

# Styrking av de juridiske rettigheter for fattige

## En strategi for en inkluderende utvikling i dag og ut over 2015

Olav Kjørven og Timothy Dolan

*Olav Kjørven and Timothy Dolan: Legal Empowerment of the Poor. A strategy for inclusive development for the present and beyond 2015.*

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Legal empowerment of the poor (LEP) focuses on rights and access to rights related to ownership and use of property, employment as well as entrepreneurship which are critical for enabling the poor to build and maintain livelihoods. It proposes that stronger and enforceable property-, labour- and entrepreneurial rights help communities and societies reap benefits. Legal empowerment insists that real life experiences of poor people must be the starting point for development efforts. It suggests that strengthening legal identity, voice and standing are as essential for poverty reduction as social services. This article provides insight into the evolution of LEP from a concept to a major tool for fighting poverty, exclusion and injustice. After briefly explaining what LEP is and what it can bring, we look at the origins of LEP, as formulated by the Commission on Legal Empowerment of the Poor. We then continue with a brief description of how the concept is being integrated by the UN System and the challenges LEP's global uptake has faced, followed by insights into UNDP's experience in implementing LEP in its development efforts. The article then illustrates key linkages between LEP and work being undertaken to meet the Millennium Development Goals (MDGs) and argues that LEP is essential for sustaining MDG gains. We conclude with a forward-looking perspective in which LEP as a development paradigm is becoming a major component of poverty eradication policies in a post-2015 setting.

*Key words:* legal empowerment of the poor, inclusive development, Millennium Development Goals, UNDP

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### Introduction

Recognizing that access to justice and the rule of law are essential for poverty reduction and development, legal empowerment of the poor (LEP) focuses on rights and access to rights related to ownership and use of property, employment as well as entrepreneurship which are critical for enabling the poor to build and maintain livelihoods. It proposes that stronger and enforceable property-, labour- and entrepreneurial rights help communities and societies reap benefits – including more equitable and robust economic growth, improved food security, more sustainable land management, better adaptation to climate change and the prevention of conflict.

Marking a shift in how we approach development, legal empowerment insists that real life experiences of poor people must be the

starting point for development efforts. It suggests that strengthening legal identity, voice and standing are as essential for poverty reduction as social services. In essence but also in practice, LEP combines bottom-up and top-down approaches to development, empowering people to demand and exercise their rights while at the same time strengthening institutions to be more responsive to the needs of citizens.

Take for example the case of upgrading a country's cadastre: rolling out a top-notch land information system may be necessary but in itself is not sufficient to improve the quality of life of the poorest and most vulnerable. It will come as no surprise to readers of this journal that the broader context, including the realities of socio-economics, access and rights must also be considered so as to give poor people a fighting chance

within an inclusive setting. It is all in the 'how'!

This article provides insight into the evolution of LEP from a concept to a major tool for fighting poverty, exclusion and injustice. After briefly explaining what LEP is and what it can bring, we look at the origins of LEP as formulated by the Commission on Legal Empowerment of the Poor. We then continue with a brief description of how the concept is being integrated by the UN System and the challenges LEP's global uptake

has faced, followed by insights into UNDP's experience in implementing LEP in its development efforts. The article then illustrates key linkages between LEP and work being undertaken to meet the Millennium Development Goals (MDGs) and argues that LEP is essential for sustaining MDG gains. We conclude with a forward-looking perspective in which LEP as a development paradigm is becoming a major component of poverty eradication policies in a post-2015 setting.

#### Legal Empowerment of the Poor – Defining Features

LEP builds upon the human rights-based approach to development within the broad sustainable human development paradigm. Accordingly, LEP:

- Protects the basic rights that enable poor people to fully realize their economic potential and improve their livelihoods;
- Recognizes the importance and potential of the informal sector and ensures its inclusion in the economic cycle;
- Focuses on property rights, labour rights and facilitates the entrepreneurial spirit of poor people by targeting the legal conditions and enabling environment for setting up and running businesses;
- Supports and underscores concrete measures to empower women and children and protect their rights;
- Combines bottom-up with top-down approaches, and emphasizes the importance of identity, voice and representation of the poor;
- Translates access to justice as a basic public service and focuses on economic and social analysis and efficient delivery of justice services.

LEP is not a substitute for other important development interventions; however it offers an integrated approach that can be contextualized across very diverse regions and countries.

