



Commission on  
**Legal Empowerment**  
of the Poor

# **SURVIVAL IN THE SHADOWS**

**Law, Development, Poverty and  
Security**

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# **Presentation to American University, Washington DC**

**School of International Service  
Human and Global Security in the  
New World Order  
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## Outline of Presentation

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- **The historical experience development co-operation between North and South over the last 60 years**
- **Rethinking Development Co-operation after 1989, end of the Cold War**
- **New thinking at the end of the century and opportunity for earlier ideas**
- **Rule of Law and links to security and economics**

## Outline Continued

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- **Capitalism and Democracy : Interactions**
- **Human Rights and Markets**
- **The Commission on Legal Empowerment of the Poor and its thematic areas: Access to Justice and Rule of Law, Property, Labor and Business Rights**
- **Towards an Agenda for Research and Teaching**

## Experience of Development Co-operation

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- **Economic growth**
- **Social Development**
- **Socio-Economic Development**
- **Human Development**
- **Basic Needs Approach**
- **Endogenous Development**
- **Sustainable Development**

# The Development Experience

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- **Invention of “underdevelopment” as political ideology on January 21, 1949**
- **Development as the lifestyle of North America and Western Europe**
- **Top down, expert driven**
- **Designed as a project**
- **Linear thinking, log frames, etc.**
- **Needs based or worse still supply based**

## Rethinking Development after 1989

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- **Focus on policy vs project**
- **Governance and politics**
- **From states to new array of actors**
- **From state security to human security**
- **From right to intervene to responsibility to protect**
- **From environment vs development to sustainable development**
- **From North vs South to our common future**

## Ideas at the turn of the century

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- **Sustainable development and sustainable livelihoods: the assets approach**
- **Impoverishment and empowerment, human development, human poverty**
- **Development as freedom**
- **The third moment of law and development**
- **Institutions: politics, economics, loyalty and competition**



## Rule of Law

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**The rule of Law implies fidelity to the following principles:**

**The Law is superior to, and thus binds, the government and all its officials.**

**The Law affirms and protects the equality of all persons. By way of example only, the law may not discriminate against persons by reason of race, color, religion, or gender.**

**The law must respect the dignity and preserve the human rights of all persons.**

**The Law must establish and respect the constitutional structures necessary to secure a free and decent society and to give all citizens a meaningful voice in formulating and enacting the rules that govern them.**

**The Law must devise and maintain systems to advise all persons of their rights and just expectations, and to empower them to seek redress for grievances and fulfillment of just expectations without fear of penalty or retaliation.**

**- Supreme Court Justice Anthony Kennedy**

# Capitalism and Democracy

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- **Capitalism: to enlarge the economic pie**
- **Democracy: system through which citizens join together to determine the rules of the game whose outcomes express the common good( sharing the pie)**
- **Power has shifted from us as citizens to us as consumers and investors**
- **Capitalism is doing its job but democracy is not**
- **Capitalism seems a prerequisite to democracy but not the reverse**

## Human Rights and Markets

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- **Human rights are social contracts whether the source is natural, divine, utilitarian or Rawlsian**
- **Four LEP rights to be proposed as basic rights**
- **Full social consensus on the acceptance of these rights will depend on expanding economic growth consistent with these rights**
- **States will have to act in collaboration with other agents using the market mechanism**

# The Commission on Legal Empowerment

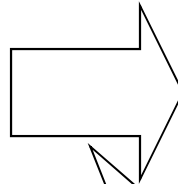
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- **Goal: to make protection and economic opportunity the right of all not the privilege of the few**
- **Growing informal sectors: extra-legality with no health insurance, no social security, no security of tenure, little access to commercial loans, no bankruptcy protection, little or no access to justice or rule of law, not even a legal identity!**
- **BUT some apparent advantages: no taxes, etc.**

# Legal Empowerment: Structured for Impact

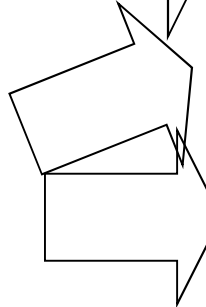
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**Working Groups:** teams of experts and practitioners from around the world



