

LEGAL EMPOWERMENT OF THE POOR



EUROPEAN LAUNCH OF THE REPORT

Making the Law work for Everyone

25 May 2009, Peace Palace
The Hague, The Netherlands

This event was generously sponsored by:



The organizing partners of this event were:



INTRODUCTION

Background

On 3 June 2008, the Commission on Legal Empowerment of the Poor launched its report *Making the Law work for Everyone*¹, and presented it to the Deputy Secretary General of the United Nations. The Commission on Legal Empowerment of the Poor (The Commission) aims to make legal protection and economic opportunity not the privilege of the few but the right of all.

The Commission was convened by the United Nations Development Programme (UNDP)². The Commission emphasized four main areas of concern: access to justice and the rule of law, property rights, labor rights and business rights. A satellite launch of the report was held on 25 May 2009 at the Peace Palace in the Legal Capital of the World, The Hague with a day long conference on legal empowerment.

This report does not purport to reflect everything presented by the speakers or by the other participants in the interactive debates. Rather, Part I offers a brief summary of the individual presentations without reference to the subsequent interactive debates. Part II focuses on summarizing the Question and Answer session with Secretary Albright and Dr Axworthy. Part III focuses on the main issues discussed with the panel members. Part IV focuses on the critical reflections from the debate and discussion groups.

The Commission started its work in 2005 with a group of political and other leaders of global stature from both developing and industrialized countries including Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the United Kingdom, and completed its work in 2008.

Topic of and attendance at the meeting

The European Launch of the report for policy makers, practitioners and academics had three main goals: (1) raising public and policy/political awareness on the importance of legal infrastructure for development; (2) reflection on rule of law and access to justice programs and approaches on the basis of the report of the Commission; and, (3) innovation, by exploring what "The Hague" can contribute to the emerging global Legal Empowerment agenda.

There was a wide variety of participants at the meeting, including, the co-chair and a member of the Commission on Legal Empowerment of the Poor (Secretary Madeleine K. Albright and Dr. Lloyd Axworthy, respectively); the Mayor of the City of The Hague, Dutch Government officials; representatives from UNDP (including Under Secretary General Olav Kjørven); experts on Legal Empowerment of the Poor and development cooperation; representatives from European NGOs with programs on rights and access to justice; officials and professionals working at Hague-based legal institutions; and international students.

Format / Structure

The one-day meeting was comprised of three sessions, featuring a total of seven presentations. In addition, there were two interactive sessions which were meant to trigger debate and discussion on the meeting's topics.

The first and third sessions were policy seminars. The second session entailed the public launch of the report which featured a discussion with Secretary Albright and Dr. Axworthy.

¹ For the report please see: <http://www.undp.org/legalempowerment/report/index.html>

² Official website: http://www.undp.org/legalempowerment/clep_archive/index.html

I. BRIEF SUMMARY OF THE PROCEEDINGS

Making the Law Work for Everyone: Highlights of the Report Dr. Sam Muller, Hiil

On behalf of all organizing partners, Dr. Muller welcomed all participants. He stressed the importance of The Hague as a place where academia and practice often meet when it comes to questions of law, globalisation, security and development. This event was no exception.

As a backdrop to his brief remarks, a PowerPoint presentation with the highlights of *Making the Law Work for Everyone* was displayed.



PART 1: POLICY SEMINAR

How will UNDP work on Legal Empowerment of the Poor? Mr. Olav Kjørven, Assistant Secretary General for Development Policy UNDP



Mr. Kjørven started out by quoting Dr. Martin Luther King: “We are faced with the fierce urgency of now [...] there is such a thing as being too late.” He related this motto to the legal empowerment agenda, which is strongly connected to realising the Millennium Development Goals. The law and meaningful legal protection can be of tremendous value as a cornerstone in human development, not just in relation to economic development, but also as an element of human dignity and human rights.

Mr. Kjørven highlighted some of the main outcomes of the report:

- More focused attention to legal empowerment worldwide, while at the same time configuring development programmes to developing capacity that makes for legal empowerment.
- The need for a bottom-up approach towards legal empowerment, so as not to waste existing, already present capital.
- The number of projects aimed at improving the legal protection of the poor is growing rapidly, the launch events of the Commission’s report are a significant contribution the rise in legal empowerment projects worldwide.
- The recognition that more knowledge and knowledge dissemination about legal empowerment is required.

Mr. Kjørven ended his address by expressing the hope that the Hague-based academic and legal institutions could play a positive and leading role in creating and expanding global networks of lawyers, judges, policy makers, etc., who are committed to actually making the law work for everyone.

