2007). These firms often say they would like to forge partnerships with poor communities in the developing world to create business models that are sustainable, equitable and embedded in the local culture (Hart 2005). Some signatories are turning to the poor as business partners, suppliers, or distributors.

Nairobi, for example, has a productive alliance between informal entrepreneurs and larger businesses. Two business associations joined with the street vendors' organization in a dialogue with local authorities to improve the status of street vending. Street vendors in Kenya's capital city are subject to harassment and demand for bribes from city inspectors. The uncertainty forces the vendors to limit their stock and hinders their productivity and income. The two conventional associations had wanted to drive out street vending because of litter and crowding, but came around because, among other things, of a growing realization that the outdoor presence of vendors limits crime and thus is good for everyone's business. Interestingly, the vendors' group wants its members to pay licensing fees, on the argument that paying gives the members legal cover and provides leverage for government services (Kamunyor 2007).

It should go without saying that these observations do not mean every self-described ally of the poor is a true friend of the legal empowerment agenda. The real world is far more subtle and complex than that. Some grassroots groups may feel threatened by LEP if they do not have the lead in directing the movement. Stakeholder analysis cannot be done by mechanically applying generic labels to pre-determined groups of actors and assuming they will behave according to their category.

Practitioners

A third important set of generic stakeholders are practitioners—mainly the government officials, court officers, and others who draft, interpret and administer the land laws, labour statutes and commercial regulations in a country. Despite sometimes having low positions in the bureaucratic hierarchy of government, these officials can and do wield considerable effective discretionary authority over implementation.

One common problem is that permits, business licenses, tax assessments and the like are sources of power and potential illegal income through bribes, kickbacks and other “rent-seeking” behaviour.⁴ Even the abstruse text describing many of these regulations provides low-level government employees with power, for citizens cannot decode legal jargon easily on their own. The interests and attitudes of government officials at all levels must therefore be factored into the implementation process. In Beijing, for example, law enforcement officers and local authorities look the other way when rural-urban migrant entrepreneurs do not comply fully with license requirements and instead lease licenses illegally from local residents. This illicit license-leasing practice is sustained because bureaucrats profit from it (He 2005). Streamlining the business registration process in line with LEP goals would threaten illegal but routine bureaucratic income in China’s capital city.

These comments do not imply that bureaucrats are always spoilers of reform. A new programme may also mean that staff members gain promotions, have interesting new responsibilities, or have training opportunities or other perquisites. Within every government executive agency or judicial institution there may be potential policy champions, who come to identify with a particular solution to a social problem and make strenuous effort to get

it implemented. As noted, entrepreneurial effort by policy champions in elected and administrative office is a consistent theme in successful policy implementation around the world.

Challengers

A final constituency to consider is rival stakeholders that challenge disenfranchised people exercising new rights or reviving latent ones. These competing or oppositional stakeholders may include foreign businesses and large domestic companies, but also cover many small landlords, mine owners, shopkeepers and moneylenders, plus some lawyers, engineers, and similar specialized experts that tend to prefer the status quo. We should be careful about brushing any class of people with too broad a stroke, but numerous local elites and professionals are likely to feel threatened by confident and forceful poor people and may try to pre-empt improvements in poor people’s status and income. Lawyers, for example, may lose the upper hand with clients if laws are translated into everyday language or if inexpensive conflict resolution forums are made widely available.

A common and tricky problem of implementation is when contending stakeholders do not try to block reforms outright, but subtly manipulate emerging policies (and especially donor-driven programmes) to their advantage—a phenomenon known as “elite capture” (Decker 2005). This distortion is chronic with LEP activities. In many Asian countries, for example prospective titling programmes often have the perverse effect of inducing speculators to buy up land ahead of time from squatters at slightly better than informal prices. The squatters come out ahead in the short term, but pay the opportunity cost of not waiting long enough to get the main benefit of the titling programme—which accrues to the people

with deeper pockets. Low income and vulnerability lead to a safety-first calculation, so squatters reasonably prefer to have their cash immediately. Contrary to the stated intention of the titling programme, however, elites capture most of the gains from it. The sequential and conditional release of funds is one strategy for countering the persistent problem of elite capture (Platteau 2004).

Policy Environment and Contextual Analysis

Crucial as stakeholders are to implementation, even more basic is the country context. In most countries, a minority of the better-off holds disproportionate influence over the local and national policy apparatus due to its more sophisticated knowledge about markets, to its greater business and political contacts, and to its better access to finance. These power structures affect who prevails in the bargaining, competition and cooperation among stakeholders, and also constrains many other facets of LEP. It is impossible to decide what sorts of reforms to attempt and to determine what it will take to carry them without first coming to an honest assessment of the country policy environment.

A clear-eyed contextual analysis should therefore guide all decisions on if, when and how to go forward with LEP policies and provide guidance during implementation. As Figure 5.2 suggests, the most important constraints set by the national sociopolitical context are:

- The domestic social structure, especially its gender, class and ethnic makeup, plus cultural attitudes toward participation and equality.
- The economic context—including the distribution of wealth and income, and the level and rate of economic growth.
- The characteristics of the state—both the po-

litical and the administrative system.

- The extent of economic and political informality and tensions with the formal and officially recognized systems.

These are the critical factors for contextual analysis and the parameters within which practitioners must operate as they try to steer implementation of legal empowerment reforms.

Social Structure

Several important points regarding social structure were already implied in the discussion of stakeholders, which emphasized the task of building winning coalitions for change among clashing constituencies. Thus, a country with fewer poor people relative to its population will likely find it easier to integrate them into the legal and economic system compared to a country with more poor people (though the poor also may be easier to ignore when their numbers are lower). Similarly, a homogeneous country will also find empowering people at the bottom takes less effort compared to a country where the population is deeply divided by language, religion or national origin. The absolute gap between rich and poor also matters, with a smaller gap facilitating implementation of LEP policies. A society where women have considerable legal recognition will have less ground to make up with empowering poor women than another society. Whether the social and economic cleavages are cumulative or cross-cutting (that is, to what extent does membership in a particular religious community or ethnic group correlate with discrimination, low income, exclusion from power, and other negative attributes.) These are given social facts at any point in time, though they can change in a country due to economic growth, human migration, mass education, and exposure to media, among other factors. Policymakers must tailor

their empowerment strategies to the structure of particular societies.

Cultural factors are crucial to the social structure, as well. Assorted traditions and customary practices colour the systems of property rights, contract enforcement and dispute resolution that the poor typically use. Indigenous people are particularly likely to have elaborate but officially non-existent systems in place for organizing economic life. There may be a large gap here between the shared norms and values of the beneficiaries of legal empowerment versus their stakeholder allies (not to mention their rivals or opponents). That cultural distance makes it harder to come up with workable and effective empowerment instruments and activities (see additional discussion on informal institutions, below).

Another important social structure consideration is that many societies and subcultures reflect hierarchical and patriarchic power structures that may impinge on implementation of legal empowerment, which is predicated on broad participation of the beneficiaries in decisions and the levelling effects of economic rights. Great tact may be needed to find socially acceptable yet effective means of involving, say, women or members of historically excluded minorities in choosing and implementing policies that expand the ambit of empowerment. Development practitioners need to pay close attention to these cultural factors when they consider how to carry out LEP.

Economic context

A country's social structure cannot be isolated in practice from who holds the country's wealth and exercises economic power. The distribution pattern may reflect historical injustice whereby a privileged few used their political influence and access to the justice system to legitimize unfair

claims to property. The more unequal the initial pattern of ownership of land, capital, and other productive assets, the more cautious will reformers have to be about regularizing the system of economic rights. There is no advantage to the poor from locking in place deep pre-existing inequities in proprietorship—though to correct those inequities compensation must usually be paid to the pre-existing asset holders, which may be both financially costly and politically risky due to the resistance it is likely to spark. It is important to the Commission's agenda that LEP reforms are designed in a manner that braces the poor's claims to assets without amplifying the existing skewed allocation of property.

Land is probably the most difficult economic resource to manage, both because its supply is limited and because so many poor people depend directly on land for their survival. Indigenous peoples, pastoralists and subsistence farmers must assure their use of forests, pastures and arable fields, but, as mentioned earlier, that brings them into head-on conflict with richer claimants to the same limited resources. Land reforms have proven a conundrum in many countries due to the expense and complexity of managing overlapping claims to the identical resource.

In addition to how a nation's 'economic pie' is divided up, the overall size of the 'pie' also influences the extent of absolute poverty and hence the urgency of poor people's empowerment and the scale of the effort needed to confront that social problem. Economic growth makes it easier to redistribute assets to the poor, yet, ironically, growth is also an unsettling force for the poor.

A case in point is redevelopment of the vast squatter settlement of Dharavi, in Mumbai, India. As the land has soared in value, the city and state have advanced plans to replace the

informal township with upscale development. Because Dharavi's residents lack ownership rights their ability to defend their homes and shops is limited. Fortunately, direct action and advocacy from civil society has gotten the government to agree to provide small apartments to the residents who will be displaced. That is not the end of the story, however. These redevelopment plans can be drawn up without any consultation, and it is unclear who within Dharavi's population will get the new living units and work sites. Mumbai has sky-high real estate prices and the state and the private developers still stand to earn huge amounts over and above the cost of this mitigation effort (Patel 2007). On the other hand, mitigation may not have been forthcoming at all were it not for the dynamic economic conditions in Mumbai.

With the clear exception of many programmes involving the transfer of land and property, the financial cost of empowerment programmes may be modest. Since some elements of LEP are revenue neutral, it is possible to pick the resource neutral elements first, or else the ones that require limited expenditure of resources. Special attention should be paid to low-cost ways to enforce property rights, guarantee contracts, and provide fair resolution of business and commercial disputes. Still, even these activities will slow to a crawl if the country does not find enough funds to pay for them.

Empowering the poor has a long time horizon so ongoing budget support is problematic. Take many of the emerging market economies in Asia. They still frequently underpay their judges and allow their courts to languish with inadequate facilities. Many of these legal systems are swamped with a backlog of cases and are widely accused of corruption. Hence, fast economic growth does not necessarily put an end to resource scarcities for implementation if change is not a high priority.

Political System

Political system variables (i.e., factors affecting the demand side of government) are crucial for implementation and need to be taken apart and looked at carefully. To combat legal disempowerment, there is no substitute for collective action by poor men and women to push for rights and protections, as in the Mumbai case cited above. When doing contextual analysis, therefore, practitioners must consider whether farmers, residents, workers, consumers and other constituencies have legal protection to organize and petition the government or bargain with private entities to redress their grievances. In countries where these basic rights are neglected or suppressed, LEP will be harder to carry out. The right to organize does not exist in a vacuum separated from actual organizations, and thus the level of development of civil society is another important influence on the diagnosis for policy implementation. It is easier to carry out LEP in countries with strong community organizations, occupational membership groups or pro-poor political parties, than where such social capital is absent.

As we have stressed, implementation of LEP usually involves community participation, sometimes through formal venues set up for the purpose or else through the established mechanisms of local government. Simply making participatory procedures available, however, is not sufficient because the better-off and more connected members of communities tend to take advantage of them. Barbara Pozzoni and Nalini Kumar (2005) describe two related forms of social exclusion: formal, which refers to the poor and disadvantaged not showing up at meetings, and substantive, which refers to their not speaking up in these venues. In India, for example, local self-government appears to be working reasonably well, but some community members report being too intimidated to

contradict local leaders and government administrators (Viswanathan and Srivastava 2007: 72). Social mobilization of the poor can help make participatory procedures in government work closer to the way they are meant to.

Legal empowerment is sometimes also facilitated by democratic competition and free discussion of policy issues at the national level, which induces leaders seeking majority support to vie with policy proposals favourable to disadvantaged citizens. But these are not panaceas. Procedural democratic rule is now quite common in the world, yet empirical studies show countries experiencing democratic reform do not have systematically better poverty outcomes (Ross 2006). For example, democratic countries are just as capable as dictatorships at carrying out government austerity programmes that fall most heavily on the poor (Lindenberg and Devarajan 1993).

The procedural democracies are not at all consistent in the extent to which they protect minorities, root out political corruption and prevent state-sponsored violence against citizens. Often the leadership positions in these countries are dominated by the same social stratum that was in charge before the advent of procedural democracy and competitive politics. In some societies this dominant group's role is legitimated by religion or tradition, and deferential attitudes on the part of the poor may add another stumbling block to empowerment. One explanation for the economic disparities that persist under democracy is the holdover of identity politics that divide the poor (Varshnay 2005). There may also be deep rooted patron-client networks that push down the poor (more on this topic later).

Take the example of Philippines. Its government is chosen in contested elections. Thousands of community based organizations exist in Manila and

elsewhere, so there is a strong civil society. Philippines has a national housing finance programme to regularize the city's vast informal settlements, implementation of which is left to partnerships between community groups, local governments, and the private sector. Local governments are also required to set aside land for relocation of informal settlers and to compile lists of informal settlers who are eligible for relocation. Yet even in this relatively benign political environment, the community groups tend to have limited influence and evictions and conversion of land to commercial uses continues apace (Shatkin 2000).

Honduras and Nicaragua have analogous problems in rural areas. Land and forestry laws favour the poor on paper, but practice is different. In Nicaragua, constitutional and legislative provisions exist for the demarcation and titling of indigenous territories. Yet the government continues to grant industrial logging concessions on community lands without fulfilling these requirements. In Honduras, small-scale forest producers have use rights but seldom can meet transaction costs of securing permits and other approvals, owing to regulatory complexity and bureaucratic corruption. This forces them to rely on timber traders to secure permits and other approvals, which, in turn, fuels collusion between traders and public officials, and elite capture of community forest management rights (Wells et al. 2004). Again, the quality of democratic institutions in this pair of countries appears to vary according to the class and income of the citizens using them.

These anecdotes obviously do not mean dictatorships are consistently better at confronting poverty than are countries classified as democratic. There are examples throughout history of authoritarian regimes that carried out successful land reforms and other pro-poor policies; yet there have undoubtedly been a far greater number of authoritar-

ian regimes that did little or nothing to improve the health and well-being of ordinary citizens. We need to look beyond political labels when designing implementation strategies for LEP.

It is important to think of political systems as shades of gray when it comes to empowering the poor. At the far end of the pallet are systems of arbitrary personal rule, which are typically quite closed regarding grassroots participation in policymaking, but which may be open to pro-poor policies if the regime is a populist one that depends on mass support. Dictatorships blend into more open and competitive systems where the poor may have progressively greater scope to sway public policy, but where the rich may still exercise hegemony on key political economy issues. Happily, there are fewer political systems today where poor people cannot organize at all to have some countervailing influence on government decisions; but in a number of countries, freedom of association is still being denied (ILO 2004: 1-2). And even in the most receptive political systems the influence of the poor is difficult to transform into extensive power. Development practitioners should be careful not let preconceptions about regimes blind them to these possibilities.

Administrative state

The supply side of political systems also needs to be considered to understand implementation probabilities. How capable is the public administration? Does the state have the capacity to provide physical safety, to secure personal belongings, to settle disputes fairly, and to provide other public goods to society? Does it possess the personnel, skills, systems, and infrastructure to carry out these core functions? Even political will cannot drive reform in the face of binding constraints on the capacity of institutions charged with delivering the mandate of empowerment.

High-capacity states are ones that implement policies efficiently, predictably and in the manner intended. High-capacity states may or may not be democratic, but they can carry out the LEP agenda if that is what leadership wants. In very low-capacity states, on the other hand, supportive leadership is still beneficial except the follow-through capability is missing. Residents must therefore improvise and figure out how to protect assets and resolve disputes through pragmatic means, such as aligning with a political patron (see discussion of informal governance below).

Administrative weakness is usually rooted in lack of human and financial resources, but a vicious cycle reinforces the problem. A World Bank report argues: Burdensome or extraneous business and labour market official regulations drive people into the shadow economy, while a collective perception of ineffectiveness of the state's actions gives rise to a social norm of non-compliance with taxes and regulations, which further undermines the state's capacity to enforce the law and to provide public services (Perry et al. 2007). However, the methodology underlying such studies has come under serious technical criticism (Berg and Cazes 2007).

Bureaucratic corruption can also be a major weakening factor, especially for the poor who lack the wherewithal to pay bribes to make things happen within the bureaucracy. For people with means, on the other hand, the civil service may seem capable enough because, unlike the poor, they can pay for individualized special treatment. Thus bureaucratic corruption will tend to reinforce the existing configuration of wealth and power. In cases where public sector wages are low and virtually everything the civil service does is for sale, it may be almost impossible for the poor to get public administration to work in their favour. LEP reformers would have to address

corruption before taking on implementation, or choose to work in sectors where government employees are more professional and trustworthy.⁵

Attitudes of public servants are also significant. Receptivity of state institutions to the agenda of legal empowerment is as much about changing the bureaucratic mindset as it is about new processes or additional resources. Too often public functionaries for a variety of reasons lack a service orientation and see their job as an entitlement. This must begin to change to implement LEP.

Again we are talking about shades of capacity, not stark monochromatic differences. Among developing and transitional countries, those with higher national incomes tend to be recognized as having the stronger administrative capability, though there are certainly exceptions to this pattern. The least developed countries, especially small island nations and land-locked countries tend to have lower capacity as a rule. LEP is obviously easiest to carry out on a national scale in countries with better capacity.

State capacity is at its nadir in countries where central authority is so ineffective that it has lost or is losing practical control over much of its territory. Implementing LEP in these political systems must be done entirely from the bottom up or the outside in, because the national government is too dysfunctional to work from the top down. Consider the extreme case of Somalia, with four overlapping judicial structures: a formal one in regional administrations and central governments created at international peace processes, a traditional, clan-based system, a growing number of Muslim *shari'a* courts in urban areas, and ad hoc mechanisms established by militias (Le Sage 2005: 7). A nationwide implementation strategy for legal empowerment is currently problematic in Somalia, though there may be local or regional space for reform, as Box 5.3 indicates.

