

The High Level Commission for Legal Empowerment of the Poor

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SUMMARY

Senior politicians all over the World are increasingly focusing on property rights as a fundamental resource for economic development and social stability. As a result of this growing interest, a number of countries have taken an initiative to establish a global commission to further bring this issue to the forefront of development policies and programs. The *High Level Commission for Legal Empowerment of the Poor* was formally announced at the UN General Assembly in New York in September this year. During the next three years the Commission shall, assisted by a number of working groups, prepare a *tool box* with guidance and practical recommendations to governments and professional institutions on how to develop or improve legislation, institutions and registration services that do not leave the poor dwellers and businessmen out from formalising their assets. Almost all countries of the World have legislation and register systems, but in the majority of developing countries the related services are not accessible for the poor. To change this is not solely a challenge to politicians, but as well to the professionals working with property and mercantile registers and registration.

BACKGROUND

Poverty eradication is the key issue of the Millennium Development Goals formulated on the basis of from the Millennium Declaration from year 2000. All members of the United Nations have agreed to cut extreme poverty worldwide by half by the year 2015.

One of the facts about poverty is that the vast majority of the World's poor live their daily lives outside the rule of law, in what is referred to as the informal or extralegal sector. Lack of access to legal protection leaves dwellers and small businessmen and women vulnerable, and with little opportunity for improving their economic and social conditions.

It is a staggering fact that only in about thirty countries World-wide people at large have a secured title to their or home or business. Only in these thirty countries people in general can transact in an open land market and use their assets as security for loans. Only in these countries small entrepreneurs can easily register their business and separate it from their private economy. These countries are as well the thirty richest countries of the World.

It is increasingly appreciated that access to widespread, secured and tradable rights to real property is one of the fundamentals to development. This is not new knowledge. But without

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doubt the Peruvian economist Hernando de Soto has with his book “Mystery of Capital” brought the issue to international political agenda.

In some parts of the World, distribution of land is a crucial issue, which no registration system can solve. But almost all countries of the World have some sort of legislation and registrations services, largely modeled on systems in West-European countries. In their annual report on “Doing Business”, the World Bank documents that most developing countries are characterized by very bureaucratic and time-consuming registration services that are simply out of reach for the poor.

A central challenge for poverty reduction is therefore to expand the rule of law to all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people or other minorities. Guaranteeing the poor the right to property is a key challenge.

THE COMMISSION

The initiative to establish the High Level Commission is built on the conviction that poverty can only be eradicated if governments embark on giving all citizens, especially the poor, a stronger stake in the legal economy. This can only be realized through comprehensive reforms of laws, institutions and policies.

Key challenges to the governments of developing countries include the following (copied from the Commission homepage):

- Making property rights accessible for all, especially the poor and marginalized, whether communities, groups or individuals;
- Ensuring that properties of the poor and marginalized can function as means for economic and social empowerment, including obtaining credit and investment under conditions where they are not exploited;
- Broadening access to organizational forms that allow poor and marginalized people to govern their rights collectively by dividing labor, combining assets, and assigning responsibilities productively in their own enterprises.

To cope with these challenges the Commission has a six-fold agenda:

- I.** To galvanize political support and commitment to a broad reform agenda for legal inclusion and empowerment of the poor.
- II.** To examine ways to secure broader access to legal, fungible property rights over real and movable assets – and thus replacing, supplementing or improving existing local or national arrangements for the purpose of expanding and improving their utility for bottom-up economic and social empowerment and poverty reduction.
- III.** To examine ways to provide broad access to legal organizational forms suited for the poor and that enhance opportunities for growth so that poor people can combine labor, technology, and investment to raise productivity, limit risks and protect economic achievements; and leverage property to access credit and capital.

- IV. To investigate any conceptual gaps in linking asset security, property rights, and access to the rule of law to wider development issues. These include conflict prevention, gender equality, economic inclusion, governance, administration of justice, legal enforcement, identification systems, capital formation, access to credit, provision of infrastructure -- especially land, energy, water and affordable housing -- and other issues that will benefit poor and indigenous peoples.
- V. To draw up an inventory of reforms to promote asset security, and other efforts to link the formal and informal sector, that are based on global experiences to date and contributions from relevant expertise and stakeholders from governments, civil society, the private sector and international organizations from around the world.
- VI. To produce a Tool Kit for policy makers as a basis for solid, demand-driven support programs for reform at the country level.

The Commission is an independent, global initiative, supported from a wide range of countries including Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the United Kingdom. The Commission itself will decide the detailed mandate. The Commission will also define the Terms of Reference for the Advisory Board and the Working Groups under the Commission.