Keynote Address

Professor Julio Faundez, Dean of Warwick Law Faculty



According to Professor Faundez, legal empowerment of the poor should benefit more from interaction between academics and practitioners. For this reason, he praised HiIL's recent initiative of establishing the *Hague Journal on the Rule of Law*.

Professor Faundez distinguished two views in relation to the Report: a negative view, which perceives the report as overly legalistic and presents law as a cure-all; and a more favourable view, which takes the increased attention to the topic as a positive characteristic of this report. He spoke about two approaches on (re-)establishing the rule of law and legal empowerment. He discerned between a top-down approach which results from the enlightened human rights conventions and a bottom-up approach where societies, through a process of legal evolution, arrive at a market economy in a liberal legal framework.

Making the Law Work for Everyone rejects the top down approach as well as determinism in legal change in developing countries. Professor Faundez subsequently discussed some examples of endogenously grown legal empowerment projects. Lastly, Professor Faundez noted the following lessons learned:

- There is no single model for achieving legal empowerment.
- The Commission on Legal Empowerment of the Poor asks donors to renounce abstract legal theories and determinism in economic development.
- Understanding people's demands is as important as understanding (social) institutions.
- The report guides the way, but now we need to improve its valuable insights.

Critical Appraisal and Ways Forward

Mr. Stephen Golub, Boalt Hall, UC Berkeley

Mr. Golub noted that becoming a rule of law abiding state is an ongoing process. In this sense, he referred to the Bruce Springsteen song *The Promised Land*; no country is there yet, but all strive to become one. He went on to discuss two major accomplishments of the report.

First, he praised the Commission for putting legal empowerment of the poor even more on the international map. Secondly, development practitioners are now encouraged to focus their efforts on helping build institutions that devote their attention to the position of the poor in law and governance.

On the other hand, there are topics of great importance which were somewhat missed by the report. Chiefly, Mr. Golub pointed out that the existence of formal laws is one thing; access to justice and the actual realization of these rights is much more important.





Marketplace of Ideas Summarized Professor Maurits Barendrecht, TISCO

The ideas and approaches of four different Legal Empowerment initiatives were briefly discussed and summarized by Professor Barendrecht.

In the presentation on “Facilitadores Judiciales Rurales Nicaragua” lead by **Pedro Vuskovic** from OAS, it was discussed how with minimal costs and basic training of judicial facilitators, this programme has proved it can contribute to conflict resolution, protecting business and women rights. It was noted that expanding the programme would be valuable.

The presentation on Microjustice, lead by **Toon Bullens** from the Microjustice Initiative, focused on how a joint venture of actors, aimed at developing and implementing low-cost solutions to problems of access to justice can be achieved. This is done through raising awareness and by fostering global networks of experts and partner organizations.

In the presentation “New Perspectives on Human Rights and Poverty,” **Harry Hummel** from Amnesty International highlighted how enhancing human dignity and improving human rights conditions can play a hugely important role in poverty reduction. Amnesty International aims to improve the overall level of human development by creating awareness of the law and empowering the poor in their rights.

The presentation about Oxfam Novib’s legal aid program in Cambodia, lead by **Marco de Swart** from Oxfam Novib examined why Cambodia is one of Oxfam Novib’s prime target countries with regards to the legal empowerment agenda. The causes for this focus are: the legacy of genocide, internal conflict and the general weakness of the judicial system. The programme is chiefly aimed at the reconstruction of civil society, by helping create a rights based society in cooperation with local partner organisations.



PART 2: PUBLIC LAUNCH EVENT



Welcoming Remarks by Mr Jozias van Aartsen, Mayor of The Hague

Mayor van Aartsen welcomed both the distinguished speakers and the audience to The Hague. Ever since The Hague Peace Conferences, The Hague has been known around the globe as the World’s Legal Capital, a result of the many international courts based here. Mayor van Aartsen stated The Hague’s intention to bolster its position as the world’s Legal Capital by establishing an Institute for Global Justice. Secretary Albright will become a member of the Supervisory Board of this newly-founded institution.

Remarks

Secretary Madeleine K. Albright, Co Chair of the Commission on Legal Empowerment of the Poor; Former U.S. Secretary of State



Secretary Albright started out by thanking the sponsoring organisations for hosting this event. The rule of law is properly cherished and understood in The Hague. Secretary Albright stated that legal empowerment should be understood as a fundamental right, not as a privilege.

A majority of the world's population cannot rely on the law for protection, and over 80% of property and people remain unregistered. Without legal status they are unable to invest or borrow funds, and are easy targets for exploitation, making it more difficult to escape from poverty. Another adverse effect of a lack of legal protection is the fact that those who feel unprotected by the law and the legal institutions see less need to be bound by the legal framework. Therefore, they are more likely to respond by joining gangs, or pursuing other criminal activities.

