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BUILDING LEGAL SYSTEMS FOR GLOBAL INTEGRATION: A DEVELOPMENT PERSPECTIVE FOR THE LATIN AMERICAN CONTEXT¹

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“Today, we need to counter immediate threats while also building an inclusive and sustainable globalization that will offer more sources of growth and innovation for the future, enhance multilateral cooperation to deal with shocks and downturns, and maximize opportunity and hope for all.” ROBERT B. ZOELICK³

THE focus of this article is the current Latin American context of emerging and rapidly growing institutional and legal reforms.⁴ This article is a summary of my own observations as a law and development practitioner based on my participation in the development, implementation, and supervision of a wide range of development projects, capacity building initiatives, and analyses of legal frameworks in various countries throughout Latin America.

I begin this article by providing a contextual framework that establishes what legal systems and legal reforms are. Thereafter, I provide a diagnostic review of legal reform initiatives in Latin America, including successful experiences, as well as an assessment of current issues faced by

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1. The opinions, interpretations, and conclusions set forth in this article belong exclusively to its author and do not necessarily reflect the perspective of the World Bank, its Executive Directors, or the governments they represent.
 2. Teresa Genta-Fons is Lead Counsel in the Legal Vice Presidency at the World Bank. She acknowledges the assistance and valuable contributions for the production of this article provided by Guillermo Eschoyez, LL.M., American University Washington College of Law and Jiroko Lopez, SMU Dedman School of Law JD Candidate. Valuable support was also received from Milena Sanchez de Boado, Viviana Maya and Karen Borges of the Legal Vice-Presidency at the World Bank.
 3. Robert B. Zoellick, President of The World Bank Group, Speech Delivered at the Ctr. for Global Dev. in Anticipation of the 2008 Spring Meetings of the World Bank and the IMF: A Challenge of Economic Statecraft (April 2, 2008).
 4. “It is not accidental that this great spurt in judicial reform is coming at a time of great change in Latin economies and in their role in the world. Often, as in the case of Mexico, Argentina, Peru and other countries, reform legislation has been introduced on the heels of severe economic crises in the late 1980s and early 1990s.” Jeffrey Davidow, *Symposium: The Role of Legal Institutions in the Economic Development of the Americas: Remarks*, 30 Law & Pol’y Int’l Bus. 15, 15 (1999).

reformers in the region. Finally, I propose a set of guidelines to hopefully inspire future reform efforts.

I. CONTEXTUAL FRAMEWORK

In light of challenges posed by the turmoil in financial markets as well as the most recent food and energy crises,⁵ the need for a development paradigm which goes beyond economic growth to achieve equitable development as well as inclusive and sustainable globalization has become increasingly clear.⁶ In the case of Latin America, this new paradigm requires countries to, *inter alia*, align their development strategies and legal systems to adjust and efficiently meet the growing demands of global markets to local cultural needs and traditions.⁷ To address this paradigm shift, I am proposing a second generation of legal reforms inspired by three key principles.

First, a legal system should be a balancing factor between business and political considerations, which constantly interact with each other in a globalized world. Second, a legal system, especially in Latin America, should promote legal certainty for business and investment and meet the demands of both regional integration and global markets. There is also a need for countries to adhere to the rule of law, by developing laws and processes that are clear, predictable, and accessible to all. Third, a legal reform process must not only facilitate the modernization of commercial, legal, and regulatory frameworks, but also embrace a broad development vision of inclusive and sustainable globalization.⁸

In order to achieve a common understanding of the above-detailed

5. Since drafting this article, several funding schemes have been launched to provide urgent support to countries mostly affected by these crises.

6. See generally COMM'N ON GROWTH AND DEV., *The Growth Report: Strategies for Sustained Growth and Inclusive Development*, 2008 [hereinafter Comm'n on Growth and Dev.]; *New Report Sheds Light on Success Strategies of Fast Growing Countries*, WORLD BANK, May 21, 2008, <http://go.worldbank.org/0KG89H4R20> (Danny Leipziger, Vice President for Poverty Reduction and Economic Management Network at the World Bank, expressed at the presentation of the 2008 report that the Commission is "acutely aware that there are no silver bullets to create long-running, inclusive growth, and that no single paradigm exists."); WORLD BANK, *WORLD DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT* (Oxford University Press 2005) (proposing that a focus on equity is essential for inclusive development and sustainable economic growth, and highlighting the important role that legal and regulatory frameworks play in the distribution of power and rights, said frameworks also shape the role and functions of institutions that deliver public services.).

7. See Press Release, The World Bank, *New Report on Economic Growth Offers Less on Achieving Sustained, High Economic Growth* (May 20, 2008) (pointing out to the development community that "one size doesn't fit all.").

8. Evidence suggests that a better regulatory environment can boost a growth response to lower trade barriers in Latin America. See Nancy Lee, *Integration in the Americas: One Idea for Plan B*, in *THE WHITE HOUSE AND THE WORLD* 171, 180 (Nancy Birdsall ed., 2008).

principles, I am proposing a set of four working definitions,⁹ which I crafted through my own experience and appreciation of the development process in the region.

(1) **“Legal System”** includes a country’s: (a) domestic legal framework such as a constitution, laws, codes, administrative decisions, resolutions, procedures, regulations and legal practices; (b) the repertory of international commitments ratified by said country; and (c) a broad set of national institutions, including legal and judicial institutions and other public entities with statutory or exceptional legal and regulatory authority.¹⁰ In this broad context, I am referring to institutions established and operating under the purview of all branches of government and which are responsible for the production, enactment, interpretation, enforcement, and implementation of norms, rules, and regulations.¹¹

(2) **“Rule of Law”** refers to a legal and institutional framework exhibiting the following characteristics:¹² (a) equal treatment under the law and access to justice for all; (b) recognition and protection of human dignity; (c) transparent¹³ and fair legislation; (d) predictable enforcement of contracts; and (e) legitimate and accountable governments. This definition was originally conceived as a policy development tool that would greatly facilitate economic growth, promote good governance, and attract investment. Certain disenchantment, however, has been growing with the actual content of rule-of-law based reforms. Unmet expectations of what was originally promised under those reforms and frustration with their inability to meet the pressing demands of excluded populations across the world pose serious questions regarding the viability of a second generation of legal reforms.¹⁴ Some economists argue that development efforts fail if they do not reach and empower the 1.4 billion people still

9. These definitions are derived from widely used concepts in the field but are specifically adapted for this article by reflecting the views and needs of the developing world.

