

Legal Empowerment of the Poor:
An Action Agenda for the World Bank

To the attention of the President of the World Bank.
Ana Palacio. December 2005
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ACRONYMS AND ABBREVIATIONS

AAA	Analytical and Advisory Activities
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
CAS	Country Assistance Strategy
CDD	Community Driven Development
CIDA	Canadian International Development Agency
COFOPRI	Comisión de Formalización de la Propiedad Informal
DAC	Development Assistance Committee
DEC	Development Economics Department
DECRG	Development Economics Research Group
DFID	Department for International Development (UK)
EBRD	European Bank for Reconstruction and Development
ECA	Eastern and Central Europe
ESW	Economic and Sector Work
EU	European Union
EXT	External Affairs
FPSI	Finance, Private Sector and Infrastructure Network
FY	Fiscal Year
G-8	Group of Eight
HIPC	Heavily Indebted Poor Countries
HLCLEP	High Level Commission on Legal Empowerment of the Poor
IDA14	International Development Agency, 14 th Replenishment
IFC	International Finance Corporation
ILD	Institute for Liberty and Democracy
IMF	International Monetary Fund
INF	Infrastructure Department
LEGVP	Legal Vice-Presidency
LEGJR	Legal and Judicial Reform Unit
LEP	Legal Empowerment of the Poor
MDG	Millennium Development Goal
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
NORAD	Norwegian Agency for Development Cooperation
OECD	Organization for Economic Cooperation and Development
OED	Operations Evaluation Department
OPCS	Operational Policies and Core Services
PRMPS	Poverty Reduction and Economic Management, Public Sector Governance
PSD	Private Sector Development
RDV	Rural Development Vice-Presidency
SDV	Social Development Vice-Presidency
SIDA	Swedish International Development Agency
SSIU	Sector Strategy Implementation Update
TPAC	Third Party Arbitration Court
TUDUR	Transport and Urban Development Department
UNDP	United Nations Development Program

UNECE United Nations Economic Commission for Europe
UN-Habitat United Nations Habitat
USAID United States Agency for International Development
VPU Vice-Presidency
WBI World Bank Institute

FOREWORD

In early October last, at the request of the President of the World Bank, I set about the job of reflecting on the field of legal empowerment of the poor and drafting a Concept Paper on this critical and timely topic. The task entrusted to me was related to the launch of the High Level Commission for Legal Empowerment of the Poor which, under the auspices of the United Nations, held its first meeting on January 20, 2006. Hence the urgency that has imbued the completion of this concept paper. The pages that follow are the result of ten weeks of exciting and engrossing research work, including reading late into the night, enriching conversations, and invaluable participation in the Conference on “New Frontiers of Social Policy: Development in a Globalizing World”, which was organized by the World Bank in Arusha (Tanzania) between December 12-15, and whose debates represented an excellent sounding board for the ideas advanced here.

In the development arena, legal empowerment of the poor has been driven primarily by empirical experimentation, which unfortunately has been largely devoid of theoretical underpinning, and has followed three main--albeit limited--approaches focusing on: (i) legal land titling; (ii) simplification of business regulations (both greatly influenced by Hernando de Soto's writings, personality and charisma) and (iii) establishing a coherent “legal order” and reform of the judiciary. In contrast to these focused approaches, and somewhat transcending the scope of the terms of reference of this task, this paper rests on a broad interpretation of the meaning of legal empowerment of the poor, in which ‘legal’ extends far beyond the confines of the purely formal legal system and includes an institutional dimension. For its part, the term ‘poor’ -a purely economic concept - may at first sight seem inappropriate and might better be replaced by ‘disenfranchised’. But the term has the merit of visibility.

The interweaving of the economic and legal spheres summarized in the concept of ‘legal empowerment of the poor’ reflects the collision of two tectonic plates that is changing the landscape of the development field. The first, the Poverty Reduction Agenda, freed of the adherences of the cold war politics, is conditioned today not just by ethical concepts or diffuse, mediate interests but also by the emergence of security and mass migratory movements as underlying forces. The second, the Governance Agenda, has emerged now that it has become clear that effective reforms cannot focus on the economy alone; that the state (at all levels of government) has to be brought out of the closet, fully into the spotlight; that without a capable state, developing countries cannot make and/or sustain the investment in health, education or infrastructure which has been at the core of cooperation programs to date; and finally, that an effective state is not possible where a substantial part of the population is excluded. Put another way, it is absolutely vital that the disenfranchised poor be included in the process of development and cease to be seen as beneficiaries or recipients. Instead, it is imperative that they be addressed as full citizens, jointly responsible for their political/legal/institutional collective organization.

This broad vision, stated forcefully by Paul Wolfowitz in his 2005 Annual Meeting speech -“we cannot make headway in the fight against poverty without supporting equality before the law and the legal empowerment of the poor”- suggests the urgency of developing an Action Agenda for the World Bank, an Agenda in which legal empowerment of the poor serves as a reality anchor, a catalyst that will ground the abstract models that characterize governance today. This means identifying concrete areas of need, as well as the most pressing and useful reforms required at a given time for a given society. It means on the one hand an agenda that will better coordinate ‘supply-side’ efforts aimed at strengthening and reforming legal institutions and systems to ensure they operate fairly, efficiently, and free from undue interference, and on the other hand a

focus on the ‘demand-side’ of governance, one that pursues strengthening the voice and capacity of citizens, particularly poor citizens, to directly demand greater accountability and responsiveness from public officials and service providers.

In mapping out a field in which, over the past decade, the World Bank’s involvement, although clearly positive, has been characterized by an often “piecemeal/scattered” approach, this paper aims to provide a preliminary scoping reflection, contributing to a strategic and systematic engagement by the Bank in this new frontier.

Finally, although it goes without saying that responsibility for the content is entirely mine, my sincere gratitude goes to all those who have contributed to helping this work see the light of day, from universities and think tanks, national development agencies, international institutions and private enterprise. Special mention has to be made to my many interlocutors at the World Bank, foremost amongst them Steen Lau Jorgensen, who has been an indispensable steering force from the very outset. The debt I owe to all of them is, nevertheless, best symbolized by Paloma Anós Casero, a young Senior Economist without whose endeavors these pages would simply not exist. As was the case of many of my interlocutors at the World Bank, her competence, professionalism and precise knowledge, extraordinary though they were, came as no surprise to me. What did surprise me was her enthusiasm and dedication, which belied the preconceived view commonly held today of international civil servants.

Ana Palacio. December 2005.

PREAMBLE

Terms of Reference. The terms of reference set for this task aimed at “providing strategic direction to the World Bank’s work on supporting the formalization of property rights to achieve significant improvement in the lives of poor people”. Methodologically, the terms of reference emphasized “consultation with different departments and staff at the World Bank to assess interest, technical capacity, and potential in supporting a work program on formalizing property rights in various regions; consultation with the UN High Level Commission on Legal Empowerment of the Poor on how to integrate work on property rights in Bank operations; and advice to SDV on how best to marshal the capacities of different units to undertake a coordinated approach to property rights to help the Bank’s borrowers achieve the MDGs”. This consultation process was to lead to “the preparation of a concept paper laying out strategic directions and options for a work program to formalize property rights, addressing security of tenure and partnerships between beneficiaries and relevant municipalities and service providers”. However, in the course of carrying out this task, it became clear that legal empowerment of the poor goes beyond the formalization of property rights; by strengthening the link between the citizen and the state, it offers a reality anchor that grounds abstract models of governance.

High Level Commission for Legal Empowerment of the Poor. One of the main objectives of this paper is to contribute to orient the positioning of the World Bank vis-à-vis the High Level Commission for Legal Empowerment of the Poor (HLCLEP) which, under the auspices of the United Nations, held its first meeting on January 20, 2006. Paul Wolfowitz, President of the World Bank, has agreed to join the Board of Advisors of this commission. The HLCLEP was proposed by the government of Norway, with the support of the other Nordic countries (Denmark, Finland, Iceland, and Sweden). The HLCLEP is co-chaired by former U.S. Secretary of State Madeleine Albright and Peruvian economist Hernando de Soto, and includes an array of international leaders including Chancellor of the Exchequer Gordon Brown, former presidents Benjamin Mkapa of Tanzania, Fernando Cardoso of Brazil, Ernesto Zedillo of Mexico and Mary Robinson of Ireland, U.S. Supreme Court Justice Anthony Kennedy, and Nobel Peace Prize winner Shirin Ebadi of Iran.

The Commission has the potential to build political support for reforms aimed at promoting the legal empowerment of the poor. However, it needs the support of other institutions such as the World Bank to shape its policy agenda, improve its engagement with grassroots organizations and deepen its technical expertise. This paper shares with the Commission its main premise: that expanding legal protection to all citizens through the formalization of property rights is a key part of poverty eradication. But legal empowerment of the poor goes well beyond the formalization of property rights. As will be argued in this paper, the term legal empowerment of the poor demonstrates the essential and necessary intersection of the two main agendas that drive development today: governance and poverty reduction. The World Bank is well placed to inform and broaden the HLCLEP agenda. With its unique technical expertise and cross-country experience, the Bank can contribute to the work of the Commission by providing strong technical expertise and a wide range of lending and analytical instruments to support the creation of market and non-market institutions aimed at improving governance and reducing poverty.

EXECUTIVE SUMMARY

I. MAIN FINDINGS

A. Diversity of approaches to legal empowerment of the poor

In the development arena, legal empowerment of the poor has been driven primarily by empirical experimentation, largely devoid of theoretical underpinning. Legal empowerment of the poor (LEP) suffers from a lack of clarity at many levels of definition, operation and evaluation. In response to increasing demands, aid agencies have tried to secure a handle on the massive new undertaking by breaking the concept down into the specific areas needing reform, leading to a diversity of approaches to LEP. These approaches have tried to overcome the complexity of addressing LEP by privileging a single area of focus. This paper argues that LEP should not be defined narrowly as the formalization of property rights, or the simplification of business regulations, or the reform of the justice system. It should be viewed rather as an integrated framework that addresses governance and builds citizenship through the relationship between the citizen and the state. Finally, the paper rests on the assumption that where LEP initiatives are undertaken there is an existing state structure (even if weak) that it is willing to address the challenges of legally empowering the poor. This assumption leaves to be addressed situations where the state is absent, such as post-conflict situations.

Over the last ten years aid organizations and governments around the world have developed three valuable -albeit narrow- approaches to LEP focusing on: (i) setting a coherent “legal order” through the reform of the judiciary; (ii) tackling informality through simplification of business regulations; and (iii) formalizing property rights mainly through legal land titling programs. The last two are greatly influenced by Hernando de Soto, whose writings and charismatic personality have caught the attention of heads of state from all over the world.

While this paper reviews these three approaches, it pays particular emphasis to the last one, the formalization of property rights. Programs aimed at formalizing property rights have raised the political profile of LEP. Reviewing the implementation of programs aimed at formalizing property rights reveals the inherent tensions in development policies as they try to meet the challenges of poverty reduction and governance.

(i) Law and justice reforms. Poor people suffer disproportionately when the state fails to provide access to justice. Even if a formal legal system is functioning fairly well, the poor often face significant barriers to access to justice. The barriers can be geographic (e.g. courts too far away), cultural, linguistic, financial, legal (e.g. procedures so complex the layperson cannot understand them, lack of affordable services by lawyers, lack of information on how to enter into binding contracts, etc.). When the formal system is slow, corrupt, biased toward the powerful, or unpredictable, the problems of access for the poor are magnified. Donor-financed projects to reform the justice sector have emphasized assistance to the justice sector (e.g. court management, technical assistance to ministries of justice, solicitors general, judicial commissions, legal aid providers, etc.); legal education (e.g. judicial training, legal education for citizens, training for the media, etc.); and access to justice by the poor (e.g. support for the creation of mobile courts, small claims courts, court-affiliated alternative dispute resolution mechanisms, etc.).

(ii) Informality and the simplification of business regulations. Another approach to LEP involves the simplification of business laws and regulations to reduce the costs of formality. Informality, understood as non-reported economic activities, is significant and increasing. More

than 30 percent of GDP and 70 percent of workers in the developing world are now informal. In this area, tribute must be given to Hernando de Soto and his work on informality in Peru. His theoretical and methodological approaches to addressing informality through simplification of business laws and regulations are now mainstreamed in the work of development agencies.

(iii) Formalization of property rights. Formalization of property rights, and in particular, legal land titling, is not a new policy prescription. Many legal land titling programs, some of them quite extensive in scope, have been carried out by developing countries in recent decades (Thailand, Chile, Honduras, etc). Nevertheless, formalization of property rights gathered momentum in recent years owing to the influence of de Soto's writings. De Soto has been the first to popularize an argument that appeals to very diverse constituencies from the developed and developing world. According to this theory the key element required to convert the poor into successful entrepreneurs is access to formal credit, and that they will obtain credit if they are granted a legal title to their property. It claims that lack of formal titling prevents the use of property as collateral, and hence prevents the capital embedded in these assets from being "unlocked". Give the poor titles and they will have access to credit, thereby improving the functioning of the land and property markets.

The popularity of this approach stems from its simplicity. It offers a simple policy prescription about an otherwise politically sensitive and complex issue. In particular, policy-makers in the developing world are attracted to a policy recipe that claims to stay within the safe boundaries of the market. It is also a straightforward and cheap policy prescription (eventually the poor pay the costs and the property taxes once they receive their title deed).

Yet, this approach overestimates the direct economic benefits that legal titling could bring to the poor (while downplaying important social impacts) and underestimates the difficulties in formalizing property rights in many developing countries. Among them:

- **Rural versus urban.** Successful experiences are essentially programs of mass titling in urban (and peri-urban) areas. In rural areas in many developing countries, land tenure and the formalization of land rights raise a complex set of challenges that should not be underestimated. At low levels of income and in the absence of other social security mechanisms, land serves as a social safety net for the rural poor and provides them their basic means of livelihood. In these contexts, customary systems understandably tend to restrict the marketability of land.

- **Contestability of property rights.** Public authorities must be prepared to adjudicate cases where conflicts of ownership or tenure arise. Given the contestability of property rights anywhere and the evolutionary nature of consensus over tenure, establishing who owns what among the poor in developing countries is an enormous undertaking.

- **Legal titling takes time, can be expensive and requires meeting a number of challenges that should not be underestimated:** (i) **technical:** While in some projects (in Peru, for example) legal titling was achieved at a low cost and in a short period of time, this experience cannot be taken as the norm. Thailand, the first country with a national mass titling program, took 20 years to complete its program. A city of 6 million people, where 50 percent of the population lives in irregular settlements, administrations in charge of land management would have to issue 400 titles per working day for 10 years just to cope with the existing demand; (ii) **legal, administrative and political:** To identify holders of rights and households entitled to tenure regularization, survey, adjudicate procedures, resolve land related conflicts, and allocate property titles, all require powerful specialist bodies, an appropriate administrative and regulatory environment, financial and human resources, political continuity and commitment, and finally,

keeping formalized assets formal; (iii) **economic**: The informal rental sector in most cities in developing countries is growing in economic importance. The limited resources of poor households exclude most of them from access to land and housing at market prices; (iv) **social**: The diversity of tenure systems in developing countries requires diverse responses. An emphasis placed on a single option, such as the delivery of individual property titles, leads to inappropriate ‘one-size-fits-all’ approaches; (v) **environmental**: The poorest segments of the population are frequently pushed to occupy fragile ecosystems.