#### Commission on Legal Empowerment of the Poor

In 2008, the Commission on Legal Empowerment of the Poor (hereafter, the Commission), co-chaired by Secretary Madeleine Albright and Hernando de Soto, issued its report<sup>1</sup> which identified some critical yet not adequately addressed causes of the persistence of poverty: lack of effective protection by the law for the vast majority of poor and disadvantaged people, legal and institutional obstacles that diminish opportunities for them to leverage any owned assets and claim their rights and entitlements, and a host of policy and market failures. In fact, the Commission estimated that at least four billion

people are excluded from the rule of law. Their lives and livelihoods are guided by informal systems that do not allow them to use legal frameworks to protect their assets, homes or businesses or benefit from global labour standards and an operating property rights and land tenure system. Consequently they lack access to social protection and other opportunities to improve their quality of life by leveraging legal frameworks and institutions that fortify society. The Commission offered recommendations to address the scale of the problem and provided an agenda for change to stimulate poverty reduction and make the law work for everyone through interventions in the areas of property rights,

1. For more information about the Commission on Legal Empowerment of the Poor, see the final report «Making the Law work for Everyone» volumes 1 and 2, and visit [www.undp.org/legalempowerment](http://www.undp.org/legalempowerment).

labour rights and business rights<sup>2</sup> underpinned by access to justice.

### **State of play**

#### ***Global uptake of LEP***

Much has happened in the LEP arena since the Commission issued its final report. Recognizing that LEP is essential to eradicate poverty, the UN General Assembly has referred to the Commission's report and its recommendations and called upon UN organizations and member states to undertake appropriate follow up action<sup>3</sup>.

*«While it is not a substitute for other important development interventions, legal empowerment of the poor can be a necessary condition to create an enabling environment for providing sustainable livelihoods and eradicating poverty.»<sup>4</sup>*

#### ***Challenges, but mainly opportunities***

Despite the promises LEP seeks to deliver, challenges remain, especially in translating theory into practice. On the demand-side, for example, there is no doubt that LEP can be highly political. Depending on their nature, reforms may threaten vested interests. Successfully implemented, however, LEP reforms will lead to win-win situations, although not everyone will necessarily be a winner from the start. It is, for instance, unlikely that officials used to supplementing their earnings with receipts from petty corruption will encourage reforms for streamlining administrative procedures to quash such fraudulent behaviour. Getting the reforms right from the beginning therefore requires careful balancing of incentives and disincentives so stakeholders buy in to them and are able to recognise their enlightened self-interest. Building strong partnerships with counterparts and identifying champions (also at

the highest level) must be part of any set of tactics for reform.

Ignoring exclusion for too long and failing to address the factors that lock people out from opportunities to improve their livelihoods may have consequences for those in power at some point. In some case, it can lead to instability, as recent and ongoing developments in the Arab world demonstrate. However, addressing these issues head-on can spur progress, both for people as individuals and for nations as a whole.

The report of the Commission, followed by the recommendations of the Secretary-General and the consensus reached by the General Assembly in two GA resolutions, have built a solid baseline by explicitly recognizing LEP as being essential to eradicating poverty. Although there is general enthusiasm about the importance of LEP for sustainable human development among the donor community, getting its constituents to put their money where their mouth is has not always been easy. For some it is perhaps out of prudence as they await others to take a first step in undertaking such a new initiative. For others, the fruits of LEP reform might take longer to ripen than the typical time span of 3–4 years in many traditional programme approaches.

But LEP, to quote financier and philanthropist George Soros, «is a movement that has legs and will go a long way!»<sup>5</sup>

#### ***UNDP's vision for Legal Empowerment of the Poor***

UNDP hosted the Commission from 2006–2008. During this time, UNDP supported several national consultations held by the Commission. After the global launch of the report, UNDP organised regional launches, dialogue processes and discussions focusing on the development challenges in specific regions. In 2010, UNDP's Democratic Governance Group started addressing the LEP

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2. Business rights denote rights related to meeting the unmet demand for setting up business enterprises including the right to be registered as legal entities, principles of non-discrimination and equal opportunity to access capital and markets. It is not an established area of law or recognized as International Human Rights.
  3. The UN General Assembly adopted two resolutions (A/RES/63/142 and A/RES/64/215) recognizing that Legal Empowerment of the Poor is essential for eradication of poverty. The UN Secretary General submitted his report to the General Assembly in July 2009 (A/64/133).
  4. Secretary-General report to the General Assembly on legal empowerment of the poor and eradication of poverty (A/64/133).
  5. High-level Roundtable on LEP, European Development Days, Stockholm, 23 October 2009.