10. For example, Argentina’s Executive Orders on grounds of necessity and urgency. See Alejandro M. Garro, *Judicial Review of Constitutionality in Argentina: Background Notes and Constitutional Provision*, 45 Duq. L. Rev. 409, 413 (2007) (explaining what the executive orders are).

11. See ASIAN DEVELOPMENT BANK, *Governance: Sound Development Management: Promoting the elements of good governance in Bank operations*, available at <http://www.adb.org/documents/policies/governance/gov630.asp?p=policies> (last visited Nov. 15, 2008).

12. See WORLD BANK, *Initiatives in Legal and Judicial Reform*, at 2 (2004).

13. Lee, *supra* note 8, at 177 (When suggesting solutions for reform, the article recommended transparency and defined it. “Transparency. Regulations, documents, and procedures should be standardized and published on websites, along with the authorities responsible for decision making and enforcement.”).

14. See, *Economics and the Rule of Law, Order in the Jungle*, THE ECONOMIST, March 13th, 2008, http://www.economist.com/finance/displaystory.cfm?story_id=10849115 (The adoption of a rule of law theory in the aftermath of the Washington Consensus achieved a global endorsement. Nevertheless, after the occurrence of certain events, such as the Asian crisis of 1997-98, economists are less convinced and the concept of “rule of law” is not trusted as a measure of clear “rules of the game.”).

living under extreme poverty in about fifty failing states.¹⁵ It is also argued that radical change is needed to effectively address the needs of those populations trapped in poverty. Increasing aid is not enough. A more holistic development strategy is urgently required, one which gives equal weight to complementary instruments and institutions, including changing laws and the legislative process needed in order to fully realize the rule of law.

(3) **“Legal Reform”** refers to a comprehensive set of reform initiatives launched by a country, including but not limited to the: (a) enactment of new or substantive amendments to existing legal and regulatory frameworks; (b) development of legal and judicial systems and services, including the creation of new or the strengthening of existing systems and services; (c) promotion of rule of law initiatives aimed at strengthening good governance,¹⁶ efficient public administration systems, and establishing guidelines and rules for the transparent and efficient delivery of public services to the citizenry;¹⁷ and (d) implementation of programs to facilitate access to justice for disadvantaged populations and the legal empowerment of the poor.¹⁸

(4) **“Inclusive and Sustainable Globalization”** is a comprehensive strategy that has been recently proposed by the World Bank to assist developing countries to enjoy the positive aspects of globalization, by overcoming poverty and enhancing their growth with care for the environment.¹⁹ Another potential benefit of a more inclusive globalization process would be provided through public policy aimed at creating individual opportunity and hope for the populations of poor countries, through the provision of

15. See Shaohua Chen & Martin Ravallion, *The Developing World is Poorer Than We Thought, but No Less Successful in the Fight Against Poverty* 19 (DEV. RESEARCH GROUP OF THE WORLD BANK, Working Paper No. 4,703, 2008) (showing that poverty estimates currently amount to 1.4 billion people—most of them women and girls—still living under the new international poverty line of \$1.25 a day); See also PAUL COLLIER, *THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT*, (Oxford University Press 2007) (Before the publication of the aforementioned paper, it was believed that people living in extreme poverty represented one billion of the world’s population, which are referred to as the bottom billion in Paul Collier’s Book: *The Bottom Billion*.)

16. The post-Washington Consensus resulted in significant changes in the development agendas of the World Bank and the International Monetary Fund. The two institutions provided greater attention to good governance and the need for sound political and legal institutions as a prerequisite for effective economic policy. See NGAIRE WOODS, *THE GLOBALIZERS: THE IMF, THE WORLD BANK AND THEIR BORROWERS* (Cornel University Press) (2006).

17. See World Bank, *supra* note 12, at 16.

18. The Commission on legal empowerment of the poor was launched in January 2006 and aims “to make legal protection and economic opportunity not the privilege of the few, but the right of all,” by focusing on the link between exclusion, poverty and law. Co-chaired by Ms. Madeleine Albright and Mr. Hernando De Soto, the Commission set up a Steering Committee, including the World Bank. The Legal Vice-Presidency of the Bank created a supporting technical Secretariat, of which Ms. Genta-Fons was a member. See Commission on Legal Empowerment of the Poor, <http://legalempowerment.undp.org> (last visited Nov. 15, 2008).

19. See generally Comm’n on Growth and Dev., *supra* note 6.

technical expertise and comparative learning.²⁰ This requires a concerted strategy from developed and developing countries, in order to build well-functioning global markets. In turn, inclusive institutions and laws must be created to promote and protect individuals through sustainable and socially responsible investments.²¹

II. DIAGNOSTIC REVIEW OF REFORM INITIATIVES IN LATIN AMERICA

"Putting up walls will not provide answers. Instead, integration and the construction of institutions and respect for norms is the greatest task for governments in the region." RICARDO LAGOS, former President of Chile, 2007.²²

The dynamic transformation of the economic, institutional and political landscape in Latin America has had serious impacts on the legal systems of a large number of countries in the region. Often, macroeconomic reforms have not been accompanied by adequate and prompt changes in local legal frameworks. In certain jurisdictions, business activities have also evolved by creating rules and contractual practices in isolation of a legal system, or by marginalizing or bypassing legal and regulatory frameworks. For example, economists are called to develop financing schemes and economic instruments without consideration of the timely legal grounding for the appropriate use, management, and protection of global public goods affected by macroeconomic reforms.²³ This newly crafted development definition becomes especially relevant in an interdependent and globalized world. Currently, global public goods are identified as those goods that are usually associated with communicable diseases and public health, environmental commons,²⁴ financial architecture, including enhanced preparedness for financial crises and improved investment climate,²⁵ as well as greater integration and harmonization of aid and trade finance initiatives.²⁶

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20. See Press Release, Robert B. Zoellick, President of the World Bank, Address to the Governors of the World Bank Group: Catalyzing the Future: An Inclusive and Sustainable Globalization (October 10, 2007).
 21. The six strategic development themes proposed by the World Bank are: Africa, fragile states, middle-income countries, public global goods, the Arab World and the fostering of a knowledge and learning agenda.
 22. Ricardo Lagos, former President of Chile, *Democracy's Growing Pains*, AMERICAS QUARTERLY (Spring 2007).
 23. See IAN GOLDIN & KENNETH REINERT, GLOBALIZATION FOR DEVELOPMENT: TRADE, FINANCE, AID, MIGRATION, AND POLICY, (Palgrave Macmillan 2006) (defining the various elements that constitute a global public good).
 24. For example: forest and land management practices, climate change.
 25. For example: gender equality, agricultural and rural development.
 26. See The 3rd High Level Forum on Aid Effectiveness, <http://www.accrahlf.net> (last visited Nov. 15, 2008) (describing forum held in Accra, Ghana, September 2-4, 2008, resulting in ministers of developing and donor countries responsible for promoting development, and heads of multilateral and bilateral development institutions, endorsing an agenda aimed at accelerating the implementation of the Paris Declaration on Aid Effectiveness from March 2005).