There are four ways in which legal empowerment may lead to sustainable economic growth: by giving all a legal identity; by registering property rights; by maintaining labour rights; and, by enforcing business rights so that small companies can compete in the market.

Legal empowerment strategies have to be adapted from one country to another – there is no cookie cutter approach; however the ultimate goal should stay the same. Here, cultural anthropological knowledge can give valuable support to lawyers. Political will is an absolute precondition for legal empowerment programmes to succeed, however positive steps can be greatly supported by grassroots social initiatives among disadvantaged communities striving for the same goal.

Remarks

Dr. Lloyd Axworthy, Member of the Commission on Legal Empowerment of the Poor; former Canadian Minister of Foreign Affairs

Dr. Axworthy thanked both the audience and other speakers. Dr. Axworthy spoke about how he became involved in the work of the Commission. He was asked by Secretary Albright to join the Commission right after his return from Peru, where he spoke with presidential candidate Toledo. When Dr. Axworthy asked Mr. Toledo about his biggest difficulty running for elected office in Peru, the latter said that it was the fact that one million Peruvians do not exist in legal terms, since they are not registered and are consequently left without any rights. Thus, Ms Albright's call came at a fitting moment; Dr. Axworthy was determined to help these so-called non-existent people.



Now is the time to translate the talk about rule of law in development cooperation into concrete action whereby the interests and needs of the poor are of central importance. Standards and norms laid down in international treaties and conventions can provide guidance in this process, however, we must remain cautious that all our efforts are carried by bottom-up demand for change. Legal empowerment can cause tremendous social change, just by registering people they can become full participants in society.

II. DISCUSSION WITH SECRETARY MADELEINE K. ALBRIGHT AND DR LLOYD AXWORTHY

Secretary Madeleine Albright, Co-Chair of the Commission on Legal Empowerment of the Poor and **Dr. Lloyd Axworthy**, Member of the Commission on Legal Empowerment of the Poor discussed the report, moderated by **Fiona Campbell**, Radio Netherlands Worldwide.

1. *Why did you focus your experience on this project?*

Albright: The large number of poor people is a critical problem; central to my life is trying to find ways to help them, and I was looking for the best tool. Democracies can only flourish when everyone participates and the poor grow to become middle class.

2. *How do you convince poor people that legal rights will help them?*

Albright: Well, one important thing is to make it simpler for people to become real citizens in their societies. We have to persuade them that if they don't have an identity and can not register land tenure, they have to operate in a way that keeps them outside of the formal economy.

Axworthy: If people know their rights, they could have better access to justice. It sometimes requires intervention by a third party. In a country like Tanzania, where many are living in poverty, one of the most important elements of human development is to know that one has the right to become a citizen, be registered and obtain a legal status.

3. *Many say you advocate too much of a top-down approach, what do you think?*

Albright: Absolutely not; it is about empowering people – don't they need a stronger voice in government affairs, and don't they need human development? One of the critical elements in improving the rule of law is the classical conflict between individual rights and state intervention.

Axworthy: Important in this endeavor is to help, organize and support grassroots initiatives. In Sierra Leone we saw training from village to village in legal affairs and peaceful conflict resolution. Such grassroots activity is of the greatest importance, also in combating crime, which can be a huge problem in some societies. Being denied rights often creates an environment in which criminal activities emerge.



4. *Are you saying the legal systems are already in place but not being implemented?*

Albright: There are formal and traditional legal systems of some kind in most countries. That's what we meant about no cookie-cutter approach. But sometimes there are laws on the books that are not interpreted in any way that makes sense. For example, inheritance by women may be part of the formal legal system, but tradition may not allow it. There must be some top-down interventions and training, as part of the bottom-up approach. We hope there are a lot of wonderful people that work with developing countries and poor that have additional tools in this process.

Axworthy: People are interested in change when they are going through a transition, which is also when they are most vulnerable. Here, law becomes important to provide stability. The World Bank says 2 million kids are dying from economic realignment – making this exactly the right time to intervene by making legal empowerment a top issue.

5. *What are you asking from the international community? How do you want the world to contribute?*

Albright: I want legal empowerment to be part of our dictionary – like sustainable development already is. We are very happy to get a UN General Assembly Resolution on the report, which signifies the importance of this topic. Since The Hague is the center of the international legal community, spreading the word here should be especially important. Moreover, The Netherlands counts as one of the biggest per capita donors in development cooperation. This combination of law and development makes this a great place to begin the debate.