- ***The direct economic benefits to legal titling may not materialize in contexts where poor people are confronted with distorted financial, labor, land and housing markets, as well as poorly developed infrastructure.*** The presumed link between legal titling and capital accumulation is not automatic. The gains from formal titling depend on the outcome of three separate transformations. Property has to be transformed into collateral, collateral into credit, and credit into income. In each of these steps distortions in land, infrastructure, labor and financial markets may impede capital accumulation even if the poor have obtained legal titles.

- ***Legal titling can have other important effects on poor households’ welfare, including increased female labor participation, reduced child labor, and improved child schooling.*** Child schooling and labor market participation by urban squatters, particularly women, is commonly constrained by the need to keep a family member at home to protect against residential property invasion. By reducing the fear of eviction, programs of legal titling commonly allowed household members to work more hours outside the household. Short-run effects of legal titling often operate not through credit markets, but through its impact on wage income as a result of increased labor market participation.

- ***Legal land titling is not the only way to improve security of tenure.*** Formal land titles in some African countries did not bring the expected benefits of higher income and investment because indigenous tenure was already sufficiently secure under customary law. In most rural areas in Africa, customary law prevails, and land is often restricted from sale despite being titled by the state. Other alternatives to conventional private land titles have also been explored in developing countries through instruments that do not require prior physical planning, infrastructure servicing, or surveying of settlements, and can therefore offer widespread coverage at lower costs. In addressing secure tenure, the key policy lesson is to look at a range of options that exist as alternatives to formal property rights and the granting of title.

B. LEP goes beyond the formalization of property rights

In contrast to these narrow approaches, LEP should be envisaged as a broad concept in which ‘legal’ extends far beyond the confines of the purely formal legal system. It is a concept in which empowerment is understood as part of “political empowerment” that provides citizens with a stake in the state. It is also a concept in which poverty is understood as a transient condition. Ultimately, if legal empowerment is to mean anything for the poor, it has to provide them with security and mobility to enable them to climb the economic ladder.

The interweaving of the economic and legal spheres summarized by the term LEP reflects the current challenge facing the development world: the collision of two tectonic plates that is changing the landscape of development policies. The first, the Poverty Agenda, is conditioned today not just by ethical concepts or diffuse, mediate interests but also by the emergence of security and mass migratory movements as underlying forces. The second, the Governance Agenda, has emerged now that it has become clear that effective reforms cannot focus on the economy alone; that the state (at all levels of government, particularly local) has to be brought out

of the shadows, fully into the spotlight; that without a capable state, developing countries cannot make and/or sustain the investment in health, education or infrastructure which has been at the core of cooperation programs to date; that an effective state is not possible where a substantial part of the population is excluded. Put another way, it is absolutely vital that the disenfranchised poor be included in the process of development and cease to be seen merely as its beneficiaries. It is imperative that the disenfranchised poor instead be addressed as full, co-owner citizens, jointly responsible for their political/legal/institutional collective organization. It is absolutely vital to transcend the economic arena: while poverty reduction rests on economic growth, its achievement depends on the multiple dimensions of citizenship.

This broad vision suggests the urgent need for an Action Agenda for the World Bank, an Agenda in which LEP serves as a reality anchor, a catalyst that will ground the abstract models that characterize governance today. It would identify concrete areas of need, as well as the most pressing and useful reforms required at a given time for a given society. It would be an Agenda that on the one hand better coordinates “supply of governance” efforts aimed at strengthening and reforming state institutions to ensure they operate fairly, efficiently, and free from undue interference, and on the other hand promotes the ‘demand for governance’ work—efforts that strengthen the voice and capacity of citizens, particularly poor citizens, to directly demand greater accountability and responsiveness from public officials and service providers.

LEP, by supporting stronger coordination of these efforts, can help promote the enabling environment that allows the rule of law to take root and flourish. A society based on the rule of law is characterized by laws that apply equally to everyone; the opportunity for citizens to participate in making new laws and amending or contesting bad laws, without harassment from the government; the fair, efficient and consistent enforcement and application of laws and regulations; rules that are understandable and are made known to the citizens by the government; and respect for basic political and civil rights. A rule of law society requires capable and answerable judges, prosecutors, administrators, legislators, police forces and enforcement agencies operating largely free of corruption. It also requires a robust and accountable civil society, private sector and media. Equally important to the rule of law is a ‘culture of lawfulness’ where the vast majority of people strongly believe in the rule of law as one of society’s central organizing principles.

II. KEY RECOMMENDATIONS

The World Bank has a unique role to play in leading the LEP agenda. Its areas of comparative advantage are: (i) the quality of its technical and analytical work; (ii) its cross-country experience; (iii) its ability to mobilize substantial resources to support reforms; (iv) its broad mandate focused on poverty reduction; (v) its global vision, not loaded by historical ties or national interests; and (vi) its ability to convene diverse stakeholders to discuss and implement strategies and programs. This combination allows the Bank to play an important role in coordinating donor dialogue on issues relating to LEP.

Yet, to advance the LEP agenda the World Bank faces an important challenge. The World Bank has carried out valuable work related to LEP, by developing a number of sector strategies, programs, projects and monitoring instruments. But this work is scattered across Bank units, lacking a common thrust and vision. The challenge is to coordinate and consolidate these efforts effectively. The Bank needs to deepen its efforts to develop a strategic integrated framework to address the LEP agenda, where the citizen is the main subject, and that strikes the right balance between the economic, social, legal and political dimensions of poverty. The poor are still addressed more as ‘beneficiaries’ of development. LEP means addressing the poor as full citizens that demand participation in public policy-making and who are able to hold the state accountable

to address their needs and rights. This calls for better integration of Bank activities that share a common management vision recognizing that listening to poor citizens and enabling them to influence public action is necessary to ensure effective development policies and programs. It also requires more effective engagement with local government.

The World Bank should lay out an articulated, common vision on LEP and develop an Action Agenda whose core building blocks should include:

- ***Adopt a strategic framework where LEP plays the essential ‘stitching’ role between top-down and bottom-up approaches to governance.*** This strategy should aim at addressing the current divide in Bank approaches to governance: on the one hand, programs that can broadly be classified as focusing on the supply-side of governance (e.g. capacity building of state institutions), and on the other, programs promoting the demand-side of governance (mainly, community-driven initiatives). The strategy should be revised periodically to reflect the dynamic nature of LEP in different country contexts. It should also include a discussion of the corresponding benchmark indicators against which to set baselines and measure performance. This strategic framework should be implemented at the country level through the CAS process. Ultimately, it is the country director’s responsibility to develop an integrated country program to address the LEP issues relevant to the particular context and time. The type, sequence, timing and speed of interventions should vary according to country specific contexts. Furthermore, to the extent that the core of the LEP agenda is a process of treating the poor as full citizens, it can only be implemented at the country level. During CAS preparation and implementation, country directors should ensure that country teams coordinate in preparing operations that have an explicit LEP objective in their particular sector.

- ***Use political analysis in World Bank operations and programs more systematically.*** Political analysis can address broader social concerns, such as the underlying political dynamics generating pressure for corruption, or narrower topics, such as the politics surrounding conflicting claims over property rights. Political analysis should also be undertaken to assess the perceived costs and benefits of proposed reforms and their political feasibility. When conducted properly, such analysis can reveal important insights into the prospects of a given reform agenda to move forward. The Bank’s future effectiveness depends on how well it identifies and manages political risks and opportunities. This means setting country operational priorities that consider these risks. It means an approach that is both politically sensitive and politically savvy. It also means increasing the resources for data collection, measurement and analysis of the quality of governance, and legal empowerment of the poor.

- ***Use (and adjust when necessary) existing lending instruments and analytical products to operationalize the LEP agenda.*** Learning and innovation loans should be used to their full potential since they allow experimentation in areas where the Bank does not have traditional expertise. Existing investment and policy-based lending operations would also be useful to operationalize the LEP agenda and could be adjusted if necessary. As to analytical work, three venues should be explored. The first is stand-alone reports on the most pressing LEP issues relevant in a particular country at a specific time. The second venue is to include analysis of relevant LEP issues in existing Bank integrative country diagnostics. The third venue is to develop surveys measuring progress in LEP over time. This initiative would be similar to the Doing Business project but instead of focusing on entrepreneurs would measure constraints to the legal empowerment of the poor.

- ***Improve coordination between core and sector-related LEP reforms.*** The World Bank has already integrated core LEP reforms in areas such as civil service and judicial reforms,

institutional development and capacity-building at the sectoral level. However, moving from state capacity-building to strengthening the rule of law entails a higher degree of integration and coordination between these efforts and those focused at the community level. ***In the medium to long-run***, one proposal that should be considered is to consolidate the core activities related to LEP that are currently spread across different units of the Bank. This could be achieved in a number of ways. One alternative would be to create a new network combining the different Bank units currently involved in LEP. Another option is to anchor the LEP work in an existing network that would expand its mandate to coordinate the LEP activities carried out in other networks. ***In the short run***, the Bank should consider setting up a task force consisting of members with an operational background and representing the different Bank units currently involved in LEP. The responsibilities of the task force would include (i) reviewing current LEP-related work carried out in existing Bank thematic groups, VPUs and Regions; (ii) revising existing Bank analytical, lending and monitoring tools and propose recommendations to improve them; (iii) assessing the financial and human resources now devoted to various LEP activities to determine whether the Bank is under-investing in this agenda; and (iv) developing a research agenda to address current intellectual and operational gaps associated with the proposed strategy.

• ***Rethink the World Bank's engagement with local governments.*** Local governments can play an important role in advancing the LEP agenda because they are closer to the citizens. Currently, the Bank has some lending instruments whose main beneficiaries are local governments, but the central government is still the main guarantor. Notwithstanding the ongoing internal debate on this issue, this paper suggests reassessing the limitations of requiring sovereign entities to be the exclusive obligors or guarantors of lending operations and grant instruments, and exploring direct sub-sovereign lending and grant financing:

- (i) ***Direct sub-sovereign lending.*** Other international financial institutions are already providing direct sub-sovereign lending without sovereign guarantee (e.g. the EBRD in Central and Eastern Europe and the US Export-Import Bank in Brazil and Russia). The regional development banks do not require the sovereign guarantee to be built into their charters, and in the last decade they have begun to offer a broader range of financial products to middle-income countries, including products for sub-sovereign borrowers. The Bank should consider cautiously moving in this direction.
- (ii) ***Sub-sovereign grant financing.*** A second avenue the Bank should explore is to agree with those bilateral donors financing World Bank administered Trust Funds on the consideration of non-sovereign counterparts in grant financing criteria.

Identify and manage potential misperceptions of the “LEP World Bank Action Agenda”. Any World Bank strategy aiming to promote the legal empowerment of the poor will need to carefully identify and manage risks. The LEP agenda could be misperceived as being yet another “western” imposition on developing countries. It could also be misinterpreted as a political strategy supported by the main shareholders of the World Bank. Promoting LEP requires navigating carefully through an emotionally and politically charged debate that balances the diverse interests and demands of client governments, the donor community and civil society. The World Bank should build on its strengths and areas of comparative advantage and finance activities that remain within the remit of its Articles of Agreement.

INTRODUCTION

1. ***Reducing poverty is the Bank's mission.*** Poor people often lack legal rights that would empower them to take advantage of opportunities and protect them from arbitrary treatment. More than any other group in society, they are adversely affected by weak rule of law that fails to protect individual and property rights. Poor people may lack formal recognition of their rights, they may have rights but are unaware of them, or governments may ignore their rights by not enforcing them. Similarly, they may be aware of their rights but unable to assert and claim them.
2. ***This paper rests on an broad interpretation of "legal empowerment of the poor" (LEP),*** in which 'legal' extends far beyond the confines of the purely formal legal system and embraces institutional empowerment. For its part, the term 'poor' -a purely economic concept - may at first sight seem inappropriate and might better be replaced by 'disenfranchised'. But the term has the merit of visibility. The interweaving of the economic and legal spheres summarized in the expression 'legal empowerment of the poor' reflects the collision of two tectonic plates that has changed the landscape of the development field: poverty reduction and governance. As with the collision of continental plates, the synthesis of the governance and poverty reduction agendas can result in more fertile territories and loftier mountains.
3. ***The crucial importance of empowering the poor has featured in the Bank's policy discourse for the last few years.*** Acquiring a better understanding about how legal empowerment of the poor can enhance the situation of the nearly half the world's population living on less than \$2 a day, and especially the 1.2 billion people who barely survive on less than \$1 a day, is one of the greatest challenges confronting the Bank's work today. The 2001, 2002, 2004 and 2006 World Development Reports recognize empowerment of the poor as an integral component of the Bank's poverty reduction efforts. Within this general 'empowerment' framework, the Bank's involvement in LEP has been limited to stand-alone programs (including legal titling, simplification of business regulations, legal and judicial reforms). However, LEP cannot be understood as merely the improvement of laws; it also entails addressing institutional barriers (institutions to be understood not in terms of 'organizations' but as the 'rules of the game') that impinge on the enforcement of rights.
4. ***The time is ripe for the Bank to take a step ahead and develop an integrated approach to LEP that can help advance governance and poverty reduction more effectively.*** Traditionally, the Bank's efforts to address the governance challenge were centered on institution-building. As such, these efforts have focused on judiciaries, public administrations and other formal legal institutions and actors. These 'supply-side' efforts sought to strengthen and reform state institutions to enable them to operate fairly, efficiently, and free of undue interference. Yet, such top-down approaches have achieved only limited success. More recently, increased attention has been paid to the 'demand-side' of governance - that is, to strengthen the voice and capacity of citizens, and particularly poor disenfranchised citizens, to directly demand greater accountability and responsiveness from public officials and service providers. As a result, the Bank has broadened the scope of its interventions by adopting alternative approaches as diverse as community-driven development projects, participatory budgeting, and citizens' score cards. What is missing is an integrated approach linking the supply and demand side

approaches to governance at the country level. This is what a well structured LEP approach can offer.

5. ***Purpose of the paper.*** The assignment was related to the launch of the UN-sponsored High Level Commission for Legal Empowerment of the Poor, which held its first meeting on January 20, 2006. This paper draws on research and consultations conducted over a short ten week period leading to a first draft that was presented to the President of the World Bank on January 10, 2006. This revised version has benefited from a wide range of comments by lead specialists and managers responsible for relevant Bank units. The paper will need to be further refined and modified into a full-fledged strategy document. At this stage, its main purpose is to spearhead a reflection that shapes an Action Agenda for the World Bank on legal empowerment of the poor. It maps out a field in which the Bank has been involved for the last ten years and sheds light on the concept and its key elements. It does not seek to be a detailed description of LEP tools and activities, or to provide an exhaustive conceptual analysis. This paper does not attempt to provide a “cast-in-stone” definition of legal empowerment of the poor. Rather, it aims to map out the principles that underpin LEP. Finally, the paper rests on the assumption that where LEP initiatives are undertaken there is an existing state structure (even if weak) that it is willing to address the challenges of legally empowering the poor. This assumption leaves to be addressed situations where the state is absent, such as post-conflict situations.

6. ***Organization of the paper.*** Following this introduction, the paper is organized into five main sections. Section I briefly overviews the conceptual scope of legal empowerment of the poor and identifies some of the key elements or ‘building blocks’ of LEP. Section II reviews the rationale for the Bank’s involvement in LEP. Section III addresses the evolving external environment and assesses the internal context, discussing how the Bank’s work on issues related to, or falling under LEP, has historically been conducted and organized. Section IV addresses the evolving substantive LEP agenda and highlights a number of important emerging issues that might be incorporated into the Bank’s practice. Section V outlines how the Bank’s LEP strategy could be taken forward, including specific recommendations for revising the manner in which the work is organized and conducted.

