The World Bank has engaged in justice reform for two decades. Though its portfolio in this area remains relatively small, the World Bank recognizes the significance of justice reform: the Bank’s Governance and Anti-Corruption Strategy (GAC), for example, highlights the role of justice institutions and recommends an expansion of Bank support for justice reform efforts.1 The Bank is now preparing a paper to elaborate its approach in this area, and to do so we are seeking input from external stakeholders as well as Bank staff.

Though the precise channels of causation are complex and contested, there is broad consensus that an equitable, well-functioning justice system2 is an important factor in fostering development and reducing poverty.3 A country’s justice system shapes whether firms can rely on their contracts, whether citizens have recourse from breaches in policy or failures in service delivery, whether corruption and other crimes are punished, and whether the power of the executive has limits. According to World Bank President Robert Zoellick, “[t]he most fundamental prerequisite for sustainable development is an effective rule of law.”4

The proposed paper, Directions in Justice Reform, will take stock of the Bank’s justice reform experience thus far and make recommendations for future direction. The paper

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2 A World Bank handbook defines ‘justice system’ as comprising “[t]he institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules that societies create to govern members’ behavior; and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions.” Dory Reiling, Linn Hammergren, and Adrian Di Giovanni, Justice Sector Assessments: A Handbook, World Bank Legal Vice Presidency 2007. These institutions include, among others, the courts, the police, prosecutors’ offices, public defenders, legal aid providers, administrative law mechanisms, customary law institutions, anti-corruption commissions, and property and commercial registries.
3 See, for example, Douglass North, Institutions, Institutional Change, and Economic Performance 1990, p. 54, claiming that the absence of a low-cost means of enforcing contracts is ‘the most important source of both historical stagnation and contemporary underdevelopment in the Third World;’ Dani Rodrik, Arvind Subramanian, and Francesco Trebbi, ‘Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development,’ in 9 Journal of Economic Growth, no. 2 (2004), p. 131–65, which argues that the quality of institution is a greater determinant of income level than either trade or geography; Rick Messick (WB PREM), Judicial Reform and Economic Development: A Survey of the Issues,’ in 14 World Bank Research Observer, no. 1 (1999), p. 124–26, which concludes that, although the specifics of causality are unclear, ‘history and comparative analysis support the view that a better judicial system fosters economic growth.’
will also inform updates to the Bank’s Board of Directors regarding implementation of its Governance and Anti-Corruption Strategy. We offer this discussion note as a basis for consultation. We address below four areas in which we seek to clarify the World Bank’s work and focus: how the World Bank defines its goals in justice reform, how best to meet client needs in this area, how to improve the quality and effectiveness of justice reform efforts, and how best to integrate justice reform into the World Bank’s overall support for development. We conclude with seven questions for consultation, and we invite participants to address any or all of them.

**World Bank Justice Reform Portfolio**

Like governance as a whole, justice concerns and justice reform activity cut across development, and they accordingly cut across the work of the World Bank.

Some lending operations take justice sector institutions as their primary focus. Most projects in this portfolio—which includes twenty closed projects and sixteen active projects from every region—focus on improving management and performance of courts and other justice sector institutions. There is also significant focus on the law-making process and ensuring citizens have access to and understand laws and court decisions and how to make use of law and justice institutions. Most projects support training for justice sector actors, and some involve not only courts, but also ministries of justice, legal aid entities, etc. Some focus on a particular development need within the justice sector such as commercial courts, enforcement process improvement, or insolvency offices. The largest dollar amount investments in this portfolio are aimed at court and case management, which is included in 89% of projects; and at infrastructure, which is included in 47% of projects but accounts for a significant proportion of the Bank’s investment in justice.  