The timing and substantive content of a reform process is critical to understanding its economic and institutional impact. In certain countries, legal modernization has arrived either too late or has quickly become obsolete due to the dynamic evolution of business or trade.²⁷ Some reforms have been poorly crafted, undertaken due to external pressure or enacted as a remedy to impending crises and in many instances, inadequately based on foreign models by incorporating international model laws in a developing country context.²⁸ Seemingly good reforms can fail if approved without prior development of regulatory authority or essential funding.²⁹ In certain circumstances, legal reforms are doomed to fail for their inherent inconsistency with local legal traditions or for their flagrant ignorance of prior international legal commitments.³⁰ There is also a frequent habit of transplanting laws from other jurisdictions or hastily enacting legislation without participation from local experts. A meticulous assessment of a proposed law aimed at testing its adequacy in the local context is essential, including a detailed consideration of the institutional framework that would facilitate the effective implementation of the reform.³¹

Inconsistencies also arise because Latin American countries tend to embark on two separate and divergent efforts - economic reform on the one hand and legal reform on the other.³² These efforts are often triggered by competing incentives and expectations, sponsored by different domestic or external institutions and, oftentimes, through quite a protracted political processes. Often legal reforms take place in response to electoral and political events; officials may undo reforms upon taking office by issuing overlapping or inconsistent norms through executive orders or decrees. This haphazard lawmaking process has harmful effects on business and investment and eventually affects the poor populations in the region as investors may decide to leave the country and curtail badly needed job opportunities.

Reform efforts have also been undertaken through piece-meal approaches by enacting specialized laws to regulate certain sectors of the

27. Jorege L. Esquirol, *The Failed Law of Latin America*, 56 AM. J. COMP. L. 75, 92-124 (2008).

28. See, Lee, *supra* note 8 at 171. (Crises in Latin America have a tendency to arise because "[p]olitical polarization and the steep rise in crime and urban violence present real threats to stability in large and small countries.").

29. For instance, when parliaments fail to provide sufficient budgetary appropriation for the implementation of the law.

30. For countries seeking economic development, "legal institutions [must] be compatible with socioeconomic, cultural, and political factors in order to have legitimacy, and ultimately, a role in shaping economic development." Graham Mayeda, *Appreciate the Difference: The Role of Different Domestic Norms in Law and Development Reform; Lessons from China and Japan*, 51 MCGILL L.J. 547, 595 (2006).

31. *Id.* at 547 (arguing that "transplantation of foreign laws and institutions will only be effective where the domestic context is prepared to integrate foreign models through a process of adaptation and modification").

32. See Christina Biebesheimer & Mark Payne, *Lessons Learned and Elements for Policy Formulation, IDB Experience in Justice Reform*, 2001, <http://www.iadb.org/sds/doc/sgc-IDBExperiences-E.pdf> (last visited Nov. 15, 2008).

countries in isolation of closely related legal fields. An example is regulating access to capital markets and finance in isolation of the closely related legal principles included in the commercial and procedural codes. Although local officials believe that this is a faster and more efficient way of modernizing a legal system, this approach can provide additional hurdles to the implementation of laws in detriment to achieving a more coherent and system-wide economic modernization process. An example of this is the enactment of commercial and financial laws in Nicaragua, including modern intellectual property legislation in clear opposition to an outdated Commercial Code dating from the 1900s.

In some cases, the proposed legal developments do not succeed due to political gridlock such as when opposing parties occupy the executive and the legislature³³ or because of a lack of technical capacity among lawmakers to recognize the economic and political impacts of the draft law. Political processes may further hurt the interests of the poor as protracted delays in ratifying social and poverty reduction programs may entail not only a failed legal reform, but also a missed developmental or social opportunity. The law-making process in several countries requires overhaul, particularly to ensure that laws reflect knowledge of highly complex technical matters. In this regard, parliamentarians need adequate funds to seek and retain, as needed, expert advice on sophisticated issues brought to their attention. Technical capacity is also required when a country must reform its codified law, enact competitiveness laws, or regulate critical sectors such as telecommunications, information, and technology, among others.

In spite of the flaws and weaknesses in Latin American legal reform initiatives, there have been many successful legal reform efforts in the region. Some of those efforts did not limit their focus exclusively on changes of legal texts, but frequently included the launching of related institutional development initiatives.³⁴ Such dual legal and institutional reform initiatives can purposefully include specific tools and mechanisms designed to provide underprivileged populations greater access to the le-

33. The legislative process in Denmark may be underscored as a good practice contrasting the political gridlock often present in the Central American countries' congressional debates. Traditionally, the Danish Parliament is formed by several political parties. Currently, there are eight parties. Most Danish governments since the Second World War have been made up of parliamentarians that did not amount to a majority in Parliament; therefore, governments have depended on the support of parliamentarians representing other political parties in order to pass legislation. This circumstance has led to a long tradition for extensive co-operation among governments and parliamentarians. See Jens Teilberg Sondergaard, *Report on the Quality of Laws: Legislation Technique in Denmark* (World Bank Working Paper, 2008).