agenda in an integrated manner with the view of rolling it out throughout UNDP and in close partnership with country offices, regional centres and bureaus. As a starting point, and building on the strengths and existing linkages with the work of UNDP's Democratic Governance Group and the Bureau for Development Policy as a whole, the LEP dimension was mainstreamed into the Access to Justice, Human Rights and Public Administration/Local Governance portfolios. These programmes have been engaging in collaborative efforts with other parts of the organisation, and it is exciting to note that many concrete proposals for joint work are currently being developed along the three main thematic foci of MDGs, Land Governance, and Informality.

#### *Country examples*

Today, an increasing number of projects incorporating components of LEP are being implemented, demonstrating the growing demand for LEP<sup>6</sup>. This work has begun to foster understanding of LEP needs in different parts of the world and has also led UNDP to begin to investigate viable strategies to replicate and scale up effective interventions based on «what works» in the LEP landscape.

While regional demand builds upon the needs of constituent countries, the sequence of LEP activities at the national level is led by each country's respective priorities and requirements. For instance, the experience in Asia highlights the need for access to justice as the foundation for the work on LEP in the region. In the region comprising Arab states the emphasis is on the need to explore solutions to bring efficiency into the informal economy and provide access to property (land) rights. In Europe, LEP programmes have mainly addressed issues related to informality in the ownership of property and housing. LEP work in the West Africa region calls attention to property and inheritance rights particularly for women.

UNDP's country-level experiences are wide ranging too. For instance, in Montenegro the UNDP has partnered with the gov-

ernment and other stakeholders to assess mechanisms to regularise property ownership. In Indonesia, UNDP is employing an LEP approach to expand access to justice in five provinces. Strategic or public interest litigation to protect and help fulfil social and economic rights is becoming a phenomenon in the Arab region. Examples of such cases being registered in various countries include: Egypt (minimum wages, universal health coverage, collective forced eviction, safeguarding the rights of entrepreneurs in the informal sector, etc.); in Lebanon (freedom of organization); Kuwait (turning down the obligation to wear the veil in political public life; endorsing women's right to obtain a passport without their husband's approval); Sudan (against the government for inability to provide Khartoum residents with potable drinking water). These cases are being mapped by UNDP's Regional Centre in Cairo in partnership with the Arab Organization for Human Rights. In Africa, UNDP is working with its country offices in Liberia on community land titling systems and in Mozambique and Uganda on strengthening the land rights of women and security of their tenure. Human rights and legal education training programmes, such as those supported in Bangladesh, assist citizens in exercising their rights effectively and for their betterment.

In addition, the Democratic Governance Trust Fund, which allows UNDP to leverage good ideas for governance with fast and flexible non-core funding for innovative and catalytic projects, has received over six new country proposals on LEP this year, stemming from all regions and covering all aspects of this exciting agenda. Apart from the UN System – twelve organisations indeed provided input about their LEP work for the Report of the Secretary-General – numerous non-governmental organisations, other civil society actors and academic institutions are deeply engaged in LEP. UNDP, for example, is exploring and developing partnerships with the *International Labour Organisation* in the context of social protection, the *International Development Law Organisation* and

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6. As evidenced by the 2010 response to calls for proposals for the Democratic Governance Thematic Trust Fund in which five of the selected DGTTF projects explicitly address LEP.

the *Open Society Justice Initiative* with respect to access to justice, with the *Institute for Liberty and Democracy* to address informality and with *Harvard University* on a mix of LEP issues.

*LEP: a recipe for accelerating achievement of MDGs and maintaining gains*

Through its emphasis on social justice and equity, LEP is central to achieving the MDGs and addressing the structural causes of poverty and exclusion. In September 2010, one of UNDP's core messages to the record number of heads of states and government attending the MDG Summit was that achieving the MDGs by 2015 is still possible. Despite the significant challenges, the development and international communities have the knowledge, experience and resources to close the gap.

