



POLITICALLY SMART AND LOCALLY LED JUSTICE PROGRAMMING: LEARNING FROM OTHER SECTORS

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This briefing draws on discussions at a workshop held by the Overseas Development Institute (ODI) and the Law and Development Partnership (LDP)² in September 2014. The workshop brought together representatives from donor, practitioner and researcher communities, largely in the United Kingdom, grappling with what politically smart and locally led programming looks like. The purpose was to share and learn from like-minded organisations and to consider the implications for the justice sector, where these ways of working are still relatively incipient.³



DFID-funded Paralegal Committee members in Nepal assist women experiencing violence in their communities. (Malcolm Hood/DFID Nepal)

We first set out here what politically smart, locally led programming entails, with two examples presented at the workshop that are working in these ways. From this, we distil a number of operational principles emerging from programmes applying these approaches across a range of sectors. We then turn specifically to justice programming: what is unique about working in the justice sector and why politically smart, locally led efforts are critical to achieving success. Finally, we provide a set of recommendations for funders and implementers undertaking justice programming that can help deliver more politically smart, locally led ways of working.

WHAT IS POLITICALLY SMART, LOCALLY LED PROGRAMMING AND WHAT CAN IT ACHIEVE?

Political astuteness and context relevance have long been understood as essential for effective development interventions.⁴ In the last ten years, this has been reinforced by disillusionment with the good governance agenda and attempts to 'go with the grain' of local politics, recognising the leading role local political forces play in reforms.⁵ This has led to a reappraisal of ways of working in supporting reforms and opened up discussions about what 'working politically' means in practice.⁶ These arguments have recently been renewed by work on

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3 Some of the presentations from the workshop can be watched here: <http://www.odi.org/events/4025-justice-security-politically-smart>.

4 Ferguson, J. (1994) *The Anti-Politics Machine*, Minneapolis, MN: University of Minnesota Press.

5 Kelsall, T. (2011) 'Going with the Grain in African Development?,' *Development Policy Review* 29(1): 223-251; Unsworth, S. (2010) *An Upside Down View of Governance?* Brighton: Institute for Development Studies.

6 Wild, L. and Foresti, M. (2013) 'Working with the politics: How to improve public services for the poor,' ODI Briefing Paper 83, <http://www.odi.org.uk/publications/7864-politics-service-delivery-institutions-aid-agencies>.

problem-driven iterative adaptation (PDIA), focusing on the need for flexible approaches that adapt to changing local political dynamics.⁷

Politically smart interventions are not just well-informed, but astute in their ways of working, taking opportunities as they arise, investing in multiple small bets, learning from those that fail and scaling up those that yield returns.⁸ Locally led programming focuses on problems that are identified locally and harnesses local capacity to find solutions. It involves brokering relationships, understanding incentives and building common interests in order to solve specific problems.⁹



A State Accountability and Voice Initiative (SAVI) program in Jigawa State, Nigeria. (George Osodi/SAVI)

A number of programmes have adopted politically smart, locally led ways of working on the basis that it is seen to help provide more relevant and sustainable solutions to intractable development problems than conventional development assistance.¹⁰ Four examples of efforts to incorporate these ways of working in different sectors were presented at the ODI/LDP workshop. These included the Africa Governance Initiative's (AGI) work with centres of government in Africa, the Budget Strengthening Initiative's (BSI) work with Ministries of Finance in fragile states, the Facility for Oil Sector Transparency and Reform's (FOSTER) engagement in Nigeria and the State Accountability and Voice Initiative's (SAVI) programming also in Nigeria. A more detailed examination of the ways of working and emerging results of two of these efforts is captured in Box 1 (*next page*).

Of course, as with many trends there is a danger that everyone claims to be 'doing PDIA' without interrogating what that means in practice. Politically smart, locally led programming risks becoming a development trope, which gets operationalised as a tick-box exercise and thus fails to substantially change ways of working. In order to give greater specificity to what 'politically smart and locally led' might mean in operational terms, therefore, below we highlight a number of common themes emerging across the programme approaches presented at the workshop.

1. **Strategic support to local reformers:**

Working closely, usually embedded within, partner governments or organisations, operating behind the scenes. This helps development practitioners to build greater trust and understanding of the partner and their operating environment than conventional ways of working, allowing for greater sustainability.