Box 5.3 Empowering Workers through Community Contracting

“As in many other places in Somalia, the civil war that has been raging on for years has had its toll on Garowe, a city in the Puntland region of that country. ... A project to improve the livelihoods of the people of Garowe through sustainable waste collection management ... applied the Community Contracting Model, a participatory process whereby the community group negotiates with local government or a development programme and enters into contractual agreements to undertake garbage collection and disposal. This had multiple advantages: members of the community were directly involved in negotiating contracts which in turn provided them with jobs that helped them improve their livelihoods.”

“This contracting system uses a participatory and bottom-up approach. ... Local actors were responsible for ... organizing community contributions, transport hire, procurement of tools and materials, authorization of payments, decisions on workers’ wages, selection and supervision of workers and ensuring workers’ safety. They were also responsible for solving all disputes related to project implementation.”

“There is a great potential for replication of sustainable waste management activities in towns and municipalities within the country as well as in urban centres of other African countries.” UN-Habitat, ILO and UNA (an Italian consortium of NGOs) have supported the Somali initiative.

Indeed, 11 municipalities in Kenya, Tanzania and Uganda are pursuing similar approaches to municipal service delivery. Community-based organizations, small enterprises, NGOs, informal economy operators and local training institutions work with the administration to create pro-poor urban services using public-private partnerships. This was made possible by changing local government by-laws. The change opened up new opportunities for poor men and women; the ILO is working with local partners towards ensuring that the jobs are safe and productive.

Source: ILO, Success Africa: Partnership for Decent Work – Improving People’s Lives, 2nd vol. (Addis Ababa, Apr. 2007), pp. 2-4 and 31-33.

Post-conflict states present a special situation for LEP even if the central state has nominally reasserted its claim to authority. It is particularly vexing to figure out how to return property after its rightful owners have fled or been killed by one side or the other in a civil war. Often the disputes over homes and other assets are so intense they must be addressed at once to sustain peace.⁶ The international community has recognized institutional reform of the legal infrastructure is essential for reconstruction and reconciliation. Yet, a realistic timeframe for re-creating a justice system following serious armed conflict with formal courts, trained judges and a retrained police force is close to 20 years (Samuels 2006: 19). That is a long period for implementation with many chances for administrative operation to deviate from initial policy intent.

Merilee Grindle (2007) proposes an elementary typology of political systems, adapted here in Table 5.3, right, which is a useful place to begin to consider what sort of LEP policies are feasible within different countries. The three left-hand side column headings reflect the political and administrative dimensions of regimes, with the far right-hand column very roughly indicating the sorts of LEP initiatives that might be appropriate; the rows are five common regime patterns or syndromes. These are heuristic, but they suggest the possibilities for legal empowerment are greatest in states that are more competitive and better institutionalized. As Grindle points out, there is simply more to build upon in these countries than in weaker states. A starting point for LEP practitioners, then, is to debate honestly where a particular country can be located among the common patterns of political administrative systems, and use the information to think creatively but realistically about what empowering reforms will work in that context.

The typology in Table 5.3, right, is educative, not exhaustive; the capsule policy prescriptions in the last column on the right are not meant to cover all the possibilities, which are too numerous to capture in a simple table. The reality on the ground is that policy champions may need to pursue a variety of tactics in every country, custom fit to the different stakeholders, to support their overall strategy. That means mobilizing the grassroots, the community organizations, the professional groups, and other interests to counterbalance opponents of LEP trying to derail the agenda. The prospect of working with state actors varies according to the administrative capacity of the government.

Informality

A cross-cutting dimension of the policy environment is the extent of informality—in the economy, in the polity, and in the juridical system. People, organizations, and firms can operate under conditions of informality for some purposes and under conditions of formality for others. LEP reformers must be sensitive to the vulnerability of informal empowerment mechanisms to cooptation and domination by elites and formal organizations. Let us look at the phenomenon and consider the impact on implementation of LEP.

In the economic sense, informality refers to small-scale, self-financed and unskilled labour-intensive productive activities, which the poor use to survive. These pursuits are under-the-table and off-the-books, and thus are legally defenceless against more powerful market interests and are subject to unfair exploitation. This parallel or shadow economy is a vast domain, representing the equivalent of about 40 percent of official economic activity in developing and transition countries, according to a study financed by the World Bank (Schneider 2002). Half or more the employment (including subsistence farming) in

Table 5.3. Political Administrative Syndromes

Political Competition	Institutional stability of the state	Organizational capacity of the state	Potential LEP policy initiatives*
Rule through stable and legitimate organizations and procedures; open competition for power through programmatic parties	Rules of the game widely recognized as legitimate and not subject to significant change; conflicts resolved through appeal to the rules	High. Organizations challenged to improve performance on a sustained basis.	National level reforms in human and economic rights; assert claims to existing legal and basic welfare services; work through established civil society
Rule through stable and legitimate organizations and procedures; no open competition for power. Political parties serve the regime or are hindered and controlled by it	Clear rules of the game and generally orderly processes of decision-making and public management are in place; generally centralized and authoritarian practices.	Modest. Many organizations carry out routine activities on a sustained basis.	Mobilization of poor citizens for greater influence over the range of legal protections and opportunities from the centre
An unstable mixture of personal and impersonal rule, with varying degrees of legitimacy. Parties are based partly on personalities	Basic rules of the game are established in law and practice, although they function poorly and intermittently.	Low. There may be some organizations that are able to carry out responsibilities on a sustained basis.	Similar to above, but with possibly more decentralized focus and more emphasis on institution building; corrupt bureaucracy may be a bigger obstacle
Rule through personalities and personal connections. If political parties exist, they are based on personalities.	Stability highly dependent on personal control of power. Rules of the game emphasize power of elites and personal connections to elites; there is conflict over who controls the state	Low. Organizations respond to the personal and shifting priorities of powerful elites.	Bypass strategies to get around corrupt officials; incremental steps only; watch out for elite capture
There is no effective central government	Extremely low. There are no effective rules of the game that are agreed upon	Extremely low. It is difficult to identify organizations that have any capacity to produce results.	Community-based empowerment programmes

* Illustrative examples only; the activities in these cells are not mutually exclusive.

developing countries is outside the formal sector. Earnings are low and uncertain, but these parallel market activities have proven remarkably vital and have grown worldwide in new guises and unexpected places. Capturing the positive attributes of the informal economy while minimizing the low

productivity and hazardous working conditions that go along with it, is one of the challenges of the legal empowerment agenda.

Economic informality does have some advantages for the poor; for example, women may find home-based work easier to fit in around their household

responsibilities. Formal sector businesses may choose to outsource work to informal workers to gain flexibility. That said, these jobs are mostly very badly paid, often dangerous, and they rely heavily on children (ILO 2003). Most people who toil in the parallel economy do so out of necessity, not freely exercised choice. Judith Tandler (2002) writes of an implicit 'devil's deal' in Brazil and other countries, whereby informal economy workers and entrepreneurs consent to support certain politicians. In return, the politicians agree not to enforce tax, environmental, or labour regulations; and to keep the police and inspectors from harassing the poor. This arrangement is difficult for either side to get out of and it limits the options for legal empowerment. Tandler suggests the way to break the 'devil's deal' is by demonstrating the paths by which small firms grow into form ones, including treating workers better and helping to upgrade their skills.

The boundary between the informal and the formal economies is fluid and poor people can push it in a direction that favours them. Cairo, to take an example, has an informal refuse collection system which actually has a well-defined set of internal rights, responsibilities, and sanctions that evolved over several decades in response to a changing external environment. The city tried to bring refuse collection under municipal control by issuing licenses to large corporate contractors. Refuse collection is a major enterprise for poor people so the city was threatening their livelihood. After negotiation and mutual adjustment, a new arrangement emerged in which small-scale service providers selectively adopted institutional forms recognized by the municipal authorities, while hanging on to the personalized and adaptable practices that marked their informal system (Assaad 1996). The second element of informality that concerns LEP policy implementation is

found in the political system. Similar to what goes on in the economy, informality here is based on implicit and unwritten understandings. In effect, it is a coping method for the poor. The terms used to describe this grey government zone are patrimonialism and clientelism. Its dimensions are hard to measure, but the informal patron-client political system is large in many countries and may crowd out the official state system of rule, along with that system's broad policies that guarantee rights and distribute privileges according to objective criteria.

Patron-client politics emerge from webs of personal bonds that develop between patrons and their individual clients or followers. These bonds are founded on mutual material advantage: the patron furnishes excludable resources (money, jobs) in return for support and cooperation (votes, attendance at rallies). Typically, marginalized members of society are drawn into patron-client arrangements as a more reliable means than the state to take care of their everyday concerns (Brinkerhoff and Goldsmith 2004). Clientelism is widely seen as a barrier to more transparent governance and professional public administration. It lives on, however, because it provides something of value to people. No society is so 'advanced' that it relies exclusively on de jure institutions to run its common affairs. For all their drawbacks, informal patron-client exchanges are expedient means to get things done.

Clientelism evolves and adapts to the formal governance system, similar to what happens in the economic sphere. In fact, the formal levers of power are often held by individuals who also head up patronage networks. Political openness, widespread political participation and the emergence of broad programme that help people regardless of their personal affiliations are ways clientelism can be pushed back to benefit the

poor (Brinkerhoff and Goldsmith 2005). But this is a struggle. Patrons do not give up their position willingly, and they often have multiple additional claims to power, not just their control over material resources but also legitimacy derived from a high position in the local system of social stratification and privilege. There may be a religiously or historically derived convention of deference to authority that makes poor people less likely to stand up for their prescribed rights against the wishes of traditional patrons.

The participatory budget process in Porto Alegre, Brazil illustrates how hardy clientelism can be. The city has garnered a great deal of attention for making public spending more programmatic and universal, and less dependent on individual connections and friends in high places. When the Workers Party came to power in Porto Alegre in 1989, it was determined to end the clientelism of the old administration and it set up an inclusive process that involved citizens from all social groups in establishing budget priorities, allocating investments and monitoring results. Many city council representatives held office based on clientelistic networks tied to neighbourhood associations. Though often disagreeing with participatory budgeting, they voted for it with the hope of using the programme's popularity to gain votes in the next election. It was difficult for these legislators to oppose projects that directly benefited their own constituents (Wampler 2007). Despite this progress, after the Workers Party lost control of the city government in 2004, due in part to a drop in support from its low-income political base, there were signs of resurgent clientelism, with the city councillors and municipal staff once again doing deals to arrange individualized delivery of public works and services.

Informality turns up a third time in the legal system itself, where we again see overlapping

statutory and non-state systems of law (including mafia-like self-regulating systems) in every country. As with economic informality and political clientelism, the informal legal structures exist partly because they are more accessible and 'user friendly' to people of limited means. Sometimes, private or mixed arrangements for rule enforcement and settlement are efficient because they enjoy the confidence of the participants and encourage flexibility and compromise within community norms. Other times, however, the non-state system is neither efficient nor fair.

The minibus taxi industry in South Africa shows how the informal economic and governance domains can coincide in the real world, in this instance with major social cost. Minibuses are the major means of transportation for South Africa's poor, plus a major source of employment for poor people. A loophole in the transit law allowed this largely unregulated sector to emerge toward the end of the apartheid era, and commuter transportation became dominated by independent small business operators, driving owned or rented vehicles. The minibus taxi business provided low-cost movement around the country at a time when the majority was trying to get out from under the oppressive minority regime ruling South Africa, and it has continued to grow to currently account for about two-thirds of commuter travel. In the absence of government regulation, however, the individual minibus owners and drivers turned to emerging private industry associations to allocate taxi routes and cab stands, and to settle disputes that arose among competitors. Over time, these associations grew very powerful in their own right and began to use strong-arm tactics to defend or expand turf claimed by rival taxi groups. By the mid-1990s a virtual taxi war was costing hundred of drivers and passengers their lives each year. Lack of vehicle maintenance, overloading and poor

Box 5.4 Organizing out of Poverty: Taxis in Rwanda

The International Cooperatives Alliance, the International Trade Union Confederation (formerly the ICFTU) and the International Labour Organization have teamed up to develop an approach known as SYNDICOOP. “SYNDICOOP promotes trade unions and cooperatives – membership-based organizations for workers in the informal economy. And because they are membership organizations, they can be accountable.”

An example is Assetamorwa (Association de l’Espérance des Taxis Moto au Rwanda) in Rwanda. “Each driver is an individual trader, negotiating fares with passengers. But by combining together, they support each other and can negotiate with the authorities of Kigali, the Rwandan capital.” Assetamorwa has organized a system of pooling money that its members can tap in turn (known as “tontine”) and a health insurance fund for members. The group also trains young drivers, runs a garage and spare-parts depot, and works to combat the spread of HIV/AIDS. All of this activity depends on the necessary framework legislation on freedom of association and cooperatives being in place at the national level.

Source: Stirling Smith and Cilla Ross, *Organizing out of poverty: Stories from the grassroots: How the SYNDICOOP approach has worked in East Africa (Co-operative College, Oldham, 2006)*.

safety standards led to thousands of additional fatalities per year in road accidents. According to reports, the police have been corrupted to look the other way on traffic violations and in some cases have become leaders in the violence and intimidation among taxi associations (Barrett 2003).

Fortunately, freedom of association is guaranteed by law in South Africa, and the government has a non-judicial mechanism to resolve disputes through mediation and conciliation. Thus, institutional and legal conditions exist for

overcoming the industry’s problems. The government has tried to reassert its regulatory authority and formalize the industry. After consultation with stakeholders, a financial incentive programme has been developed to encourage operators to upgrade the minibus fleet, join designated membership associations, keep better records and begin paying taxes on their enterprises (van der Merwe 2007). The effectiveness of these efforts to supplant the informal institutions and practices remains to be proven, however.

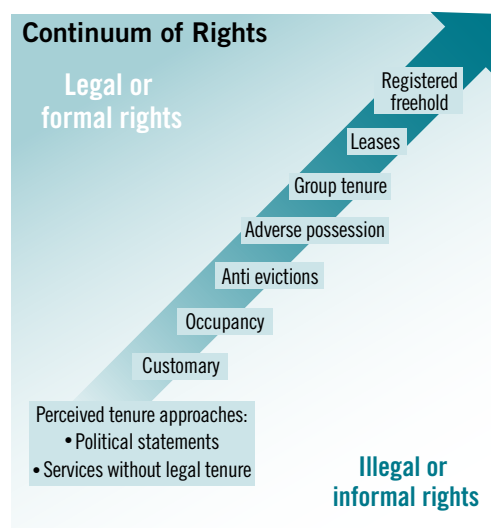
This example is extreme, and Box 5.4 reports a much more encouraging case of a taxi drivers’ organization from Africa; nevertheless, it makes the point that development practitioners face dilemmas in dealing with informality (and, by extension, with decentralized and local institutions generally). There are obvious advantages to exercising rights through personalized and traditional authority because it is less expensive, more familiar and locally available. Yet, just because *de facto* or relationship-based authority is embedded in poor communities does not mean they must be constructive in fighting poverty and injustice, as the violent feuding of the South African taxi case vividly illustrates. A patron-client network, or clique, may provide a safe haven for society’s most vulnerable, but it limits their options also, long-established rules for allocating resources may work when the population is small, but they might buckle under population pressure. Additionally, a private legal mechanism may be accessible, but it could easily play favourites depending on a plaintiff’s personal connections.

A bottom-line concern is that development professionals must creatively seek to capitalize on the available mix of *de facto* or ‘traditional’ modes of authority. There is no reason to assume that the informal institutions, rules and arrangements are either superior or inferior to

Box 5.5 Authority Systems: Land Rights

Regarding the critical asset of land, there exists an internationally well recognized spectrum of rights, as shown in the figure below. Starting with the floor of freedom from eviction, security of tenure progressively improves as one follows the arrow. Land rights begin with the perception that one will not be evicted, based often on political statements to that effect. The right becomes stronger through customary law, temporary occupancy certificates, through anti-eviction legislation and adverse possession (otherwise known as squatters' rights) and group tenure. Long-term leases and individual freehold tenure represent the most secure forms of tenure. The noteworthy feature of the continuum of land rights is that it accommodates and reflects the diverse reality of land rights and social land tenures that exist in the world today (for example, family and group rights). It also demonstrates the potential for an incremental path to greater security consistent with the way the poor accumulate their resources over time. This approach may be a solid foundation for achieving consensus on the issue of land and property rights. It

is also a good starting point for developing an innovative spectrum of protection and opportunities in this area, where parallel opportunities-protection/security spectrums can also be linked (e.g. labour, justice, entrepreneurship).



their *de jure* or 'modern' counterparts. Context is critical. India is a possible model for how to integrate representative and legal institutions, having extended official recognition to a system of village councils and people's courts. Drawing on traditional norms, the councils are reported to be seeking out new roles and to be adapting to the democratic factor in India's formal political institutions (Pur and Moore 2007). Several West African countries use decentralized local councils to administer land laws. These tend to be based on customary power structures, though as yet they appear upwardly accountable to the central state, rather than downwardly to local populations (Ribot 1999). Box 5.5 discusses how the integration of formality and informality may help the poor with land rights generally.

In all instances poor people's perceptions should

be kept front and centre. Legal or organizational reforms that look self-evidently empowering to experts from outside the poor community may look dangerous from the perspective of someone on the inside. This could detract from the local support needed for implementation."

As we finish this aspect of Section 2, it should be more than evident how important contextual analysis is to implementation of LEP reforms. Policy makers have to come to grips with the national environment of public policy – that is, with the domestic social structure, economic context, nature of the political and administrative systems, and the scale of economic and legal informality. While a country's environment for reform has to be unpacked and probed on its own terms, we have offered useful questions that could be asked. Practitioners and policymakers can make

good use of the tool of contextual analysis to determine if conditions appear ripe for LEP reforms, which implementation scenarios seem most probable, what sequencing and timelines for reform look doable and how they should be designed, what tradeoffs need to be considered, which risk mitigating mechanisms are worth trying, and what contextual variables need careful monitoring during implementation. Adhering to this general set of guidelines will increase the chances of successfully carrying out empowerment policies.