I. LEGAL EMPOWERMENT OF THE POOR: CONCEPTUAL ISSUES

A. Context

7. ***Poverty reduction has been central to the World Bank's mission for over 50 years.*** However, a renewed awareness of the imperative to reduce poverty has gathered momentum in the last few years in response to increasing concerns in richer states over security and immigration. The Global Poverty Report issued at the G8 Okinawa Summit in July 2000 noted that eliminating global poverty "is both a moral imperative and a necessity for a stable world." At the global level, this renewed emphasis on poverty reduction was restated in the United Nations Millennium Declaration of September 2000. On July 2005, the G8 put forward an unprecedented proposal agreeing to complete the process of debt relief for the Heavily Indebted Poor Countries (HIPC). The proposal provided additional development resources to support poor countries' efforts to attain the goals of the Millennium Declaration (MDGs).
8. ***Governance has recently climbed to the top of the development agenda.*** Over the past fifteen years, major developments have unfolded, including: (i) the breakup of the Soviet Union and the rise of new states (the 1990s were the second most prolific decade in modern history in terms of new state creation); (ii) the expansion of democratic regimes (from 80 to more than 120); (iii) a reduction in the role and size of the state (through privatization, outsourcing, rightsizing, etc); (iv) a growth in decentralization; and (v) the rise of the anticorruption agenda. In tandem, aid agencies have gradually realized that to be effective development policies must transcend the economic arena and promote the rule of law and the consolidation of citizenship. This implies that the subjects of development programs should not be considered 'beneficiaries' but as full citizens who should meaningfully participate in the design and implementation of these programs.
9. ***LEP provides a useful organizing framework to navigate through the complex landscape which has resulted from the fusion of the two tectonic plates driving development today: governance and poverty reduction.*** The first, the Poverty Reduction Agenda, is conditioned today not just by ethical concepts or diffuse, mediate interests but also by the emergence of security and mass migratory movements as underlying forces. The second, the Governance Agenda, has emerged now that it has become obvious that effective reforms cannot focus on the economy alone; that the State has to be brought out of the closet, fully into the spotlight; that without a capable and efficient State, developing countries cannot make and/or sustain the investment in health, education or infrastructure which has been at the core of cooperation programs to date; that an effective State is not possible where a substantial part of the population is excluded. Put another way, it is absolutely vital that the disenfranchised poor be included in the process and instead of being perceived as beneficiaries are be addressed as full citizens, jointly responsible for their political/legal/institutional collective organization.

B. Fluidity and Complexity of the Concept

10. ***LEP is a complex and fluid concept, yet essential to development when appreciated in its broader sense.*** Legal empowerment of the poor still suffers from a lack of clarity at many levels of definition, operation and evaluation. LEP is one of those concepts which, like "rule of law", could end up being subjected to ideological abuse and general over-use. Politicians of every stripe, academics, NGO representatives and international

organizations alike often repeat it mantra-like. In the development arena, the LEP field has been driven by empirical experimentation without much theoretical underpinning. In response to increasing demands, aid agencies have tried to secure a handle on the massive new undertaking by breaking the concept down into the specific formal institutions in need of reform. In some cases, this meant a focus on “judicial reform”. In others, legal change alone was thought to be sufficient; when this approach failed to bear fruit, efforts expanded to reform other rule-of-law institutions. It has become clear, however, that LEP requires reform *across* institutions (in the broader legal sense of the term, which refers not only to organizations but also to the ‘rules of the game’), in contrast with traditional approaches to LEP that are generally carried out *within* institutions. For example, enacting a law that allows freedom of speech would not be enough to strengthen state accountability if poor people are not able to assert their rights because they lack access to justice. Conceptual clarity will be crucial to the Bank’s effectiveness in implementing LEP reforms.

11. ***The diversity of LEP definitions used by international organizations reflects the fluidity of the concept, as illustrated below:***

- (i) ***Carnegie Endowment***: “Legal empowerment of the poor is a rights-based strategy for improving governance and alleviating poverty”;
- (ii) ***Asian Development Bank***: “Legal empowerment of the poor is the use of law to increase disadvantaged populations’ control over their lives”;
- (iii) ***World Bank***: “Legal empowerment promotes safety, security and access to justice and helps poor people solve problems and overcome administrative barriers”;
- (iv) ***High Level Commission for Legal Empowerment of the Poor (HLCLEP)***: “Legal empowerment of the poor expands the rule of law to the benefit of all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people or other minorities”.

C. Diversity of Approaches to LEP

12. ***In the development arena, legal empowerment of the poor has been driven primarily by empirical experimentation, largely devoid of any theoretical underpinning.*** Legal empowerment of the poor (LEP) suffers from a lack of clarity at many levels of definition, operation and evaluation. In response to increasing demands, aid agencies have tried to secure a handle on the massive new undertaking by breaking the concept down into the specific areas in need of reform, leading to a diversity of approaches to LEP. These approaches have tried to overcome the complexity of addressing LEP by privileging a single area of focus. This paper argues that LEP should not be defined narrowly as the formalization of property rights, or the simplification of business regulations, or the reform of the justice system. It should be viewed rather as an integrated framework to strengthen the link between the state and citizens that may encompass these and other reform efforts.

13. ***Over the last ten years aid organizations and governments around the world have developed three valuable -albeit narrow- approaches to LEP*** focusing on: (i) establishing a coherent “legal order” through the reform of the judiciary; (ii) tackling informality through the simplification and codification of business regulations; and (iii) formalizing property rights mainly through legal land titling programs. The last two

approaches have been greatly influenced by the ideas of Hernando de Soto, whose writings and charismatic personality have gained the attention of heads of state from all over the world. While the paper reviews the three approaches, it pays particular emphasis on the last one, the formalization of property rights. Programs aimed at formalizing property rights have raised the political profile of LEP. Reviewing the implementation of programs aimed at formalizing property rights reveals the inherent tensions in development policies as they try to meet the challenges of poverty reduction and governance.

C.1. Formalization of property rights

14. ***Formalization of property rights, particularly through legal land titling, is not a new policy prescription.*** Many legal land titling programs, some of them quite extensive in scope, have been carried out by developing countries in recent decades (Thailand, Chile, Honduras, etc). Legal titling programs have also covered non-real estate assets such as machinery and tools (the Asset Credit Bureau in Thailand is an example). Slum upgrading programs (and to some extent sites and services upgrading, such as street addressing initiatives) have also addressed the formalization of property rights for the poor. However, de Soto has been the first to popularize arguments and policy prescriptions that appeal to very diverse constituencies from the developed and developing world. De Soto's work has had a substantial impact on development theory and has also influenced aid agencies, including the Bank, as reflected in land and real estate projects on formal land titling and land transferability. In his most recent book, *The Mystery of Capital* (2000), de Soto argues that the key element required to convert the poor into successful business people is access to formal credit, and that they will obtain credit if they are granted a legal title to their property. De Soto claims that lack of formal titling prevents the use of property as collateral, and hence prevents the capital embedded in these assets from being "unlocked". Give the poor titles and they will have access to credit thereby improving the functioning of land and property markets.
15. ***The popularity of this approach stems from its simplicity.*** It offers a simple policy prescription about an otherwise politically sensitive and complex issue. Policy-makers in the developing world are attracted to a policy recipe that claims to stay within the safe boundaries of the market. It is also a straightforward and cheap policy prescription, particularly when the poor are prepared to pay the costs and the property taxes once they receive their title deed.
16. ***Limitations to this approach.*** Legal titling programs may overestimate the direct economic benefits that formalization of property rights could bring to the poor and underestimate the difficulties in formalizing property rights in many developing countries.
 - (i) ***Rural versus urban.*** Successful experiences have essentially been programs of mass titling in urban (and peri-urban) areas. In rural areas in many developing countries, land tenure and the formalization of land rights raise a complex set of challenges that should not be underestimated. At low levels of income and in the absence of other social security mechanisms, land serves as a social safety net for the rural poor and provides them their basic means of livelihood. In these contexts customary systems tend to restrict the marketability of land.

(ii) **Contestability of property rights.** Public authorities must be prepared to adjudicate cases where conflicts of land ownership arise. Given the contestability of property rights anywhere, establishing who owns what among the poor in developing countries is an enormous undertaking that should not be downplayed. For example, in many African countries, due to the lack of clarity in the relationship between customary and statutory law, land titling programs did not offer greater tenure security. In some cases it increased conflicts over land ownership. Most disputes concerned boundaries and ownership of land occasioned by disagreements over previous customary land agreements. In some cases, local elites used their influence with local tribunals and land administration agencies to acquire title deeds of land owned by local communities under customary law. Some African governments are currently seeking to recognize customary land rights, and are either integrating customary authorities into new local land administration institutions (Ghana) or gradually phasing out their roles in land administration (Tanzania and Botswana). In some cases, the issue is not so much the contestability of property rights but rather the lack of recognition of the actual possession of the land by statutory law. In Peru, a legal reform allowed the formal recognition of possessory proofs to grant property titles to poor people.

(iii) **Formalization of property rights takes time, can be expensive and can introduce unexpected market distortions.** For example, in Thailand property rights reform distorted the land rental market by triggering a sense of insecurity among owners of undocumented land. Before the reform, landowners were leasing plots of land irrespective of whether they had a legal deed. The reform, by prohibiting the sale and rental of undocumented land, triggered a sense of insecurity among land owners, increasing the expropriation risk premium included in the rental rate of unsecured plots. Providing individual property titles requires meeting a number of **challenges** that should not be underestimated:

- **Technical:** While in some projects (in Peru, for example) legal titling was achieved at a low cost and in a short period of time, this experience cannot be taken as the norm. Thailand, the first country with a national mass titling program, took 20 years to complete its program. In a city of 6 million people where 50 percent of the population lives in irregular settlements, administrators in charge of land management would have to issue 400 titles per working day for 10 years, just to cope with the existing demand.
- **Legal, administrative and political:** Identifying holders of rights and households entitled to tenure regularization, surveying, adjudication procedures, resolving land related conflicts, and allocating property titles, all require powerful specialist bodies, an appropriate administrative and regulatory environment, financial and human resources, and political continuity and commitment. Another important challenge for policy-makers is keeping formalized assets formal by recording titles. Ensuring the sustainability of legal titling programs (especially when they are subsidized supply-side interventions, such as mass titling programs) also poses legal, administrative and political challenges that need to be considered.
- **Economic:** The informal rental sector in most cities in developing countries is growing in economic importance. The limited resources of poor

households exclude most of them from access to land and housing at market prices.

- **Social:** The diversity of tenure systems in developing countries requires diverse responses. When the emphasis is placed on a single option, such as the delivery of individual property titles, this leads to inappropriate ‘one-size-fits-all’ approaches.
- **Environmental:** The poorest segments of the population are frequently pushed to occupy fragile ecosystems (e.g. the slums of Rio de Janeiro) adding another layer of difficulty in the design and implementation of legal titling programs.

(iv) **Legal titling is not the only way to improve security of tenure.** Formal land titles in some African countries did not bring the expected benefits of higher income and investment because indigenous tenure was already sufficiently secure under customary law. In most rural areas in Africa, customary law prevails, and land is often restricted from sale despite being titled by the state. Other alternatives to conventional private land titles have also been explored in developing countries. In Trinidad and Tobago, a 1998 law authorized three incremental levels of statutory security, each requiring additional documentation and commitment from the settler and the public authorities. In one year, an estimated 80 percent of informal settlers on state land applied for the lowest level. Because many of these instruments do not require prior physical planning, infrastructure servicing, and surveying of settlements, they can offer widespread protection at lower costs. In addressing secure tenure, the key policy message is to look at a range of options that exist as alternatives to formal property rights and the granting of title.

(v) **The direct economic benefits to legal titling may not materialize in contexts where poor people are confronted with distorted financial, labor, land, housing markets, and poorly developed infrastructure.** In *The Mystery of Capital*, de Soto states that “In the midst of their own poorest neighborhoods and shanty towns, there are trillions of dollars, all ready to be put to use if only the mystery of how assets are transformed into capital can be unraveled.” The presumed link between legal titling and capital accumulation is not automatic. The gains from formal titling envisioned by de Soto depend on the outcome of three separate transformations. Property has to be transformed into collateral, collateral into credit, and credit into income. For each of these steps distortions in land, infrastructure, labor and financial markets may impede capital accumulation even if the poor have obtained legal titles. In low-income settings where land plays a vital role as a social safety net, poor communities may resist using land as collateral for loans (one way in which land is transformed from a mere asset to capital), when virtually no other safety nets exist. Even the program of urban land titling in Peru, often cited as a successful implementation of de Soto’s theories, because it brought about significant, positive social outcomes, did not result in substantively greater access to credit from private financial institutions. Urban land titling was associated with a 9-10 percentage point increase in loan approval rates from the public sector bank for housing construction materials, but there was no effect on the loan approval rate from private sector lenders. Access to credit may not increase if private banks are unwilling to accept titled shanties in marginal urban areas as collateral. In Brazil, a 30-year longitudinal study of Rio’s urban poor revealed that legal land titling, the great struggle of the 1960s and 1970s,

is now a non-issue for *favelados* in Rio de Janeiro, who are no longer threatened with eviction and have “de facto” tenure. Their main concern is the lack of job opportunities owing to a distorted labor market. Rio’s *favelados* do not want to pay property taxes nor submit to building codes, and have no intention of using formal credit systems for loans. In their view, it is much too risky to borrow against their homes when they cannot find a job that would provide them with a steady income to repay their loans.

- (vi) ***Legal titling can have other important effects on poor households’ welfare including increased female labor participation, reduced child labor, and improved child schooling.*** By reducing the fear of eviction, the program of legal titling in urban Peru allowed household members to work more hours outside the household. Labor market participation by urban squatters, particularly women, is commonly constrained by the need to keep a family member at home to protect against residential property invasion. Short-term effects of legal titling operate not through credit markets, but through their impact on wage income as a result of increased labor market participation. In Lima, legal titling was associated with 17% increase in household labor force hours. In families with two working-age members, and ten years of residence, the effect on female labor could be up to 18 additional working hours per week. This is equivalent to one in three women joining the labor force full time. For households with children, acquisition of title was associated with a 27% reduction in probability that children would be working and increased child schooling.

C.2. Informality and simplification of business regulations

17. ***Another approach to LEP involves the simplification of business laws, and regulations aimed at reducing informality.*** Informality, understood as non-reported economic activities, is high and on the rise – more than 30 percent of GDP and 70 percent of workers in the developing world are now informal. In this area, tribute must be given to Hernando de Soto and his work on informality in Peru. His theoretical and methodological approaches to addressing informality are now mainstreamed in the work of development agencies. In his book *The Other Path (1989)*, de Soto argues that the informal economy emerged as a reaction to state regulatory controls that led to stagnation in the formal economy. He proposes simplification of business regulations as an effective way of addressing informality in developing countries.
18. ***The benefits of informality.*** All informal activity has a common feature world-wide: the high cost of formality that drives entrepreneurs to operate in the informal economy. The main benefit from remaining informal is the avoidance of burdensome government regulations and taxes. Regulations impose both a direct cost in terms of fees or bribes to officials, and indirect costs (transaction costs) measured in terms of the entrepreneur’s time spent fulfilling various requirements and submitting documents. For example, not long ago setting up a business in Sindh, Pakistan used to require 132 visits from representatives of concerned government agencies. The World Bank’s 2006 *Doing Business* study reports that an entrepreneur in Mozambique must undergo 14 separate procedures, taking 153 days, to register a new business. In Sierra Leone, if all business taxes were paid, they would eat up 164 percent of a company’s gross profits.
19. ***The costs of informality.*** Informality, however, comes at a cost. Informal enterprises are much more vulnerable to harassment by bureaucrats and are willing to pay higher bribes so that inspectors look the other way. The cost of informality in the form of implicit taxes

tends to be high in emerging economies. Surveys by the World Bank estimate that informal firms in transition economies pay approximately 20 percent of their revenues to government officials in the form of bribes (implicit taxes). Still, the main problem with informality stems from the uncertainty surrounding business prospects and the absence of safety nets for employees. Employees in informal enterprises are not covered by the insurance and pension systems offered by government and/or formal enterprises. The costs of informality also include the inability to tap into formal credit channels or to seek government and private sector services available to firms that fully comply with regulations.