**Distribution of activity and investment in ‘stand-alone’ justice reform projects:**

<table>
<thead>
<tr>
<th>Component Type</th>
<th>% of all projects that included this component type</th>
<th>% of $ value of all project expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct judicial process support – administering court caseloads and the services provided by courts</td>
<td>89%</td>
<td>26%</td>
</tr>
<tr>
<td>Legal drafting, transparency of</td>
<td>78%</td>
<td>9%</td>
</tr>
</tbody>
</table>

5Analysis is based on a review of stand-alone justice reform projects conducted by the World Bank Justice Reform Group.
<table>
<thead>
<tr>
<th>legal information</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training of the legal profession and justice sector actors</td>
<td>53%</td>
<td>6%</td>
</tr>
<tr>
<td>Support to non-judicial justice agencies, legal aid and NGO programming</td>
<td>39%</td>
<td>10%</td>
</tr>
<tr>
<td>Infrastructure – building and refurbishing courts and related facilities</td>
<td>47%</td>
<td>40%</td>
</tr>
<tr>
<td>Special process support – commercial courts, enforcement, insolvency</td>
<td>22%</td>
<td>1%</td>
</tr>
<tr>
<td>Project management</td>
<td>83%</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>17%</td>
<td>2%</td>
</tr>
</tbody>
</table>

In addition to ‘stand alone’ operations, a larger proportion of the Bank’s work on justice reform comprises components of other development projects. Since 1990, over 500 World Bank lending projects have dedicated between 10 and 50% of their funding to advancing the rule of law. A private sector development project in Guinea-Bissau included a component focused on improving access to justice for firms, for example; a Poverty Reduction Support Credit in Benin supported establishment of a Legal and Judicial Information Center; a land project in Peru improved the mechanism for resolving land disputes.

In recent years the scope of justice institutions engaged by World Bank operations has widened to include, among others, criminal justice and customary law institutions. Taking “stand alone” and component operations together, Bank lending to support the rule of law averaged $335 million per year from 2005 to 2010.

These lending activities are complemented by a plethora of grants (instruments include the Institutional Development and Japanese Social Development Funds) and research (instruments include the Bank Netherlands Partnership and the Trust Fund for Environmentally and Socially Sustainable Development) which support and/or study among other things anti-corruption agencies, ombudsman offices, rights education, legal

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6 Data extracted from World Bank’s Business Warehouse. The theme “rule of law” includes the following sub-themes: access to law and justice, judicial and other dispute resolution mechanisms, law reform, legal institutions for a market economy, legal services, and personal and property rights. We mention the range 10-50% merely as a rough approximation for the body of projects that do dedicate substantial attention to justice reform but that are not stand-alone justice reform operations.

7 This mean is derived from figures presented in World Bank Annual Reports from 2005-2010.
pluralism, legal aid and legal empowerment, and data gathering on the protection of basic rights. In addition, initiatives on stolen asset recovery and money laundering seek to improve specific aspects of governments’ law enforcement capacity.

**Justice Reform work thus cuts across all of the World Bank’s activities.** Interventions have produced positive results. Mobile courts initiated under a World Bank project in the Philippines, for example, allow judges to travel to prisons and underserved communities to adjudicate, and have led to the release of thousands of pre-trial detainees.\(^8\) A World Bank supported reform project in Venezuela led to between 20 and 70% reductions in case processing times.\(^9\) A community paralegal program in Sierra Leone, supported in part by a World Bank-administered Japanese Social Development Fund grant, was found to empower clients and communities to achieve redress for grievances that had otherwise stagnated.\(^10\)

On the other hand, many efforts--by the World Bank and by others--have underperformed or failed because of, among other reasons, misinterpretation of local context, lack of sustained political will, overly short time horizons, and inadequate capacity.\(^11\) Even when outputs are successful—a new case management system is adopted, courthouses are refurbished, judges receive training—the relationship between those outputs and ultimate outcomes is difficult to predict or measure. Have the interventions made the system more accessible, or more fair?

In the process of preparing the *Directions* paper, we are undertaking reviews (and in some cases drawing on existing reviews) of various aspects of the Bank’s justice reform experience—court administration, case management, alternative dispute resolution, and data gathering on the protection of basic rights. In addition, initiatives on stolen asset recovery and money laundering seek to improve specific aspects of governments’ law enforcement capacity.