Policy characteristics

Three internal policy characteristics (the lower middle box in Figure 5.2, above) stand out in influencing implementation: complexity, ambiguity and the potential for discord and conflict. These characteristics are important in all policy arenas but are especially relevant for the four domains of legal empowerment.

Complexity

Other things being equal, the more complex a policy is, the harder it is to implement due to the intensity of the administrative effort required. On the scale of complexity, LEP tends to fall at the far end. As seen by the Commission, the paradigm for empowerment is holistic and thus highly ambitious. Ideally, the poor should obtain legal protection for their physical and financial assets (property rights) and human capital (labour rights), and also have the ability to engage in market transactions (business rights). Cutting across all three areas is a need to obtain access to justice and political decision making (legal identity and citizenship rights). Those are a lot of balls to juggle during implementation. It may be best to go forward selectively and not dissipate energy on too many initiatives at once. On the other hand, progress in only one area without the others may

create imbalances that perpetuate poverty.

A second source of complexity is the fact that legal and regulatory systems are very robust; meaning that reconfiguration of one or a few aspects of the law or institutions may not alter the overall risk and lack of opportunity poor people face. Social conventions and structures develop over long periods with many redundancies and mutually reinforcing elements. Progress in one domain of empowerment may be neutralized by lack of progress in another. Unanticipated effects may also be triggered during implementation that undermine or bypass the intended beneficiaries. In Peru, for instance, the introduction of greater flexibility in the labour market was heralded as progress in the early to mid 1990s; one of its effects, however, was to drastically reduce the percentage of the population who enjoyed a legal status as employees, which had given them access to social protection. In the short-term, poverty rates increased. Had the reform package been less sweeping, or accompanied by a social floor or mitigating measures, this negative impact might have been avoided.

Third is the time dimension to complexity. Empowerment policies seldom take effect quickly. Regarding law reform to promote the right to freedom of association and collective bargaining, for instance, the ILO (2004: 110-111) has observed that four to five years is the minimum time that should be allowed before substantive results can be seen. In general, delays make political backtracking likely as ministerial appointments change and bring in new ministers who have little interest or commitment to their predecessor's programmes. Hesitation in implementation reinforces any inclination of the poor not to go along as expected with a policy in the first place. Individual uncertainty about implementation encourages the majority to hold back supporting the reform, which creates a self-fulfilling prophecy of implementation slip-

page. Thus it is important to look for interventions that promise short-term rewards for beneficiaries. Microfinance, for example, can have an immediate (though perhaps not sustainable) effect on poor people's consumption.

A final source of complexity is that legal empowerment is both a top-down activity (initiative and coordination often come from the national capital, regional centre, or city hall) and a bottom-up activity (the poor and their allies play a central role as advocates and watchdogs). There are many chances for misunderstanding and miscommunication with a policy where leadership comes from several directions. Even if NGOs and local communities are the prime movers of LEP, they may not be able to accomplish much on their own without government assistance.

An example of how complexity can distort implementation of LEP is the ongoing struggle over labour rights in Latin America. During the 1990s, several governments in the region tried to promote greater flexibility in the labour market through changes in national labour legislation. This undermined labour union members' freedom of association and rights to collective bargaining; it also impinged on workers as individuals because they lost job security. Trade unions fought back against these changes and, in some cases, succeeded in curbing erosion of their group rights, a positive accomplishment from the perspective of LEP. But they often ceded on deregulation of employment law relating to individual rights, which is perhaps an even greater loss for an LEP agenda. An unintended byproduct of these policy disputes was also to strengthen the larger and more established unions but to further weaken the organizing and bargaining rights of emerging rival unions (Cook 2005). These last are often strong allies of poor people.

Ambiguity

Ambiguous policies are also more challenging to carry out than clear policies are. There are several reasons for this, but a principal one is that ambiguity gives bureaucratic stakeholders greater discretion in interpreting or even ignoring the policy. Ambiguity also clouds the efforts of beneficiaries and sponsor groups to hold the bureaucrats to account. As a result, the policy in practice tends to drift further and further away from its design. Many policies related to LEP rank relatively high for ambiguity. In several African countries, for example, local people's access to land is protected through use rights, which are legally recognized as long as the land is put to productive use. What uses are 'productive' is not clear in the formal law, however, which tends to favour large scale commercial or industrial users not pastoralists or subsistence farmers seeking access to land (Cotula 2007: 36). The less clear-cut a policy is, generally the greater is the probability of elite capture during implementation.

The informal legal arrangements discussed earlier are a source of ambiguity simply because they exist side by side with the formal system of civil and criminal justice. Which one takes precedence? The inadvertent result could be a labyrinth of law, in which the poor and disadvantaged may lose their way. Setting aside any possible net advantages of informality for the poor in a given legal context, the absence of documentation tends to render informal justice a less effective platform for implementing empowerment strategies. Consider the phenomenon known as 'forum shopping' whereby economic actors navigate among multiple legal orders to seek the most favourable forum to pursue their claims. Thus a policy to give legal recognition to poor people's customary system of justice or dispute resolution may in some cases work against the poor, as long

as the statutory or rule-based legal code continues to exist. A business corporation or rich person will simply avoid the less expensive traditional forum and force poor people to litigate in forums where they are at a disadvantage. The flip side of forum shopping is that NGOs and human rights stakeholder groups working on behalf of the poor also have multiple venues to seek redress of their grievances, so, again, the implication is not that institutional pluralism is inherently bad for LEP. Still, it is a complicating factor that makes empowerment policies trickier to plan and execute.

There may be temptation to clarify an ambiguous informal legal structure simply by replacing it with a more orderly statutory code, but as it might conceivably backfire on the poor, any approach must be carefully reasoned. Sudan is an acute case of what can happen when change is suddenly rushed through. Urban elites in Sudan aggressively moved to take land at less than its true value by shifting land out of community-based tenure systems and into a standardized Islamic tenure system. The civil war that raged for years in the south of the country was set in motion for many reasons, but one was the resistance by rural people to the imposition of an unfamiliar tenure system that destroyed their traditional land rights (Bruce *et al.* 1998: 195). The conflict in Sudan's Darfur region also grows in part out of conflicts around competing systems of land tenure, represented by group-based camel nomadism, on the one hand, and more individually oriented sedentary cultivation, on the other (Abdul-Jalil 2005).

Ambiguity additionally clouds lines of accountability and responsibility among implementing agencies and allows them to 'pass the buck' during implementation. In post-tsunami Sri Lanka, the housing authority allocated land to the displaced which was later found to have been un-

der claim by the municipality as a waste dump, and had been classified by the water board as uninhabitable. Straightening out mix-ups like this takes time and energy that could have been used more productively.

Discord

The distributional strife unearthed by policy ambiguity in countries such as Sudan merges into the third stylized internal influence on implementation, which is a policy's inbuilt potential to generate dissension. An 'iron law of public policy' says that most acts of government, no matter what the broader merits, create winners and losers. If the gains and losses are seen as significant, they will become the object of intense political attention. This is particularly likely where the policy redistributes a right or benefit from one group to another, as happens when there are mutually exclusive claims to a fixed resource such as fertile land or minerals. LEP attempts to minimize redistributive conflicts by expanding economic opportunities so that different interests can be negotiated to meet every side's needs, but there is still plenty of potential for confrontation because important stakeholders believe others' gains come at their expense. The mutual payoff to legal empowerment is in the future, but the individual sacrifices must be borne now.

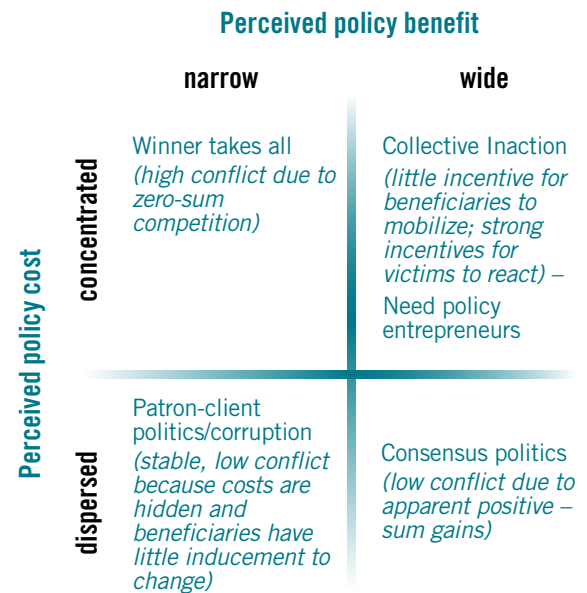
A concrete example of this 'iron law' is the titling and registration programme implemented in Peru starting in the 1980s. According to a World Bank report, the main winners were: settlers, who accrued the economic and social benefits of formal ownership; the President of Peru, who earned the political credit for the programme; local mayors, who shared the political credit, and congressmen, who backed the legal framework for formalization. The principal losers were reportedly the public officials in charge of regularization processes who

previously benefited from bribes; lawyers and notaries, who lost the monopoly they enjoyed in the traditional registration system, and former community leaders, who were replaced by new leaders elected by the communities during the reforms (Palacio 2006: 41).

In conflict equations, defenders of the status quo almost always have the upper hand because they have won earlier power struggles over the same public policies. With LEP a special difficulty is that the self-perceived ‘losers’ are apt to include members of the local elite and bureaucrats mentioned earlier, who feel their monopoly on neighbourhood or community power is jeopardized should anyone else gain economic and financial independence. While these stakeholders have many means to delay or dilute implementation of policies they reject—especially by co-opting the poor through the dependency relationships of patronage and clientelism and by corrupting the local bureaucracy—the example of Peru proves it is possible to overcome the odds with the right leadership and a winning coalition of support.

LEP conflicts can be mapped and considered before they come to a head, providing time to think about political strategies to manage the tension. A policy’s cost and benefit can both be widely distributed (spread over most citizens) or narrowly focused (limited to an identifiable group). Decisions by a central bank to greatly expand the money supply, for instance, have widely distributed costs because everyone has to pay the consequent inflated prices for goods and services. Regulations targeting a specific industry, such as licensing or safety inspections for minicab taxis (mentioned earlier), are more focused and narrowly concentrated and may be perceived as a loss or gain for those most affected. In other words, whether people see themselves as policy winners or losers is more important than the

Figure 5.3 Conflict Implications of Public Policy



reality of who wins or loses. By and large, we can group the varieties of political situations into four categories; they are shown in Figure 5.3.⁷ Each has different implications for generating conflict.

LEP policies such as land titling or legal assistance fall in the top two cells in this matrix. Where both cost and benefit are narrowly concentrated (the top left cell), each side has an incentive to dig in to defend its interests by preventing or establishing the transfer of resources. Because the policy affects relatively few people, gaining allies may be difficult for both sides unless they can make ‘side payments’ or engage in ‘logrolling’.⁸ Where the benefit is widely dispersed, as might be true of many policies designed to help the poor by expanding their rights, getting those beneficiaries motivated to push for the policy is difficult because the individual gains are small or may seem abstract. In short, each category of policies tends to have a distinct shape that LEP practitioners ought to be alert to, as they try to predict and influence stakeholder actions.

The categories, however, are not air-tight and can metamorphose into one another over time, as perceptions of issues change. Thus education and marketing are important aspects of LEP implementation to try to get stakeholders to take a wider perspective on their self-interest.

Lessons may be drawn from knowledge about the inbuilt characteristics of public policy. For example, as LEP tends to be complex and ambiguous, and as implementation efforts might therefore be hindered, the policies to promote empowerment must be made as clear-cut and straightforward as possible. Design simplicity is one way to avoid or minimize conflict, uncertainty and other implementation problems arising from procedural and technical traits of legal empowerment activities.

Diagnosing the Influence on Policy Implementation

We have emphasized the stresses and strains on LEP implementation to awaken policymakers to the need to think pragmatically and opportunistically about policy reform. Policymaking is not an assembly line, and a formulaic approach to the 'who', 'what' and 'where' factors could lead to overly pessimistic generalizations and missed opportunities. Effective implementation requires a mix of experience, professional judgment, and a willingness to take chances. Creative actors look for policy windows that open up and create space for moving forward to solve a particular problem, even when the circumstances appear to be difficult.

With these caveats in mind, Table 5.4 outlines how to catalogue the influential factors in different nations and assess tendencies to impel or impede implementation (as indicated by the three right-hand columns). The questions are illustrative and need to be altered to suit different needs and situations.

An approach to implementation for Country 'X'

Broadly, LEP implementation in country 'X' might start with an environmental scan and contextual analysis. The focus would be on (1) social and cultural features that affect implementation; (2) the economic context, which also can be both a help and a hindrance, and (3) on the openness and capacity of the state. Supplementing the inventory of these concerns would be a careful analysis of the reach and hold that informal institutions have on the poor. The full contextual analysis would then form the basis for a feasibility review of various empowerment scenarios.

Next (or perhaps simultaneously because these are never discrete implementation steps), local activists and external change agents in country 'X' would undertake a stakeholder analysis of the constituencies concerned with LEP. The objective: to differentiate among the superficially homogeneous beneficiaries, to better understand the divisions, alliances and particular needs that exist among the poor. Other stakeholders, who might oppose or assist the target group or groups, would also be scrutinized to see what motivates their behaviour and reflect on how they could be brought into the process. The purpose of the stakeholder analysis would be to get a firmer grasp of the probability of moving forward with various LEP scenarios, and to begin serious thinking about what it might take to build a minimum winning coalition for legal empowerment in country 'X'.

Finally, with possible overlapping chronology, the internal technical features of the alternative policy scenarios would be reviewed. The policy characteristics analysis would focus on the complexities of the various policies, potential ambiguities that might possibly sow discord—all of which would serve to hinder implementation. Efforts would be made to find a simple, incremental

**Table 5.4 Skeleton Diagnostic Tool:
Analyzing Influences on Policy Implementation**

Questions (list is not comprehensive)	Effect on Implementation		
	Negative ✓	Positive ✓	Neutral ✓
<p>Policy Environment</p> <p>How extensive are poverty and lack of ownership of or access to productive assets? What is the position of women in society? What is the degree of social and ethnic heterogeneity? Are there marginalized minorities? What is the relative balance of power among social/ethnic groups? What dependency relations exist between elites and the poor? How open and competitive is the political system? Nationally? Locally? Is freedom of association guaranteed? To what extent do public agencies operate as effective bureaucracies? Is bureaucratic corruption common? What is the capacity of institutions of the state to deal with the agenda of legal empowerment? Are accountabilities clearly spelled out? How scarce or abundant are government resources? Anything special about the country context? (Transition economy, least developed country, post-conflict, etc.)</p>			
<p>Policy Stakeholders</p> <p>Who are the target beneficiaries? How many are there? Are they members of an ethnic group or groups? Mostly women? Are the beneficiaries organized? What civil society organizations exist? Where do they stand on the pro-poor policy issue? Who is in opposition to the policy? What are their resources? What allies and potential allies are there for empowering the poor?</p>			
<p>Policy Characteristics</p> <p>How complex are the changes that are supposed to happen? Are these small departures from current practices or major changes? Is the policy geographically concentrated? Does it require a high degree of technical or professional knowledge? What is the level of conflict about the value and nature of the changes? What does the pro-poor policy do? Is this clear or vague? What is the desired impact of policy reform, what is it expected to accomplish or facilitate?</p>			

**Table 5.4 Skeleton Diagnostic Tool:
Analyzing Influences on Policy Implementation cont.**

Questions (list is not comprehensive)	Effect on Implementation		
	Negative ✓	Positive ✓	Neutral ✓
<p>Policy Characteristics cont.</p> <p>Where did the impetus for the policy come from?</p> <p>Who decided to pursue the policy, how, and why?</p> <p>What is the nature of the policy benefits, and to whom do they accrue (disaggregated by sex, age and ethnicity)?</p> <p>What is the nature of the costs of the policy reform, and who bears them (disaggregated by sex, age and ethnicity)?</p> <p>What is the degree and complexity of the changes brought about by the new policy?</p> <p>How administratively intense or technically complex is the new policy?</p>			

and sustainable course of action, and to avoid as much as possible taking steps that provoke confrontation needlessly—recognizing that some confrontation is unavoidable and that it might even prove productive in moving the empowerment agenda forward. Obviously, what works for LEP in country ‘X’ may be irrelevant in country ‘Y’ with a very different social structure, economic environment and universe of stakeholder groups. The procedures in determining a suitable LEP strategy might look alike in these two locations, but the substance of the outcome would be sharply different. And in all cases, the process is messy and imprecise, yielding only what would appear to be the best fitting policies given the imperfect information available to policymakers at the time and the current political realities.

Without looking beyond the generic influence on implementation to any specific cases, we can see that the legal empowerment movement has taken on a stiff but not infeasible implementation challenge. We have placed much stress on the need for imaginative and adaptable policymaking, but to help imagination along it is imperative to have

a number of rough roadmaps that will help to take policymakers around some of the pitfalls and impediments to LEP implementation. That is the subject of Section 3.