34. There is abundant bibliography detailing the limited impacts of law reform, particularly in the area of judicial reform. Most of the assessments conducted provide a legal perspective and therefore focus on the limitations and shortcomings of the reforms. A hybrid legal-development perspective to legal reform proposes a dual approach to diagnose ex-ante the development impacts of law reform, and an ex-post evaluation of how such reform has impacted on the development strategy of a country or in meeting its development goals.

gal system. Additional training for judges and legal professionals and models for effective court systems may also be included. The country in Latin America that exemplifies this dual approach is Chile. As a result, Chile has achieved legal certainty, a strong business sector, and high investment levels.³⁵

Legal reform programs may be particularly successful if their initial design blends institutional development efforts along with legal initiatives. Creating mobile courts in Guatemala, for example, provided indigenous and other disadvantaged populations access to courts. Likewise, grant funds provided broad reform to the judicial system in Ecuador.³⁶ Some of these reforms included the creation of institutions or strengthening access to justice for indigenous persons and women so as to increase the use of their rights and to fight discrimination.³⁷ Brazil's decision to restrict the number of cases heard by the Federal Supreme Court of Justice created positive changes in the enforcement of judgment and creditor's debt collection procedures. Training lawyers and legal staff in their respective specialties also helps bring about change into long-term legal culture. In particular, legal training helped public defenders increase their capacity to deliver justice services to the poor in Peru.³⁸ In Honduras,³⁹ family courts dealing with domestic violence were strengthened. Colombia was able to develop a modern and efficient conflict resolution model court system and improve regulations related to ports that increased the ease of import and export activity.⁴⁰ Similarly, El Salvador was able to facilitate importers' activities by simplifying legal registration and licensing requirements.⁴¹

Finally, even when the legal reform process may have been successfully completed, many Latin American countries do not perform the necessary routine maintenance to update their newly enacted laws. This oversight ultimately produces mixed or contradictory legislation over the same subject area. Constant upkeep is needed to ensure that laws reflect updated knowledge of complex technical matters. Oftentimes, when economic authorities identify legislation that urgently needs modernization, legal re-

35. See *Doing Business: Measuring Business Regulations*, WORLD BANK (2009), <http://www.doingbusiness.org/ExploreEconomies/?economyid=41> (last visited Nov. 16, 2008).

36. GOLDIN & REINERT, *supra* note 23.

37. See *Committee on Elimination of Racial Discrimination Considers Report of Ecuador*, STATES NEWS SERVICE, July 29, 2008.

38. See *Staff Appraisal Report for Peru: Judicial Reform Project*, WORLD BANK, Oct. 27, 1997, available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1997/10/27/000009265_3971229181044/Rendered/PDF/multi_page.pdf.

39. *Through eyes of the victim: Police Training and Domestic Violence in Honduras*, UNITED NATIONS POPULATION FUND, Oct. 11, 2005, <http://www.unfpa.org/news/news.cfm?ID=689> (last visited Nov. 15, 2008).

40. Colombia and Dominican Republic have been ranked within the world's top 10 reformers of business regulation by the World Bank Doing Business. See World Bank, *supra* note 35.

41. See *Reforms in Latin America and Caribbean*, WORLD BANK, 2007-2008, <http://www.doingbusiness.org/Reformers/LAC2008.aspx#E> (last visited Nov. 15, 2008).

forms are carried out with disregard to existing legislation governing the same topic. These mismatched reforms can be seen in a variety of macroeconomic issues, which inevitably brings more confusion and inconsistency to the rest of the legal system.

III. ASSESSMENT OF CURRENT ISSUES FOR LATIN AMERICAN REFORMERS

Latin America has received a large amount of public and private funds⁴² from both domestic and international organizations and private foundations to finance legal reforms.⁴³ A significant amount of that funding has been provided for the design and implementation of programs such as economic legal reform, legal and judicial reform, or public sector reform for the promotion of rule of law and improvement of governance. Many of these legal reform initiatives were carried out, however, without a solid strategy as a foundation for reform efforts. This weakness may undermine the credibility of the reform since it is perceived as lacking visible success or long-term sustainability. This situation raises serious questions among funding partners regarding the effectiveness of their support and weakens the likelihood of extending further funding. In addition, many national stakeholders express concerns and strongly distrust the reform agenda. A growing lack of confidence in governmental institutions, including a weakening trust in the judiciaries, is also a serious concern.⁴⁴ In this context, and considering that legal reform is still an unfinished agenda, it is imperative to drastically change the approach and guiding principles of future reform initiatives by carefully addressing the following four unresolved issues.

First, for over a decade, Latin America has embarked on structural economic reforms without the appropriate integration of law as an enabling engine of development.⁴⁵ Consequently, the reform process has evolved without timely consideration of the eventual legal impacts that it may

42. See *Annual Report 2007 Latin America and the Caribbean*, WORLD BANK, 2007, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTANNREP/EXTANNREP2K7/0,,contentMDK:21507480~menuPK:4187v908~pagePK:64168445~piPK:64168309~theSitePK:4077916,00.html> (last visited Nov. 15, 2008) (stating that in 2007, the World Bank's funding to Latin America and the Caribbean reached US\$ 4.5 billion.); See also The Briefing Center, *Latin America and the Caribbean Regional Brief*, (October 2007); UNITED NATIONS ECONOMIC COMMISSION ON LATIN AMERICA AND THE CARIBBEAN, DIVISION OF PRODUCTION, PRODUCTIVITY AND MANAGEMENT, FOREIGN INVESTMENT IN LATIN AMERICA AND THE CARIBBEAN 2005, U.N. Sales No. E.06.II.G.44 (2006).

43. Including for instance from: the World Bank; Inter-American Development Bank; United States Agency for International Development (USAID), Gesellschaft für Technische Zusammenarbeit (GTZ); Organization of American States and the European Union.

44. See *A Warning for Reformers*, THE ECONOMIST, Nov. 15, 2007, available at http://www.economist.com/world/americas/displaystory.cfm?story_id=10136464 (last visited Nov. 15, 2008) (basing its data on a poll conducted in 18 Latin American countries).