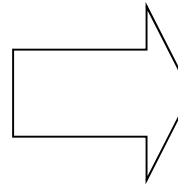
Create thematic **Working Group reports** and contribute to the **Final Commission Report**

**National Consultations:** conferences organized with partners in the field, national experts and grass roots organizations that provide first-hand understanding of the issues



Set the stage for **national reform**

**Commissioners:** global policymakers dedicated to Legal Empowerment's mandate



**Advocate for change** at the national, regional and global political levels

**Board of Advisors:** leaders from multilateral agencies, civil society and private sector who provide independent counsel and global support

**Incorporate the legal empowerment agenda into current work** being done by civil society networks and multilateral agencies, such as the World Bank and UNDP

## Legal Empowerment Goals

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**In many developing countries, more than 75% of people live and work outside the formal legal framework**

**The Commission is working towards:**

- I. How to make justice systems more friendly to the poor**
- II. How to make property rights (including land rights) work for the poor**
- III. How to maintain labor standards without reducing profitability of firms**
- IV. How to expand legal business opportunity including increased access to finance for poverty reduction**
- V. How to make legal empowerment reforms work for the poor**

## **I. Access to Justice and Rule of Law**

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- **Lack of legal identity: indigenous, stateless, displaced**
- **Ignorance of legal rights**
- **Lack of access to legal services**
- **Unjust and unaccountable legal institutions**
- **Denial of fundamental rights**
- **Customary, formal and informal systems**

## II. Property Rights

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- **Property Rights as Human Rights (Article 17)**
- **At the heart of wealth creation and therefore contentious**
- **Right to have private property rights whether individual or collective**
- **Need for systematic change, not technical fixes such as and titling which usually fail on their own**
- **Property rights as bundles of rights, which might be thick or thin**



### III. Labor Rights

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- **Informality, productivity and poverty**
- **Quality of regulations**
- **Lack of social security and protections**
- **Balancing labor rights with efficient markets**

## IV. Legal Mechanisms to Empower Informal Businesses

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- **Inability to use the law for specialization, division of labor, market outreach**
- **Institutional barriers to formal economy: complicated procedures (entry/exit, expansion of business contracts, conflict resolution)**
- **Health and environmental risks**
- **Lack of appropriate credit and capital instruments, limits of microfinance**
- **Lack of social security/protection**

## V. Implementation: Making Reforms Work for the Poor

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- **Develop country tailored tool-kits and monitoring devices that are empirically tested and found to be functional**
- **Constitute an inventory of information and empirical examples of legal empowerment in different countries**
- **Evolve instruments for monitoring and evaluation, such as indicators of legal empowerment that may be used to asses reform progress**

## National Consultations

ONGOING	COMPLETED	
Benin	Brazil	Mexico
Mali	Bangladesh	Pakistan
Mauritania	Ethiopia	Philippines
Morocco	Egypt	Sri Lanka
Mozambique	Guatemala	Tanzania
South Africa	India	Uganda
Zambia	Indonesia	CIS & Southeast Europe
	Jordan	
	Kenya	

## Towards a Research and Teaching Agenda

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- **Measurement issues: Measure the extent of informality or extra-legality in DC (other city)**
- **Measure the level of rule of law in DC (or other city) using RoL Index etc.**
- **Measure the level of property, labor, business rights**
- **Can we combine these in some way to measure Legal Empowerment?**

## Research and Teaching Agenda: Desk Research

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- **What is the level of inequality in DC?**
- **What are the trends over the last few decades?**
- **How can these trends be explained?**
- **What can we project for the future?**
- **What is the level of poverty in DC, what are the trends and what are the impoverishment or empowerment factors at work?**
- **What research currently exists in DC on LEP, as we have defined it?**

## Research and Teaching Agenda: Policy Questions

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- **Is there a relationship between LE and inequality, or poverty or security?**
- **What is the nature of the relationship and how can it inform policy?**
- **Is there a relationship between extra-legality and security in DC?**
- **Can LE help foster democracy and good governance?**
- **Identify and describe concrete cases of how power can remain a positive sum game?**



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