20. ***Limitations to this approach.*** The main caveat of this approach lies in its narrow scope. Several institutional changes may be needed in developing countries to improve the environment for operating a formal business. More than streamlining administrative processes and reducing the number of business licenses and approvals is required.
- (i) ***Blurred distinction between formality and informality.*** Firms around the world lie on a spectrum of business activity, ranging from informal to formal. In some parts of the world, informal sector enterprises are almost always small in terms of assets and employees, allowing them to remain relatively invisible to the authorities. In other areas, unofficial enterprises are medium or large enterprises with sophisticated activities. This happens because an enterprise is able to keep its activities ‘blended’, part formal and part informal. Some of the informal activity may be illegal (criminal) and will never become formal, regardless of improvements in the business climate. Other activities, such as those conducted by small production units, operate merely for the subsistence of the owners and do not generate enough revenue to make their inclusion in the tax base meaningful. However, a considerable share of business activity is semi-formal, e.g., the company is registered but most employees are not, and could become formal with appropriate policy changes.
- (ii) ***Simplification of business start-up regulations may not be enough to reduce informality because other government regulations may still make the cost of formality too high for informal enterprises.*** Fighting informality may also require simplification of product, factor and tax regulations, together with sustained improved public sector governance. International evidence shows that countries that suffer most from a heavy regulatory burden have the weakest governance and enforcement capacity.

C.3. Law and Justice Reforms

21. ***A third approach to LEP adopted by aid agencies involves the promotion of law and justice programs.*** There is broad agreement among the development community on the importance of building the rule of law, and of the strength of the evidence that the poor and disenfranchised suffer disproportionately when the state fails to provide access to justice. Even if the formal legal system is functioning fairly well, the poor often face significant barriers to access - geographic (courts too far away), cultural, linguistic, financial, legal (such as complex procedures not understandable by the layperson, lack of affordable services by lawyers or lack of information about how to enter into a binding contract). When the formal system is not functioning well (i.e. slow, corrupt, biased toward the powerful, or unpredictable) the problems of access for the poor are magnified. The poor suffer most from crime and violence, they do not have financial reserves to permit them to wait if the judicial system is slow to address their claim, and they cannot afford to pay bribes or bring political pressure to bear if the system is corrupt.

22. ***Law and justice reform is a broad field.*** Donor-financed projects to reform justice institutions emphasize court management, including processes for selecting judges, strategic planning, financial management, case management, IT systems, and introduction of court-affiliated alternative dispute mechanisms (ADR) ; assistance to ministries of justice, solicitors general, judicial commissions, legal aid providers, and other institutions of the justice sector; legal education, including judicial training, assistance to law faculties, civic education for citizens, and training for the media; and access to justice. Efforts to broaden access to justice represent the work within the law and justice field most relevant to LEP. Enhancing access to justice can involve working with formal institutions to move courts closer to citizens through establishing mobile courts, small claims courts, justices of the peace, and more even geographic distribution of judges and courthouses. It can involve strengthening and expanding the coverage of government-provided legal aid services and public defenders. It can seek to simplify court procedures, encourage *pro se* proceedings, and expand court-affiliated ADR mechanisms. Access to justice work by the Bank and many other donor organizations also involves working with non-state institutions, setting up ADR and legal aid clinics run by civil society organizations or law schools, training paralegals and community leaders, and exploring ways to support traditional community dispute-resolution structures and to improve the relationship between these structures and the formal justice system.
23. ***There is increasing recognition among justice reform practitioners that work with both formal and informal institutions is required.*** Practitioners understand that reform efforts must take both the supply and demand sides into account, that design of reform projects must be adapted to country conditions (institutional, political, legal and social conditions) and that the impact of reforms must be empirically measurable and then evaluated. These are difficult tasks, requiring field research and scientifically-designed pilots to test for the factors in reform projects that have the greatest development impact.

D. Myths and realities of LEP: Emerging Lessons

24. ***LEP goes beyond the formalization of property rights and beyond law and justice reforms.*** Without a broad set of complementary reforms, property titling and registration systems are likely to have a limited effect on the daily lives of poor people. To have a lasting impact on poverty reduction, formalization of property rights must be embedded and sustained by a series of politically challenging steps. This includes, for example, strengthening the efficiency of judicial systems, improving accessibility to dispute resolution mechanisms to address the contestability of property rights, strengthening mechanisms of voice and accountability, restructuring financial market regulations, etc. These reforms will involve difficult choices for policy makers. LEP is a dynamic process that involves the transformation of the poor into citizens who are aware of their rights, are able to assert them and also hold the state accountable for their adequate enforcement.
25. ***LEP is a long-term, dynamic process, not the result of a “stroke-of-the-pen” decision.*** LEP is a long-term, dynamic process of achieving and enforcing freedoms and securing rights. There is a need to understand how these rights shift as economies move through stages of economic growth and progress in participatory government and how these shifts require different LEP interventions. Take legal titling as an example: the recognition of property rights is only the first step in the process to legally empowering the poor and improving their daily lives. Formalization must be accompanied by other measures, among them procedures for gathering, systematizing and analyzing information on formalized properties and their owners; research to understand the real factors restricting

access to credit and investment in housing, infrastructure, and public utilities; dissemination within the newly-titled population of the benefits of registering improvements made to their properties; strengthening municipal government functions in urban planning and improving targeting of social programs.

26. ***Progress on LEP cannot be measured in terms of***

outputs, but in outcomes. Too often, LEP reforms (such as land tenure reforms) have been measured in terms of outputs rather than impacts on governance and poverty reduction. For example, measuring the number of land titles which have been issued as opposed to focusing on the impact of the reforms themselves on the daily lives of the poor (such as improved conflict management and conflict prevention, increased access to key markets and services, reduced fear of eviction, and so on). The focus on outputs prevents us from fully understanding the effectiveness and potential cross-sectoral benefits of LEP programs and projects. In trying to measure the effectiveness of LEP programs a number of points may be stressed. First, LEP programs may have a lagged effect. By the very nature of the work, efforts to promote LEP are often long-term undertakings and their impact may not be realized for many years after first implemented. Second, it may be possible to determine whether there is a positive correlation between a LEP initiative and a measurable outcome. But because programs designed to promote LEP affect many sectors of society and alter the relationships between them, it may be difficult to establish direct causation between a particular LEP program and a change in a measured indicator. Third, indicators to evaluate the impact of LEP and the ‘health’ of the rule of law must be developed with analytical rigor and should be subject to vigorous cross-examination to eliminate the possibility of drawing erroneous inferences from gathered data. For example, if judges are well-paid and appointed for life, one should not conclude from this evidence that the judiciary is independent from the executive and legislature.

Box 1. Legal empowerment of the poor as a process- the case of urban property rights reform in Peru (in Annex)

27. ***LEP is neither a ‘silver-bullet’ solution nor a ‘cookie-cutter’ approach.***

No single “model” approach to promoting LEP is preferable to others. Addressing LEP will vary from country to country, from local reality to local reality. The Bank should respond to the constituencies of developing countries and, in particular, to the poor living in poverty pockets characterized by statelessness. The Bank can play a critical role in supporting LEP research to better understand local contexts. One way to differentiate between countries is to consider that in some nations the poor are relatively a small minority of the population, while in others they are the vast majority. The significance of this simple distinction is that empowerment of a poor minority leads to different political and economic consequences than the empowerment of a poor majority. In a country where the poor are a small minority, the rest of the nation can afford to help lift up the minority by providing additional assistance and political and economic rights. Many Eastern European countries come to mind in this context. However, in countries where the majority of the population is poor, giving them rights will not significantly ‘grow the pie’ to be shared. To say it differently, in a society not predominantly poor, there is sufficient economic activity to make legal empowerment a meaningful tool to enable the disadvantaged to share in the wealth of the society. On the other hand, in a predominantly poor society, legal rights may not mean much in the absence of complementary reforms aimed at increasing economic growth. In countries with weak states and/or corrupt regimes, legal empowerment would not be the solution to

Box 2. Understanding the legitimacy of property right claims in Informal Settlements in Jordan (in Annex)

reduce poverty. Giving the poor a legally protected stake in a degraded regime is hardly a strategic goal. Legal empowerment is ultimately a modicum of political power, a stake in the state, not a value in itself. If legal empowerment means the ability- or opportunity- to exercise a right, it is logical to believe that individuals, acting in their self-interest, will exercise that right in the manner they believe will be most productive for them.

28. ***LEP starts with strengthening the voice of the poor in public decision-making and improving their ability to hold policymakers accountable.*** The approach to LEP defended here is built on the premise that poor people are first and foremost citizens. In principle, they should be able to contribute to the policy-making process that defines society's collective goals and hold public officials (politicians and civil servants) accountable to achieve those goals. In practice, they are often excluded from the formulation of public policies or they cannot influence public action because of weaknesses in the political system and/or because of weak administrative capacity. Here the key question would be whether the state is prepared to respond to the needs and rights of the empowered poor. The Bank may consider ways to cushion such an empowering process by providing financial instruments, analytical guidance and administrative muscle to governments dealing with newly empowered poor.

Box 3. Legal empowerment of the poor starts with strengthening voice and accountability (in Annex)

29. ***LEP is not linked exclusively to the promotion of statutory law nor must LEP interventions necessarily support dispute resolution in a court of law.*** Reinforcing state institutions is central to LEP. But one cannot ignore the reality that state effectiveness is often linked to the involvement of non-state institutions. Take equality before the law as an example. Equality before the law does not mean that disputes among parties - whether individuals, organizations, companies, or public administrations - must necessarily end up in a court of law. Alternative Dispute Resolution mechanisms (including arbitration, early neutral evaluation, mediation and conciliation) have been used with increasing frequency in recent years as a more efficient and cost-effective option than costly and time-consuming civil litigation. By the same token, security of property rights may also need the integration of non-state institutions in the overall legal framework. Conventional notions of property rights focus on static definitions of property rights, usually as defined by statutory law. In practice, state, customary, religious and *ad personam* (often ethnic) laws often interact. All of them may provide legitimate bases for claiming property rights.

Box 4. Alternative Dispute Resolution- Third Party Arbitration Courts in Eastern and Central Europe (in Annex)

30. ***LEP is not the exclusive domain of lawyers and judges - LEP is not solely about reforming law and justice and improving security of property rights. It is fundamentally about strengthening the link between the state and citizens.*** Essentially, LEP concerns how law and public institutions can benefit the poor in a broad range of development fields that may not have a strictly legal dimension. While lawyers and judges contribute important technical skills, a professional background in law is not a prerequisite to effective involvement in LEP. For example, access to justice by the poor may require social/legal anthropologists who understand the plurality of norms, institutions and actors that interact in the daily lives of poor people. Programs involving the formalization of property rights in informal settlements may need multi-sectoral teams to understand the drivers of and obstacles to change, including economists, and gender and public sector/governance specialists. In other cases, rural or urban policy

specialists may be needed to bring their expertise to a particular issue related to the legal empowerment of the poor.

Box 5. Reassessing Customary Law in Uganda and Sierra Leone (in Annex)

31. **LEP plays an essential ‘stitching’ role between supply and demand side approaches to governance.** Traditionally the Bank has conducted parallel work on supply (institution-building) and demand side of governance (community-driven development). What is missing is an integrated framework that systematically connects these two approaches at the country level. Admittedly, the distinction between ‘supply’ and ‘demand’ side work is not always clear. For example, a reform to the legal framework that allows the enactment of freedom of information laws could be interpreted as ‘supply-side’ effort since it focuses on legal reform. But it could also be read as a ‘demand-side’ effort because it furnishes citizens with data they can use to hold the state accountable for better services. By strengthening the link between citizens and the state, LEP can help improve governance. LEP encompasses a set of institutional arrangements governing the relationship between the state and its citizens, thus reinforcing broadly-based mutual rights and obligations. LEP involves poor people (i) knowing and understanding their rights and (ii) being able to effectively assert and enforce their rights. This, in turn, requires stronger voice, ability to organize collectively, and greater state responsiveness.

Box 6. LEP stitching role between supply and demand side approaches to governance: the case of Mozambique (in Annex)

Box 7. LEP helps address governance – examples from Bangladesh and Pakistan (in Annex)

- (i) **Knowledge of Rights.** Poor people need to know and understand their rights. This involves ‘demystifying’ the law. It is important to translate the generic principles of the law into terms that make sense for the daily lives of poor people. Hence, the need for legal intermediaries both from civil society (e.g. development workers, paralegals, local NGOs or local lawyers and from the public sphere (e.g. trade unions, chambers of commerce, political parties).

Box 8. Knowledge of rights and state responsiveness: two critical steps toward promoting LEP (in Annex)

- (ii) **Stronger Voice.** In non-democratic countries, the poor at best have only a weak hold on politicians. Even if there is a well-functioning electoral system, poor people may not be able to hold politicians accountable because of failures in political markets: they may not be well informed; they may vote along ethnic or religious lines; or the lack of effective political competition leads them to be influenced by powerful groups that affect their vote in exchange of promises of ready cash and jobs. As a result, enforcing poor people’s rights to basic services often becomes the currency of political patronage and clientelism. Even in countries with imperfect political markets, societies can still introduce some intermediate elements to make state institutions more accountable. Participatory budgeting at the municipal level, decentralization, and freedom of information laws are examples of how citizens can participate in budget formulation and then hold municipal government accountable for executing the budget. Perhaps the most powerful means of strengthening the voice of poor citizens is better information. When Ugandan citizens learned that only 13 percent of recurrent spending for primary education was arriving in primary schools, parents compelled school principals to post the entire budget on the schoolroom door. The media can do much to disseminate information about public

services. Higher newspaper circulation in some Indian districts is associated with better local-government performance in distributing food and drought relief.

- (iii) ***Improving the collective agency of the poor.*** Strengthening the organizational capability of poor citizens is another example that shows how LEP can support stronger voice. Through aggregation of numbers, organizations of the poor help overcome the disadvantages of being small and powerless. Poor people gain economic and political clout when they achieve scale through aggregation. One response by indigenous communities to the challenges of ensuring access to forests and addressing regulatory barriers has been to develop networks and associations. Similarly, in India the trade union representing street vendors and salt workers helped enforce their rights and release their economic potential. However, in countries where the vast majority is poor, helping them to organize would not necessarily immediately improve their condition because even if all their rights were protected, there is insufficient wealth to share to enable them to become less poor.

Box 9. LEP can unleash the potential of poor people to organize themselves- examples from Asia and Latin America (in Annex)

- (iv) ***State Responsiveness.*** Knowledge of rights and stronger voice is important, but is not enough. The poor also need to have the legal, political and economic means to assert their rights and press demands on the state. Strengthening poor people's voice can make politicians *want* to respond to their needs and rights. But they still may not *be able* to. Even well-intentioned politicians often cannot offer the incentives and do the monitoring to ensure that state institutions and service providers respond effectively to poor citizens' demands. What can be done to strengthen state responsiveness to the needs and rights of poor citizens? Where the state is absent, policy-makers may need to create temporary institutions (such as social development funds or other types of community-driven development initiatives) that can ensure effective primary responsiveness to the needs and rights of poor people. Over time, these transitory institutions could be progressively integrated in the formal/state system. Where the state is weak and the poor lack access to justice, policy-makers could start by recognizing and supporting informal/alternative dispute resolution mechanisms. Under either circumstance, efforts should be made to progressively integrate these informal/customary ADR mechanisms into the formal legal system.