45. In Latin America, the gap between laws on the book and actual implementation is wide. See Esquirol, *supra* note 27, at 85.

have on citizens and the private sector. This limited scope has not only failed to resolve the fundamental development issues in the region, particularly poverty and exclusion, but has further weakened legal certainty for business and entrepreneurial activity. In turn, this has lowered investors' confidence as governments reclaiming rights over natural resources clearly affects rights under existing concession contracts. For example, in Bolivia, energy and petroleum production has been nationalized and the ICSID Convention rejected, thereby increasing legal uncertainty.⁴⁶

Another threat to legal certainty is associated with a country's strategy to pursue economic growth without corresponding consideration of respect for rights of poor populations. Latin America is greatly affected by exclusion and inequality,⁴⁷ and it is becoming obvious that local populations would rather live under authoritarian regimes than in democracies plagued with increasing violence, criminal activity, and disrespect for the rule of law.⁴⁸ The business community, however, may find some comfort in the recent commitment to legal certainty expressed by the region's judiciaries. Legal certainty is recognized as a systemic issue affecting all areas of a legal system, including administrative rules and involving all branches of government and, thus, of critical importance.⁴⁹

Second, legal reform is perceived by many stakeholders as a major financial burden, especially with the worrisome increase of foreign debt without commensurate social and economic improvements. This perception raises the question of what constitutes a successful legal reform effort that would overcome this apparent opposition to launch new reforms. Evaluations of externally funded legal reforms are constantly produced,⁵⁰ all pointing to the urgent need for the development of new results-oriented initiatives where progress can be measured with rigorous monitoring indicators.⁵¹ Continuous commitment by governments and full

46. Within a political and economical move toward establishing what has been qualified as a New Regional Economic Order for the Americas, Bolivia's denunciation of the ICSID Convention became effective on November 3, 2007. The Bolivian President Evo Morales said that the "legal, media and diplomatic pressure of some multinationals that . . . resist the sovereign rulings of countries, making threats and initiating suits in international arbitration." *Latin Leftists Mull Quitting World Bank Arbitrator*, REUTERS, Apr. 30, 2007, <http://www.reuters.com/article/worldNews/idUSN2936448520070430> (last visited Nov. 15, 2008). Faced with criticism not only from foreign business interest, the Bolivian government subsequently added a number of other reasons to justify its decision, among them "ICSID's alleged bias towards corporations, the lack of substantive appeals mechanism for arbitration rulings, and the confidentiality of arbitration hearings charged with resolving matters of public interest." See C. Tietje, K. Nowrot, and C. Wackernagel, *Once and Forever? The Legal Effects of a Denunciation of ICSID*, March 2008, available at <http://www.wirtschaftsrecht.uni-halle.de/Heft74.pdf> (last visited Nov. 15, 2008).

47. "The most unequal region in the world" according to De Ferranti, a former World Bank Vice President for Latin America and the Caribbean and Augusto de la Torre, Chief Economist at the World Bank.

48. See A Warning for Reformers, *supra* note 44.

49. See *Recommendation No. 19*, XIV Ibero American Judicial Summit, March 2008.

50. See Biebesheimer & Payne, *supra* note 32.

51. See Economics and the Rule of Law: Order in the Jungle, *supra* note 14.

involvement of private sector and civil societies are also critical in order to carefully design and supervise successful reform processes.

It is too early to determine whether governments in the region are likely to launch the next generation of legal reforms and whether adequate funding sources would be readily available without more tangible evidence of positive results. Critics feel that multi-million dollar projects have mostly strengthened infrastructure and technology, including the construction of court buildings⁵² and the acquisition of vehicles and computers for judges, rather than showing structural change in critical issues. Much has been said about reform programs funding extensive training and capacity building initiatives that do not translate into increased judicial independence and technical capacity of courts and fail to effectively change the culture of corruption or improve judicial transparency. It seems easier to find significant improvements in the reduction of case backlog and efficient separation of judicial and managerial functions within the courts. In addition, civil society throughout Latin America still lacks confidence in the justice sector⁵³ due to the perceived isolation of judicial authorities from the needs of the poor and disadvantaged populations.⁵⁴ Access to justice for such populations has not improved as originally expected and much more needs to be done. But successful examples do exist, such as the modernization of the criminal justice system reform implemented in Chile, as found in a regional review conducted by the Santiago-based Center for Judicial Studies of the Americas.⁵⁵

Third, in light of the serious concerns raised by civil society organizations and external partners about the disappointing results of legal reform initiatives, there seems to be an apparent weakening of government commitment to endorse future reforms.⁵⁶ This reluctance may be caused by a variety of reasons. Some reasons include the fact that performance indicators have not been consistently met and there has been evidence of poor or weak results, all of which highlight the fact that monitoring justice-services delivery is not a perfect science. This uncertainty increases the credibility gap between economic reform and the argument that it should not be attempted without adequate considerations or timely establishment of supporting legal systems. Law and justice institutions are

52. See LINN HAMMERGREN, *ENVISIONING REFORM, IMPROVING JUDICIAL PERFORMANCE IN LATIN AMERICA*, (Pennsylvania State University Press) (2007).

53. See, A Warning for Reformers, *supra* note 41.

54. Such as indigenous peoples, Afro-descendants, the disabled, women, and youth at risk.

55. Chile is an example of successful judicial reform. Consensus on type and scope of the reforms to the criminal judicial system was widely achieved. Sizeable resources were dedicated, and analysis and measurement of the result were undertaken. Such reform is currently being taken to other areas, such as family courts. Peter DeShazo & Juan Enrique Vargas, *Judicial Reform in Latin America – An assessment*, Policy Paper on the Americas, Vol. XVII, Study 2, Sept. 2006, available at http://www.csis.org/media/isis/pubs/0609_latin_judicial_reform.pdf (last visited Nov. 15, 2008).

56. See Hammergren, *supra* note 52.

under constant pressure from finance ministries to increase cost effectiveness and reduce fiscal cost caused by litigation against the state, known as contingent liabilities, which are particularly relevant in the context of infrastructure investments and related public procurement litigation.⁵⁷

Agencies in the executive branch are growing increasingly concerned about a perception of interference of judicial authorities in economic policymaking.⁵⁸ Another source of concern is the pressure put by parliaments on legal and judicial institutions to do more with less by diminishing budgetary support and questioning the judiciary's management policies.⁵⁹ In addition, there is a perception among government officials that the legal profession would consistently oppose or even boycott law reforms. Some government officials argue that conflict-of-interest issues may drive lawyers to maintain the status quo, because they are viewed as mostly guided by rent-seeking or individualistic purposes.

Fourth, in many countries, the overall reform process does not adequately integrate the legal dimensions of economic or political reform. Looking ahead to the next generation of legal reform, special consideration should be given to the reasons for the lack of inclusion of law as a fundamental prerequisite to sustainable development, so that we can develop a more focused strategy.