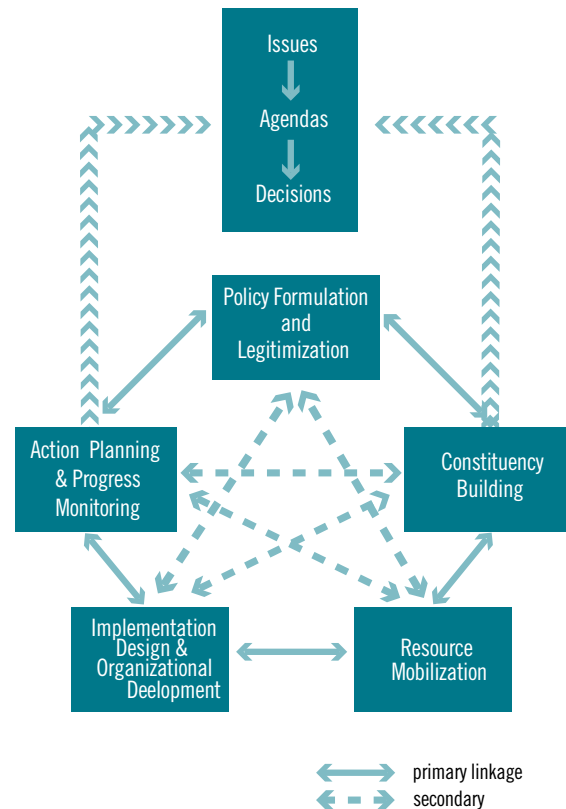
3. Roadmaps to Implementation

Reforms to legally empower the poor are multi-faceted. Besides technical analysis and prescription, successful implementation of reforms calls for consensus-building, participation of key stakeholders, compromise, contingency planning, adaptation, and flexibility. These are the ‘how’ or method issues of implementation. Reforms never proceed in a straight line; change is multi-directional and calls for actions—by donors, government, NGOs, the private sector, and communities—sometimes iteratively, sometimes simultaneously, and sometimes sequentially. To guide and track the necessary actions to achieve reform ends, a roadmap is useful to identify and to incorporate the technical, institutional, and political and dimensions of the reform process.

In developing an implementation roadmap for reforms for LEP, our working group adapted a practical template developed by Brinkerhoff and Crosby (2002), which draws on policy reform research from multiple sectors. This template builds on empirical analysis that identifies a common set of tasks associated with successful reform design and implementation. These tasks follow a generalized (but not lockstep) pattern, which can be conceived of as an interactive cycle comprising the following phases: policy formulation and legitimization, constituency building, resource mobilization, implementation design and organizational development, and action planning and progress monitoring. The cycle is launched by a stream of issues, agendas and decisions that, over time, provide additional input and momentum to the process.

Figure 5.4, adapted from Brinkerhoff and Crosby (2002), illustrates this iterative process of policy implementation, showing junctures or ‘cross-

Figure 5.4
Roadmap to the Implementation Cycle



roads’ where choices must be made while moving the policy onward. Below is a brief description of tasks associated with each decision point on the roadmap.

Issues, Agendas, and Decisions: Advocating for change, developing policy issues, lists of items to be considered, and making decisions that launch LEP reforms are the precursors to crafting the operational content of a specific policy. For these activities, it is politicians and interest groups that tend to take the lead but they will seldom succeed without pressure from below and mobilization and demands from the poor themselves. Out of this process, in the ideal, a policy champion will emerge (this could be an influential individual, a change team, or a coalition of interests).

Without the commitment to reform and the political will to empower the poor, it is difficult, if not impossible, to move to implementation. Commitment and political will depend upon incentives; thus LEP reforms must identify and create reasons for government and other entrenched interests to back (or at least not vigorously oppose) the pro-poor policy.

Policy Formulation and Legitimization: Address the technical content of reform measures. However, besides technical content, reform measures need to be accepted and seen as necessary and important. The poor should, through their representatives, be part and parcel of the reform design process.

Constituency Building: Convince beneficiaries of the advantages of reforms, and demonstrate that long-term benefits are worth short-term costs.

Resource Mobilization: Ensure flow of adequate resources by addressing incentives, and exercising leadership in galvanizing constituencies. The recommendations of the Commission call upon countries to undertake reforms that will require financial, technical, and human resource commitments.

Implementation Design and Organizational Development: Reformers need to create and nurture networks and partnerships for cooperation and coordination, and provide for the development of new organizational skills and capacities in the public, private and non-governmental sectors. Old procedures, operating routines, and communication patterns die hard; change is likely to be resisted within some quarters.

Action Planning and Progress Monitoring: Set up systems and procedures for obtaining feedback so that implementation is related to learning and adaptation, so as to produce results and impact.

Table 5.5 suggests the questions to consider in drawing up a roadmap for implementing LEP in a specific country—recognizing that it is never possible to have a complete understanding of the social structure, political framework and legal system beforehand, and that even if such foreknowledge were possible, it would soon be outdated because the factors themselves are constantly changing.

Mapping the Empowerment Domains

LEP may be perceived as a spectrum that provides opportunities, protection and security. It establishes a minimum ‘floor’ of entitlements and safeguards to which everyone is entitled, by the simple fact of our common humanity. Under each of the Commission’s four core themes (access to justice, security of assets, labour protection, and entrepreneurial rights), the task is to establish this floor using human rights law. For every empowerment domain, therefore, one challenge is to identify a range of potential policy options from which nations and citizens can choose, depending on their national context and the different starting points of various groups of the poor within them. Finally, and perhaps most significantly, a spectrum approach explicitly recognizes the incremental manner in which poor people improve their lives in practice. At each stage of this improvement, fundamental rights and an appropriate combination of protection measures/security and opportunities must be available to them.

It would be futile to propose implementation recommendations for universal application; but it is possible to put forward stylized recommendations in the four domains of empowerment. Table 5.6 shows how access to justice issues can be mapped with protection/opportunity available in various legal instruments and with the goals of empowerment.

Table 5.5 Country Specific Implementation Roadmap: Representative Summary Checklist

Reform implementation “crossroad”	Questions to bear in mind
Issues, agendas and decisions	Contextual analysis and checklist: Are the conditions right for a legal empowerment reform to succeed? Consultative process: Are the poor organized and represented by community groups, NGOs or member-based organizations of workers?
Policy formulation – legitimization	Have specific pro-poor policies been formulated? What LEP policies are proposed/underway? What are the characteristics of the LEP policies? What does the policy do? What is the desired impact of policy reform, what is it expected to accomplish or facilitate? Where did the impetus for the policy come from? Who decided to pursue the policy, how, and why? What are the policy benefits and costs, and who is affected? What is the degree and complexity of the changes brought about by the new policy? What is the duration of the policy change process? What institutions are involved in implementing the policy? How administratively intense or technically complex is the new policy? Have LEP reform champions been identified, and who are they? Have LEP reform policies been discussed in public forums and the press? Do key stakeholders see the LEP reforms as desirable?
Constituency building	Do LEP reform champions have sufficient support and resources? Has a stakeholder analysis been conducted? Are constituencies at various societal levels organized and supportive of the LEP agenda? Has the LEP agenda been marketed to demonstrate its desirability and benefits? Are politicians and technocrats on board? Are representatives of the poor identified and engaged? Has opposition been addressed and overcome?
Resource mobilization	Have resources been identified/obtained to pursue reform policies? Have partnerships been formed among government, civil society organizations, community associations, and pro-poor advocates? Are donors on board with resources and technical support? Have capacity/resource gaps been identified? Steps taken to fill them?
Implementation design and organizational development	Has implementation responsibility been assigned, and to which organizations or groups? Have implementation measures been elaborated and sequenced? Have pilot sites been identified? Do implementing organizations/groups have the appropriate capacities, missions, mandates, and resources to carry out implementation activities? If no, what modifications are required? Are new organizations/partnerships/networks required? Has the design of appropriate incentives been considered and addressed?
Action planning and progress monitoring	Have specific plans, performance expectations, timetables and outcomes been developed? Do these plans include provision for early success and dissemination of success stories? Have resistance, opposition, and conflict been planned for? Are milestones in place to track progress and flag the need for adaptation? Are mechanisms established to capture lessons learned?

Table 5.6 Empowerment Domain 1: Access to Justice

Framework of Opportunities and Protections		
Legal Instruments	Problem for Poor People	Opportunities/Protections
<ul style="list-style-type: none"> • Universal Declaration on Human Rights (UDHR), ICCPR, CDESCR • Rights related to access to information; legal services; protection • Professional rules of conduct • Extracts from other inter-national human rights treaties (including fundamental ILO Conventions and the Convention on indigenous and tribal peoples) conventions, UNGA resolutions, etc. 	<ul style="list-style-type: none"> • Lack of legal identity: indigenous, stateless, displaced • Ignorance of legal rights • Lack of access to legal services • Unjust & unaccountable legal institutions • Denial of fundamental rights 	<ul style="list-style-type: none"> • Registration drives; right to legal identity • Increase knowledge of rights • Improve access to legal services • Institutional reform/legal reform • Capacity-building of representative organizations

In the second empowerment domain of asset-holding rights, the major issues for the poor include insecurity of tenure, forced evictions, the appropriation of the rural commons by the state, confusing institutional, legal and regulatory frameworks, lack of access to infrastructure, basic services and credit, and difficulty of establishing rights. Table 5.7 shows how these might be mapped.

The first task would be to identify the minimum standard to which all human beings are entitled by their very humanity—in other words, the minimum floor of protection. In the case of property rights, it would be the ‘freedom from eviction’. No one should feel threatened with being removed from their place of residence without due process and compensation, including the possibility of resettlement. The main sources of this protection include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Relations (ICCPR) and the International Economic and Social Covenant (ICESR); for indigenous peoples, the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169). In

addition, there is an internationally recognized ‘Right to Adequate Housing’, which includes security of tenure as one of its six components.

New opportunities and protections for the poor could include systemic reforms to legal, regulatory and institutional frameworks to simplify procedures and systems, the recognition and training of para-professionals (valuers, surveyors, etc.), extending housing micro-finance ‘down-market’ to reach the poor, community-based savings linked to urban poor funds, low cost and decentralized surveying and registries of land, recognition and registration of customary and common property rights in the name of rural poor and indigenous people, and freehold titles where appropriate and affordable.

The spectrum of land rights (see Box 5.5) has some important policy implications that could inform a practical approach to the follow-up work of the Commission, namely implementing a legal empowerment agenda in the area of land rights. A government could initially make a public statement or decree that residents of unauthorized settlements will not be evicted without due

Table 5.7 Empowerment Domain 2: Property Rights

Framework of Opportunities and Protections		
Legal Instruments	Problem for Poor People	Opportunities/Protections
<ul style="list-style-type: none"> • Universal Declaration on Human Rights (UDHR), ICCPR, CESC • Habitat Agenda • Right to adequate housing, including security of tenure, General Comment 4 & 7 • Pinheiro Principles on Restitution of Housing, Land and Property Rights • Extract from other international human rights treaties, conventions, declarations, etc (in particular Indigenous and Tribal Peoples Convention, 1969 (ILO Convention No. 169)) 	<ul style="list-style-type: none"> • Insecurity of tenure • Forced evictions • Common-property appropriated by the state • Non-respect for rights of indigenous and tribal peoples • Legal and institutional barriers (path to property, overlapping mandates, professional reluctance) • Lack of access to infrastructure and basic services • Lack of access to credit 	<ul style="list-style-type: none"> • Spectrum approach to security of tenure • Guidelines to promote due process in the event of forced evictions • Pro-poor land and agrarian reforms • Joint titling and reform of discriminatory inheritance laws and practices regarding land • Skills development of para-professionals (e.g., “barefoot surveyors”) • Extending housing micro-finance “down-market” • Community-based savings linked to urban poor funds

process. This would enable residents to invest in improvements to their home and community that would have beneficial side effects on other aspects of their life, particularly health. As resources permit, security could be increased, facilitating further investments. This incremental process would help ensure that the tenure increases take place at the pace of the urban poor and do not unintentionally result in ‘downward raiding’ by the middle-class – possibly resulting in market-based evictions of the poor.

On the labour rights front, the major concern is how to ensure decent work for all. The poor face non-respect for fundamental principles and rights at work, a lack of legal recognition of workers and their organizations in the informal economy (and to some extent in the formal economy), institutional and regulatory issues, unsafe working conditions, the specific problems of vulnerable groups such as children, and the lack of social security and protection. As in the case of land, workers find

themselves in a range of situations, from those in which they are denied all opportunities (being subjected to forced labour) to those in which they enjoy opportunities for full and productive employment, accompanied by basic security. Unlike land the spectrum for legal empowerment in relation to rights at work should focus on the extent of opportunity/protection enjoyed by a particular worker or group of workers. This is to avoid formal legal classifications (‘casual work’, ‘independent contractor’, etc.) which vary across legal systems. Fundamental principles and rights at work are particularly vital in the market for unskilled labour that is the main source of income for the poor.

In relation to labour issues, protection/security and opportunities could be mapped along an ‘upwards arrow’ spectrum towards decent work for all (full and freely chosen productive employment, carried out in conditions of dignity, equity and security). Fundamental principles governing work (e.g., freedom of association, freedom from

Box 5.6 Gold Rush in Mongolia: from Herders to “Ninjas”

Harsh winters in Mongolia have been forcing traditional herder families to eke out a living as informal miners. Workers laid off from formal mining sites were the first to mine informally. From the green plastic containers they wear on their backs in turtle style, they are known as ‘ninjas’. An estimated 100,000 men, women and children engage in informal mining (the entire population is only 2.7 million), producing the same level as formal mining companies. Exposure to mercury used to extract gold from the ore puts the miners, especially the children, at serious risk.

The Mongolian Employers Federation (MONEF) has been seeking a new law to govern informal mining. At the same time, it has been raising awareness among the mining companies and providing chances for children of mining families to receive education and training. Tripartite negotiations (involving government, and employers’

and workers’ representatives) agreed on changes to labour legislation that would extend its reach to those in the informal economy and improve protection against the worst forms of child labour. So far, however, these initiatives have not been enacted into law.

Such measures would help to fill a legislative gap that emerged at the time of privatization of mining in the 1990s. Legislation on mining minerals and the people who mine them provides an opportunity for coherence between policies on natural resource use, investment, property ownership, job creation for adults and labour protection.

Source: Damdinjav Narmandakh, “Extending labour protection to the informal economy in Mongolia,” in David Tajgman, ed., Extending Labour Law to All Workers: Promoting Decent Work in the Informal Economy in Cambodia, Thailand and Mongolia (ILO, Bangkok, 2006), pp 105-153; “Gold rush in Mongolia: When shepherds become ‘ninjas’.” ILO: About the ILO, 2 Sept. 2005.

forced labour, child labour and discrimination) involve both opportunities and protections. For example, the legal protection prohibiting children from engaging in the worst forms of child labour (that can stunt their growth and condemn them to a life of poverty as unskilled workers) needs to be accompanied by opportunities to attend school and acquire marketable skills.

Similarly, the exercise of freedom of association goes hand in hand with legal protections that permit easy registration of trade unions, small employers, cooperatives and small traders’ associations, whether they are in the formal or informal economies. The security/protection dimension has obvious relevance in relation to protecting workers’ health and ensuring a social floor that keeps them from falling back into poverty when a family health emergency strikes. For example, the Zambian Congress of Trade Unions and the Alliance for Zambia Informal Economy Associations launched a partnership in 2002. (Another illus-

tration from Mongolia is presented in Box 5.6.) Moreover, the ability to achieve decent work for all will be conditioned by the job-creating or job-destroying effects of international and national macroeconomic policies, so this dimension would need to be captured as well

Table 5.8 shows how labour rights can be mapped with the protection and security available in various legal and other instruments and with the opportunities and protections implicit in the LEP agenda.

Establishing entrepreneurial rights also implies a broad policy reform agenda (Table 5.9). Within the mandate of the Commission, the major issues for poor business people include lack of recognition and vulnerability, lack of credit and capital, absence of social security, lack of protection of labour and of assets, and institutional barriers to the formal economy such as complicated procedures (entry/exit, expansion of business contracts,

Table 5.8 Empowerment Domain 3: Labour Rights

Framework of Opportunities and Protections		
Legal and Other Instruments	Problem for Poor People	Opportunities/Protections
<ul style="list-style-type: none"> • Universal Declaration on Human Rights (UDHR), CESPR, CCPR • ILO Conventions • Extracts from other international human rights treaties, declarations, etc. • Rights to decent work/livelihoods • National labour laws • Collective bargaining agreements • Some corporate codes of conduct 	<ul style="list-style-type: none"> • Earnings inadequate to support family • Lack of recognition • Denial of freedom of association • Institutional barriers/issues • Unsafe working conditions • Child labour • Forced/bonded labour • Discrimination • Barriers to combining work and family • Lack of social security/protection • Low productivity and long hours 	<ul style="list-style-type: none"> • Productive employment with higher incomes • Skill acquisition/upgrading • Balanced regulation of sub-contracting • Improved enforcement mechanisms and other institutions • Legal framework for stronger collective representation • Minimum package of labour rights for informal economy workers • Innovations in social protection • Measures for gender and indigenous equity • Rapid, efficient and low-cost dispute resolution mechanisms

conflict resolution). There would be a possible spectrum from the street hawker or fisher without assets, to the petty trader, the mobile hairdresser, the shopkeeper or tea-shop owner to the small business person with under-five employees, and the larger formal sector business. All these different entrepreneurs require different levels of

protection and access to different kinds of opportunities. Examples of these rules and institutions are guarantees of fundamental rights, member-based organizations, cooperatives, access to financial services, social security innovations, insurance, credit, equity and capital.

Table 5.9 Empowerment Domain 4: Business Rights

Framework of Opportunities and Protections		
Legal Instruments	Problem for Poor People	Opportunities/Protections
<ul style="list-style-type: none"> • Universal Declaration on Human Rights (UDHR) • Rights to livelihoods • Right to development • Extract from other international human rights treaties, conventions, declarations, etc. 	<ul style="list-style-type: none"> • Lack of recognition-vulnerability • Institutional barriers to formal economy: Complicated procedures (entry/exit, expansion of business contracts, conflict resolution) • Health and environmental risks • Lack of credit and capital • Lack of social security/protection 	<ul style="list-style-type: none"> • Registration • Member-based organizations (associations, cooperatives) • Access to credit, equity and capitalization • Rapid, efficient and low-cost dispute resolution mechanisms • Social security deficits (insurance)

These questions become even more important because the Commission's intent is not to push legal reforms, *per se*, but legal empowerment of the poor. Policy changes must provide poor people with an institutional environment that offers protection, and in addition, provides incentives so that they can develop their full capabilities as individuals. This becomes a difficult agenda to implement because in too many developing countries, rights that are well articulated in legislation are simply not respected; in other developing countries, there is well-functioning statutory legal regime, but it often mainly serves the interests of the middle and upper income brackets. In some cases, the same law can be used against the poor.

