



# Part 4



## 4.2 Policy brief 9

### Developing a Strategic Policy Framework (SPF) using the 17 Sustainable Enterprises Policy Pillars

## RULE OF LAW AND SECURE PROPERTY RIGHTS

- ❑ At the heart of any successful society is respect for and enforcement of the rule of law. Stable and prosperous societies contribute to the environment for sustainable enterprise growth. The rule of law is a fundamental pillar of this environment.
- ❑ The rule of law means that government decisions are made according to a set of written laws and rules, which are to be followed by every citizen. The rules are applied consistently, administered by a professional bureaucracy, adjudicated by a fair and transparent judiciary that is adequately compensated, and applied equally to women and men.
- ❑ Robust legal institutions are important to enable resolution of commercial disputes between enterprises and their clients.
- ❑ A well-functioning court system enables creditors to get their loans back when firms underperform and declare bankruptcies, and are as a result more willing to lend to enterprises.
- ❑ Laws form an intrinsic layer of the foundation for a robust private sector. Without a transparent legal framework and a fair judicial and administrative system, other efforts to foster private sector development cannot work as intended, and could even do harm.
- ❑ Legal compliance forms the bedrock for social development. In most instances, this compliance is largely self-regulated, but behind this stands an effective, transparent, unbiased, and efficient enforcement - be that by the police, the judiciary, or by other government enforcement agencies such as the labour inspectorate. However, to be effective all such enforcement needs to sit within a wider social respect for the rule of law.<sup>1</sup>
- ❑ Trust is an important part of efficiency in a market system because predictability and enforceability of agreements are important, and in the absence of trust, the transactions and institutional costs required to restore these attributes are high.
- ❑ Countries may subscribe to different legal systems arising from different political and social cultures, but the fair administration and enforcement of a just system of laws is a cardinal principle for all. Both elements matter: laws and their

<sup>1</sup> IOE: *Labour Administration: Information Paper*, 2005.

administration.<sup>2</sup>

- ❑ Improvements in economic security contribute to the rise of private investment by decreasing downside uncertainty on the return of investment and securing property rights. Moreover, improved security may enhance the efficiency of resource allocation and growth.
- ❑ Property rights are a key basis for sustainability. They put in place a circuit of information of enforceable statements. A market economy is a system of exchange, and in order to exchange people need to trust each other. Property enables trust, which in turn enables credit, which in turn enables capital, which is ultimately what enables exchange.<sup>3</sup>
- ❑ When property rights are well protected, information disclosure about firm performance is more adequate, banks are therefore more likely to make loans, shareholders are more willing to invest, and abuse of company funds is more likely to be detected and punished.
- ❑ Property systems need to provide confidence that property rights are secure, including women's property rights, otherwise they lead to few incentives for individuals to expand operations or develop their businesses and reinvest their profits.
- ❑ Intellectual property rights (IPR) must be clearly defined and protected. Little interest, awareness and use of IPR laws in the country is an indication that innovation, research and development are probably not an important characteristic of national enterprises and that the private sector tends to adopt existing technologies rather than invent new ones.
- ❑ Both foreign and domestic investors perceive crime as an indication of social instability and which additionally drives up the cost of doing business.
- ❑ Crime must not impose major costs on enterprises by forcing them to divert resources from productive uses to cover security costs.
- ❑ Reforming systems of property rights can often require a broad long-term programme of reform, encompassing additional elements such as improvements in the land registry, collateral registry and access to the courts.

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<sup>2</sup> UNDP Commission: *Unleashing entrepreneurship: making business work for the poor*, 2005.

<sup>3</sup> Hernando de Soto: *The Mystery Of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, 2003.,