Setting aside country-specific conditions, the following three causes of this disconnect between economic and legal communities are worth noting. First, there seems to be a pervasive resistance to including law as an early consideration by reformers. In various countries, a large number of qualified and knowledgeable legal professionals, experts, academics, and institutions, including professional associations, are neither fully consulted nor thoroughly involved in this complex change process. Second, in many cases, the enactment of new or the amendment of existing laws and regulations may be spearheaded by economic or financial institutions, thus avoiding a crucially required legal-dialogue phase that could effectively identify legal grounds for reform and expected impacts of said reform. They either argue that lawyers cannot grasp the complexity and sophistication of the technical contents of the proposed norm or that including a consultation phase would significantly delay the enactment process. Third, economic communities do not necessarily seek the proactive engagement of legal professionals, not only in the actual consultation

57. For instance, in Colombia, Argentina and Uruguay.

58. See *Uruguay risk: Tax policy risk*, Economist Intelligence Unit, Sept. 15, 2008 (Uruguay's tax reforms declared unconstitutional by the Supreme Court on April 15, 2008).

59. The creation and the reform of the existing judicial councils in many Latin American countries often allow the executive branch to impose its views on judicial selection and career. One of those cases is the reform of Consejo de la Magistratura in Argentina, whereby the government obtained a majority of members and thus the ability to appoint its candidates. Lanacion.com, http://www.lanacion.com.ar/nota.asp?nota_id=782853 (last visited Nov. 15, 2008).

phase, but most importantly not during the legal development process.⁶⁰

IV. GUIDELINES FOR THE FUTURE

“Latin American countries must expand commerce within the region and, following the Asian experience, take advantage of trading opportunities with other continents.” MICHELLE BACHELET,
President of Chile, 2008⁶¹

In the current turbulent times, Latin America risks being further marginalized, vis-à-vis other regions, such as Asia,⁶² for its inconclusive and limited legal reform evolution.⁶³ The region may fail to fully benefit from globalization and it may also further deprive itself of the ability to compete in global markets. As a consequence, I would argue that future efforts by any country interested in overhauling its business legal and regulatory framework would be in a better position to attract greater investment through an improved perception of legal certainty and predictability.

Over 180 economies are annually ranked by their ease of doing business, including licensing, property registration, access to credit, and enforcing contracts. The 2009 classification shows that among the Latin American countries, the highest marks go to Chile.⁶⁴ This ranking can help explain why Chile obtained foreign direct investment flows amounting to U.S. \$14.457 billion.⁶⁵ There seems to be a close connection be-

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60. An example is the Mexican financial sector reform implemented in 2000. *See generally*, Jose Angel Gurria, *Mexico: Recent Developments, Structural Reforms, and Future Challenges*, 37 FIN. & DEV. 23 (Mar. 2000) (explaining economic reforms in 1999 and Mexican plans for future economic strategy), *available at* <http://www.imf.org/external/pubs/ft/fandd/2000/03/gurria.htm> (last visited Nov. 15, 2008).
 61. Michelle Bachelet, President of Chile, Address in Acceptance of an Honorary Degree from Essex University (April 3, 2008) (challenging Latin American countries to strengthen links). The Chilean President emphasized the low level of inter-regional commerce in Latin America and called for the development of additional investment in infrastructure, energy supply, social cohesion, and education. *Id.*
 62. The East Asia experience shows how regional integration helps increase competitiveness, growth, and income convergence. *See Lee, supra* note 8, at 172; Also, in “East Asia, the role of governments and regional agreements has been to assist the regional investment strategies of private companies through trade facilitation [and] infrastructure development” *Id.* at 175;
 63. “Latin America differs from the most successful emerging market regions in a way that bodes ill for the future: Investment as a share of gross domestic product (GDP) remains discouragingly low”. *Id.* at 3. Latin America thus needs to first partake in legal reform that will create legal certainty so as to increase investment and become competitive worldwide.
 64. *See Economy Rankings*, WORLD BANK GROUP, <http://www.doingbusiness.org/economyrankings/?regionid=3> (last visited Nov. 15, 2008).
 65. *See* ECON. COMM’N FOR LATIN AM. AND THE CARIBBEAN [ECLAC], FOREIGN INVESTMENT IN LATIN AMERICA AND THE CARIBBEAN, U.N. Sales No. E.08.II.G.11 (2007), *available at* <http://www.eclac.org/publicaciones/xml/1/32931/lcg2360i.f.pdf>; *See also* ECON. COMM’N FOR LATIN AM. AND THE CARIBBEAN [ECLAC], FOREIGN INVESTMENT IN LATIN AMERICA AND THE CARIBBEAN, U.N. Sales No. E.07.II.G.32, (2006) *available at* <http://www.eclac.org/publicaciones/xml/4/28394/lcg2336i.pdf>, (indicating that in 2006 Chile received a higher (16%) level

tween having clear rules of the game and the decision to invest in a country. Policy makers should more carefully analyze the reasons why the region is not meeting the demands of a competitive global economy and learn from the Chilean experience.⁶⁶

A key element in this urgently needed transformation is the development of a modern and efficient legal system and a transparent, agile, and technically savvy supporting institutional framework, both core ingredients of a national development process. For future generations of legal reforms, a phased approach is proposed to increase legal certainty in Latin America. This approach may also be conducive to add a larger number of regional winners in the globalization process, expanding their capacity to fully enjoy the benefits of a global economy.

A. A STEP-BY-STEP APPROACH: FIVE GUIDELINES

I believe that there are five helpful guidelines, or steps, that can help manage the design and development of a comprehensive and sustainable legal reform process.

First, it is imperative to have the government's political will and secure the commitment from a broad array of stakeholders such as political parties, labor unions, professional groups, and the press, so that the reform is positioned as a national priority. For instance, the government should pledge to be the driver that will obtain, coordinate, and fund national legal reform programs that include components to allow disadvantaged populations equal access to the legal and judicial systems.

Second, once a common goal is determined, a national dialogue must be launched as a consensus-building mechanism among the various government branches, private sector actors, and civil societies. All key stakeholders must work together to identify the appropriate tools and instruments needed to inspire and guide the development and implementation of legal reform. Although attaining consensus may be challenging, the results will bring legitimacy to the areas that are ultimately destined for reform. The legitimacy arises out of the fact that the process was a homegrown effort rather than a requirement imposed by foreign interests or external funding partners. The appearance of a homegrown response can enhance the reform processes through constant validation and thus attract investment opportunities.