LEP provides a fresh methodology to sustain and accelerate progress to achieve MDGs by better aligning development interventions for the poorest with national MDG priorities, plans and strategies. MDG assessments reiterate that it is important to learn from experiences of the past. For example, evidence shows that investing in expanded opportunities for women and the girl-child and advancing their economic, legal and political empowerment has strong multiple benefits for all MDGs. Increasing access to energy, water and sanitation for poor people has been shown to have a fundamental impact on MDG measures related to poverty, health and education. And, investing in broad access to clean energy options has proven critical for a more sustainable, low-carbon future for all. Robust social protection and employment programmes reduce poverty as well as vulnerability to shocks and can also reverse inequality. LEP can effectively contribute to the above areas and therefore the *MDG Acceleration Framework* (MAF), UNDP's innovative approach designed to help countries identify and resolve barriers to eradicating extreme poverty. LEP can also effectively contribute to achieving sustainable development by identifying bottlenecks to MDG progress at the country-level, as well as near-term solutions to overcome them.

In a relatively short lapse of time, LEP – which was nowhere to be seen at the time the MDGs were rolled out – has gained a respectable place in the arsenal we use to fight poverty, exclusion and injustice. In preparation to development post-2015, it is however imperative that we take a step change so that LEP becomes an even larger and stronger focus of our efforts. In this context, LEP can be a critical principle as well as a policy instrument in three specific areas – inclusive growth, MDG acceleration and sustaining MDG progress.

Inclusive growth embraces three specific pillars: sustained pro-poor growth; equity in resources, services and income; and productive employment. The pro-poorness of growth is not defined only by its poverty reduction impacts, but by whether the poor in fact actively engage in generating the growth, and also derive *disproportionate* benefits from it. In many cases, people cannot effectively participate in the generation of growth or benefit from it because they are poor. A legal framework to ensure their representation in the growth process can be very useful. Similarly, the poor often do not have access to resources because of ownership issues (e.g. common natural resources such as community forests). Poor women have an even greater constraint in terms of land rights because of religious and cultural factors. Legal reforms in both areas to ensure the ownership of resources for the poor would make growth inclusive. Finally, in the area of productive employment, the poor are often engaged in the informal sector, where their rights of ownership are inadequately protected, both in self-employment and as suppliers of labour in wage employment. Therefore, LEP can be a good shield to help protect and promote entrepreneurs and workers in the informal economy.

In terms of MDG acceleration, the MDG Acceleration Framework (MAF) focuses on three dimensions: a diagnostic dimension to identify lagging MDGs and binding constraints, a prescriptive dimension where proven interventions for overcoming the constraints have been identified, and a roll-out dimension where support is provided to countries for MDG acceleration. In the diag-

nostic part, lack of legal rights of the poor may be identified as a binding constraint in MDG achievement. It may occur in areas of access to productive resources or basic social services. If that is true, then it may be beneficial to see where establishment of legal rights for the poor have contributed to enhance their access and to suggest that intervention. For example, in India, in the area of primary and secondary education, the poor could not send their children to school simply because there were no schools in the near vicinity of where the poor live. A legal measure was taken where the state is required to provide schools to people within feasible distance. If the state fails to do so, citizens can initiate public litigation cases against the State. This has increased enrolment of children (both boys and girls, particularly from poor neighbourhoods) and contributed to acceleration of MDG 2 (achieving universal education by 2015) in India. If the same binding constraint is found today in another country with regard to schools or healthcare centres, a similar intervention could be quite effective. Such measures can be part of the MDG Action Plan, anchored in national development processes and aligned with the United Nations Development Assistance Frameworks (UNDAFs) that are being developed in MAF countries.

As we move forward with MDG acceleration, sustaining the MDG progress will be crucial. As UNDP's MDG Breakthrough Strategy notes, *'In times of global economic, food and climate volatility, MDG reversals are a real possibility. Even in stable times, countries may find it difficult to maintain their rate of progress. Sustaining progress can thus be just as important as accelerating achievements'*.<sup>7</sup> On both fronts, sustaining MDG progress would require addressing some long-term structural constraints. Legal disempowerment of the poor would be a major one. Whenever it constrains sustenance of MDG progress, LEP can be the answer to overcome it.

UNDP has already started looking at climate change, land degradation and drylands development through the lens of LEP. Without equitable and responsible governance of land resources, long-term sustainable development will hardly materialize. As many ill-conceived land grabbing schemes have unfortunately shown recently, secure land tenure is key to food security, income, housing, and hence basic welfare, for many poor and marginalized groups. Often, it also contributes to a sense of identity, connection and security. Tenure insecurity and uncertainty undermine incentives for longer-term investments in land, which in turn affects the income that people receive from their landholdings. Land governance and efficient management of natural resources are also crucial to ensuring a viable adaptive response to the adverse impacts of climate change on the poor and the disadvantaged.