We should also make mention of the legal regimes based on customary and sometimes religious rules and social compacts. These are well described and increasingly rely on some form of documentation nested in local institutions, but not recognized by statutory law. These legal regimes are typically used by the poor, as previously discussed. Formal institutions and regulations are too complex, with technical standards set too high. The lack of legal identity cuts off access to basic opportunities, such as education. At the same time, lack of identity exposes the poor to harassment and violence. Ignorance and illiteracy prevent accessing opportunities and ensuring enforcement of legal obligations. Special opportunity-measures are often required for women and the more vulnerable groups, including children and indigenous peoples.

Mapping the LEP Agenda at Different Political/Administrative Levels

There is also a need for 'global public goods' or activities undertaken at the global level that will have an important role to play in supporting country-level activities. Moreover, as the Commis-

sion itself has stated, important differences exist between countries and even between regions that also call for a flexible, demand-driven approach appropriate to local realities. This section presents a framework for discussing the potential activities that could be undertaken at the global, regional national and local levels to support the implementation of the legal empowerment of the poor agenda.

Table 5.10 presents an indicative summary of potential strategies and activities to be considered in the implementation of the LEP agenda at the global, regional national and local levels.

Activities at global level

Activities at global level would likely focus on two types of activities to support LEP at the country level: advocacy and knowledge management. The former would focus on getting key messages out to important target audiences through a variety of vehicles. For the World Bank's *World Development Report*, six months of time is usually allocated to promoting the key messages after the launch date. A website, or a 'brand/logo' that can be added to existing websites, would become the future repository of the follow-up to the Commission, providing updates and progress reports on how the LEP agenda is being implemented. An inventory of evidence on capacity development in domains similar to LEP would be compiled, and dialogue would be supported to disseminate global good practices.

Knowledge management activities would build on initial inventories of good practice, on-going initiatives and actors engaged in promoting empowerment collected through the process of preparing the Commission's report. A key element would be to identify existing indicators and monitoring efforts to further the LEP agenda. Similarly, and particularly in the case of the rights to justice and

Table 5.10 LEP Implementation Strategies and Indicative Activities

Political/ Admin.Level	Advocacy	Knowledge Management	Pilot Initiatives	Capacity Development
World	<ul style="list-style-type: none"> • High Level Meeting within the framework of the UN • Identify global principles of LEP and promote as vehicle for poverty reduction • Media strategy and campaign promoting LEP agenda • Mobilize donors • Target setting in relation to 2015 • Periodic reports on state of LEP • Website 	<ul style="list-style-type: none"> • Inventory of existing initiatives and actors • Inventory existing evaluations and analyze lessons • Develop analytical frameworks for evaluation (including from gender/indigenous perspectives) • Developing indicators and LEP monitoring • Strengthen statistical bases for contextual analysis • Establish support networks of professionals, academics, etc. 	<ul style="list-style-type: none"> • Develop country selection criteria • Conduct global survey • Engage in dialogue with potential countries and support organizations • Develop LEP intervention logic and strategy (logical framework approach) • Develop assessment tools • Gender audit • Use Poverty Reduction Strategies and Decent Work Country Programmes 	<ul style="list-style-type: none"> • Advocacy to change organizational and management practices to favour LEP • Inventory of existing capacity-building programmes • Inventory of toolkits, tools and methods to support implementation • Undertake capacity needs/gap assessment
Region and sub-region	<ul style="list-style-type: none"> • Regional and sub-regional advocacy strategies with relevant political and financial bodies • Regional Social Contracts • Ministerial meetings • Awareness raising 	<ul style="list-style-type: none"> • Sharing of Regional Best Practice • Regional progress monitoring • Regional reports 	<ul style="list-style-type: none"> • Cooperation between implementing countries, development banks, and political and economic regional institutions 	<ul style="list-style-type: none"> • Peer-exchanges within and between regions • Knowledge platform on capacity development and evaluative evidence

asset holding, evaluations for learning will be vital.

In addition, a range of activities would be undertaken to prepare for country-level work. Countries and international support organizations would be identified to support the process of change at country level. Resources would be mobilized. Pro-poor toolkits and methods to support capacity-building would also be inventoried and gaps identified. These would be made available

through a variety of avenues – websites, workshops, etc.

Activities at the Regional and Sub-regional Levels

At the regional and sub-regional levels, activities would also likely focus on advocacy and knowledge management. The region and sub-region are critical for the success of the legal empowerment

Table 5.10 LEP Implementation Strategies and Indicative Activities cont.

Political/ Admin.Level	Advocacy	Knowledge Management	Pilot Initiatives	Capacity Development
Nation	<ul style="list-style-type: none"> • National LEP Campaigns • Integrate LEP into poverty reduction strategies/ national development plans/ decent work country programmes 	<ul style="list-style-type: none"> • Establishing baselines and monitoring progress regarding LEP • Situation Analyses • Thematic studies • Who's doing what where in LEP 	<ul style="list-style-type: none"> • Pilot countries step forward/ are identified • Pilot initiatives 	<ul style="list-style-type: none"> • Inventory of existing support structures and needs • Collaboration with professional orgs and academia to train grassroots professionals • Set up and activate forums for state interface with the poor
Locality	<ul style="list-style-type: none"> • Rights awareness • Information campaigns • Opportunities awareness 	<ul style="list-style-type: none"> • Identifying grassroots experience • Identifying partners 	<ul style="list-style-type: none"> • Pilot initiatives in up to four thematic areas 	<ul style="list-style-type: none"> • Support to grassroots/ community-based organizations • Support to grassroots professionals and para-professionals • Facilitate community engagement techniques and forums

agenda; it is at these levels that global norms can be adapted to different socio-economic contexts. Building political will for change will occur through regional and sub-regional organizations (e.g. African Union, ASEAN, etc.), U.N. Regional Commissions (e.g. ECA, ESCAP, ECLAC), sub-regional bodies such as SADAC, Mercosur and in partnership with regional development banks (African Development Bank, Asian Development Bank, Inter-American Development Bank). A series of new 'Regional Social Contracts' could be an important mechanism to forge political consensus on the legal empowerment agenda.

Existing ministerial forums could be good opportunities to promote LEP and existing peer-exchange mechanisms will be possible platforms for aggregating regional demand for national reforms.

Forums already engaged in law reform among countries would have a natural interest in the issues being raised by LEP. For example, francophone countries in West Africa are already taking steps to streamline their commercial codes under the framework of the Organization for the Harmonization of African Business Law. In terms of implementation, peer-exchange mechanisms can facilitate the sharing of country level experience in policy reform.

Activities at National Level

Implementation of empowering policies ideally takes place at the national level, where the chance is greatest to have wide impact on poverty; however, the aim should probably not be to establish a 'legal empowerment programme'

as a stand-alone entity; rather, it should be to integrate LEP into existing processes, such as the preparation of national development plans, poverty reduction strategies (PRSs), UN Development Assistance Frameworks (UNDAFs), etc. Another important dimension of national level work will involve working closely with professional associations (lawyers, surveyors, planners, local authorities, micro-finance institutions, Chambers of Commerce, labour unions, farmers' organizations, etc.) to create a new generation of professionals in the spirit of the 'barefoot engineers' that have been pioneered in South Asia.⁹

Activities at the Local Level

Without support from the poor's base organizations, there is little chance of realizing the LEP agenda. Involving these groups in the design of interventions of any kind (advocacy, knowledge management, pilot initiatives, and capacity development) is crucial. Information dissemination will be a central strategy at the local level. In some countries with particularly weak or oppressive national governments, community empowerment activities may be the only feasible ones. Where social mobilization is strong, however, the legal empowerment agenda can be built, bottom-up, by supporting existing initiatives of the urban poor, such as the pioneering urban poor funds in Cambodia, India and elsewhere.

4. Country Level Approaches, Toolkits and Indices

The pathways to LEP are multi-tiered with many possible intersections, roundabouts, dead-ends, detours, and shortcuts. Given the options, carrying out LEP takes a variety of different country-level approaches, tools or specific techniques for manipulating the 'how' of policy. For countries promoting the legal empowerment agenda, identifying the appropriate process, picking the right tools and establishing the appropriate benchmarks for success are critical.

Countries Piloting Legal Empowerment Reform

There has been a tremendous positive response around the world to the idea of pro-poor legal empowerment. As the Commission moves from the global to the country level, a process must be developed to enable, where appropriate, the matching of the demand for reform with the appropriate supply of information, expertise and experience. Different countries will wish to take different paths to legal empowerment. Some of the critical issues that countries and their development partners will have to address are:

Historical and social context: The objectives of legal empowerment aim at achieving systemic change in the relations between the poor, the state and the market. The historic context will greatly affect the possibility to achieve change of this magnitude and the timing should be carefully considered. Is the country ready to undertake the legal empowerment challenge? Comparing data regarding economic growth, inequality and social exclusion, and poverty will be important in assessing the need and the potential for success.

Political will: As the reform agenda affects the institutions and structures of government, high level political support must be ensured. Evidence of government commitment will include addition of legal empowerment to national development plans, poverty reduction strategies and, perhaps most importantly, national budget allocations.

Grassroots and civil society capacity: To sustain the momentum for reform will require the active and sustained support of civil society, perhaps more than any other entity with the exception of government. Assessing its capacity to drive and sustain change is critical.

Governance: The quality of governance — the processes, rules and organizations supporting development — will have an important bearing on the likelihood of success in implementing LEP. The relations between government, civil society and the professional and private sectors will make or break the chances for success. Political risk mapping and stakeholder analysis will be useful tools for managing political risk.

External support: Legal empowerment processes must be nationally owned, but outsiders can play an important role in supporting the quality of the reform process and in helping to deliver specific outputs that will build the momentum for change. Assessing donor interest and the capacity of external support organizations will be important.

Choosing the appropriate country level process

A variety of options exist for countries, and the organizations that support them, to drive the legal empowerment agenda. The option chosen will depend on the specific country context and will be affected by such factors as the strength of civil society, private sector and donor interest, date of the next elections, preparation of national devel-

opment strategy, and other time sensitive issues affecting the policy window. Options include:

- National civil society or academia collect information and get specific issues, such as LEP, into the policy debate and on the table.
- Governments develop projects in a department/ ministry as part of their on going development plans and programmes, independent of donor support.
- Governments and donors agree on specific legal empowerment projects. These can include the establishment of project implementation units whose intent is to facilitate on-the-job training of government officials or, more direct methods, such as establishing an implementation cell in a senior office, possibly even the Office of the President. In so doing, care should be taken not to sideline other institutions that may need strengthening, such as law reform commissions.
- Building on national reform processes in any of the four legal empowerment domains, ranging across broad national processes such as national development plans or poverty reduction strategies.
- Establishing multi-stakeholder processes that include government, civil society and external partners. One such example is the country-level adaptation of the Harmonization, Alignment and Coordination (HAC) process emerging from the 2005 Paris Declaration on Aid Effectiveness (see Box 5.7 describing the Kenya HAC process in the land sector). Donors can choose from a wide variety of funding mechanisms to support this process, ranging from direct budget support to the establishment of basket funds.
- Using the coordination and funding mechanisms established in post-disaster or post-con-

Box 5.7 Land Sector Harmonization, Alignment and Coordination for Poverty Reduction in Kenya

In line with the new agenda on aid effectiveness, the Development Partners Group on Land (DPGL) aims to deliver and manage aid to the land sector in Kenya as to meet the principles of harmonization, alignment and coordination (HAC). In its activities and cooperation with other stakeholders, the DPGL strives to achieve consensus and support around the policy direction of the government instead of pursuing diverging agendas.

The emphasis of the group is on three areas: (1) strengthening government capacity to develop and implement land-related policies and programmes; (2) aligning donor support with government priorities as set out in its poverty reduction strategy (PRS), and (3) avoiding duplication and overlapping in aid initiatives. The land sector donor group was officially formed in July 2003 and it has up until 2006 channelled support to the National Land Policy Formulation Process through a Basket Fund arrangement. Since its establishment, the donor group has supported the government with investments worth of \$10 million in the land sector.

The support of the DPGL is now expanding beyond policy development to cover the main activities run by the Ministry of Land through the Land Reform Support

Programme (LRSP). The LRSP incorporates elements relating to the finalization of the land policy process, policy implementation, institutional transformation, the development of a pro-poor Land Information Management Systems (LIMS), the implementation of the recommendations of the Ndungu Commission on illegal allocation of public land and the development of Forced Eviction Guidelines in Kenya.

These and other activities have collectively supported the Government's economic recovery strategy (i.e., PRSP) as well as the government's efforts to realize the Millennium Development Goals, particularly relating to the Eradication of Extreme Poverty and Hunger (MDG 1), Promotion of Gender Equality and Empowerment of Women (MDG 3), and Ensuring Environmental Sustainability (MDG 7). Development Partners financially supporting the Basket Fund initiative have been DFID (UK), SIDA (Sweden), DCI (Irish Aid) and USAID. Other development partners involved in the land sector in Kenya include JICA, the Embassy of Finland and Italy respectively, the World Bank as well as UN related agencies such as the FAO, UNDP and UNEP.

Source: Adapted from UN-HABITAT (2007) Global Report on Human Settlements 2007: Enhancing Urban Safety and Security, London, Earthscan, p. 154

flict contexts to support the reform process.

After deciding on the general tack to take with regard to LEP, countries will likely need to agree on a more detailed process for managing the reform process. This process will often include a series of steps as outlined below. These are not necessarily sequential and several steps may have to be repeated over time as the situation changes.

- *Mobilizing stakeholders:* Identifying key stakeholders and agreeing on a process and a set of principles to guide the legal empowerment agenda will be a critical step to build confidence among stakeholders. Key issues will

include coordination mechanisms, adoption of a protocol or agreement, and clarification of roles and responsibilities, and agreement on a broad process for reform;

- *Situation analysis or legal empowerment diagnostic:* A detailed assessment should be made of the relevant issues to be addressed, including the relevant aspects of each of the four legal empowerment domains. The analysis will identify policy, legal and institutional issues, as well as gaps in resources, capacity and tools.
- *Action planning:* Development of the goal, objectives, strategies, and specific interventions

that will contribute to the legal empowerment objective. Critical issues will include sequencing and timing, resource constraints, establishing a monitoring and evaluation framework and ensuring a balance between process and products to maintain momentum.

- *Pilot activities*: These should be built around the idea of ‘quick wins’ — outputs – in areas where these are feasible. In this way one can build the credibility of the legal empowerment agenda and demonstrate some initial success. Pilot activities could include a mix of practical reforms in each of the domains, policy analysis (e.g., ‘path to property’ analysis), advocacy and awareness, information collection and strengthening coordination mechanisms.
- *Scaling-up*: Expanding the range of activities and taking on more complicated challenges. Raising awareness of past successes, additional sensitization, strengthening the consultation process will all support this stage. Evaluations may be useful tools here.
- *Institutionalizing change and the change process*: Tackling some of the fundamental reforms by building on the experiences in the pilot phase and scaling-up phase to reform the organizations and rules that shape the institutional context.

Tools to support legal empowerment reforms

After deciding on the general approach to be taken with LEP, reformers need to consider numerous applied techniques, developed by anti-poverty workers, community organizers and reform advocates around the world for carrying out activities analogous to the Commission’s empowerment agenda. Table 5.11 summarizes some of the pertinent pro-poor policy tools, sorting them out according to the implementation phases where

they are most, but not exclusively, applicable. These implementation techniques are general, flexible and easy to modify; development practitioners will need to screen out those tools that do not apply to their situation, and select those that are workable in the particular country context and suitable for the particular task at hand.

Explanation of the tools

Three tools (stakeholder analysis, contextual analysis, and policy characteristics analysis) have already been covered at some length in Section 2. All the tools are annotated in alphabetical order in Annex 1 (and the tools for action planning and monitoring are explained further in Section 5). Readers are also referred to the numerous toolkits developed by international organizations and NGOs for organizing communities and implementing numerous aspects of social and economic development policy (see the footnote below and Annex 2 for a comprehensive inventory of toolkits).¹⁰ Many of these tools can be used individually or in combination in the implementation of LEP reforms. On this basis, a set of LEP indicators can be developed, tailored to country circumstances.

Ready-made Indicators of Legal Empowerment

Both the formulation and monitoring phases of LEP implementation depend on indicators of democratization, good governance, human rights protection, and many other variables related to legal empowerment. There has been a quantitative revolution in recent years of internationally comparable data on political and regulatory institutions. There are now at least 150 measures of different aspects of governance in the public domain. These data series are of variable quality and utility in establishing rough baselines for gov-

ernance among the nations of the world; they are not sufficiently developed to be of great value in measuring changes in the political or legal status of a country's poor men and women over time. They are also highly aggregate and thus of limited utility in ascertaining empowerment in a particular sub-national community or region.

While not perfect, perhaps the best example of international indexes relevant to LEP is the World Bank's Governance Research Indicator series. These are based on several hundred individual variables measuring perceptions of governance. They are organized into six categories: rule of law, lack of political violence, quality of the regulatory framework, efficiency of the bureaucracy, control of corruption and accountability of the political leaders.¹¹ The World Bank's data have their uses but must be applied very cautiously in development work (Arndt and Oman 2006). The Eurostat/UNDP (2004) users' guide to governance indicators describes at length the applications and limitations of several of the leading off-the-rack governance data series.

Pending reliable pre-existing empirical information on national or local-level legal empowerment, LEP programmes and projects will have to develop and use their own metrics for evaluating the socio-economic environment and gauging accomplishments, based on surveys and interviews, as discussed above. Ruth Alsop and Nina Heinsohn (2006) report to the World Bank on one such analytic framework that can be used to measure and monitor empowerment processes and outcomes. Kucera et al. (2007) put forward indicators that have been tested for measuring various aspects of decent work. (See Annex 3 for a list of readymade indicators.)