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10 The program is called Timap for Justice. A World Bank assessment of the program, in which researchers selected 42 cases from Timap’s docket and interviewed all parties involved, reported that respondents were “overwhelmingly positive” about their experiences with Timap. Respondents “praised Timap’s effectiveness in resolving disputes, particularly those that confront institutions or power relationships.” The report found “strong evidence that Timap’s interventions were indeed empowering their clients, the paralegals themselves, and the community as a whole to claim their rights and pursue cases that had previously stagnated.” Pamela Dale, *Delivering Justice to Sierra Leone’s Poor: An Analysis of the Work of Timap for Justice*, World Bank, 2009, p. iv, 33.
judicial infrastructure, access to justice. These reviews will contribute to recommendations regarding the World Bank’s future direction.

Justice Reform Going Forward

Defining the World Bank’s Goals in Justice Reform

The proposed paper is an opportunity to clarify the World Bank’s goals in justice reform, and in particular how this area of work fits with the Bank’s development mission. (We of course do not seek to define justice or rule of law for any of our member countries).

Some of the scholarly and political debate about justice centers on the question of what kind of a social order satisfies humans’ moral obligations to one another. Others conceive of the justice system and the rule of law in thin, formalist terms: their key question is whether rules are followed and enforced, irrespective of the content of those rules, or the process by which enforcement takes place.

The World Bank’s involvement in justice reform inhabits a middle ground between these poles. On the one hand, the thickest conception of justice is probably beyond the Bank’s development mandate. On the other hand, the purely formalist conception of justice is too thin to motivate reform: the content of rules and the character of legal process do matter for development.

World Bank justice reform efforts can be anchored in what Trebilcock and Daniels refer to as “institutional and procedural values,” which do have normative content but which are not necessarily determinate on the question of an ultimate just order. The Governance and Anti-Corruption Strategy emphasizes institutional and procedural values to which the World Bank is committed: efficiency, equity, inclusion, accountability. These

16 See, for example, World Bank, Strengthening World Bank Group Engagement on Governance and Anticorruption 2007, at p. 2-4. The UN’s definition of “rule of law” specifies some of the same institutional and procedural values (the UN also goes further to explicitly embrace human rights). “For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It
values can form a basis for assessing the impact of justice reform interventions going forward.

**Meeting Country Needs**

Though justice reform has proven difficult in many countries, or perhaps in part because it has proven difficult, there is increasing recognition of the need for effective interventions in this area. During consultations on the Governance and Anti-Corruption strategy, participants representing client governments, donor agencies, and civil society underscored the importance of strengthening the justice sector. The GAC itself recommended that the Bank "scale up support for judicial reform."  

Many countries, in particular in Latin America and the Caribbean, have asked for greater World Bank involvement in criminal justice. Gender advocates worldwide identify justice reform as crucial for the security and livelihoods of women. Some counterparts emphasize support for the judicial branch as a useful counterweight to support for the executive, lest development aid distort a nation's balance of powers. The 2011 World Development Report calls for greater attention to justice reform in fragile and conflict-affected states.

Colleagues also point out that justice reform is crucial for the achievement of sector objectives: forestry experts highlight the need for better enforcement against illegal

requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies 2004.
18. Comments of African Development Bank, id. at p. 2: “[There needs to be emphasis on] reforming, building and strengthening the capacities of parliaments, inspectorates of government and the judicial system (this can be done in collaboration with other bilateral or multilateral donors). In addition to strengthening them, there may be need to ensure enabling laws, so that these institutions can operate effectively and independently.”
19. Comments of Transparency International, id. at p. 33: “To play its role effectively, civil society requires a constructive legal and regulatory environment that provides safeguards against bureaucratic harassment, threats of libel, and fear of physical harm.”
logging, for example; land experts stress the need for legal aid and dispute resolution in support of land reforms; private sector experts demand mechanisms for faster and cheaper resolution of commercial disputes.

These widespread acknowledgments of the need for justice reform do not, however, necessarily correspond with immediate demand from client countries for World Bank justice reform operations. Is this because of a genuine lack of interest in Bank assistance for justice reform; because requests from non-executive branch justice agencies are being filtered out of government requests for assistance; because requests for justice system assistance do come to the Bank but the Bank hesitates to undertake justice projects, which tend to be relatively small and are perceived as risky? There is anecdotal evidence for each of these hypotheses, and we wish to test them during the consultation process.