6. *What evidence have you seen indicating that you've embarked on the right road?*

Axworthy: The General Assembly Resolution is a good start. One thing that makes concrete action possible is that as a result of the internet, we can now get information to many people around the world. The report is published on the website and will be disseminated everywhere in various languages.



DISCUSSION WITH PANEL MEMBERS

A panel composed of **Maarten Brouwer**, Netherlands' Ministry of Foreign Affairs; **Julio Faundez**, Warwick Law Faculty; **Stephen Golub**, UC Berkeley; and, **Olav Kjørven**, UNDP went on discussing the Report and the previous session featuring Dr. Axworthy and Secretary Albright. The panel was moderated by **Fiona Campbell**, Radio Netherlands Worldwide.

1. *We're going to discuss how to implement these new policies and values. What are your views?*

Mr. Golub: First, I would like to praise this effort and the Commission did a great job – touching on important issues like paralegals, social activism, rule of law schools, but we may differ on whether governments are always centrally important to legal empowerment. There have been times that civil society was the incubator of change. Yes, sometimes governments have helped, but many times it was civil society that was the driver of change. I would attach more importance to civil society and not primarily rely on governments.

2. *Have poor societies been doing enough to help themselves?*

Mr. Kjørven: Many times civil societies have looked away from this topic and turned to other important things, like medical assistance, improving markets and/or infrastructure, etc. We have rarely seen a concerted effort by civil society to address complicated issues of access to law; and even less effort to create a real change. Both societal and governmental efforts are necessary to achieve real breakthroughs.

3. *Do you think this report appealed enough to allow the poor to create their own solutions?*

Mr. Brouwer: Well, the fact that concepts have been shared is a major step forward. In the field of development, we often see a degree of ambiguity in concepts and methodologies that are employed.

4. *We don't deny that we have a responsibility to protect – but why can't we do that? And why is this approach attractive to development?*

Professor Faundez: An important issue is that many people don't exist on paper and getting them registered and getting legal identity is a very important step forward, but it is only a first step. In fact, this is just a formal step, but it can have tremendous meaning in all sectors of social interaction. I'd like to highlight that the phrase law and development was mentioned early on because it is now part of the development agenda, which wasn't true 20 years ago. The report has actually indicated a deficit in the way law has been incorporated into the development agenda, because it is just as important for governments to be involved as it is for civil society.

5. *Who is responsible for taking these initiatives forward?*

Mr. Brouwer: Hopefully all governments will be interested. The Dutch government is particularly strong in two aspects: the area of humanitarian assistance (together with security and safety) and also in the area of business law, by making sure ownership is granted on legal basis.

6. *This report stated that UNDP must take the lead. What strategies are you going to employ to assist in legal empowerment?*

Mr. Kjørven: Well, old habits die hard. In our organization and in many different development organizations you find various disciplines working there, however all now share a conviction that the legal empowerment agenda is very much a cross-cutting theme. Is legal development vital? Yes it is, but not all see it that way right now. It's important to demonstrate that it's better for society as a whole and thus for the entire economy.



7. *But how will you use your influence to exert power over governments?*

Mr. Kjørven: Well, we don't have the financial muscle of the World Bank, so we work with governments in order to provide them with information.

Mr. Golub: Legal empowerment is about much more than law; the greatest array of impacts may come from bilateral donors. Not all interventions will be within the legal sphere, but integrating people's rights to healthcare, women's rights and subsequently giving people the tools to act on those rights is vital. I'm working on the situation in Pakistan – the country's in a mess – with lots of ramifications beyond the borders. Keeping the Taliban cancer from spreading, we can better focus on social justice activities instead of flushing millions of dollars to build a central judiciary.

8. *Do you have concerns that grassroots levels won't be engaged?*

Mr. Golub: Civil societies can be corrupt as well, but most dynamic initiatives – though not called legal empowerment – have come from community-based groups and the like, acting on behalf of impoverished citizens. In some countries the best approach involves these methods.

Mr. Kjørven: Over the years, we've unfortunately seen many issues where we've ended up in unfortunate politicized North-South discussions, but on this issue there is a different dynamic, with a lot of excitement on all sides.

9. *Did you think it was wise and correct to flesh out four pillars in the Report? And, do you agree with this particular order? (Legal identity, property rights, labor rights, business rights).*

Professor Faundez: I would have liked them to go a bit further into the political implications of their recommendations. Like labor rights: it starts with a vast majority of poor people working in the informal sector who don't have access to legal rights, but how do you move from no rights to rights? Well, international labor standards can be helpful. But if you look at them, they've been developed with the conception of a factory of 100 people and that they are joining unions in large groups. One must be aware that there is a political dimension, because what we've had the past few years is denial that countries already have a legal infrastructure.