Third, governments can seek external partnerships to integrate growth and development into their countries after there is a focused and nationally driven reform in place with the adequate funding and legal authority. Such external partnerships are needed to overhaul economic, financial, banking, trade, and investment legal frameworks so as to fund the most

of investments, mainly in the electricity, gas, water, mining, and communications sectors).

66. Latin American countries, "(with some country exceptions) rank poorly in the World Bank's Doing Business indicators. It also has the fewest number of countries making reform progress of any developing region." Lee, *supra* note 8, at 172.

pressing social dimensions of law and justice. The local content of reform is often well understood by civil society organizations, as they can shape the social content of laws, ensuring that local customs and traditions are adequately analyzed and addressed throughout the reform process.

Credibility in the legal reform process among societies is important and is increased by judicial institutions' concerted efforts to explain their roles and functions through public media campaigns and other community programs.⁶⁷ In addition, civil societies should continually and forcefully demand their integration into the growth and development process. Fortunately, the local content of reform is often well understood by civil society organizations that are well positioned to shape the social content of the law.

Fourth, it is crucial to build institutional and technical capacity within the public sector in order to obtain strict consistency between a country's domestic and international legal commitments. It is necessary to identify possible gaps and contradictions and identify exact areas of reform imposed by these regional and extra-regional legal commitments. Actual implementation of said legal commitments, however, may exceed the capacity of local institutions and legal professionals. Examples include judges and parliamentarians that are not necessarily trained in the area of industry and technology of a proposed new law. In such cases, the analysis of international jurisprudence and legal thinking may be extremely beneficial.

It is important to guide local experts working on legal reform to tap into the wealth of regional and international analytical work in this area. Certain experts have experience in the implementation of particular reforms that were successfully enacted in other countries. It is also important to share legal knowledge across borders through substantive exchanges and networks among legal professionals so as to provide a more informed environment for the decision-making process by local policy and lawmakers. By highlighting the leadership of local experts and avoiding the perception of foreign interference, a significant reform effort can be triggered to avoid poorly crafted law reforms that deviate from local conditions and neglect weak institutional capabilities.

Fifth, financial and economic authorities may wish to more broadly take advantage of lawyers when devising policy reforms by carefully ensuring that legal systems are considered as an integral part of the development process. In addition, authorities may want lawyers to carefully craft legal changes that are aligned with the intricacies of local law, demands of local constituencies, national growth challenges and opportunities, and the growing demands of a technology demand-driven global economy. For lawyers in the region, there is an urgent call to raise awareness of this critical situation among stakeholders and to proactively en-

67. The strengthening of offices responsible for public affairs within the judiciary is included as a component of judicial modernization projects financed by the World Bank in Peru, Mexico, and Honduras.

gage in the country-tailored plans aimed at promoting sound, responsive, and dynamic legal reform strategies.

Likewise, as proposed earlier in this article, governments and civil societies need to assess the relevance and usefulness of developing a legal system aimed at positioning laws and regulations as the balancing factor between politics and business considerations. This assessment could be conducted by taking into account three different perspectives.⁶⁸

From a business perspective, national laws should allow all stakeholders to participate in a global scheme, such as the protection of global public goods, allowing them to share their respective contributions of knowledge, information, resources, and products in support of initiatives of common interest in a wide area of topics. This emerging legal creation requires further creativity from lawyers and economists in the near future.

From a legal perspective, clear rules of the game are required to ground development and integration initiatives on a predictable documentary framework, including technical, contractual, and legal instruments. A lawyer should closely work with business promoters to develop and interpret a wide range of international instruments,⁶⁹ all with different legal standing and creating a wide range of rights, obligations, and responsibilities for government and private sector alike.

From a development perspective, a country that constructively embarks on an equitable development strategy must have an enabling legal system that proactively eliminates discriminatory practices *de jure* and *de facto*. The poor and disadvantaged must overcome inequality traps⁷⁰ that impede their full enjoyment of opportunities and rights. A key decision for policy makers, once a consensus on the need of legal reform is reached, should be integration into a national development plan. This plan is structured as a policy instrument detailing the development goals of a country to achieve equitable and sustainable economic growth, and details the government's programs and activities specifically tailored to realize national goals.⁷¹ Ideally, a sound plan should be designed through a highly democratic process, capturing the results of meaningful and wide consultations with civil society⁷² to ensure that their views on how to pro-

68. Hammergren, *supra* note 49, at 53, (arguing that one "[o]ne evident problem is a failure to evaluate progress or present programs in manners facilitating evaluation. When benchmarks are ignored and overarching objectives are not converted into measurable terms, it becomes very difficult to determine whether we are indeed advancing.").

69. Including treaties, declarations, joint communiqués, resolutions, diplomatic protocols, memoranda of understanding, etc.

70. See World Development Report 2006, *supra* note 6 (defining what an equitable development strategy is and its results).

71. National development plans' durations vary from medium term (three to five years) to long-term (up to ten years).

72. Support and funding to assist countries in the implementation of their national development plans are known as Country Assistance or Country Partnership Strategies. The World Bank issued guidelines in 2006 indicating that in-country consultations are encouraged to involve civil society, through seminars and roundtables.

vide such equality of opportunity are adequately reflected. This process is of particular importance for countries that are committed to meeting the special needs of ethnic minorities, disadvantaged, and vulnerable groups. The national development plan can serve a dual purpose. First, it will guide budget negotiations between the executive and political parties within congress. Second, the plan could also provide the basis for the development of policy-based poverty reduction strategies seeking internationally-funded cooperation and aid initiatives.⁷³

A good example of how a national strategy incorporates social inclusion as a development goal grounded on an enabling legal framework is the Uruguay 2005-2010 Country Assistance Strategy,⁷⁴ which included as a unique development tool a grant for the strengthening of justice institutions for equitable development.⁷⁵ This grant assisted judicial and other relevant institutions through legal reform and institution building activities to develop a first ever Equity Act.⁷⁶ As is well recognized, however, laws by themselves do not achieve development. Thus, a combination of national and international funding must be packaged to ensure that supporting procedures and institutions are in place and equal access to rights and opportunities are under the development process.⁷⁷

Based on this holistic example, it is critically important for countries to build an equitable legal system by providing individuals with greater awareness of their own opportunities and rights. In most countries, there is also a need to effectively promote a more equitable access to legal and judicial institutions through tailored legal aid and other access to justice initiatives.⁷⁸ This enhanced enjoyment of rights would facilitate an individual's access to existing public resources and services, such as education, health, safe water, and social security services. Through specific

With prior government approval, surveys are conducted to gain perspective of the various stakeholders in the country on the efficacy, relevance, and efficiency of the National Development Program (NDP) funded activities. See *Country Assistance Strategies*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120746~menuPK:51551~pagePK:41367~piPK:51533~theSitePK:40941,00.html> (last visited Nov. 15, 2008).