2. **Selectivity:** Working on issues or sectors only where the right people are in place and the opportunity is ripe for change. This approach means the problem that programming will address is not identified during the design stage but during implementation.

3. **Purposive muddling:** Making numerous 'small bets' as opportunities arise to address multiple angles of the same problem. This requires greater risk tolerance as some bets will fail but these can be learnt from, and programmes can rebalance investments to support successful strategies. Because the bets are small, this allows for shortened feedback loops and regular learning and adaptation.

4. **The right people:** This way of working requires high levels of flexibility and excellent people skills. Often people are not employed on the basis of technical skills but their political insights and connections. Local recruitment is prioritised and a large degree of responsibility is delegated to those on the ground.

5. **Flexible funding:** In order for this approach to be possible, it is critical that funders are flexible – with fast and simple procurement processes that allow for quick mobilisation and a large

7 Andrews (2012) *The Limits of Institutional Reform*.

8 Booth, D. and Unsworth, S. (2014) 'Politically smart, locally led development,' ODI Discussion Paper, <http://www.odi.org/publications/8800-politically-smart-locally-led>.

9 Ibid.

10 Ibid.

BOX 1: EXAMPLES OF POLITICALLY SMART, LOCALLY LED PROGRAMMING

Africa Governance Initiative (AGI) – AGI works to support African governments to deliver reforms that drive poverty reduction by embedding advisers in centres of government. They work alongside local public servants to identify practical solutions to problems and build government capacity.

In Rwanda, AGI has helped the government to transform the energy sector by supporting capacity building and service delivery. In 2010, the government established targets to increase electricity access from 15% of the population to 50%, and to increase Rwandan power generation from 108 to 1000 megawatts by 2017. Yet it quickly became clear to the AGI adviser in the Ministry that the power generation target was too high, and that the target itself was holding up planning in the sector and negatively influencing negotiations with investors. Using relationships and trust that AGI had built having worked in Rwanda since 2008, the adviser worked with Rwandan officials at the centre of government and with the Finance and Energy Ministries, to broker an agreement to decrease the power generation target to a more realistic level of 563 megawatts. This change unblocked the planning process, resulting in a more balanced approach to sector planning and oversight, and improved the Ministry's negotiating position vis-à-vis private sector energy companies. The Ministry is now on track to meet this new target.¹

State Accountability and Voice Initiative (SAVI) Nigeria – SAVI aims to support more responsive state governance and constructive engagement between government and citizens. Their approach is unorthodox in that they do not give out grants or disburse money but instead hire politically informed and connected individuals at the state level who broker relationships between civil society, media and government, in order that these networks sustainably address locally identified priorities themselves.

One example is SAVI's work to support citizen engagement with government in Yobe state, North Eastern Nigeria.² In 2011, there was no structured process for citizens to engage with government, the Yobe State House of Assembly (SHoA) was weak and relations between the SHoA, civil society and the media were characterised by mutual suspicion. However, SAVI's politically informed local staff identified that the government executive was reform-minded, stipulating improved financial management and budget control as priorities. This became a key entry point for SAVI, who responded by engaging informally with reform-minded SHoA members. Building on this relationship, assembly members asked SAVI to assist in developing a Strategic Plan, leading to the joint formulation of a SHoA vision, mission and values statement, and a fully costed one year operational plan, which fed into the 2013 budget. At the same time, SAVI brokered relationships between civil society groups, the media and SHoA, leading the SHoA to set up a civil society liaison desk to facilitate regular interaction – the first ever structured process of constituency engagement.

The result was that the 2013 budget released all funds requested in the SHoA Strategic Plan and included five projects prioritised by citizens. Building on this, the 2014 budget included 35 projects deriving from constituency meetings. In addition, the Ministry of Budget and Planning has now also established a civil society liaison desk and has committed to incorporate citizen views into all budgets.

1 Hymowitz, D. (2014) Conference presentation at 'Doing Development Differently workshop,' 22-23 October 2014, Harvard Kennedy School, <http://www.youtube.com/watch?v=2xnA1eRzIwA>.

2 SAVI (2013) 'Yobe State House of Assembly and civil society groups influence State Government to fund projects prioritised by citizens,' <http://savi-nigeria.org/casestudy/yobe-state-house-of-assembly-and-civil-society-groups-influence-the-state-government-to-fund-projects-prioritised-by-citizens/>

amount of central funding that is not linked to specific outputs identified upfront.