II. RATIONALE FOR THE BANK'S INVOLVEMENT IN LEP

32. ***LEP contributes to poverty reduction and economic growth.*** Countries cannot make headway in the fight against poverty without supporting equality before the law and the legal empowerment of the poor. These are essential components to unleash the social and economic energy of poor communities. Poverty is a transient condition. The poor do not want to stay poor. The objective of LEP is to empower the poor to move up the economic ladder. If legal empowerment is to mean anything, it has to mean mobility and security. Individual and collective initiative will often triumph over deprivation, when people can believe their lives and assets are secure. Promoting legal empowerment of the poor helps improve tenure security to millions of poor people. Security of rights has a direct correlation with

Box 10. Legal empowerment of the poor not only contributes to reducing poverty but it also promotes economic growth (in Annex)

increased incentives to invest labor and other resources. On the one hand, if the poor do not know or cannot effectively assert their rights (e.g. when these are not well defined or easily enforced), individuals and families will be obliged to spend time and resources defending their assets. They will be reluctant to invest too much time, money or materials in something over which they have no security. With greater security of tenure, people tend to make more productive use of their land and labor. Security of tenure has been linked with investment in land, land transactions, and the production of marketable surplus. In post-disaster and post-conflict contexts, it is the tangible evidence of property rights to real-estate and other assets that safeguards the poor and reduces their vulnerability. However, in conflict-torn countries where statelessness prevails, legal empowerment may not be the solution. Courts are by definition procedure based, ex post instruments to protect rights. Adjudicating rights and enforcing them will be useful to people once they are firmly convinced they have those rights and the rights are valuable enough to fight for in court.

Box 12. Legal empowerment of the poor strengthens state legitimacy and effectiveness (in Annex)

33. **Legal empowerment of the poor and gender equality.** Women with strong property rights are less likely to become economically vulnerable in their old age or in the event of widowhood or divorce. Depending on the norms governing household decision-making, women may not fully participate in the economic and social benefits of household asset ownership if they do not share formal property rights over land and natural resources. For widows, land ownership may be one of the few vehicles through which women can elicit economic support from their children in the form of labor contributions to agricultural production, cash or in-kind transfers. In such circumstances, independent property rights can represent the difference between dependence on natal family support and the ability to form a viable, self-reliant, female-headed household. Several countries have taken steps to require joint titling of land in the names of husband and wife, bolstering women's effective right to land, particularly during the husband's absence. In addition to the direct economic benefits of property ownership, property rights may serve to empower women within the community and society at large. World Bank research shows a positive relationship between the amount of assets a woman possesses and the share of household expenditure devoted to food, education, health care, and children's clothing.

Box 11. Legal empowerment of the poor and gender equality – the case of Uganda (in Annex)

34. **Legal empowerment of the poor offers win-win solutions for governments and poor citizens.** By helping to strengthen citizens' awareness and their ability to hold the state accountable, LEP increases state effectiveness to deliver services to the poor. Poverty reduction means not only increased income, but also informed participation by the poor in public actions that affect their lives. LEP also contributes to strengthening state legitimacy and effectiveness. In Peru, the program of urban land titling rebuilt trust in the state and strengthened its legitimacy in communities that were under the control of the terrorist group Sendero Luminoso.

III. THE EXTERNAL ENVIRONMENT

35. **What are other institutions doing in the field of LEP?** A considerable number of multilateral and bilateral institutions/donors are actively engaged in issues relating to/or falling within the scope of LEP. In addition to the High Level Commission for Legal Empowerment of the Poor, a number of multilateral and bilateral agencies are active in

- this area. Major multilateral players include the European Union, the G-8, the IMF, UNDP, UNECE (which has created a unit on legal empowerment of the poor), and UN-Habitat (which is supporting the Global Network for Pro-Poor Land Tools with support from the Swedish government). Bilateral donors include USAID, CIDA, DFID, Agence Française de Développement, NORAD, SIDA and other bilateral donors. The German political party foundations (the Konrad Adenauer Stiftung; the Friedrich Ebert Stiftung; and the Friedrich Naumann Stiftung); the National Endowment for Democracy and affiliated associations, Human Rights Watch, the Ford Foundation, and countless other organizations, public and private, have also advanced LEP-related initiatives.
36. ***Although collectively donors cover the spectrum of governance issues and countries, their support is highly uneven in its distribution.*** Substantively, bilateral aid often tends to be provided in areas that are of the greatest interest to the donor. Some national aid agencies tend to focus on democracy promotion, land tenure, local governance, civil society and rule of law, while others concentrate on human rights, fostering an enabling environment for trade and private sector growth, and immigration. International institutions such as the IMF focus on their areas of core competence, such as improving macroeconomic and fiscal management, strengthening fiscal transparency, and financial market development.
37. ***Within this context the Bank has a unique role to play.*** Its areas of comparative advantage are the quality of its technical and analytical work, its ability to make available to others its experience from a wide range of country contexts, its ability to convene diverse stakeholders, and the fact that it can mobilize substantial resources to support country-level governance reforms. The Bank's mandate is broad. Its vision is not weighed down by historical ties or national interests. Its ability to mobilize significant resources often gives it more leverage than bilateral donors. This combination allows the Bank to play an important role in coordinating donor dialogue on issues relating to the legal empowerment of the poor.

IV. THE INTERNAL CONTEXT: BANK THINKING AND PRACTICE

A. Evolution of Bank Thinking

38. ***Although for over two decades the Bank has been involved in activities that fall within or are related to LEP, its most concentrated efforts in this field have taken place over the last ten years.*** During the 1970s, the Bank focused on basic human needs. Relatively little LEP work took place during that period. The Bank's shift in the mid-1980s towards trade and private investment drew attention to the enabling environment for private sector growth, and the Bank quickly recognized that the legal, regulatory, and institutional frameworks in developing countries were major barriers to foreign and domestic investment. At the end of the 1980s, in an effort to increase the effectiveness of development loans, the Bank began to address governance issues in developing countries.
39. ***The 1990s saw a surge of institution-building activities that addressed the 'supply-side' of governance.*** Scholarly research and concern with institutions is by no means new, although a strong interest in institution-building characterized the 1990s. The Bank, in supporting the 'supply-side' of governance, developed interventions aimed at strengthening the legal, regulatory and judicial frameworks, training civil servants, educating legislators and reforming every function of the executive branch from public financial management to human resource management. It also designed an array of tools to support the formal supply of governance including Public Expenditure Reviews,

Institutional and Governance Reviews, Legal and Judiciary Assessments, Procurement and Financial Management Assessments, and a wide range of lending operations supporting public sector management reforms.

40. ***In recent years, the Bank has broadened the scope of its interventions to focus on the demand-side of governance.*** Increasingly, the Bank has also focused on the relationship between government and citizenship, working to improve the transparency of government actions and on the inclusion of civil society groups in policy dialogue. In July 2000, the Public Sector Governance Network developed a Sector Strategy entitled, *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy*. The strategy had been developed in 1997 and refined over three years, a period of unprecedented growth in the Bank's attention to governance issues. The strategy called for the Bank to move governance and institutional-building to center stage. It recommended broadening the approach to focus on the 'demand' as well as the 'supply' side of reform, that is, promoting voice, participation and accountability. In addition to the Public Sector Governance Group, many units of the Bank are involved in promoting LEP, including the Social Development Group, the Rural Development Group, the Gender Group and the Vice Presidency for Legal Affairs. All of these departments have developed their own sector strategies, their own databases, monitoring indicators and toolkits, and their own approaches. In January 2005, the Social Development Network completed a sector strategy paper with a focus on the demand-side of governance. The strategy is entitled *Empowering People by Transforming Institutions: Social Development in World Bank Operations*, which defines social development as 'transforming institutions to empower people', with three operational principles to guide its approach to social development: 'inclusion, cohesion, and accountability'. In November 2005, the Legal Vice-presidency launched a *Legal Modernization Initiative* that seeks to address the demand-side of legal and judicial reforms, calling for a better understanding of (and engagement with) local level decision-making institutions and dispute resolution mechanisms available to the poor.
41. ***Although governance and institution building are now understood as main drivers of economic development, some development practitioners, including the Bank's, are still reluctant to address the political aspects of development and focus instead on technocratic changes.*** One reason many judicial reform projects have had modest success is that their design failed to reflect the competitiveness of the domestic political system. A major determinant of whether in the long run an agency will operate free from political interference is the degree of political competition. Virtually all the early projects financed by aid agencies made 'an independent judiciary' a principal objective irrespective of the political setting. All these projects shared a common design. Had their designers appreciated the importance of addressing failures in the political field, such as the lack of political competition and the restricted public access to information on public affairs, judicial reform projects in authoritarian or semi-authoritarian regimes would have been designed differently than those crafted for mature democratic nations.
42. ***The Bank shows awareness of the challenge of helping countries to navigate the difficult terrain of governance.*** Perhaps the most important lesson that the Bank has learned is that "technical" responses to improve governance work only in propitious settings – where there is committed leadership, a broadly-based coalition to support reform, and sufficient capacity to carry out the reform program. Clearly, these conditions exist in only a minority of developing countries. The most difficult challenge is to create demand for good governance in countries with unaccountable states. The Bank is also becoming aware that good governance is not only the responsibility of the state. Civil

society organizations also need to be legitimate, transparent and accountable. Meeting the challenge of supporting good governance requires a full understanding of the political dimensions of reform and the ability to act selectively to create and nurture an environment conducive to needed reforms.

B. Bank Practice Today

43. ***Attention to governance in Country Assistance Strategies and analytical work has increased in recent years.*** Within the context of the recent SSIU exercise for Public Sector Governance, the PREM Anchor conducted an assessment of how effectively governance issues were addressed in Bank CAS documents between FY02 and FY05. They found that virtually all CAS documents mentioned governance issues and the risks associated with them. Four fifths incorporated some diagnosis of the causes of bad governance, and an even higher proportion integrated some governance elements in their lending and analytical work. However, more detailed analysis revealed that much of this work was done in a perfunctory manner, with governance viewed as a relatively narrow sector of engagement. Limited analytical work was undertaken to assess the risks of corruption to Bank projects or to analyze the impact of Bank lending on governance.
44. ***Analytical work (AAA/ESW) related to LEP has also increased.*** Thirteen new analytical products called “Institutional and Governance reviews” were carried out in Africa, Asia and Latin America over the last few years. The Bank has also developed numerous types of surveys and toolkits to measure impact of its interventions, ranging from surveys of court cases in the Dominican Republic and Peru (which shed light on the types of cases handled by courts and where scope might exist for greater efficiencies) to scorecards of public services in the Philippines and Ukraine (to facilitate civil society monitoring of public service provision) and public expenditure tracking surveys in Uganda and Tanzania (to illustrate the positive impact the dissemination of information on public services can have as a tool to promote voice and accountability). Fourteen “Legal and Judiciary assessments” have also been carried out in different regions over the past few years.
45. ***Lending operations that are related to LEP have also grown.*** While some loans may be difficult to classify, according to the World Bank’s Annual Report, 24 percent of the Bank’s loans in fiscal year 2005 aimed to strengthen the rule of law, the justice system and public administration. This is a larger percentage of loans than was dedicated to any other sector, and outweighs the percentage of loans for health, education and social services combined. In addition to financing governance reforms, the Bank has increasingly conditioned the disbursement of other loans on improvements in the quality of governance. Lending operations that are related to legal empowerment of the poor have grown over time:
 - (i) ***Public Sector Governance.*** The Bank has made significant progress in focusing its lending more centrally on institution-building in areas such as administrative and civil service reforms, decentralization, financial management, legal and judicial reforms, and the development of accountability institutions (such as legislatures and supreme audit organizations, ombudspersons and anticorruption agencies, and NGOs and citizen watchdog groups). In FY97 the Bank approved 14 core public sector reform projects accounting for 3.7 percent of total Bank commitments. By FY01 the number of projects had increased to 22 projects, representing 14.5 percent of total commitments. At the end of FY05, the Bank’s

entire portfolio in public sector governance amounted to 183 active lending projects with commitments of \$9.6 billion (around 10.1 percent of total Bank commitments).

- (ii) ***Law and Justice.*** LEG reports that there are more than 400 Bank-financed projects that deal with or include legal/justice sector reform components. There are currently 30 freestanding judicial reform projects approved in five regions.
 - (iii) ***Community-Driven Development.*** The number of Community-Driven Development projects has increased substantially over time, from 10 CDD projects in 1989 to 70 in 2003. The largest percentage of projects is in the Sub-Saharan African Region, with Latin America second. With regard to land tenure reform projects, whereas in FY 1995-94 only 3 stand-alone land projects were approved, the number increased to 25 in 2000-2004. FY04 commitments on land-related projects alone amounted to US\$1 billion.
46. ***It is virtually impossible to produce an exhaustive account of the Bank's current involvement in the area of LEP.*** Many Bank sector projects have a significant LEP institutional development and/or capacity building component that may not be fully captured in the Bank's project classification. Often, activities can serve a dual purpose. While acknowledging that the Bank's work on LEP issues is more comprehensive than is reflected here, this assessment has focused on lending and ESW primarily identified as addressing LEP themes.
47. ***A rapid overview of the Bank web site by thematic areas illustrates the diversity of approaches to tackling issues related to legal empowerment of the poor:***
- (i) ***"Public Sector Governance":*** In this field the Bank's work has traditionally focused on institution-building. It has supported reforms of the judiciary, public administration, and to a lesser extent decentralization and municipal governance in a variety of contexts. It has also supported actors and institutions involved in promoting vertical and horizontal accountability (ombudsmen, the media, parliamentarians, supreme audit institutions, NGOs, watchdogs, and participatory budgeting to include citizens in decision-making processes). An innovative project deserving of note is the Judicial Reform project in Armenia. Surveys found that many citizens were unaware of their legal rights and lacked understanding of the legal system. Distrust of the courts was widespread. To change public opinion and create legal literacy, the Bank funded a TV show through its Judicial Reform Project. The TV program uses mock trials to depict real-life disputes. The show has increased public interest in the protection of legal rights and introduced people to the type of legal remedies they can find in courts.
 - (ii) ***"Law and Justice"*** (one of the thematic priorities of the Legal Group): The Bank has supported legal and judicial reform projects that include legal education for the general public in the Russian Federation, anticorruption programs in Sri Lanka's judiciary, indigenous dispute resolution mechanisms in Guatemala, and legal aid for poor women in Ecuador. Another example is a legal and judicial development project in Morocco that has contributed to strengthening commercial courts and registries. The Indonesia project entitled "Justice for the Poor" forms an essential part of the Bank's learning curve in the LEP field. The project has launched a 2-year research effort to better understand the complementarities and contradictions of the informal and formal justice

systems. More recently, the Law and Justice Institutions Thematic Group (joint effort of LEG and PREMPS) has launched a website that provides a wealth of information about law and justice reform around the world.