5. Monitoring and Evaluation

Because action planning and progress monitoring (the final row in Table 5.11) has not been discussed much in these pages, and because this function is especially important for outside agencies, some of its tools are worth looking at a bit more closely. Brinkerhoff and Crosby (2002) identify four components to establish an efficient participatory and country-driven policy monitoring system:

- (1) A management information system based on targeted indicators endorsed by national stakeholders.
- (2) Stakeholder monitoring to identify the responses of those that benefited or those that lost from the policy reform measures.
- (3) Problem-solving studies to devise tailored and practical solutions to implementation issues.
- (4) Process and impact evaluations to support learning over time.

Best practices recommend that the design of each component should be based on the principles of adaptation to user needs and availability of resources, user participation, parsimony (the least amount of information and cost required to accomplish the task), and simplicity. To address both the content and process sides in monitoring policy implementation, it is important to understand fully what needs to be monitored.

Lessons learned from country experiences have led to the following practical suggestions for monitoring policy reform implementation, according to Brinkerhoff and Crosby (2002):

- (1) Define a list of steps, processes, targets and milestone events in the reform process. This will enable the breakdown of the policy processes into a series of components to enable

Table 5.11 Pro-poor policy implementation tools*

Implementation phase	Possible tools
Developing policy issues, agendas, and decisions	Competencies Assessment Contextual analysis Legal and institutional framework Opportunity Ranking Policy characteristics analysis Political will and risk analysis Problem Census Problem tree Social Baseline Study Social Impact and Opportunities Assessment
Policy formulation and legitimization	Community Mapping Focus groups Force field analysis Influence mapping Institutional Analysis Participatory Poverty Assessments Policy briefings Political mapping Stakeholder analysis Strategic Planning Framework/SWOT/PEST
Constituency building	Conflict prevention and resolution National symposium Outreach (Media Campaigns, School Programmes, Public Speaking Engagements, Publications, Public Hearings, Study Circles) Workshops
Resource mobilization	Advocacy/lobbying Domestic resource mobilization Fundraising Participatory budgeting
Implementation design and organizational development	Best practices (collection, dissemination) Exchanges Institutional twinning Internship programmes Para-professionals Plain language (translation and dissemination of laws) Technical assistance Training (on leadership, group work and related management issues) Travel grants/internships for officials Web-based support
Action planning and progress monitoring	Gender audit Impact evaluation Logical framework approach MIS Problem solving studies Stakeholder monitoring (household surveys, key informant interviews)
<p><i>*Guide to the techniques that might be appropriate during the implementation cycle; a technique may be useful in more than one phase of implementation. Highlighted tools are described in Section 2 of this chapter.</i></p>	

Table 5.12 A Framework for a Demand-Led Assessment of Implementation

	Access to Justice	Asset holding Rights	Labour Rights	Entrepreneurial Rights	Capacity Development
Law	E.g., To what extent does the law recognize the right of a poor person to be registered at birth?	E.g., To what extent does the law protect poor tenants from eviction?	E.g., To what extent does the law extend labour standards to the informal economy?	E.g., To what extent does the law mandate the reduction of cost of registering a business belonging to a poor person?	E.g., To what extent does the law mandate government institution to simplify procedures for the poor?
Government implementation efforts	E.g., In the instant case, how affordable was the registration process to the poor persons?	E.g., In the instant case to what extent has the government documented tenure rights of the poor?	E.g., to what extent does the relevant government agency monitor compliance with labour laws in the formal and informal economy	E.g., in the instant case to what extent has the relevant government agency decentralized its business registration process to give access to the poor?	E.g., To what extent does the government provide training to its staff on legal empowerment of the poor? E.g., To what extent does the government provide accessible guidance to the poor on services available to them from government agencies?
Effectiveness	E.g., In the instant case, to what extent was the poor person able to affect the registration?	E.g., In the instant case, to what extent was the poor person able to retain possession of the property?	E.g., to what extent was the poor person working in the formal or the informal economy able to enjoy the benefits of labour protection laws?	E.g., To what extent was the poor person in the instant case able to affect the registration of his/her business?	E.g., To what extent was the poor person in the instant case aware of their legal rights?

an easier grasp of what needs to be monitored.

(2) Make the use of qualitative rather than quantitative approaches in monitoring the system, as they offer a more complete and nuanced set of data that are numeric and narrative.

(3) Engage implementing parties and beneficiaries in the draw up of the monitoring systems and methodologies and acquire feedback. This will simplify the process of tracking previously identified indicators. Focus group discussions, workshops and other similar methods

can be used to ensure participation.

(4) Customize the choice of monitoring methods to the needs and constraints of the implementing agencies.

(5) Delegate the monitoring process to an external body selected from civil society organizations, think tanks and advocacy groups, to ensure greater independence, transparency and accountability.

A possible framework for a demand-led assessment of government implementation of the LEP recommendations is shown in Table 5.12, which is based on the framework of the World Resources Institute's Access Initiative Assessment method. Each cell of the matrix has been populated with an indicator to serve as an example. Those undertaking the assessment can rank each metric based on research guidelines and data collected. These assessments, when repeated over time, will show whether and how well LEP recommendations are being implemented.¹²

Monitoring of reforms will involve seeking answers to critical questions. Among the questions that may need to be posed are the following: Are the policy reforms really being implemented? And if so, do they really matter? If they do make a difference, how important is it? What are the gender impacts?

Taking into consideration the multiple dimensions of policy reforms, the pace of implementation will likely be gradual. There may not even be conspicuous impact in the short-term. Therefore, in the monitoring of progress, it will be important to establish process indicators, and to pursue monitoring activities either on a continuous or repetitive basis. Furthermore, the entire set of measuring activities – data collection, analysis, and interpretation – will need to be based on the country's national priorities.

6. Strategy and Tactics

We have reviewed the social, political and technical factors that stand in the way of poor people's legal empowerment, and set forth broad ideas about how to counter those forces. Change agents must put aside preconceived or uniform approaches to LEP to think creatively about how to make LEP available, affordable and acceptable in the specific context they are working in. They must be on the look out for unintended consequences, perverse incentives, and hidden agendas. Their initiatives must be informed by pilot projects that can be amended if they fail, and scaled-up and replicated if they work.

In designing empowerment policies and deciding upon how to implement them, change agents must always keep the following core values front and centre:

- Poverty reduction is the ultimate objective of LEP, so every reform must be judged by the extent to which it imparts freedom and allows poor people to gain more control over their futures and to improve their well-being.
- The peaceful struggle against impoverishment must be participatory, based on respect for human rights, and with poor people playing active roles along the way.
- The gains of LEP should be broad-based and take into account the diversity of disadvantaged groups, in particular, the indigenous people who are often inadvertently overlooked by policymakers.
- The gains also must include women; therefore, another standard against which to measure LEP policy is whether it takes full account gender-specific effects.

Empowerment of the poor in the end means social transformation — not only a more just

distribution of wealth and income, but a more expansive sharing of power so disadvantaged people can begin bringing about significant change through their own actions.

Strategic Findings

Among the strategic options and considerations implied in chapters 1 through 4 of this volume, a number of them stand out, and they are mentioned below. Several are rich with paradox, and government officials, civil society members, and development practitioners need to sort out the conflicting elements to determine the most promising strategic direction to take for their community, country or region.

1. *LEP is easiest to implement where it is needed least.* An effective administrative state, a set of transparent and accountable political institutions, and a growing economy are predictors of success for legal empowerment policies. Yet, countries that meet these criteria probably have their poverty and social exclusion under relative control; the bulk of the global poverty problem is in precisely those nations that lack these positive attributes, so implementation of LEP must usually be completed under inauspicious conditions.
2. There is a rich base of comparative international experience, but no ready-made formulas for legal empowerment. Solutions that suit one context may be dead wrong in another. Great care should be taken to develop interventions that are appropriate for the specific historical, socio-economic and political context of a given country.
3. Think systemically, act incrementally. A nation's legal and administrative setup functions like an ecosystem with a heavy measure of interdependence. That implies empowerment takes systemic changes. Yet, big bang approaches are rare and they often run out of steam when they are tried. In particular, any attempt to supplant and replace existing informal mechanisms seems doomed to failure. Instead, informal mechanisms must be gradually integrated with the formal.
4. Think long, go short. Justice, labour and land issues are complicated and do not lend themselves readily to a traditional two-year project approach. Yet, reformers can never lose sight of the fact that politicians are in office for finite terms. The implementation process, therefore, needs to involve actors who are less affected by elections, and deliver successes on a regular basis. Even if these successes are small, they must provide tangible improvements to maintain the momentum for reform.
5. Start from afar, but change from within. Legal empowerment is on the international community's agenda, as the very existence of this Commission proves. Yet, pro-poor policy change has to be endogenous. Any perception that reforms are driven by foreign donors may prove counter-productive. Reforms that do not find champions and build constituencies within are likely to fail (as they should).
6. Support associations of the poor, but do not compromise their independence. Capacity-developing support is important to associations of the poor, be they small farmers' cooperatives, community-based organizations, domestic worker trade unions or urban user-groups. The incongruity is that assisting these groups may cause them to become more accountable to the external funding agency than to their membership.
7. Work from the bottom up and the top down. Donor expectations regarding the interest of the poor in legal empowerment are often out of touch with the poor's desires to get the state to provide services and benefits through recourse

to clientelistic connections if necessary. At the same time, external change agents cannot ignore the preconceptions and policy positions of the international agencies that are funding their work with LEP. They need to think about how to balance these two perspectives.

8. Decentralize...except when it is better to centralize. A common theme in several Working Group reports is the need to decentralize responsibility, resources and accountability for legal service delivery to the lowest level at which they can be effectively managed. But decentralization also gives power to local elites opposed to the LEP agenda, so this option bears watching.
9. Balance demand for change with the capacity to accommodate change. The energy of the poor to pinpoint solutions to their problems, to organize, and to engage in advocacy must be met with an equally receptive state. It is important to give attention to official capacity to respond to the thrust for change coming upwards from the grassroots.
10. Put together informal and formal institutions. Informal institutions and authority can be of great utility in pursuing LEP, but so can official institutions. Policymakers need to combine the best features of both to facilitate implementation.
11. Look for cooperation, but anticipate confrontation. There are LEP policies where all sides can benefit, for instance land readjustment which takes irregularly subdivided land and reallocates it for public and private use according to planning requirements; however, practitioners also need to face up to the fact that compromise and mutual adjustment are not always going to happen with LEP. The narrow technical and legal aspects may be the least controversial, but even those ulti-

mately affect the distribution of power within society. Governments trying to implement an empowerment agenda have to figure out ways either to reimburse or to defuse those possibly disadvantaged by the reforms. Managing political risk throughout the implementation process, therefore, is critical.

Tactical Ideas

While walking the tightrope of these strategic issues, change agents will also need to consider implementation tactics. Here is a list of frequently-occurring and detailed modes of action, selected and presented below, in no particular order. They have been selected from materials put forward by all the working groups involved in the preparation of this volume, and are presented in no particular order.

- 1. Be opportunistic.** Take tactical advantage of opportunities as they arise and not being constrained by a programmed calendar of deliverables.
- 2. Use plain and local language.** One of the key elements for national ownership is language: dialogue, debate and information sharing must be conducted in local languages; legal documents should be demystified by rendering them in layperson's terms.
- 3. Work with para-professionals.** A proposal raised in several working group reports is to create a new generation of para-professionals, who are trained and possibly certified to respond to the day-to-day service requirements of the poor, but who do not require the advanced studies of current professionals, which are often inappropriately scheduled, expensive and include subjects of limited relevance for the prospective client base.

4. Bring existing technical solutions up to date.

Particularly in the land sector, many of the existing legal instruments are inadequate. Land information systems are often expensive, complicated, and bureaucratic and, as a result, quickly become outdated. Unfortunately, the systems required, for example, to integrate innovative forms of tenure (certificates, group rights, etc.) into the national spatial data infrastructure do not currently exist. As emphasized in chapter 2 of this report, the choice of long-term technical solutions must be driven by the willingness and ability of the users to pay. Thus an important element in successful LEP implementation will be the appropriateness of the underlying analysis and the existence or creation of technical systems to support reform.

5. Bring together technical expertise and grassroots experience.

Policymaking in LEP is dominated by technocrats. While valid reasons exist for some technical requirements, grassroots realities and community solutions also need to be understood and incorporated in the reform process. If a law does not meet its users' needs, it is useless to the poor.

6. Dedicate resources to support participatory processes and coordination.

While technical solutions often attract significant donor and government interest, capacity development for participation and coordination mechanisms is often undervalued and therefore under-funded. Other kinds of support, for example, are translation of laws and regulations into local languages, or grants to local civil society groups to lay bare LEP issues and to fund dissemination campaigns. Specific support is required for coordination, preparation of research and options papers, and information dissemination. Peer exchanges (both inter-regional and intra-regional) are another valuable pro-poor tool for

building commitment to reform and for maintaining momentum over time.

7. Provide effective outreach. Under intense pressures to deliver, information and communication programmes are often neglected during implementation. Yet without a dedicated outreach campaign, clients will rarely adopt the proposed reforms. Feedback received from those involved needs to be cycled back into the reform process, to keep it homegrown and responsive to demand.

8. Provide access to information. Two-way communication between governments and the poor will need to be improved. For example, access to information has helped people to secure tenure and to tackle job discrimination through a better understanding of their rights. There are also examples in post-disaster and post-conflict nations of the importance of providing access to information. Mobilizing resources to take advantage of information in support of LEP presents a challenge because in many countries information that is nominally 'public' is in practice difficult to obtain. In India, for example, civil society organizations waged a fierce campaign to gain access to public budget and expenditure data using freedom of information laws in six states, which later culminated in the passage of a national law. However, in countries where civil society is weak, and where certain social groups have been marginalized over extended periods of time, the ability of the poor to engage in effective collective action is likely to be limited and fragile.

9. Bundle service delivery. The strategy of bundling services is highlighted in several chapters of this report; it is seen as a cost-effective strategy for delivering a variety of services to the poor. An example is to deliver identity cards with vaccination programmes. Such bundling

may also have the great potential of contributing to community empowerment, especially if the delivery is structured so as to reinforce transparent and accountable community institutions. Experience with delivering bundled municipal services (e.g., licensing, registration, tax and fee payments) through one-stop shops offers relevant lessons of utility for LEP reforms as well. Membership-based organizations such as cooperatives, business associations, trade unions and grassroots women's organizations can offer free or low-cost legal services to the members.

10. Support alternative dispute resolution. All four working groups emphasize the need to support alternative dispute resolution mechanisms, including arbitration, mediation and conciliation. The fundamental challenge is to avoid the cost and expense of formal litigation in return for decisions that are made transparently and can be enforced. Lessons learned from labour courts may be instructive in other fields as well.

11. Collaborate with professional organizations. Professional organizations are promising potential allies. While lawyers, national bar associations, law reform commissions, and law schools are oriented towards meeting the needs of the middle and upper classes, they are also often willing to lend their professional expertise to the needs of the poor. Land surveyors, valuers, notaries also can act as gatekeepers of rules that are often divorced from the realities of the urban poor or even holdovers from the colonial era, but they may also be amenable to reorienting their thinking. The role of urban planners and local authorities also merits attention. It may be possible to convert these stakeholders from possible opponents into allies for change.

Change agents are invited to consider and then try these suggestions for strategy and tactics, remaining true to the core values of the legal empowerment agenda. Where their efforts prove successful, they will make it possible for many more people now mired in poverty to improve their lot in life within the foreseeable future. While implementation success cannot be guaranteed because of the many countervailing factors mentioned earlier, steady, modest progress in fighting poverty with legal tools and rights is well within the realm of possibility in most countries.

Annex 1: Policy Implementation Tools

Listed below are a variety of tools deemed useful for implementing policies that may help to advance legal empowerment reforms:

Advocacy/lobbying: These are attempts to influence the outcomes of any policymaking system through endorsements, publicity, discussions, etc.

Best practices (collection and dissemination): A best practice is a management idea that assumes there is a technique, method, process, activity, incentive or reward that is more effective at delivering a particular outcome than any other technique, method or process. The idea is that with proper processes, checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complications.

Contextual analysis: This involves a systemwide review of economic, social, cultural, political, administrative, and institutional factors that affect the ease of implementing a particular public policy in a country, such as legal empowerment reforms.

Community Mapping: A Community Map is a visual representation of what the community perceives as its community space. This includes showing the boundary of the community as understood by community members and all the elements recognized by them as part of their area. Most of the spatial information is obtained through direct observation. The community members themselves decide what does and does not go on the map. Some items of importance to the community may not be noticeable to outsiders, such as sacred sites or clan boundaries (ICMM, the World Bank and ESMAP 2005).

Competencies Assessment: Measuring and recording the skills of an individual or group is an

essential starting point for any LEP implementation strategy. Competencies may include knowledge, skills, and abilities as well as other characteristics such as initiative, motivation, legitimacy and values. Competencies can be assessed in the framework of a facilitated workshop process or on an individual basis, for example.

Conflict resolution: Conflict is a normal part of relationships and occurs whenever people or groups have different expectations of joint or intersecting activities. Instead of seeking to avoid conflict at all costs, which would be unrealistic, it is better to learn to recognize and manage conflict as part of good relationship building and maintenance. Not all conflicts can be resolved, but methods exist for managing differences between stakeholders so that development activities can continue (ICMM, the World Bank and ESMAP 2005).

Domestic resource mobilization: As defined in the Monterrey Consensus, domestic resource mobilization includes policies that foster good governance that is responsive to the people's needs; an appropriate policy and regulatory framework; the fighting of corruption at all levels; sound macroeconomic policies aimed at sustaining high growth rates, full employment, stability and poverty eradication; fiscal sustainability; investment in basic economic and social infrastructure; improvement in working conditions; strengthening and development of the domestic financial sector, enhanced by microfinance and credit for micro- and small and medium-sized enterprises, and the establishment of development banks to further facilitate access to credit.