The proposed paper will probe drivers of client demand, then, and suggest ways of meeting client needs in this area. One limitation is ambiguity about the World Bank’s mandate, and concern about the political risk in engaging a client country’s justice system. The Directions paper itself should help to solidify the Bank’s role. A forthcoming guidance note on criminal justice should provide further clarification.

The paper will seek to identify the World Bank’s comparative advantages in justice reform. The Bank has experience in dealing with multiple branches of government worldwide, and has developed considerable expertise in court reforms. Moreover much of the Bank’s experience in public sector management—in areas like budget reform, financial management, and human resources—can be applied to justice institutions. The Bank also has significant expertise in legal empowerment, and can build on that experience as well.

We will equally identify areas in which the Bank’s involvement should be limited, or in which the Bank should work in partnership with other agencies. The World Bank is relatively new to criminal justice, for example, and its engagement in that field should probably be selective.

Enhancing Quality and Effectiveness

Directions will propose ways of strengthening the effectiveness of the World Bank’s justice reform portfolio. Successful justice reform efforts do exist, and the World Bank

25 See e.g. IFC and World Bank, Financial Infrastructure: Building Access through Transparent and Stable Financial Systems 2009.
can play a greater role in consolidating and disseminating lessons from experience both
good and bad. Research should be translated into practical guidance for project design.
Keeping with the Bank’s public sector strategy, justice reform efforts need to emphasize
context-specific, “best fit” problem solving rather than the transplantation of “best
practices.”

Important issues to address include: risk management, the alignment of activities
with desired outcomes, realism in setting time horizons, the tailoring of justice reform
approaches to different aspects of country context (e.g. middle income, plural legal regime,
fragile or conflict affected, authoritarian), and the role of demand-side legal empowerment
interventions.

In order to support justice reform operations in the course of implementation, we
may propose a mechanism for speedy, cross-regional assistance for projects, along the lines
of the Bank’s existing Global Expert Teams.

Monitoring and evaluating the impact of justice reform efforts is an abiding concern,
and the Bank should contribute to evaluation methodologies that meet the distinct
challenges of the field—outcomes that are difficult to measure, causal chains that are
difficult to trace, and reforms whose results are sometimes inherently indeterminate. In
this vein, the paper itself may propose some workable indicators for measuring the success
of justice projects. The Bank’s recording system could also be adjusted so as to allow for
better aggregation of data on justice reform activities.

**Integrating Justice Reform into Development Strategy**

Justice reform should be a key element of the Bank’s effort to mainstream attention
to governance. Nearly every undertaking the World Bank supports invokes questions of
law and justice. Building a new road involves compensating land owners, which in turn
often requires navigating plural, overlapping land tenure regimes. Supporting expansion of
a health service creates new entitlements, which in turn poses the question of how citizens
can seek redress in the event of a breach. The Bank has recently piloted a program that
provides Bank project teams and client countries with support in addressing these sorts of
justice issues in development projects, particularly in the context of plural legal systems.

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26 See, for example, Barry Walsh, *In Search of Success: Case Studies in Justice Sector Development* 2010.
also Dani Rodrik, “Thinking about Governance” in World Bank, *Governance, Growth, and Development
Decision-Making* 2008 at 23 (“[I]nsofar as [best practices] narrow rather than expand the menu of
institutional choices availbale to reformers, they serve the cause of governance badly”).
Directions will consider whether the approach of this program, called Justice for the Poor, is worth extending.\textsuperscript{28}

Justice reform concerns can be integrated more systematically into political economy analysis, results chain analysis, and country assistance and poverty reduction strategies. The Bank’s monitoring of its Governance and Anti-Corruption Strategy—see for example the Quality Assurance Group’s \textit{2009 report on governance and operations}—could include tracking of justice and rule of law dimensions.\textsuperscript{29}

The justice reform community of practice in the Bank is diffuse—this is appropriate, given that justice is an element of many kinds of Bank development work, and justice reform benefits from diverse areas of expertise. As a result, however, there is a need for greater communication and learning between justice specialists and the wide body of practitioners who have justice components within their projects or who confront justice-related challenges in their work.