- (iii) **“Land Policy and Administration”** (one of the thematic priorities of the Rural Development Group): The Bank has financed projects ranging from massive land titling programs in Thailand to the land administration project in Ukraine, which aims to improve the registration and cadastre system. The Bank has been increasingly broadening its approach to securing property rights, going beyond traditional legal land titling programs. Some recent examples include: (i) establishment of property and business registries to provide the basis for operating the private sector (Bulgaria, El Salvador, Uganda, Thailand); (ii) creation of market and non-market mechanisms, including legal aid, to resolve land related conflicts (the Philippines, South Africa, Brazil, India); (iii) measures aimed at facilitating the use of land as collateral, linking land titles to public housing schemes and credit and mortgage instruments (Jordan, Brazil, Mexico, Ghana); (iv) legal reform that allows spousal co-ownership and independent rights of succession, followed by issuance of land titles in women’s names (Vietnam, Nicaragua); and (v) support to land administration programs to improve property tax collection by local governments (Colombia, China, India). Helping countries secure property rights is a large and evolving agenda and more attention to assessing impact will be needed. More recently, in 2005, the Bank approved an Operational Policy 4.10 on Indigenous Peoples that recognizes the right of indigenous peoples to ‘benefit sharing’ when natural resources are developed commercially. It requires that if a Bank-financed project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories that indigenous peoples traditionally owned or customarily occupied, then indigenous peoples are entitled to share (or be compensated) equitably in the benefits to be derived from such commercial development.
- (iv) **“Community-Driven Development”**: The Bank has financed a great diversity of projects that have pursued various objectives- decentralization, local governance, employment generation, urban upgrading (including street addressing and slum upgrading) as well as capacity building for local governments, NGOs and local communities. For example, the Nepal Community School Support Project provides technical assistance to build the capacity of communities to hold government-funded schools accountable for delivering results. Other examples include capacity building projects in community radio programming, civic participation and local governance in Ghana, Kenya, Sri Lanka and the Kyrgyz Republic. In 2002, the Bank published the Empowerment and Poverty Reduction sourcebook that brought together a wide range of Bank staff working on empowerment-related issues. As a result, an Empowerment Community of Practice, including staff from SDV and WBI, was formed in 2003 with the purpose of exchanging information and experiences. Since its creation, members of the Community of Practice have launched a number of learning and research activities linked to social empowerment issues.
- (v) **“Global Governance”** (initiative led by WBI): The Bank has supported the development of global governance indicators to rank over 200 countries biannually on six dimensions of governance (rule of law, control of corruption, government effectiveness, voice and accountability, regulatory quality and

political stability). These governance indicators are based on an aggregation of existing expert polls and surveys on the perceptions of foreign investors on the quality of governance.

- (vi) **“Investment Climate” (initiative led by IFC and PSD):** The Bank has financed diverse advisory and research activities to understand the constraints of doing business and to offer policy recommendations to simplify business regulations and improve the investment climate. Examples include the country Investment Climate Assessments and the Doing Business reports, which have become an indispensable reference for academics, policy-makers and development practitioners. These recent World Bank flagship publications have the merit of overcoming the complex task of benchmarking countries on the quality of their investment climate by providing simple, objective and comparable measures of business regulations and their enforcement across 155 economies. They indicate the regulatory costs of doing business and rate countries according to their relative degree of investor protection. Countries can gauge how they rank and legal reform practitioners can use the data to identify unnecessary regulatory red tape. In this way, the Doing Business report helps instigate reforms, and provides the tools for their implementation. The country benchmarking approach developed by the Doing Business project has influenced other areas of Bank work.

C. Challenges Ahead

48. ***Over the past four years, the Bank has supported LEP-related reforms through a number of vehicles:*** (i) providing financial and budgetary aid to support governance reforms, (ii) contributing to countries’ institutional development and capacity building; and (iii) preparing analytical reports to inform policy-making.
49. ***Yet the ultimate measure of the Bank’s success is not outputs, but final outcomes: its impact on the daily lives of the poor,*** the extent to which the Bank is able to help improve poor peoples’ lives by enhancing the rule of law, combating corruption, enabling the state to deliver better and more cost effective services, advancing accountability, transparency and inclusiveness, and promoting an environment in which the private sector can flourish. On this score, the agenda remains far from finished. Measuring the impact of Bank efforts to improve governance is a challenging task, as it may involve interventions that are not always amenable to quantitative measurement. To address this challenge the Bank has launched several initiatives, including developing and piloting governance and social development indicators to monitor progress in promoting governance at the country level. In FY05, the Bank, together with other development agencies, moved from conceptualizing to implementing the results agenda. The Bank is beginning to measure sectoral outcomes and launched the IDA14 Results Measurement System website, with data for MDG indicators. The Bank has also been working with the MDG Working Group and the OECD-DAC Joint Venture on Managing for Development Results to build corporate results-based systems. But the Bank is still at an early stage in the process and much work remains to be done to determine how to move credibly from measuring Bank-supported sectoral outputs to governance and poverty reduction outcomes.
50. ***The Bank faces an important challenge in determining how to advance the LEP agenda.*** As the previous section illustrated, the Bank has developed a number of sector strategies that are related to or fall within the agenda of the legal empowerment of the

- poor. These strategies have translated into diverse programs, projects, toolkits and survey instruments. The challenge is to coordinate and consolidate these instruments more effectively.
51. ***On the managerial front, the Bank needs to deepen its efforts to develop a strategic integrated framework to address the LEP agenda, in which citizens are its main subject.*** The Bank has made progress in designing LEP approaches to strengthen state institutions and promote community-driven development. But the poor were addressed more as ‘beneficiaries’ than as citizens. LEP, however, means addressing the poor as full citizens who demand participation in public policy-making and are able to hold the state accountable to address their needs and rights. This calls for better integration of Bank activities which share a common management vision recognizing that listening to poor citizens and enabling them to influence public action is necessary to ensure the effectiveness of development policies and programs. The Bank needs to find ways to strengthen participation by citizens so they demand from their governments greater effectiveness in implementing policies and using public resources.
 52. ***On the operational front, the Bank needs to deepen its efforts to understand and measure the impact of LEP-related interventions on the ground.*** When looking at project performance of completed Bank projects, a recent quality assurance study revealed mixed outcomes on governance and policy reforms. The Bank needs to improve its measurement of the impact of its country programs on the quality of governance and the ‘health’ of the rule of law.
 53. ***From an organizational viewpoint, the Bank’s work on issues related to or falling within LEP is currently carried out by a variety of units and departments, without any coordinating unit.*** Work on public sector governance is concentrated in regional PRMPS units while work on legal and judicial reforms is done jointly by PRMPS and LEGJR. EXT is involved in issues of anticorruption, transparency and right to information. WBI is supporting capacity-building activities on comparative governance work, public sector management, anticorruption, and legal and judicial reforms. IFC and PSD have been closely engaged both on issues of decentralization and municipal governance and on issues relating to investment climate and the cost of doing business. SDV coordinates community-driven development activities across the Bank and promotes efforts on the demand-side of governance. RDV hosts the thematic group on Land Policies and Growth which tackles issues related to formalizing property rights and security of land tenure. LEG is engaged in legal and judicial assessments and has recently launched a research initiative (jointly with DEC and SDV), “Justice for the Poor,” to further understand the factors that constrain the ability of the poor to effectively assert, claim and secure their rights.
 54. ***Internal decentralization efforts should be further pursued.*** Important progress has been made in supporting internal decentralization efforts. The Bank’s goal of moving work closer to the client through decentralization has resulted in about 66 percent of the Country Directors now being located in Country Offices. Where it is not viable to have the Country Director in the field, the Bank has set up local offices run by Country Managers. The number of senior technical staff that has moved to field offices has also increased over the last few years. The trend towards increasing the delivery of country management services in the field should be further pursued as it will help improve the effectiveness of LEP related programs.

55. ***Internal incentives may need to be revisited to respond to the challenge of the LEP agenda:***

(i) ***Institutional incentives.*** Current institutional incentives may not be conducive to supporting the design and implementation of lending operations demanding cross-sectoral cooperation. Core and sectoral department heads have an incentive to spend their budgets and maximize the volume of their respective sectoral portfolios.

(ii) ***Individual incentives.*** One of the most pressing challenges confronting the advancement of the LEP agenda is the extent to which experienced task managers are confronted with dwindling resources and are stretched thin between countries. An additional challenge is that moving out of headquarters to the field is still perceived by many Bank staff as a risky career move. Family considerations often deter staff from moving to the field for prolonged periods of time.

V. UNLEASHING THE POTENTIAL OF LEP: AN ACTION AGENDA FOR THE WORLD BANK

56. ***The reflections set out thus far are pointers aimed at launching an internal research on the quality of the Bank's work at the crossroads of governance and poverty reduction,*** using LEP as an organizing framework and moving the Bank from its current "piecemeal/scattered" approach to a more strategic and systematic engagement at the country level. These reflections also aim at informing the Bank's involvement in the High Level Commission for Legal Empowerment of the Poor by, among other things, applying its unique technical expertise and cross-country experience. The HLCLEP initiative may potentially lead to more effective engagement with policy-makers in developing countries and could help build political support for policy reforms.

57. ***Implementing the LEP agenda is a challenging task.*** If the strategy is too limited and the resources allocated for implementation are insufficient, LEP risks becoming nothing more than a set of disconnected activities which, though valuable in their own right, collectively will not suffice to leverage change. If the strategy is too expansive, it will over-tax the capacity of countries to manage it effectively - a particular concern in low-capacity environments. The paper suggests keeping the design of LEP programs simple by focusing on only the most pressing concerns for the specific time and context, as a recent OED report put it "*to understand more comprehensively but act more selectively.*"

58. ***In order to unleash the full potential of LEP, the Bank should conceive a comprehensive "LEP World Bank Action Agenda" built around the following recommendations:***

(i) ***Adopt a strategic framework where LEP plays the essential 'stitching' role between top-down and bottom-up approaches to governance.*** The strategy should be revised periodically to reflect the dynamic nature of LEP in different contexts. It should also include a discussion of the corresponding benchmark indicators against which to set baselines and measure performance. This strategic framework should be implemented at the country level through the CAS process. Ultimately, it is the country director's responsibility to develop an integrated country program to address the LEP issues relevant to the particular context and time. The type, sequence, timing and speed of interventions should vary according to country specific contexts. Furthermore, to the extent that the core of the LEP agenda is a process of treating the

poor as full citizens, it can only be implemented at the country level. During CAS preparation and implementation, country directors should ensure that country teams coordinate in preparing operations that have an explicit LEP objective in their particular sector.

- (ii) ***Use political analysis in Bank operations and programs more systematically.*** At some level, political analysis has long been a part of Bank operations. Standard project documents include institutional assessments and stakeholder analyses. Recent work by PREMPS and SDV has also moved this analysis to the macro level. These types of political analysis can address broader social concerns, such as the underlying political dynamics generating pressure for corruption, or narrower topics, such as the politics surrounding conflicting claims over property rights. Political analysis should also be undertaken to assess the perceived costs and benefits of reforms and their political feasibility. When conducted properly, such analysis can reveal important insights into the prospects for a given reform agenda to move forward. Currently, there is some effort to carry out political analysis to inform Bank policies and programs (examples include Institutional and Governance Reviews, Country Social Analysis and Poverty and Social Impact Analysis) but it is not done systematically and there is a need to strengthen the institutional capacity to analyze political economy issues. The Bank's future effectiveness depends on how well it identifies and manages political risks and opportunities. This means (1) setting country operational priorities that consider these risks; (2) an approach that is both politically sensitive and politically savvy; and (3) increasing the resources for data collection, measurement and analysis of the quality of governance at the country level.
- (iii) ***Improve coordination between core and sector-related LEP reforms centered on state-building and the promotion of the rule of law.*** The Bank has already integrated core LEP reforms in areas such as civil service reform into sectoral programs and projects. Examples include health and education sector reform projects that include specific components on capacity-building of key line ministries. However, moving from capacity-building of state institutions to the broader goal of strengthening the rule of law entails a higher degree of integration and coordination between these national efforts and those focused on the community level. This may prove difficult to achieve in practice. The obstacles are many, as discussed earlier, and include divergent performance criteria for lending and analytical work, different reporting relationships and skill sets, and an incentive structure that tends to reward task management over team collaboration.
- ***In the medium to long-run,*** one proposal that could be considered is to ***consolidate the core activities related to LEP*** that are currently spread across different units of the Bank (PREMPS, SDV, LEG, DEC, RDV, INF, FPSI, WBI, DECRG). This could be achieved in a number of ways. One alternative would be to create a new network combining the different Bank units that are currently involved in LEP. Another option is to anchor the LEP work in an existing network that could expand its mandate to coordinate the LEP activities carried out in other networks.
 - ***In the short run,*** the Bank should consider **setting up a task force** with the participation of members with an operational background of relevant units. The responsibilities of the task force could include:

- **Reviewing current LEP-related work** carried out in existing Bank thematic groups, VPUs and Regions;
 - **Revising existing Bank analytical, lending and monitoring tools** and propose recommendations to improve them;
 - **Assessing the financial and human resources now devoted to various LEP activities** to determine whether the Bank is under-investing in this agenda. Beyond the value of the resulting stocktaking exercise, it can help develop a consensus among participant members about future directions; and
 - **Developing a future research agenda that will address current intellectual and operational gaps associated with the proposed strategy to address LEP.** The research agenda should also aim to deepen the Bank's knowledge of the three main LEP themes discussed in the paper, namely: tenure security, dealing with informality, and justice and law reforms. Some themes meriting particular attention include: (i) how to measure effectiveness of LEP interventions; (ii) how to address LEP in post-conflict contexts and non-democratic states; (iii) how to address diffuse and collective rights concerning the protection of the environment (environmental justice); and (iv) how to ensure the sustainability of LEP interventions (for example, how to keep formalized assets formal).
- (iv) **Use (and adjust when necessary) existing lending instruments and analytical products to operationalize the LEP agenda.** Learning and innovation loans should be used to their full potential since they allow for experimentation in areas where the Bank does not have traditional expertise. Existing investment and policy-based lending operations would also be useful to operationalize the LEP agenda and could be adjusted if necessary. With regard to the analytical work, three venues could be explored:
- (1) **Stand-alone reports on the most pressing LEP issues** relevant in a particular country at a specific moment. These can be used as a broader public good by Bank staff working on a variety of projects and sectors.
 - (2) **Analysis of LEP issues does not have to be necessarily free-standing. It could be included as part of Bank core diagnostic reports**, such as Country Economic Memorandums, Country Social Analysis, Institutional and Governance Reviews, Poverty Assessments, or Development Policy Reviews.
 - (3) **Launching surveys that measure progress in LEP across countries over time.** This initiative would be similar to the Doing Business project but instead of focusing on entrepreneurs it would measure constraints to the legal empowerment of the poor.
- (v) **Rethink Bank's engagement with local governments.** Local governments can play an important role in advancing the LEP agenda because they are closer to the citizens. Currently the Bank has some lending instruments whose main beneficiaries are local governments, but the central government is still the main guarantor. Notwithstanding the on-going internal debate around this issue, this paper suggests reassessing the limitations of requiring sovereign entities to be the exclusive obligors

or guarantors of lending operations and grant instruments, and instead exploring direct sub-sovereign lending and grant financing.