Exchanges: Practitioners may visit or temporarily work in a similar organization or job assignment in a foreign country to gain practical and comparative experience about a policy such as legal empowerment.

Focus groups: These are groups selected for their relevance to a particular area of investigation, which are engaged by a trained facilitator in discussions designed to share insights, ideas, and observations on the area of concern. Focus groups are typically open ended, discursive, and used to gain a deeper understanding of respondents' attitudes and opinions. A key feature is that participants are able to interact with each other. The group dynamic often provides richer insights and data than would have been achieved by interviewing the participants individually (ICMM, the World Bank and ESMAP 2005)

Force field analysis: Force field analysis helps clarify a group's position on a particular policy. It is a graphical representation in which groups are placed on a continuum from 'oppose' to 'favour', where the middle of the continuum is 'neutral'. It is useful in providing a quick overview of sources of major opposition and support (Brinkerhoff and Crosby 2002).

Fundraising: There are individuals, corporations, foundations, and national and international government bodies that may be approached for help in funding LEP.

Gender audit: A participatory and self-assessment approach to promote organizational learning about gender mainstreaming (Moser 2005).

Impact evaluation: An impact evaluation assesses changes in the well-being of individuals, households, communities or firms that can be attributed to a particular project, programme or policy. It is aimed at providing feedback to help improve the design of programmes and policies. In addition to providing for improved accountability, impact evaluations are a tool for dynamic learning, allowing policymakers to improve ongoing programmes and ultimately better allocate funds across programmes.

Influence mapping: This technique identifies the individuals and groups with the power to effect a key decision. It further investigates the position and motives of each player and the best channels through which to communicate with them (Start and Hovland 2004).

Institutional Analysis: Institutional analysis studies the institutional setup in and around a given community, including how important each institution is, how they interact with each other and who participates in them. This information can be gathered through an interview process, for example, by asking community members to describe the institutions present in their community, their function, importance in relation to other institutions, and if and how they participate in them. Institutional analysis is particularly useful in identifying institutions at the community level that can play an important role in the legal empowerment process (ICMM, the World Bank and ESMAP 2005).

Institutional twinning: Institutional twinning is a form of staff exchange. For instance, staff of a particular agency would visit a similar institution in a foreign country, with the aim of exchanging expertise. Often the exchange is two-way (Ouchi 2004).

Internship programmes: These are programmes that integrate study with planned and supervised career-related work experience on practical issues of implementation.

Logical framework approach: LFA is an analytical, presentational and management tool that can help planners and managers to analyze the existing situation during project preparation, establish a logical hierarchy of means by which objectives will be reached, identify some of the potential risks, establish how outputs and outcomes might best be monitored and evaluated, and present a summary of the project in a standard format

(Örtengren 2004). LFA is an overarching tool that may use other techniques listed here, for instance situational analysis and stakeholder analysis.

MIS: A Management Information System is one of four components that establish an efficient policy monitoring system (see Section 5). MIS is used to collect, analyze, store and disseminate information useful for decision-making in a project. It tracks targeted indicators that help inform choices in a project. Design of the MIS should be based on the principles of adaptation to user needs, and availability of resources, user participation, parsimony, and simplicity. It is important to understand fully what needs to be monitored.

National symposium: This is a high-profile way to publicize LEP or other policies.

Opportunity Ranking: Opportunity ranking is used to help community members and development partners decide upon which projects to start implementing. Taking account of locally available resources, skills, and capacities, it is built around a scoring system that ranks various options against agreed criteria.

Outreach: (Media Campaigns, School Programmes, Public Speaking Engagements, Publications, Public Hearings, Study Circles) These are methods for publicizing LEP or other policies. Study circles, for example, are a method of adult education and social change popular in Scandinavia.

Para-professionals: These are people in various occupational fields, such as education, health-care, and law, who have obtained a certificate by passing an exam that enables them to perform a task requiring significant knowledge, but without having the occupational license to perform at the professional level in the field.

Participatory budgeting: Participatory budgeting is a process of democratic deliberation and deci-

sion-making, in which ordinary residents decide how to allocate part of a municipal or public budget. Participatory budgeting is usually characterized by several basic design features: identification of spending priorities by community members, election of budget delegates to represent different communities, facilitation and technical assistance by public employees, local and higher level assemblies to deliberate and vote on spending priorities, and the implementation of local direct-impact community projects. Various studies have suggested that participatory budgeting results in more equitable public spending, higher quality of life, increased satisfaction of basic needs, greater government transparency and accountability, increased levels of public participation (especially by marginalized residents), and democratic and citizenship learning.

Participatory Poverty Assessments: A Participatory Poverty Assessment (PPA) is a tool that allows consultation of the poor directly; findings are transmitted to policymakers, thereby enabling the poor to influence policy. APPA uses a variety of flexible participatory methods that combine visual techniques (mapping, matrices, diagrams) and verbal techniques (open-ended interviews, discussion groups). It also emphasizes exercises that facilitate information sharing, analysis, and action. The goal is to give the intended beneficiaries more control over the research process. To ensure follow-up at the community level (a principle of participatory research), many PPAs have involved the development of community action plans subsequently supported by local governments or NGOs (Robb, 2000).

Plain language: In many countries, the law is only drafted and administrated in the national language, which many of the poor may not speak or read. Translation of laws into local language is hence an obvious way of improving the poor's ac-

cess to information. This may also involve rendering legal jargon into everyday terms in the dominant country language.

Policy briefings: *These are summary reports that review the current state of practice and methodologies and summarize critical issues and implications.*

Policy characteristics analysis: Policy characteristics analysis informs reformers' understanding of the dimensions and dynamics of the policy, its origins and where greatest support and opposition are most likely to lie. Its purpose is to provide a systematic understanding of the policy that can carry over into more detailed appraisal such as the political mapping or the stakeholder analysis. It is designed to answer questions such as the exact aim of the policy, its implementation context, how the public may react to change, how consequential the change will be (Brinkerhoff and Crosby 2002).

Political mapping: Political Mapping is a means for organizing information about the political landscape in an illustrative way. Macro-political mapping provides analysis of political alliances at the macro (national or sector) level, while micro-political mapping provides more disaggregated insights into the political landscape. Political mapping can be used to illustrate concentrations of support for the government.

Problem Census: The Problem Census is usually conducted in a small group setting, at the local community level, for example. Designed as a non-threatening, focused discussion that uses small group dynamics, its objective is to elicit a comprehensive and ranked census of the problems, real or perceived, of households and the community as a whole as well as the community's proposed solutions. This approach gives community members the opportunity to articulate and prioritize the problems they consider need addressing in their

community, to discuss them as a group, and then collectively decide on which problems to solve (ICMM, the World Bank and ESMAP 2005).

Problem solving studies: Problem solving studies aim at devising tailored and practical solutions to implementation issues. As for MIS above, the design of problem solving studies should be based on the principles of adaptation to user needs, and availability of resources, user participation, parsimony, and simplicity. (Also see Section 5.)

Problem tree: Problem tree analysis serves to identify immediate and direct causes and effects of a focal problem assisted by graphical representation. The technique helps illustrate context and interrelationship of problems as well as possible impacts when targeting projects and programmes towards specific issues.

Social Baseline Study: A base line study consists of collecting and analyzing baseline data that describes the social and economic environment of an area of interest as well as the characteristics of a target group. A social baseline study, for example, would observe demographic factors (population, population density, age, ethnicity, health, income, etc.), socioeconomic determinants (e.g. factors affecting income and productivity, land tenure, access to productive inputs and markets, family composition, access to wage opportunities), social organization (e.g. participation in local-level institutions and decision-making processes, access to services and information), economic organization (e.g. local and regional businesses and commercial structures, infrastructure supporting economic activity, government, and other economic/industrial development plans for the area), sociopolitical context (stakeholder organizations, development goals, priorities, commitment to development objectives, control over resources, experience, and relationship with other stakeholder groups), his-

torical context (historical issues and events, migration, relocation), needs and values (stakeholder attitudes and values determining whether development interventions are needed and wanted, appropriate incentives for change, and capacity of stakeholders to manage the process of change), human rights context (prevailing human rights issues and country risks), institutions (role, governance, resources, capacities of local institutions as well as regulatory framework), cultural background (cultural norms and practices and places of high cultural value) (ICMM, the World Bank and ESMAP 2005).

Social Impact and Opportunities Assessment:

This is a process that identifies negative and positive impacts resulting from a given project. It then looks at ways of maximizing opportunities that can arise from the positive impacts and offsetting or minimizing the negative effects. Being able to demonstrate positive effects at the early stages of a project facilitates local engagement and participation (ICMM, the World Bank and ESMAP 2005).

Stakeholder analysis: Stakeholder analysis is designed to identify those interests that should be taken into account when making a decision. It assesses the nature of a policy's constituents, their expectations, interests, intensity of their interest in the issue at hand, and the resources they can bring to bear on the outcome of the policy. It helps ensure that the policies are designed in ways that improve their chances of adoption and implementation. In implementation, it helps build an understanding of the relative importance of various groups and the role they might play. To be useful, it is important that the stakeholder analysis indicates why interests should be taken into account (Brinkerhoff and Crosby 2002).

Stakeholder monitoring (household surveys, key informant interviews): Household surveys provide

data on spending for different kinds of goods as well as household characteristics, such as age, gender, education and occupation of family members. Data obtained from household surveys is particularly useful for measuring income poverty and relating it to household characteristics. They are the most valuable resource available for assessing economic outcomes, as well as some aspects of opportunity, and for understanding how those outcomes are associated with household characteristics (Stern, Dethier and Rogers 2005). A key informant interview is a form of in-depth interview often used in the initial phase of a project and again in evaluation. Key informants are selected for their first-hand knowledge about the topic of interest. Some of the people who might be approached in a key-informant interview include a community leader, the head of an NGO that could become a partner, or the leader of a small business organization. (See Section 5 of this chapter for further discussion.)

Strategic Planning Framework/SWOT/PEST: Strategic planning is a general management technique of defining development objectives, planning to achieve those objectives, and deciding how to know when you have succeeded. Strategic planning begins internally, and as it progresses toward detailed activity planning, it needs to be shared and reviewed by stakeholders. SWOT Analysis is a specific strategic planning tool used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture. It involves specifying the objective of the project and identifying the internal and external factors that are favourable and unfavourable to achieving that objective. PEST analysis stands for "Political, Economic, Social, and Technological analysis," and describes a framework of macro environmental factors used in environmental scanning. It is a part of the external analysis when do-

ing strategic planning and gives a certain overview of the different macro environmental factors that the company has to take into consideration.

Technical assistance: Technical assistance means transfer of new knowledge along with new technology to others who do not know about it. The field of technical assistance may include management, operations systems, engineering and other technologies.

Training (on leadership, group work and related management issues): This tool covers a variety of planned, prepared, and coordinated programmes to give group leaders and practitioners information they can use to perform their jobs better.

Travel grants/internships for officials: These allow mid-career professionals and para-professionals to acquire practical knowledge by visiting or serving in organizations in foreign countries.

Web-based support: The Internet is an invaluable tool for disseminating information to change agents and development practitioners about legal empowerment of the poor.

Workshops: These are structured group meetings at which a variety of key stakeholder groups, whose activities or influence affect a development issue or project, share knowledge and work toward a common vision. With the help of a workshop facilitator, participants undertake a series of activities designed to help them progress toward the development objective (consensus building, information sharing, prioritization of objectives, team building, and so on). Stakeholder workshops are used to initiate, establish, and sustain collaboration in policies such as LEP (World Bank 1996).

Annex 2: Existing Toolkits: An Inventory

Access to justice

There are several access-to-justice toolkits, focusing on different aspects of the justice question. Among the major ones are the following:

- *The Access Initiative Assessment (TAI) Toolkit*.¹³ Although this has been designed with the environment in mind, the concepts are capable of being extended to more general access to justice issues. There are four categories in the TAI toolkit – access to information, public participation, access to justice, and capacity development. More importantly, the indicators are divided into law, effort and effectiveness. Law indicators measure the presence and scope of the law, its breadth and support for access and whether it provides sufficient guidance for implementation and enforcement. Effort indicators assess government action taken to provide access, including action to implement laws. Effectiveness indicators assess whether laws and government efforts have resulted in effective access and whether the world has changed because of the level of access achieved. Given the focus of legal empowerment, adapted use of the access to justice indicators (on all three counts of law, effort and effectiveness) seems to be the most appropriate.
- *The Office on Drugs and Crime of the United Nations (UNODC) has a Criminal Justice Assessment Toolkit*¹⁴ - This has separate segments on policing, access to justice, custodial and non-custodial measures and cross-cutting issues. Given the focus of legal empowerment, adapted use of the access to justice indicators (covering four heads of the courts; the independence, impartiality and integrity of the judiciary; the pros-

education service; and legal defence and legal aid) seems to be the most appropriate.

- *Although not quite presented as a toolkit, UNDP's Practitioner's Guide on Access to Justice can be interpreted as a toolkit*¹⁵ - This has the additional advantage of bringing in a pro-poor angle. "The meaning of access to justice is interpretative and contextual. When people think of 'access to justice', they are not necessarily thinking of the justice system. For example, a UNDP participatory survey on people's perceptions of justice in India found that slum dwellers prioritized access to justice with regard to economic issues, whereas members of marginalized castes highlighted the social dimensions of access, and indigenous minorities highlighted the political dimension. Therefore, the potential of formal and informal mechanisms to provide people with a sense of 'justice' in a particular situation depends on the context, and is just one part of a bigger picture."
- *The Asian Development Bank has a few toolkits in the general law area, but the most relevant one is the one on gender, law and policy*¹⁶.

Property rights

Toolkits on property rights belong to different categories or segments – such as housing, land rights, minerals, forests and intellectual property. Among the major ones are the following:

- *The Housing and Land Rights Network (HLRN) of the Habitat International Coalition (HIC) has a toolkit for the 'housing rights defender'*¹⁷ – "At the end of the last century, close to 1.2 billion people of the world survived in housing conditions that were unhealthy and precarious, including 100 million who were homeless. At least 600 million urban residents in developing countries, with these numbers swelling everyday, already live in housing of such poor quality and
- with such inadequate provision of water, sanitation and drainage that their lives and health are under continuous threat."
- *USAID has a toolkit for situations where there is a link between land rights (or their lack) and conflict*¹⁸ - Today a 'menu' of approaches helps facilitate broader access to land and engenders greater equality in economic opportunity. In the past, land was typically taken from large landholders and redistributed to the 'land-needy' by way of expropriation, usually with compensation or channelled through land funds. Increasingly, market-mediated and community-managed efforts are being explored, including land rental market facilitation. There is a parallel USAID toolkit on the relationship between minerals and conflict¹⁹ and yet another one on forests and conflict.²⁰

Labour rights

- Described as a Handbook rather than a toolkit, there is a *Core Labour Standards Handbook, co-published by ADB (Asian Development Bank) and ILO*.²¹
- *The Public-Private Infrastructure Advisory Facility of the World Bank group has a toolkit specifically on the issue of how private participation in infrastructure can affect the labour market, because of fears of job losses and changes in employment status*²² - This is designed for policy-makers and practitioners, especially in countries where there is an absence of social safety nets.
- *The ADB has a toolkit, although it is described as a technical note, on labour issues in public sector restructuring*.²³
- *ILO: Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*.²⁴
- D. Tajzman has edited, *Extending Labour Law to All Workers: Promoting Decent Work in the*

Informal Economy in Cambodia, Thailand and Mongolia (ILO, Bangkok, 2006).

- Ojeda Avilés, *Métodos y prácticas en la solución de conflictos laborales: Un estudio internacional* (ILO, Geneva, Dialogue Document No. 13, May 2007). [Methods and practices in the resolution of labour disputes: An international study]
- *Informal Economy Resources Database*, which includes case studies.²⁵
- *Labour legislation guidelines* (which provide substantive guidance on drafting legislation that is compatible with core labour standards) features a chapter covering elements to take into account in any legislative drafting process.²⁶
- Child Workers in Asia/ILO (2006): *Raising one voice: Training manual for advocates of the rights of child domestic workers*.²⁷
- ILO's *Gender Mainstreaming Strategy (GEMS) and Toolkit for Asia and the Pacific* includes elements that can be applied to law reform processes to ensure their gender inclusivity.²⁸
- ILO: Gender Equality and Decent Work – *Selected ILO Conventions and Recommendations promoting Gender Equality*.²⁹
- The ILO Gender, Poverty and Employment (GPE) Programme has included law reform as one means of tackling exclusion that keeps women in poverty. Its capacity-building and policy development tools, used in countries in all regions, are captured in the GPE Package, available in English and Spanish (and to be available in Arabic).³⁰
- ILO: *Sustainable Enterprises*. (Report of the Director-General, International Labour Conference, 96th Session, 2007), and the Conclusions on sustainable enterprises adopted at the Conference (Provisional Record No. 20), set out features of legislation promoting both sustainable entrepreneurship and protection for labour rights.