The commission will have about thirty members. Not all are yet appointed. It will be co-chaired by **Madeleine Albright** (former state secretary US) and **Hernando de Soto** (Economist and Director of Institute of Liberty and Democracy, Peru). Among the other members are, in alphabetical order:

Soledad Alvear, former Minister of Foreign Affairs for Chile

Fernando Cardoso, former President of Brazil

Shirin Ebadi, Nobel Peace Prize Laureate, Iran

Benjamin Mkapa, President of the United Republic of Tanzania

Michael Moore, former Prime Minister of New Zealand, former Director General of the WTO

Milinda Moragoda, former Minister for Economic Reform, Science and Technology of Sri Lanka

Mary Robinson, former President of Ireland and former High Commissioner of Human Rights

Arjun Sengupta, Chairman of the National Commission for Enterprises in the Unorganized Sector of India

Lindiwe Nonceba Sisulu, Minister of Housing for South Africa

Lawrence Summers, former Secretary of the Treasury for the United States and President of Harvard University

Ernesto Zedillo, former President of Mexico

All Commissioners participate in their personal capacity.

The Commission will be supported by a number of *Working Groups* composed of leading professionals and representatives of key stakeholder groups. In addition the Commission will

also set up an *Advisory Board* of leaders from civil society, international organizations and the private sector.

UNDP in New York will host the secretariat to the Commission. It is expected that UNDP will support the Commission's work by financing field activities in countries where there is interest and demand. The Commission will also work closely with the relevant UN agencies, such as the World Bank, UN Habitat and FAO. The United Nations Economic Commission for Europe, which for some years have been working with the subject in relation to restitution of ownership and re-establishing property institutions in former socialist countries in Europe, will also have a role in servicing the Commission.

The Commission is being funded by voluntary financial contributions and in-kind support from the private and public sectors, including the governments of Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the United Kingdom, as well as the United States Agency for International Development.

WILL IT WORK

The cornerstone of de Soto's theses is that formalisation facilitates transformation of dead capital to live capital, and that the poor in all countries in sum possess huge values that could be released if their assets are formally registered. That perspective has certainly also inspired those who initiated the Commission. Citizens and businessmen of developed economies "all" know the importance of tradable properties and mortgages to the economy of their nation as well as to their personal economic well being. In Norway the amount of registered mortgages using real property as security, is more than three times the annual state budget. But will it work in developing countries?

Hernando de Soto's opinion is also challenged. It is being argued that formalisation will only cement the current injustice distribution of land and could lead to further allocation of land to the rich, making the poor even poorer. Secondly that formalisation leads to risky mortgaging with the result that many poor in the end will lose their homes. In the process of making formalisation accessible to "all", it is important to look at instruments that could protect the poor from being marginalized.

Certainly there are many factors that need to be in place to boost the economies of poor countries and poor communities. Formalisation alone will probably have limited effect. On the other side, almost all countries already have in place some kind of legislation, systems and services for registering properties and licensing businesses. In the majority of developing countries however the services are so bureaucratic, time consuming and costly to use, that the poor are effectively left out. To me, that is a matter of injustice. At the same time this observation raises a major challenge to the existing institutions.

A CHALLENGE TO THE PROPERTY PROFESSION

It was very encouraging to read the Secretary General's invitation to this Congress (quoting some of the sentences);

During the two years which have elapsed since the last Congress held in Moscow, society has become increasingly aware of the importance of both Land and Mercantile Registries This is due to the now generalised convincement that a Registry is, or at least can be, one of the

factors which exert the greatest influence on the growth of a country and that it is, hence, useful as a tool in combating poverty.

Recognition of this importance, considered jointly with the unsatisfactory operation of Registries in some countries and the fact that they do not even exist in others, has served as an incentive to make a greater effort towards clarifying the basis on which the level of effectiveness of a Registry is determined.

This is a very promising statement. But a key question is to what degree registrars, notaries, property lawyers and land surveyors are open for change? If we want to make registration services accessible to the poor the registration costs have to be reduced to a fraction of what can be observed in most countries today. Is a 20 dollar registration possible?

The World Bank doing business reports provide very interesting information about the time and costs of making property transactions and using registries around the World. The level of services and costs differ very much without being correspondingly linked to the viability of the land market. Some countries do well without precise surveying of boundaries; some do well without requesting the assistance of notaries in property transactions, etc.

Indeed the new and highly profiled political interest for the formalisation and related registration services is very encouraging, but also a huge challenge to all working in this field today.

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