There are ample opportunities for greater collaboration. Social accountability measures like community scorecards and social audits, for example, have tended to focus exclusively on the nexus between community and service provider, or between community and local government. Those efforts could be linked to legal aid and legal empowerment efforts that seek redress from the wider network of state authority in the event that local pressure fails.\textsuperscript{30} On the supply side, project-specific complaints handling mechanisms could be better integrated into countries’ justice systems, including administrative law mechanisms, ombudsman offices, and the courts.\textsuperscript{31}

To catalyze such collaboration, the proposed paper may recommend enlivening the World Bank’s law and justice thematic group with greater outreach and with activities that address the justice dimensions of various sectors.

\textsuperscript{28} For an articulation of Justice for the Poor’s approach, see Caroline Sage, Nicholas Menzies, and Michael Woolcock, “Taking the Rules of the Game Seriously: Mainstreaming Justice in Development,” in Stephen Golub (ed.) \textit{Legal Empowerment: Practitioners’ Perspectives} 19-37. See also worldbank.org/justiceforthepoor.

\textsuperscript{29} World Bank Quality Assurance Group, \textit{Governance and Anticorruption in Lending Operations: A Benchmarking and Learning Review}, 2009. The review does track the use of grievance redress mechanisms under ‘demand for good governance;’ it may make sense to include additional variables on justice reform.


\textsuperscript{31} The empirical work of Varun Gauri and colleagues on courts in South Africa, Nigeria, Brazil, Indonesia, and India shows that courts have a substantial role in shaping health and education services. Varun Gauri and David Brinks (eds), \textit{Courting social justice: Judicial Enforcement of Social and Economic Rights in the Developing World} 2008, at p. 30–32.
Justice reform also has an important role in the shift towards use of country systems. The Bank could explore with clients the possibility of Sector Wide Approach Programs in the justice sector. Justice concerns can also be incorporated in indicators for policy-based lending in other sectors. A health project’s disbursements could be tacked, for example, to whether there is an effective system for handling complaints arising from breaches in service delivery.

**Timeline for Consultation and Drafting**

<table>
<thead>
<tr>
<th>December 2010-January 2011</th>
<th>Internal consultation meetings with Bank-wide working group, core community of practice.</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2011</td>
<td>Bankwide consultation meetings.</td>
</tr>
<tr>
<td>February-March 2011</td>
<td>Virtual consultation with Bank staff and external stakeholders.</td>
</tr>
<tr>
<td>April 2011</td>
<td>Summary of feedback and how feedback is used published online.</td>
</tr>
<tr>
<td>June 2011</td>
<td><em>Directions</em> paper published.</td>
</tr>
</tbody>
</table>

**Questions for Consultation**

We look forward to input from our peers, and in particular invite insights and suggestions on the following topics:

1) **Focus and scale:** On which areas of justice reform should the World Bank focus? What is its comparative advantage? Are there aspects of justice reform which the Bank should avoid or abandon? Areas to scale up? Are there aspects for which the World Bank should rely on partnerships with other institutions?

2) **Improving effectiveness:** How could the effectiveness of the World Bank’s justice reform efforts be improved?

3) **Goals and indicators:** What are the intermediate and ultimate outcomes sought by justice reform? Do current World Bank justice reform activities produce those outcomes? What indicators should be used to measure success in justice reform?

4) **Demand v. Need:** How do you perceive country need for justice reform and client demand for justice reform operations? If there is a discrepancy between the two, why do you think that is, and what should be done about it?

5) **Success stories:** Are there justice reform efforts you regard as successful? How do you know? Why did they succeed?
6) **Research**: What research and analytical work should the World Bank undertake in relation to justice reform?

7) **Integrating justice into development**: How could justice reform be better integrated into the Bank’s approach to governance, and its broader development strategy?

*We invite all stakeholders to respond to this discussion note via on-line forum, questionnaire, or email at [http://www.worldbank.org/justiceconsult](http://www.worldbank.org/justiceconsult).*