Business

- Business licensing is often a major barrier to doing business and over-regulation and red tape are associated with low income, low productivity and large levels of informality and corruption. First, the *World Bank group has a business licensing reform toolkit, with eight case studies* from Belgium, Netherlands, India, Mexico, Hungary, Georgia, Kenya and Belarus.³¹ Second, there is a *parallel and complementary toolkit on good practices for business inspections*³² that lists out benchmarks that can be used as guidelines by reformers. Third, there is a guide on the design and implementation of business registration reforms at the national level, with good-practice cases and examples of reform from several countries.³³ Fourth, there is a toolkit for the simplification of business regulations at the sub-regional level, with a focus on the municipal level.³⁴
- *The Commonwealth Secretariat has a Commonwealth Youth Credit Initiative Toolkit* to help governments, development agencies and NGOs to implement micro-credit programmes.³⁵
- A *micro-credit rating toolkit* was prepared by the UNDP's regional centre in Colombo, based on micro-credit experience in Bangladesh, India, Myanmar, Sri Lanka and Sudan.³⁶
- The Office on Drugs and Crime of the United Nations (UNODC) has an *anti-corruption toolkit*, under the framework of the Global Programme Against Corruption (GPAC).³⁷
- Transparency International has a range of *corruption fighters' toolkits* for monitoring public institutions and demanding and promoting accountable and responsive public administration.³⁸

Annex 3: Existing Indicators and Indices – An Inventory

Access to justice

- Bertelsmann Transformation Index (BTI), with data since 2004 for 119 developing countries. The status index (SI) of BTI has a question on rule of law.³⁹
- Business Environment Risk Intelligence's Operation Risk Index (ORI) has data on 50 countries since 1996, with a question on enforceability of contracts.⁴⁰
- Columbia University's State Capacity Survey has data since 1999 on 108 countries and has a question on the degree to which ethno-cultural and/or religious conflict posed a threat to political stability in the country.⁴¹
- Columbia University's State Capacity Survey has data since 1999 on 108 countries and has a question on the State's adherence to rule of law.⁴²
- Since 1997, Economist Intelligence Unit (EIU) maintains a database on the economic and business environment in approximately 120 developed and developing countries. There are six questions on violent crime, organized crime, fairness of the judicial process, enforceability of contracts, speediness of the judicial process, and confiscation/appropriation.⁴³
- Freedom House has three separate rankings; but two – Nations in Transit and Countries at the Crossroads – are only applied to a limited number of countries. The one that can be used readily is Freedom in the World, in existence since 1978 and currently with a database of 192 countries. There is a question in determining the ranking as to whether cultural, ethnic, religious and other minority groups have reasonable self-determination, self-government, autonomy and participation. There is a separate question on whether citizens are equal under the law, with access to an independent, non-discriminatory judiciary. Yet another question can be included in this access to justice head and this is about whether there are personal social freedoms, including gender equality, property rights, freedom of movement, choice of residence and choice of marriage and size of family.⁴⁴
- Since 2004, Transparency International and Gallup have the Global Barometer Survey for 69 developed and developing countries. There are two separate questions on trust in the legal system and concern with the level of crime.⁴⁵
- Since 1996, Global Insight's Global Risk Service covers 117 developed and developing countries and has a question on losses and costs of crime. It also has two separate questions on enforceability of government contracts and private contracts.⁴⁶
- Since 1996, Global Insight's Business Conditions and Risks Indicators cover 202 developed and developing countries. This has two separate questions on judicial independence and crime.⁴⁷
- Since 1995, Heritage Foundation and the Wall Street Journal produce an index of economic freedom that covers 161 countries. This has a question on the size of the black market.⁴⁸
- Since 1996, Institute for Management Development brings out a World Competitiveness Yearbook that has data on 49 developed and developing countries. This has a question on whether the legal environment is detrimental to the country's competitiveness. There is also an additional question on whether justice is fairly administered in society.⁴⁹
- Since 1982, Merchant International Group Limited has data for 155 developed and developing countries. This has a question on legal safeguards.⁵⁰

- Since 1982, Political Risk Services produces data on country risks. The financial and economic risk categories don't interest us. But within the political risk category (140 developing and developed countries), there is a law and order question, divided into two-subcomponents of law and order.⁵¹
- The US State Department has a Trafficking in People Report, started in 2001 and covering 149 developed and developing countries.⁵²
- The Cingranelli-Richards Human Rights Dataset covers 192 developed and developing countries. It has a question on independence of the judiciary and another one on imprisonments because of ethnicity, race, political or religious beliefs.⁵³
- The World Bank's World Business Environment Survey has existed since 1998 and covers 80 developed and developing countries. This has several questions on access to justice and rule of law – predictability of changes in rules and laws, quality of the police, organized crime, street crime, fair and impartial courts, affordable courts, consistent/predictability of courts, enforcement of court decisions, dishonesty in courts and functioning of the judiciary.⁵⁴
- Since 1996, World Economic Forum has brought out the Global Competitiveness Report and this covers 104 developed and developing countries. This has questions on common crime, organized crime, money laundering (through banks and non-banks), quality of police, independence of the judiciary, legal framework to challenge the legality of government action, settlements outside the court system, compliance with court rulings and/or arbitration awards, enforcement of commercial contracts and use of illegal means to adjudicate disputes.⁵⁵
- The World Bank's World Development Indicators database can be used for female work participation rates, unemployment among women and fe-

male representation in national parliament. This gives data on 184 countries.⁵⁶

- Although developed for the environment area, The Access Initiative's (TAI) 148 indicators for 40 countries can also be selectively used, the TAI having been mentioned earlier under the toolkit section.⁵⁷ These indicators are divided into three heads – law, effort and effectiveness. One should probably concentrate on law indicators, rather than effort and effectiveness. The last two essentially belong to a tool-kit category. The law indicators are again divided into access to information, public participation and access to justice. We would propose applying the last heading, on access to justice, in which case, there are 23 questions to consider. Questions linked to free legal aid, government immunity, confidentiality of information on government action and independence of appellate bodies should certainly be picked up.

Property rights

- Bertelsmann Transformation Index (BTI) has data since 2004 for 119 developing countries. The status index (SI) of BTI has a question on private property.⁵⁸
- The World Bank's Country Policy and Institutional Assessment (CPIA) database has data on 136 developing countries. The creation of the database goes back to the late 1970s. There is a question on property rights.⁵⁹
- Since 1997, Economist Intelligence Unit (EIU) has a database on the economic and business environment in 120 developed and developing countries. There are two separate questions on intellectual property right protection and private property protection.⁶⁰
- Since 1996, Institute for Management Development brings out a World Competitiveness Yearbook that has data on 49 developed and

developing countries. This has a question on whether personal security and private property are adequately protected and a separate question on whether patent and copyright protection is adequately enforced.⁶¹

- The World Bank's World Business Environment Survey has existed since 1998 and covers 80 developed and developing countries. This has two questions on confidence in the judicial system in ensuring property rights and violation of patents.⁶²
- Since 1996, World Economic Forum has brought out the Global Competitiveness Report and this covers 104 developed and developing countries. This has questions on protection of financial assets and protection of intellectual property.⁶³
- UNDP's Human Development Report (HDR) has been in existence since 1990 and now covers 177 countries. This has data on patents granted to residents.⁶⁴
- The International Property Rights Index (IPRI) is extremely new, 2007 being the first year when the index was constructed for 70 countries. It covers both physical property rights (PPR) and intellectual property rights (IPR) and also includes a third category titled legal and political environment (LP), IPRI being obtained by aggregating across all three categories.⁶⁵
- Centre on Housing Rights and Evictions (COHRE) has been collecting national data regarding evictions for several years.⁶⁶ As "freedom from evictions" should be the minimum set of "protections/security" to which anyone is entitled, this indicator is vital to assessing the state of legal empowerment regarding land and property rights. COHRE has also developed a tool for monitoring the "Right to Adequate Housing" which includes a sub-index on 'security of tenure'.
- International Land Coalition/CAPRI (Collective Action on Property Rights) are developing an index for common property resources, a crucial issue for many rural communities, including indigenous groups.⁶⁷
- African Union, the Economic Commission for Africa, Millennium Challenge Corporation, the UN-HABITAT, and World Bank map land indicators for Africa. A joint initiative to develop a comprehensive set of land indicators for Africa is to be linked to, *inter alia*, the African Peer Review Mechanism and the Expert Group meeting will be held on 3-4 May 2007.
- UN-HABITAT Global Urban Observatory has been developing a Secure Tenure Index to monitor Target 11 of the MDGs related to the slum challenge. Secure land tenure is the proxy for the achievement of progress in this target.⁶⁸
- UN-HABITAT Housing Rights Indicators (HRI) is under development, with the United Nations High Commissioner for Human Rights and includes an indicator related to security of tenure.⁶⁹

Labour rights

- Since 1997, Economist Intelligence Unit (EIU) has a database on the economic and business environment in 120 developed and developing countries. There is a question on freedom of association.⁷⁰
- Freedom House has three separate rankings, but two – nations in transit and countries at the crossroads – are only used for a limited number of countries. The one most frequently used is Freedom in the World, in existence since 1978, and now with a database of 192 countries. There is a question on whether there are free trade unions or peasant organizations or their equivalents and whether there is effective collective bargaining. There is yet another ques-

tion on whether there is equality of opportunity, which includes freedom from exploitation by, or dependency on, landlords, employers, union leaders, bureaucrats or any other obstacle that prevents access to legitimate economic gains.⁷¹

- Since 1996, Institute for Management Development brings out a World Competitiveness Yearbook that has data on 49 developed and developing countries. This has a question on whether labour regulations hinder business activities.⁷²
- UNDP's *Human Development Report (HDR)* has been in existence since 1990 and now covers 177 countries. Data on ratification of some conventions (child labour, elimination of discrimination against women, elimination of forced and compulsory labour, freedom of association and collective bargaining, elimination of all forms of racial discrimination can be used).⁷³
- The ILO database can be extensively used. In the ILO database, indicators are broadly of two categories: those that contain information on ratification of selected international labour conventions, and those that measure specific aspects of work, often linked to poverty/empowerment and the lack thereof. International labour conventions set minimum standards, and information on ratification is available for 180 member countries.⁷⁴ *Per se*, ratification doesn't solve the problem of implementation, but ratification itself signifies political will. The ratified convention database can be divided into three broad segments, beyond which there is a rich database on statistics:⁷⁵

(1) Eight fundamental conventions that concern fundamental principles and rights at work, such as Conventions 29 and 105 on elimination of forced labour, Conventions 138 and 182 on child labour, Conventions 100 and 105 on discrimination in employment and protection, and Conventions 87

and 98 on freedom of association and right to engage in collective bargaining.

(2) Conventions that provide a basic institutional framework aimed at protecting against exploitation, such as Convention 95 on protection of wages, Convention 155 on occupational safety and health, Convention 81 on labour inspection, Convention 129 on labour inspection for agriculture, Convention 144 on tripartite consultation, and Convention 122 on employment policy.

(3) Conventions that address situations that overlap with poverty, as, for example, Convention 149 on indigenous and tribal people,⁷⁶ Conventions 97 and 143 on migration for employment and migrant workers, Convention 183 on maternity protection, and Convention 137 on rural workers' organizations.

Business

- Business Environment Risk Intelligence's Operation Risk Index (ORI) has data on 50 countries since 1996 and has a question on bureaucratic delays.⁷⁷
- Columbia University's State Capacity Survey has data since 1999, on 108 countries and has a question on the severity of corruption within the State and several separate questions on nepotism, cronyism and patronage.⁷⁸
- The World Bank's Country Policy and Institutional Assessment (CPIA) database has data on 136 developing countries; the creation of the database goes back to the late 1970s. There is a question on transparency, accountability and corruption in the public sector.⁷⁹
- Since 1997, Economist Intelligence Unit (EIU) has a database on the economic and business environment in 120 developed and developing countries. There are three separate questions on orderly transfers, vested interests and

accountability of public officials. There is a separate question on excessive bureaucracy/red tape. There is a separate question on corruption among public officials.⁸⁰

- Freedom House has three separate rankings, but two nations in transit and countries at the crossroads – are only used or a limited number of countries. The one that can be used freely is Freedom in the World, in existence since 1978 and now with a database of 192 countries. There are two separate questions on whether there are free professional and other private organizations and whether there are free businesses or cooperatives. There is also a question on whether there is freedom from extreme government indifference and corruption.⁸¹
- Since 2004, Transparency International and Gallup have the Global Barometer Survey for 69 developed and developing countries. There are five separate questions on percentage who believe the government is corrupt, frequency of corruption, frequency of household bribery, extent of grand corruption and extent of petty corruption.⁸²
- Since 1996, Global Insight's Global Risk Service covers 117 developed and developing countries and has a question on costs of corruption.⁸³
- Since 1996, Global Insight's Business Conditions and Risks Indicators, covers 202 developed and developing countries. This has two separate questions on whether the necessary business laws are in place and whether there are outstanding gaps and on corruption.⁸⁴
- Since 1995, Heritage Foundation and the Wall Street Journal produce an index of economic freedom that covers 161 countries. This has a question on corruption.⁸⁵
- Since 1996, Institute for Management Development brings out a World Competitiveness Yearbook that has data on 49 developed and develop-

ing countries. This has three separate questions on ease of starting a business, the size of the parallel economy and bribery and corruption.⁸⁶

- Since 1982, Merchant International Group Limited has data for 155 developed and developing countries. This has a question on corruption.⁸⁷
- Since 1982, Political Risk Services produces data on country risks. The financial and economic risk categories don't interest the Commission. But within the political risk category (140 developing and developed countries), there is a question on corruption.⁸⁸
- The World Bank's World Business Environment Survey has existed since 1998 and covers 80 developed and developing countries. This has questions on regulations on starting new businesses, dishonesty in courts, frequency of additional payments, corruption as obstacle to business and bribery.⁸⁹
- Since 1996, World Economic Forum has brought out the Global Competitiveness Report and this covers 104 developed and developing countries. This has questions on ease of starting a company, burden of administrative regulations, percentage of firms that are unofficial/unregistered, frequency of bribery, frequency of firms making extra payments and the extent to which firms' illegal payments or influence impose costs on other firms.⁹⁰

Chapter 5 Endnotes

1 These international agreements include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESR), ILO fundamental Conventions on freedom of association/collective bargaining, and elimination of forced labour, child labour and discrimination; and for indigenous peoples, the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169). In addition, there is an internationally recognized “Right to Adequate Housing,” which includes security of tenure as one of its six components.

2 Two useful approaches to analyzing stakeholder interests in development are DFID’s drivers of change (<http://www.gsdrc.org/go/topic-guides/drivers-of-change>) and SIDA’s power analysis (http://www.sida.se/sida/jsp/sida.jsp?d=118&a=24300&language=en_US).

3 Stakeholder analysis is a standard strategic management tool. It is often applied to development programs and policies. See, for example, the Overseas Development Institute’s *Tools for Policy Impact*. Start and Hovland. 2004. and Chapter 5 of the International Development Research Centre’s text on *Cultivating Peace*, by (Ramirez. 1999. Also see Bianchi and Kossoudji, 2001.

4 Rent seeking refers to efforts to get government to create economic rents, which can then be captured for private gain. Economic rent is simply extra income that would not exist in a competitive marketplace. Rent-seeking behavior benefits the individual doing it, but is a loss for society due to the inefficiencies it creates.

5 Where a country has ratified the United Nations Convention on Corruption (140 have done so to date), formal political commitment (if not true political will) already exists to fight corruption.

6 There are tools that have been used for refugee return and restitution in the Balkans and in Afghanistan that are useful in this regard (e.g., Aursnes and Foley 2005).

7 This typology is based on one that first appeared in Wilson.1973., ch. 16. Similar matrixes are widely used in public administration and development texts (e.g., Brinkerhoff and Crosby 2002).

8 A side payment is a term from game theory referring to a compensation paid to the game’s loser. Logrolling is the exchanging of political favours to support projects that are of interest only to one side or the other.

9 See for example the work of the “Barefoot College” (Social Work and Research Centre) in Vilonia, Rajasthan, India.

10 Development practitioners wanting to mix and match tools may refer to the following easily found toolkits and handbooks: The Access Initiative Assessment Toolkit (www.accessinitiative.org/how_to_guide.html); the World Bank/International Council on Mining and Metals Community Development Toolkit (http://www.icmm.com/library_pub_detail.php?rcd=183); the UNDP’s Practitioner’s Guide on Access to Justice (www.undp.org/governance/guidelines-toolkits.htm); the Housing and Land Rights Network of the Habitat International Coalition toolkit for the “housing rights defender” (www.toolkit.hlrn.org/English/start.htm); the Overseas Development Institute’s Research and Policy in Development (RAPID) Toolkits (<http://www.odi.org.uk/publications/toolkit2.html>); USAID’s toolkit for situations where there is a link between land rights (or their lack) and conflict (www.usaid.gov/our_work/cross-cutting_programs/conflict/publications/docs/CMM_Land_and_Conflict_Toolkit_April_2005.pdf); the Core Labour Standards Handbook, co-published by the Asian Development Bank and ILO (www.adb.org/Documents/Handbooks/Core-Labor-Standards/default.asp); the ILO’s toolkit for mainstreaming employment and decent work: <http://www.ilo.org/public/english/bureau/dgo/selecdoc/2007/toolkit.pdf>; Transparency International’s corruption fighters’ toolkits for monitoring public institutions and demanding and promoting accountable and responsive public administration (www.transparency.org/tools/e_toolkit); the CIVICUS and Aga Khan Foundation resource mobilization toolkit (http://www.akdn.org/agency/akf_trainer.html). See Annex 2 for a comprehensive inventory of toolkits.

11 Available at <http://go.worldbank.org/KUDGZ5E6P0>.

12 The World Resources Institute is one organization that has developed participatory monitoring and evaluation techniques. These may be adapted for use in LEP activities to help countries track progress (and lost ground), and allow them ensure that reforms actually do lead to empowerment of the poor. Also see the Participatory Methods Toolkit prepared by the King Baudouin Foundation and the Flemish Institute for Science and Technology Assessment: <http://www.viwt.be/files/ToolkitPartAssessment.pdf>.

13 www.accessinitiative.org/how_to_guide.html.

14 www.unodc.org/unodc/criminal_justice_assessment_toolkit.html

15 *Programming for Justice: Access for All*, UNDP, 2005, www.undp.org/governance/guidelines-toolkits.htm, especially Chapter 2.

16 *Gender, Law, and Policy in ADB Operations: A Tool Kit*, 2006, www.adb.org/Documents/Manuals/Gender-Toolkit/Gender-Law-Policy-Toolkit.asp

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27 <http://www.ilo.org/ipeinfo/product/viewProduct.do;jsessionid=0a038009ce90d3a489e22af427195a29dfeb2dc51ec?productId=3060>

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– Madeleine K. Albright

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

– Hernando de Soto