73. Examples of this process include the 2005 Uruguay and the 2007 Nicaragua Country Strategies.
74. See generally *Country Assistance Strategy for the 2005-2010 Period*, WORLD BANK, 2005, <http://siteresources.worldbank.org/INTURUGUAY/SPANISH/Resources/CASFinalEspanol.pdf> (last visited Nov. 15, 2008).
75. *Project for Institutional Strengthening of Justice for Equitable Development, Institutional Development Fund*, DEPARTMENT OF SOCIAL DEVELOPMENT, http://www.mides.gub.uy/inamu/llamado_asis_fin.pdf.
76. See Equal Rights and Opportunities for Men and Women in the Republic, Law No. 18,104, (March 6, 2007) (Uru.).
77. The First National Plan of Equality of Opportunity and Rights was approved by Executive Decree on May 15, 2007. The name of the plan is The First National Plan for Equality of Rights and Opportunities (Equality Plan) 2007-2011. Executive Decree CM/291 of 15 May 2007, available at http://www.presidencia.gub.uy/_Web/decretos/2007/05/CM291_16%2003%202007_00001.PDF (last visited Nov. 15, 2008).
78. The Uruguay Equality Plan provides a separate chapter on the promotion of women's knowledge of their rights and specific measures to facilitate their access to justice services. *Id.*

programs, public policy, and the removal of legal obstacles through legal reform initiatives, the most disadvantaged populations, such as women, could be empowered to effectively participate in, and contribute to the national development process. Such an example can be seen in the World Bank Gender Action Plan,⁷⁹ which aims at helping women to participate in labor, product, and financial markets, and entrepreneurial and commercial activity.

V. CONCLUSION

In reviewing the lessons emerging from the last decades of legal reform work in Latin America, it is still possible to propose an optimistic forward-looking view of legal reform for the region. To do this it is imperative to go beyond a purely legal approach⁸⁰ and develop a hybrid legal and development lens. In this regard, I am proposing the development of a legal reform strategy aimed at an overall objective of promoting a systemic and comprehensive reform of a legal system through its integration within public policy,⁸¹ which is guided by the same economic and institutional development goals.

I also propose a reform process that facilitates the adaptation of a national legal system through the creation of legal instruments and development tools in support of countries facing the challenges of regional integration and globalization. In my opinion a prospective Law Reform Toolkit⁸² should include a multidisciplinary effort by local reformers to craft a custom tailored hybrid reform program with the following features.

First, broad strategic objectives are needed to govern and regulate a wide range of formal and informal business and commercial affiliations, associations, partnerships, and networks established to exchange or share knowledge, ideas, or products.

The second effort in the Toolkit should be multifaceted jurisdictional coverage to facilitate a nation's participation in bi-national, sub-regional,

79. The Gender Action Plan has the objective of advancing women's economic empowerment in order to promote shared growth, gender equality, and women's empowerment. *Gender Equality as Smart Economics: A Gender Action Plan*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,contentMDK:21064184~menuPK:2970672~pagePK:210058~piPK:210062~theSitePK:336868,00.html> (last visited Nov. 15, 2008).

80. There is abundant bibliography detailing the limited impacts of legal reform, particularly in the area of judicial reform. Most of the assessments conducted provide a legal perspective and therefore focus on the limitations and shortcomings of the reforms. A hybrid legal development perspective to legal reform proposes a dual approach to diagnose ex-ante the development impacts of law reform and an ex-post evaluation of how such reform has impacted the development strategy of a country in meeting its development goals.

81. Alejandro M. Garro, *Judicial Review of Constitutionality in Argentina: Background Notes and Constitutional Provision*, 45 DUQ. L. REV., 409, 413 (2007) (explaining executive orders).

82. Legal reform toolkit for the purpose of this article means a package of economic, social, developmental, institutional, and legal instruments and tools.

regional, hemispheric, or worldwide initiatives that have cross-border impacts, such as in trade, finance, migration, and knowledge. Special attention to achieving harmonization between domestic and international legal principles established under ratified conventions is also essential.⁸³

Third, a multidimensional contextual scope that should reflect a growing variety of contexts affecting relations among countries in the region, in political, economic, social, technical, scientific, and cultural areas.

Fourth, is a dynamic construction of both rights and responsibilities of a wide array of domestic and international stakeholders, including government agencies, private institutions, corporate entities, and representatives of civil society organizations.

Finally, I am also recommending that future legal reforms must be grounded on a development strategy of social inclusion or inclusive development. As a post-Washington Consensus lesson, we now understand that improving living standards, social sustainability, and equity considerations are critical to the development process.⁸⁴ The economic community has strongly stated that development policy must ensure equal opportunities for all individuals participating in the globalizing process, regardless of origin, race, place of birth, or gender.⁸⁵ Development policy must also take advantage of the role that legal systems may perform in their development, balancing politics and economic consideration, and acting as an enabling engine for growth and equitable development.

83. One significant challenge to developing countries emerges from conflicts arising out of international human rights obligations and the specific integration regimes adopted under free trade agreements. This challenge has been observed in the Central American context, particularly regarding labor rights of women workers in the manufacturing and agriculture sectors. Conclusions of country studies were conducted by the Legal Vice-Presidency of the World Bank in Guatemala and Honduras, under the sponsorship of the Danish Government Aid Agency (2006 to 2008).

84. See JOSEPH E. STIGLITZ, *MAKING GLOBALIZATION WORK* 44-46 (W.W. Norton & Co., Inc. 2006). The desirable initial development strategy was conceived as liberalization of markets and trade, privatization, and deregulation. *Id.* at 27.

85. This definition was launched by the 2006 World Development Report. See World Development Report 2006, *supra* note 6.