- ***Direct sub-sovereign lending without sovereign guarantee.*** Other international financial institutions are already providing direct sub-sovereign lending without sovereign guarantee (e.g. the EBRD in Central and Eastern Europe and the US Export-Import Bank in Brazil and Russia). The regional development banks do not require the sovereign guarantee to be built into their charters, and in the last decade they have begun to offer a broader range of financial products to middle-income countries, including those for sub-sovereign borrowers. The Bank should consider cautiously moving in this direction. Among the issues that the Bank is currently considering, the following merit particular attention: (i) adequate legal framework (as the sub-sovereign entity must be authorized by law to borrow internationally); (ii) adequate credit ratings and fiscal management (given that the sub-sovereign entity must have acceptable ratings from international credit ratings agencies, and must also have adequate fiscal management and sustainable revenue sources); (iii) ability to lend in local currency; and (iv) political feasibility (since sub-sovereign borrowing may lead to increased political pressure at central government level).
 - ***Sub-sovereign grant financing.*** A second avenue the Bank should explore is to agree with the bilateral donors which finance Bank administered Trust Funds to consider non-sovereign counterparts in grant financing criteria. This is already the case with the Global Environment Facility and could be extended to LEP.
- (vi) ***Identify and manage potential misperceptions of the “LEP World Bank Action Agenda”.*** Any Bank strategy aiming to promote the legal empowerment of the poor will need to carefully identify and manage risks. The LEP agenda may be misperceived as being yet another “western” imposition on developing countries. It may also be misinterpreted as a political strategy supported by the main shareholders of the Bank. Promoting legal empowerment of the poor requires navigating carefully through an emotionally and politically charged debate that balances the diverse interests and demands of client governments, the donor community and civil society. To overcome these potential misperceptions, the Bank should send a strong message to the governments of developing countries (both middle-income and low-income) that they will be key stakeholders in the design and implementation of the “LEP World Bank Action Agenda”. The Bank should build on its strengths and areas of comparative advantage, while remaining aware of its limitations, and financing activities that remain within the remit of its Articles of Agreement.

ANNEX

Box 1. Legal Empowerment of the Poor as a Process: Urban Property Rights Reform in Peru

I. PRE-REFORM CONTEXT

The state's legal response to informal housing in Peru marks a continuum that ranges from initial total repression to squatters and clandestine developers in the 1940s and eventually the state policy of the 1990s which sought to include informal urban owners in the formal legal and economic system. The first law recognizing *barriadas* and their community organizations was enacted in the 1960s. Beginning with the military regime of the 1970s, populist measures encouraged an “assistance” approach to less privileged sectors rather than the effective formalization and recognition of property. During the 1980s urban land policies strengthened the municipal functions of land administration: titling functions were shifted from central government to provincial municipalities. However, neither the titling procedures nor the transfer of state land for housing purposes proved effective. Cumbersome titling procedures took an average of 10 years and the costs were beyond the reach of the vast majority of homeowners.

II. GENESIS OF REFORM

The formulation of policies to reform urban property rights was the result of a long process initiated in 1985. Three periods can be identified:

First stage (1985-1989): Initial research, public awareness, simplification of the legal framework

The main outcome of the late 1980s reform was the simplification of the existing legal framework, which until then consisted of a complex array of piecemeal laws, decrees and administrative rules, through: i) the creation of a unified nationwide property register specialized in informal settlement registration (and therefore parallel to the traditional real property register). From the outset computers have been used to store information, while the register is parcel-based to facilitate information management and has sufficient flexibility to open decentralized offices driven by demand for services; ii) simplification of the administrative procedures already in place to form a compact, more comprehensive body of law and regulation that explicitly declares the policy objective of integrating informal property into the formal financial sector; iii) the incorporation of forms of proof of ownership used in the informal sector into the administrative procedures, allowing the use of economies of scale in the definition of maps and the identification of owners; iv) the elimination of unnecessary preconditions for titling and registration, i.e. searches of tax records; iv) the use of standardized forms signed by attorneys and engineers for the lodgment of information to the registry, in place of “*escrituras publicas*” (notarized documents).

The impetus for the reform in the late 1980s came directly from the policy agency efforts undertaken by the ILD. A window of opportunity was the Garcia government's need for legitimacy vis-à-vis the popular urban sectors and at the same time to convey the message that economic disaster was caused by the lack of financial resources needed to spur economic development. In line with this argument, the alternative of mobilizing “dead capital” advanced by ILD theory emerged as a plausible solution. However, the delay in implementing the reform and the fact that the pilot projects depended almost exclusively on ILD funding suggest that it was not a government priority.

Second Stage (1989 – 1993): Pilot projects that validated the reform and identified institutional constraints

The main outcomes of this stage of the policy reform were (i) the validation of some aspects of the formalization strategy (i.e. the effectiveness of renewing the legal framework, the need to incorporate community participation), and (ii) the realization that the strategy of focusing on registration components was insufficient. For this reason, the pilot programs awarded clear titles only to settlements that had already made considerable progress towards obtaining legally and technically clear title and which were the easiest cases. Despite the results achieved, the limitations of institutional reform became apparent. These limitations were: dispersed administrative jurisdictions in formalization issues and lack of an institutional set-up for coordination and cooperation across the agencies competent for titling and registration. \...\

The impetus for implementation of the pilot projects came from outside government. It was the ILD who put together the proposal and the technical expertise, and the IFIs and other donors who provided the funding. It was clear that, although it was the mayors who harvested the political gains of formalization at their jurisdictional levels, many municipal governments lacked the resources and the technical capabilities needed to take over the formalization pilot projects.

Third Stage (1995 – 2001): Mass-formalization of property rights and a centralized titling agency

The main outcomes of this stage of the reform were that (i) it gave formalization, or access to and registration of formal property, top government priority; (ii) it shifted responsibility for formalization from the municipalities and gave the *Comisión de Formalización de la Propiedad Informal* (COFOPRI) central jurisdiction, decision-making power and exclusive competence for formalization; (iii) it established COFOPRI as an Executive Branch agency chaired by a Minister of State, with members appointed by and directly reporting to the President of Peru; (iv) it proposed the comprehensive, integral and speedy implementation of a nationwide program to formalize property; (v) it attached the Urban Property Registry to the Ministry whose head also chairs COFOPRI, thus creating a direct institutional cooperation and coordination channel; (vi) it created a compulsory arbitration system as an alternative mechanism for conflict resolution; (vii) it established a process to provide an institutional solution to people's housing needs.

The impetus for reform stemmed from the government's need to strengthen its relationship with urban migrants. Immediately after winning the elections for the period 1995-2000, the Fujimori regime was already showing signs of fatigue, as evidenced by the defeat in the local elections. The government decided to place property formalization at the top of its agenda. A national formalization program carried out by the Presidency would enable it to demonstrate its effectiveness in an area traditionally perceived as the realm of bureaucratic passivity and corruption.

A critical role in the implementation of the third stage of the reform is played by the Peru Urban Property Rights Project, a US\$ 38 million World Bank lending operation approved in 1998, with a total project cost of US\$ 66 million. The project seeks to extend urban formalization activities to several cities in Peru and to develop complementary reforms -essentially those related to the reform of the legal and institutional aspects governing investment in land (credit, public infrastructure services, and others). The project supported a national formalization program in 8 cities initially and was then extended to 14 cities. The main economic benefit anticipated was more efficient use of land as a result of the increase in security of tenure. This more efficient use of property would lead to higher prices, more transactions in the real estate market and the use of property as collateral for credit.

The World Bank project built on the techniques developed by ILD, but extended the formalization process to integrate the mass production of individual titles drawing from the successful experience of mass-titling in other countries. During the formalization program implementation there was extensive legislative and regulatory activity. As the program advanced and obstacles requiring improvements to the legal framework arose, COFOPRI drafted and obtained approval for several laws and dozens of Supreme Decrees. The direct relationship between the officers in charge of COFOPRI and the President ensured the highest level of support to promote laws in Congress – where the governing party enjoyed a majority – and to accelerate coordination with other ministries to obtain approval for regulations.

III. MANAGING THE REFORM PROCESS: KEY FACTORS FOR SUCCESS

Strong local capacity to implement the reforms The pilot projects of 1990-93 were funded by different donors, including the WB. During the first two stages described above, it was the ILD that led the research, public discussion and formulation of policies and the implementation of the pilot projects. The strategy for the National Formalization Program was also formulated by the ILD. However, implementation of the National Formalization Program was carried out without ILD intervention and benefited from the technical and financial support of the World Bank. Once the initial legal framework was passed, the government broke with the ILD and formed its own team of technically knowledgeable government officials. A former ILD staff member was appointed National Coordinator of the program by President Fujimori and championed

the process. With the contribution of other former ILD members, an initial core group was set up which further evolved to grow to an organization of more than 600 individuals.

The reform design included an adequate incentive framework ensured accountability of implementing agencies. Implementing agencies benefited from administrative autonomy: as semi-autonomous agencies they were not placed within the structure of a ministry and had flexible financial and administrative rules (as opposed to the very rigid rules applicable to traditional public sector organizations). The formalization process was designed in such a way that tasks were assigned to specialized groups, dependant on mid-level managers in different operational areas. This mechanism was also a very effective device to avoid corruption. Since formalization activities were broken down into multiple tasks, responsibility for granting a specific title over a particular piece of land was therefore disseminated among several persons, making it more difficult to manipulate outcomes. The different stages of the work were documented either on standard forms or directly on computer, making quality control and audits easy. The creation of an effective system of checks and balances helped strengthen the accountability of the implementing agencies.

A powerful communication strategy that built political consensus for the reforms. The policy-making process of the first two stages described were made public by the ILD through paid advertisements published in newspapers and also through public hearings held in the communities themselves. COFOPRI inherited the methodology developed by ILD and was able to transfer it to local lawyers, architects and former ‘dirigentes’ who became community relations experts. During the course of the national program, the government used its achievements in formalization extensively for propaganda purposes, i) by organizing public ceremonies for the handing over of titles (the ceremonies were chaired by the President and sometimes co-chaired by the local mayor) and ii) through TV commercials. The government was successful in signaling its commitment to the provision of clear and registered titles. The message was formulated directly as a government priority and the media propaganda reinforced the message. Such a statement was reinforced every time the President appeared in public ceremonies handing over titles and indicating how much progress had been made by the government towards the goal of the 1 million titles by the year 2000. At the start of the reform process, Fujimori had achieved strong political support (65 percent of votes).

Effective mechanisms for voice and accountability that strengthened state legitimacy. At the start of the National Formalization Program, COFOPRI had to contend with a sudden demand from hundreds of community organizations in urban centers. To manage the demand and mobilize support for the program, a series of public hearings was held to explain the COFOPRI methodology and outline the time-frame for gradual implementation across the different parts of the country. During the mass-scale formalization campaigns a social control mechanism was put in place, whereby maps of the community and the list of eligible property owners were published and discussed prior to the issuing of titles to allow complaints and objections to be lodged during a certain period of time.

Innovative solutions that ensured state responsiveness even in difficult circumstances. Certain cultural factors posed operational difficulties at the beginning of the program. For example, many heads of households only return home to sleep at night and are difficult to find at home on any day but Sunday or except very late at night. The formalization crews learned that it was better to work on Sundays and have Monday as a rest day. Other socio-economic divisions required similarly creative solutions. For example, some settlers were so poor that they did not even have identification documents. In such cases, special procedures were devised to arrange for identity papers to be obtained and statements by neighbors were accepted in the interim.

The absence of active citizenship among excluded *pobladores* gave rise to the spread of subversive movements which, in many poor settlements, replaced the state in the provision of protection and the adjudication of conflicts. Huaycan, a settlement created in the outskirts of Lima in 1984, was considered “zona liberada” by the increasingly powerful Shining Path guerilla group and no agent of the state was allowed entry. In several parts of the highlands, also under the control of the terrorist group, there was no police, no health posts, no schools, no local courts. The terrorists -- sometimes directly and other through the community’s leaders -- administered justice, solved land conflicts and granted possessory certificates for rural and urban land plots on which the settlers had built houses. In order to rebuild trust in the state and restore its legitimacy, the reform team accepted any kind of possessory proofs in order to grant property

titles, sometimes delivered by community's authorities or generated during the occupation of terrorist groups. It also contracted out field workers (former community *dirigentes*) who acted as intermediaries between the settlers and the teams of lawyers, urban planners and representatives of public social programs

IV. IMPACT OF THE REFORMS

Economic benefits:

- Between July 1996 and the end of 2002, COFOPRI produced 1.3 million registered titles for individuals. The formalization time was drastically reduced from almost 7 years to 45 days, thanks to a substantial reduction in the number of administrative steps (from 207 to 30) and in the number of offices applicants were required to visit (from 54 offices to 4). The average cost of titles fell from US \$ 2,156 to US \$ 49.
- The number of mortgages registered on formalized properties has steadily increased: in 2001 the value of the collateral rose from US \$ 66 million in 2000 to 73 million in 2001 and 105 million in 2002 (an increase of 44% compared to the previous years). The trend for 2003 is to close with around US \$ 150 million. These figures reflect increased use of property as collateral with banks and other creditors.
- An assessment of the property market reveals an increment of 25% in the value of households as a direct result of formalization

Social benefits:

- The program improved women's access to the labor market. The titling program reduced the fear of eviction and the need to stay at home, while also reducing the demand for child labor.
- The reform program helped reduce civil conflicts and address gender equality because it simplified the legal framework for inheritance, marriage, divorce and birth registration (which was necessary to enroll children in primary schools). The legal simplification program made it easier for female heads of household to own property.
- The reform helped improved the targeting of social programs and public investment in poor communities benefiting from the program, since it collected detailed socio-economic data at household level that identified the needs of these communities in terms of access to and quality of public services.

Political benefits: restoration of State presence and legitimacy

Winners and Losers in the Reform

The main winners were: i) settlers, who accrued the economic and social benefits of titling and registration; ii) the President, who earned the political credit for the successful program, iii) local mayors, who allied themselves with central government and obtained a share of legitimacy; iv) congressmen, who backed the laws that complemented the COFOPRI legal framework for formalization. **The main losers** were (i) the public officials in charge of regularization processes who previously benefited from bribes, (ii) lawyers and notaries, who lost the monopoly they enjoyed in the traditional registration system; and (iii) former community leaders, who lost their political legitimacy to the new leaders elected by the communities during the reform process.

Source: Endo (2004) and Mosqueira (2004)

Box 2. Legal Empowerment of the Poor: Examining Property Rights in Informal Settlements in Jordan

The conventional approach to 'property rights' is based on a view of official law as unified, rational, consistent and all-encompassing of social behavior. As such, state law is the sole institution that encompasses all norms of justice and the mechanisms of promoting order and security, and preventing anarchy. Within such a framework, property relations tend to reflect legally official property rights. Such a view, which was fairly common within policy and law circles through most of the 1990s, glosses over several issues: the inconsistencies and uncertainties that are embodied by law itself; the plurality of 'legitimate' claims to property rights; and the plurality of institutional settings that are capable of generating rules and inducing enforcement of those property rights. This is illustrated in the case study along the periphery of Amman, Jordan where the rights to land are the locus of fierce contestation among the state, tribal groups and recent urban settlers. A Bani-Hasan tribal leader argued that :*"Before there was a state, there was us [the tribes]. Before the state had rights, the tribe had rights. Before the state had land, the tribe had land. If they (officials) want us to respect state rights, they have to recognize ours"*. While the Bani-Hasan had no 'legal' property rights to land in Yajouz, they had legitimate claims over the land. Similar situations are found in other regions of the world.

Adopting a LEP approach to development requires a better understanding of the various ways through which rights are established, contested, controlled and renegotiated. Such understanding can be achieved through taking into consideration the plurality of actors, norms, rules and institutions involved. True, legal pluralism can create uncertainty especially in times of conflict because any individual is unlikely to have knowledge of all types of law that might be relevant, and because rival claimants can use a large repertoire to lay claim to a resource. However, at the same time the multiple legal frameworks facilitate considerable flexibility for people to maneuver in their use of natural resources. An integrated legal framework made up of statutory and non-state laws also introduces a sense of dynamism in property rights, as the different legal frameworks do not exist in isolation, but influence each other, and can change over time. *Source: Razzaz (1993).*

Box 3. Legal Empowerment of the Poor starts with strengthening Voice and Accountability

A World Bank study entitled *Voices of the Poor* provided rich cross-cultural evidence of what matters for the poor around the world. From the perspective of the poor people worldwide, there is a deep and widespread crisis in governance. While the range of institutions that play important roles in poor people's lives is vast, poor people are excluded from participation in governance. State institutions, whether represented by central ministries or local governments, are often neither responsive nor accountable to the poor. Poor people see little recourse to injustice, criminality, abuse and corruption in their interaction with state institutions. Not surprisingly, poor men and women lack confidence in the state. "There are four dragons: law court, prosecutor's office, *khokimiat* [highest state authority] and head of police. Nobody can get anything until they are satiated" (Uzbekistan, 1997).