The UN-REDD (Reduced Emissions from Deforestation and Forest Degradation) programme makes a potential link between climate change mitigation and adaptation activities. While the REDD-related activities and benefits can contribute to improving the quality of life of the poor and the indigenous peoples by providing additional livelihood opportunities, it is possible that they might never reach these people. The political interests and the technical complexities of implementing these systems could potentially prevent poor countries and poor people from taking advantage of the opportunity, unless major efforts are devoted to making REDD work for the poor. The LEP approach can contribute to stronger concerted efforts to ensure equitable distribution of benefits; strengthened rights and voices of the poor and to marginalized, robust systems of land governance and accountability; effective conflict resolution; and greater feasibility of small-scale REDD actions. Failure to act decisively to address the challenge of climate change will consign the poorest 40% of the world population to a future of diminished opportunity<sup>8</sup>.

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7. UNDP(2010) UNDP's MDG Breakthrough Strategy: Accelerate and sustain MDG progress United Nations Development Programme: New York June.

8. UNDP. (2007) Human Development Report 2007. *Fighting Climate Change: Human Solidarity in a Divided World*, Palgrave Macmillan.

### **Conclusion**

The problems that LEP can solve are by no means confined to the developing world. More affluent societies are not immune to deficits in legal empowerment, let alone legal empowerment of the poor. To address these successfully may well mean recognizing more fully that increasingly, innovative solutions to many problems rich countries face, are already being implemented in poor countries.

In recent years, for instance, we have seen many developing countries achieve impressive poverty reduction and MDG results through various kinds of social protection schemes including conditional / unconditional cash transfers and cash-for-work. India's

National Rural Employment Guarantee Act, for instance, guarantees at least 100 days of wage employment per year to every household whose adult members volunteer to do unskilled manual work. The state must pay compensation if work cannot be found.

Microfinance is another area where developing countries are trailblazing. More affluent countries can learn a great deal from these policy- and investment innovations in developing countries, and some are indeed studying and learning from these experiences in the South. Legal empowerment offers a similar ground for fertile exchange of knowledge and experience, both between and among developing countries, and from South to North.

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## **Nekrolog**

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### **Jan Terje Bjørke**

Jan Terje Bjørke født 2. november 1947 i Lillehammer, døde brått og uventet i sitt hjem i Sandefjord den 26. april 2011. Han ble 63 år. Jan Terje var medlem i Kart og Plan sitt redaksjonsråd til han døde, og en viktig støtte for tidsskriftet. Han hadde også en professor II-stilling ved Norges Landbrukshøgskole (NLH) / Universitetet for miljø og biovitenskap (UMB) siden 01.08.1988. Som prof. II hadde han ansvar for undervisningen i digital kartografi.

Etter å ha fullført utdanningen på NLH i 1971 som jordskifte kandidat, arbeidet han i Nerdrums oppmåling som landmåler før han ble topograf i Norsk Polarinstitut i 1972. Senere arbeidet han i Fjellanger Widerøe og deretter ved Norges Tekniske Høgskole (NTH). Han tok dr. ing. graden i 1987 i kartografi. Han var den første som tok doktorgrad på fagområdet i Norge. Han hadde fast stilling ved NTH fra 1984 og ble professor der i 1993. De siste 12 årene fra 1998, har Jan Terje vært forsker ved Forsvarets forskningsinstitutt i Horten.

I 1993 hadde han et halvt års forskningspermisjon og var ved University at Buffalo, National Center for Geographic Information and Analysis (NCGIA) i staten New York i USA.



Jan Terje var genuint interessert i kart som informasjonsmedium. Han var aktivt engasjert i fagmiljøene og en pådriver for kurs og konferanser. Det gjelder både konferansene Neste Generasjons GIS (NGG) og Scandinavian Research Conference on Geographic Information Science (ScanGIS). I forbindelsen med ScanGIS-konferansen i Norge i 2007 ble flere av bidragene publisert i Kart og Plan etter initiativ av bl. a. Jan Terje. For å ha tatt initiativet til og organisert ScanGIS fikk Jan Terje i 2008 foreningen GI Norden sin ærespris.

Jan Terje var en god kollega og medarbeider. Han hadde et godt vesen som sammen med solid kunnskap ga positive resultater.