10. *In terms of implementation, what should be the time frame?*

Mr. Kjørven: The good news is that it's already happening today, in many countries including expanding access to justice. It's not like nothing is happening, but the challenge of creating momentum remains.

Mr. Golub: For real impact to develop, you are looking at at least 5-10 years, because development is a long-term process.

Part 3: Policy Seminar (cont'd)



There were five interactive sessions on Legal Empowerment and Development Policy/Millennium Development Goals. The policy agenda workshop was lead by **Maaïke de Langen, former UNDP**; the empowerment of women workshop was lead by **Helen Hintjens, ISS**; the capacity enhancement workshop was lead by **Julio Faundez, Warwick**; and **Beer Schroder, NUFFIC**; the NGOs workshop was lead by **Marco de Swart, Oxfam Novib**; **Zaza Namoradze, OSI**; and **Stephanie Joubert, Cordaid**; the monitoring and measuring progress workshop was lead by **Martin Gramatikov, TISCO**; and **Stephen Golub, UC Berkeley**.

The **policy agenda workshop** focused on the changes that were needed in government policy to make head way in the legal empowerment sector. Three items were discussed:

- There should be a more economic approach towards the 'supply side of the law', i.e. listen more carefully to citizens' demands
- A legal perspective on the economy is called for: business rights and property rights are of the utmost importance.
- Prioritizing and sequencing is always a difficult matter in rule of law interventions. Leadership and innovation are key concepts here, local methods and grassroots opinions may help in setting priorities more wisely.

In the **empowerment of women workshop**, some of the crucial items that were noted included:

- The fact that visibility and (legal) identity are interlinked concepts, special attention should be given to the fact that not each and every person wants to be visible in society.
- Culture and religion are particularly important factors in the pursuit of enhancing women's rights. Mitigating universal human rights with these local constraints is of great importance.

In the **capacity enhancement workshop** it was suggested that:

- Schools may develop distance learning programmes so that people from developing countries do not have to travel in order to receive a high-level education.
- There should be funding for the training of paralegals and that local organizations may contribute to this training.
- It is important to show cases of successful program implementation to secure more funding from donors.

In the **NGOs workshop**, several poignant observations were made:

- There are new methodologies emerging. There should be pilot tests of these methodologies, which are then evaluated by the local partner.
- Grassroots organizations should have a voice: why not include them in the debate?
- NGOs can develop evidence based approaches to show that legal empowerment is effective.

In the **monitoring and measuring progress workshop**, challenges and solutions were defined:

- We should begin by conducting research in the form of surveys, focus groups, and case studies, among others.
- Challenges include deciding exactly what to measure (is it more important to provide the poor with more power or more money), and why (to present the outcomes to policy makers).
- Measurement should be a part of the program itself, and progress should be measured during and after the program.

PART 2: CLOSING REMARKS BY THE PANEL



The Panel Chair was **Maurits Barendrecht**, TISCO. The Panel was composed of **Zaza Namoradze**, OSI; **Julio Faundez**, Warwick Law Faculty; **Sam Muller**, HiiL; and, **Ashwani Saith**, ISS.

Professor Saith observed that the central thesis behind the report is that some kind of capital can be achieved by being able to trade goods. Similarly, giving people rights of tenure so that they will invest more may help to pull them out of poverty. A question to consider is: are there circumstances in some societies such that land reform can be hijacked by well-connected people? Corruption is a critical theme in developing societies.

Professor Faundez is glad that economists have supported the need for legal development, as development is not just about economics or just about legal development – it is the combination of the two that will ultimately result in success.

Mr. Golub felt that the most remarkable comment came from Ms. Albright, when she remarked that one does not have to use the same “cookie-cutter” fix for everything. Mr. Golub further remarked that Secretary Albright and Dr. Axworthy discussed social movements more than was mentioned in the report, where it was just a footnote. The lack of focus on gender in the report was also a lost opportunity.

Dr. Muller noted that we heard today about the “promised land”. While The Hague is the global center of gravity for rule of law issues, our point of departure should not be The Hague as a geographical entity, as we can also have seminars in other countries. Secondly, he was impressed by “bringing academia into the debate”. Many policymakers are making claims and doing interesting things – just like those in academia. This meeting was a great opportunity to bring different sources of knowledge together. Furthermore, if you want economists and lawyers to work together, you have to employ a multi-disciplinary approach. The topic of legal empowerment is definitely one that should be on the desk of world leaders.