The study found that poor people frequently reported an overall sense of statelessness: "When disputes arise between neighbors, there are few legal channels by which to resolve them" (Moldova, 1997); "In our community, if there are problems between neighbors the arbiter is the representative of the *regidor*, but we do not trust him" (Panama, 1998). In Ethiopia, the community of Teklehaimanot reported a strong correlation between rises in crime and a weakening of the state and its institutions, and they also observed that, when crime is at its lowest, an effective state is complemented by local participation. As the formal state deteriorates local agents of the state are increasingly able to exercise power arbitrarily and with impunity.

How do the poor cope when the state is absent? In times of state/institutional breakdown, informal systems of justice and protection emerge. Some forms of informal justice follow traditional lines. In other cases, popular courts are established. In Jamaica, informal justice systems within the poor communities have developed a response to the lack of law and order. These alternative systems are not always ideal. Often times they are mainly hierarchical in structure in the forms of councils, committees, or even ad hoc groups headed by powerful leaders that provide justice informally. In some villages in Tanzania, where cattle theft is prevalent and the state presence is low, people have banded together to create *sungusungu* (security groups within their communities). In urban Brazil, neighborhood associations play an important role in solving community problems: "The neighborhood association is the only institution that really strives to solve our problems... it is the only institution that tells us the truth and operates any day, any hour... the association is close to us, knows our problems and responds to them" (Vila Junqueira, Brazil).

What does it mean for the Bank? State responsiveness and accountability can be increased through public access to information. It can also improve by investing in the organizational capacity of the poor. It is only when poor people can draw on the strength of their numbers and organize themselves that their voices can be heard and that they can participate effectively in local governance. Developing local organizational capacity requires facilitators who work with poor men and women and also requires mechanisms to strengthen voice and accountability at the local level. Local-level accountability can also be increased by supporting civil society organizations, the press, and other institutions such as neighbor associations and trade unions, that can serve as watchdogs of state interventions. Making justice more accessible to the poor (i.e. by supporting the integration of informal justice systems that are used by the poor into the formal judicial system) can also strengthen state accountability.

Source: World Bank (2000)



Box 6. LEP can play an essential ‘stitching’ role between the supply and demand side of governance- the case of Mozambique

Since the 1990s, donors have invested millions of dollars in Mozambique’s justice sector. Aid has focused primarily on outputs: reconstituting the sector’s physical and human infrastructure through basic training, reconstructing/rehabilitating and equipping courts, and legal reform. ***Despite the massive influx of donor investment, the justice sector is viewed as ineffective and distant from the public at large.*** A landmark study on corruption undertaken in 2001 showed that 58.1 percent of Mozambicans believed that “many” or a “majority” of court personnel are “involved in corruption.” Four years later, little has changed. In a national Governance and Corruption study undertaken in 2004, the private sector viewed the judiciary as the least honest government institution. Approximately 60 percent of civil servants believe that public corruption is a grave problem in Mozambique. A large percentage of judges in the first and second instance courts feel ill-equipped to deal with political influence. Court personnel are still identified as the most likely targets for corruption.

Lack of access to justice by the poor is another salient governance challenge in Mozambique. The country has a mainly rural population; only 37 percent of Mozambique’s 19.1 million people live in urban areas. Customary law still plays a significant role outside cities, as the formal justice system is often physically distant from rural communities. Community courts remain much closer to the population but are not a part of the official judicial system. Their unofficial status has meant that these courts function with fewer resources and their judges are generally untrained. In addition, community courts decisions cannot be appealed in the formal court system.

What does this mean for the Bank? The CAS primarily promotes targeted interventions to improve commercial proceedings within the judiciary (supply-side of governance). In parallel, the CAS calls for interventions to support community-driven projects in rural areas of the country (demand-side of governance). Yet, these interventions by themselves would not be sufficient to address the aforementioned governance challenges: lack of access to justice and widespread corruption. What is needed is a more integrated approach that can help improve Bank’s effectiveness in addressing governance. LEP, by focusing on strengthening the link between the citizens and the state can help ‘stitch’ the supply and demand-side approaches to governance. By ensuring that Bank interventions help improve transparency and accountability of state institutions. In this case, the Bank could support strengthening court inspection mechanisms and support research to identify effective ways to improve poor people’s access to justice. Given the number of institutions implicated in the judicial sector, as well as the significant number of donors involved, the Bank could play a leading role in coordinating the LEP agenda in this country.

Source: World Bank (2005)

Box 7. Right consciousness and State Responsiveness: Two critical steps toward promoting LEP

There are two critical steps towards promoting legal empowerment of the poor. The first is to translate the abstract principles embedded in treaties and laws into specific situations and problems understood by the poor and vulnerable people. Legal training is not enough, however. The second step is creating and/or strengthening institutions that respond quickly and effectively to human rights claims. Unless claimants find that police, prosecutors, courts and government officials take their grievances seriously and act on them, they are unlikely to see themselves as rights-bearing subjects.

There are many instances in which relatively poor and vulnerable people take on rights consciousness. But under what conditions do they adopt this perspective? The ideas rooted in transnational human rights documents need to be translated into terms that make sense in local contexts. This requires the work of intermediaries, such as local organizations, human right activists, academics, journalists. In 1993, a group of rural indigenous women in the new territories of Hong Kong initiated a social movement against male-only inheritance of family land claiming that it was a form of gender discrimination. These women groups were trained by human rights experts who explained the principles behind the International Convention on Civil and Political Rights in local terms. This framing enabled them to mobilize protest in a way that was heard by the public and by the Legislative Council. After several months of dramatic public protests, they persuaded the Legislative Council to pass a law changing the inheritance law. The female inheritance movement in Hong Kong illustrates the critical role of translators. Individuals must understand that they possess rights. However, sometimes ordinary people are reluctant to assert their rights they know they have, even in the rights-conscious United States. For example, a recent study of Americans with learning disabilities indicated a reluctance to assert rights even when they know they were entitled to them by law. Asserting rights can be risky. An employer unwilling to provide a wheelchair-accessible bathroom might fire the employee who demands one.

What persuades poor and vulnerable people to assert right claims? State Responsiveness. Public institutions need to take the claims seriously and respond effectively. Recent research on gender-based violence in Latin America and the Caribbean suggests that what makes them assert their rights is the way the courts and police pay attention to these claims. If a woman calls the police or goes to court and they treat the matter as unimportant this suggests to the woman that her rights are not important. Women who have these experiences drop out of the criminal process. By contrast, in one of the courts, the judge took the cases seriously. The women who had such experience became quite assertive about their rights and willing to follow through on criminal charges.

Source: Merry (2005), and World Bank (2005)

Box 8. LEP helps address governance - examples from Bangladesh and Pakistan

In Bangladesh, some old traditions, such as the dowry system and child marriage, pose a governance challenge. The “Grameen Bank” project adopted a LEP approach by including clauses that the dowry system and child marriage: “We shall not take any dowry at our son’s wedding; neither shall we give any dowry at our daughter’s wedding. We shall keep the center free from the curse of dowry. We shall not practice child marriage”.

In the province of Sindh, in rural Pakistan, a key governance challenge is the lack of access to justice by poor people. The Asian Development Bank adopted a LEP approach in a rural development project in Sindh by including as loan covenant the promulgation of amendments to the Sindh Tenancy Act to improve access to justice by poor tenants. The amendment made the settlement of disputes between tenants and landlords the responsibility of the civil judge. The project also required the drafting of amendments to the Bonded Labor System Abolition Act to ensure effective elimination of all forms of forced labor. In addition to these improvements to the law, the project also supported rights-awareness (including translating relevant legislation into local languages and terms easily understood by the poor, media campaigns and community-based training), the provision of legal aid and the training of paralegals and capacity-building programs for local courts.

Source: World Bank Legal Forum, 1-2, December 2005 , Washington D.C and ADB (2005)



Box 10. Legal empowerment of the poor not only helps reduce poverty, it also contributes to economic growth

Legal empowerment of the poor is linked to higher productivity, higher propensity to invest in physical assets and the education of children, and time and effort saved in securing property rights. Farmers in Ghana and Nicaragua invest up to 8 percent more in their land when their rights to it are secure. In Poland, Romania, Russia, Slovakia and Ukraine, entrepreneurs who enjoy secure property rights reinvest between 14 and 40 percent more of their profits in their businesses than those who do not. In a poor suburban area of Buenos Aires, land titling had a positive impact on housing investment, household size, and school achievement. The quality of houses in titled parcels was higher. Titled households had fewer members (even though their houses were larger), and they seemed to invest more in their children's education. Evidence from a massive urban squatter titling program in Peru suggests that titling resulted in more work done outside the home by women and substitution of adult for child labor.

Legal empowerment of the poor can also unleash the poor's economic potential by helping them organize and aggregate their demand. Poor people actually pay more for just about everything because they buy in small quantities, and they receive less for what they sell because they sell in small quantities. In addition their transaction costs are higher per unit. Organizations of the poor help overcome these disadvantages of being small and powerless by aggregation of numbers. The dairy cooperative movement in India started with the very clear objective of getting more rupees in the hands of the farmer for every litre of milk sold. It organized farmers in a three-tier network, with each tier serving distinct functions so as to return higher value to the farmer. Milk production is decentralized, in the hands of 12 million individual farmers. Procurement of milk is done by the 110,000 village level cooperative societies composed of these individual farmers. The cooperatives federate into 170 district level unions that serve as centralized milk processing centres. These unions combine into 22 state level marketing federations, whose primary job is to market the milk and milk products. The dairy cooperatives received high levels of funding for expansion from the government and a number of donors, including loans from the World Bank and food aid from others. They have been financially independent for close to two decades.

Source: Narajan (2005) and World Bank (2006)

Box 11. Legal empowerment of the poor and gender equality – the case of Uganda

Uganda has an exceptionally high level of entrepreneurial activity. Around 29 percent of Ugandans are engaged in some kind of entrepreneurial activity. This compares with a total entrepreneurial activity index of 12 in the US and 1.6 in France. While Uganda shares the global trend of men having higher entrepreneurship rates than women, the rate for women is also exceptionally high. About 90 percent of businesses in Uganda are sole proprietorships. Women own 39 percent of the businesses in the Uganda Business Register. Many women operate their micro or small-scale businesses without this degree of formalization. *In spite of the important role played by women in Uganda’s economy, there are important gender differences in men’s and women’s legal status and in the rights and protections afforded by law.* Key gender-related barriers to access to justice have been identified as: (i) substantive law issues, relating to gender biased laws (notably concerning divorce, adultery, and defilement) and differences in evidentiary (burden-of-proof) requirements; (ii) administration of law issues, including physical access, training, and delays in delivery of justice; and (iii) barriers which exist in the community where disputes occur, notably, power imbalances in the household and community dispute resolution mechanisms that are not necessarily gender-inclusive or gender-responsive. Enterprises headed by women are much more likely to be subject to harassment, including requests to pay bribes and threats of closure. While the delays and costs of registration and licensing processes impose a burden in all businesses, available evidence point that such requirements impose a disproportionate burden on women-headed enterprises.

In Uganda, men and women each contribute around one-half of the country’s national product. Women are more active in agriculture than men, specifically in food crop production, marketing, and processing of agricultural products. The vast majority of female employment is in agricultural subsistence work, and more specifically crop production, with 60 percent of women having “cropping” as their occupation, as opposed to only 49 percent of men. Women provide 60 percent of the labor for planting, 70 percent for weeding, 60 percent for harvesting, and 90 percent for processing. *Despite this, households headed by women are significantly less likely to report cultivable land among their assets or to have access to or control to land.* Women hold only 7 percent of registered land titles in Uganda. Conflict over land is widespread and is more likely to affect women. The probability of having a conflict is 14 percent higher for widows and 48 percent higher for a separated woman than for a man. Women’s limited security of land tenure affects their ability to improve the productivity of their crops. While by law widows are to be taken care of by their husbands’ relatives in practice it is common for a widow to be thrown off the land. Upon divorce, it is difficult for a woman to assert her rights over matrimonial land, as under customary law she has no rights to it. Even where the law protects their right to land, women are often unaware that such protection exists or unable to assert their rights. A Ugandan woman can assert her rights to assets on the death of her husband under Ugandan law. The reality, however, is that time, cost and knowledge required to seek justice make the system inaccessible for many women. Local Council Courts tend to apply customary law, which upholds the rights of the husband’s family to take the assets. Many women cannot afford the cost and time of traveling to Kampala, where the Administrator General’s Office is located. Because gender inequality act as a powerful constraint on growth in Uganda, removing gender-based barriers with effective legal empowerment interventions will make a substantial contribution to realizing the country’s growth potential.

Source: Blackden, 2005; Ellis et Al, 2005

Box 12. Legal empowerment of the poor strengthens state legitimacy

The existence of state legitimacy reduces the transaction costs of governing by reducing reliance on coercion and monitoring. Its existence denotes popular approval of government and governors, or, at least, acceptance of their right to rule. Some understand legitimacy in a narrow sense and claim that it been a support of very problematic governments. Divine right bolstered the power of some despotic monarchs. Being the party that wins a civil war may legitimate its rule among the victors but not the losers. We focus on two key aspects of state legitimacy: effective government and quasi-voluntary compliance.

State legitimacy requires evidence that government is effective and that it is perceived as just and fair, and these features in turn, help the government legitimate itself. In these circumstances we would have confidence that state legitimacy exists. We would still lack confirmation that it matters. For that, we would need to assess the extent to which compliance with government is quasi-voluntary rather than coerced or habitual. Key to quasi-voluntary compliance is citizen assessment that government is representative of and accountable to them, and that is effective, that is, it performs reasonably well and is capable of protecting the population from violence, ensuring property rights, delivering services, regulating behavior and making extractive demands. Indeed, there may well be a feedback loop here: government effectiveness enhances legitimating beliefs which elicit quasi-voluntary compliance that, in turn, makes government both more effective and more legitimate.

To achieve legitimacy requires the state to be competent and reliable in providing services to its citizens, not only infrastructure, health and education, but also justice. But law and services are insufficient without government commitment to procedural fairness and transparency. This in turn involves public servants with incentives to serve all constituents. And that in turn rests on a symbiotic relationship with an alert citizenry willing to make demands and hold their public servants accountable. They will do so only if they believe that they are getting something in return for their compliance and active citizenship. There is a chicken and egg problem here. Without services, citizens will not find government legitimate, BUT funds for services can be a source of corruption rather than legitimate government. The way to break this cycle often involves appropriate alignment of incentives to public servants; management capacity and good leadership. More importantly, it requires government transparency, fairness and accountability. In Uganda, the Bank discovered that public funds allocated to Ugandan primary schools were disproportionately going to 'ghost' workers. By publicizing their survey findings and thus making parents and more general public aware of this problem, the Bank helped create significant public pressure, which in turn led to a significant increase in the proportion of funds actually reaching the schools. Such initiatives on government monitoring and transparency helped create a more alert and effective citizenry as well as inhibiting corruption.

Source: Levi (2005)

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