- 6. Long-term results horizon:** Success is judged against broad, often unpredictable and long-term outcomes, rather than overly prescriptive outputs, requiring greater continuity of support. Patience is therefore needed in terms of how quickly resources can be sensibly spent and in turn requires a high degree of trust between funders and implementers, and an acceptance that successes will also be attended by failures.

This is by no means the conclusive list of what 'working politically' means – but provides us with some markers for considering what the justice sector can learn from these approaches.

TRIALLING POLITICALLY SMART, LOCALLY LED PROGRAMMING IN THE JUSTICE SECTOR

It is frequently claimed that the justice sector is unique and different from other sectors, and that it therefore faces a particular challenge in adapting to politically smart, locally led ways of working. This relates to several features of the justice sector, including it being:

Inherently political, as it represents the 'rules' of society, the institutions and processes that determine access to, and resolve disputes relating to power, resources, and rights. The justice sector represents the evolving processes of the political settlement, often reflecting the interests of those who hold power. It can also, however, act as a check against arbitrary elite interests. It is thus difficult to access from the outside, especially without deep political understanding, and contentious to address from within.

Complex, made up of a myriad of actors across state, non-state, and customary systems. Working effectively to understand these systems requires long timeframes and a range of technical and soft skills. It is important to recognise that these entities can compete over power and resources, and can also cooperate by referring cases between different levels. Engaging with one component of the system in isolation can thus have consequences (positive or negative) on other parts of the system.¹¹

Isolated, insular and non-responsive, as there is no single coordinating body for the various

11 Albrecht, P. & Kyed, H.M. (2010) 'Justice and security – when the state isn't the main provider,' DIIS Policy Brief, Copenhagen: Danish Institute for International Studies, <http://subweb.diiis.dk/graphics/Publications/PolicyBriefs2010/PB-Justice-and-Security-web.pdf>.

ministries, departments, and agencies that make up the sector, meaning each component often operates on its own. In addition, institutions such as the judiciary can fiercely guard their independence, due to a need to remain impartial. The justice sector is thus often unaccustomed to working with those outside their own institutions, and as a result can be closed off and impervious to externally-driven change efforts.

More risky for external engagement due to the fact that adherence to human rights norms might not be consistent within partners at the country level, and that human rights violations could be committed by counterparts.¹² As a result, the appetite for testing new approaches in this sector is especially low.

These features have meant that politically smart, locally led ways of working have gained less ground in the justice sector. Yet the complex and political nature of the sector itself underscores all the more the need for politically smart, locally led approaches. It is precisely because of the features set out above that the justice sector is particularly impervious to traditional reform efforts and instead requires more nuanced ways of working. For instance, despite its long history – since at least the 1960s – justice programming often exhibits 'state-centrism, organizational isomorphism, short time frames, and linear trajectories of change.'¹³ Long-standing critiques highlight how too often justice programming falls back on technocratic, blueprint approaches, with reforms seeking to transplant exogenous legal systems.¹⁴ In part, this is driven by the experience of practitioners working in this area – often police officers and lawyers whose experience is based on careers in their home-countries, rather than an understanding of the places undergoing reform. It can also be driven by demands of partner governments that may request development assistance that will enable their own justice institutions to resemble those operating elsewhere.

12 Galletti, N., & Wodzicki, M. (2011) 'Securing human rights: Shifting the security sector reform paradigm,' in M. Sedra (ed.), *The future of security sector reform*, Ontario: The Centre for International Governance Innovation, <http://www.cigionline.org/publications/2010/11/future-security-sector-reform>.

13 Desai, D., Isser, D. and Woolcock, M. (2012) 'Rethinking Justice Reform in Fragile and Conflict-Affected States: The Capacity of Development Agencies and Lessons from Liberia and Afghanistan,' *World Bank Legal Review*, v.3, p.248.

14 Carothers, T. (2003) 'Promoting the rule of law abroad: The problem of knowledge,' Working Paper No. 34, Carnegie Endowment, <http://carnegieendowment.org/files/wp34.pdf>; Faundez, J. (2001) 'Legal reform in developing and transition countries: Making haste slowly,' in R. V. Van Puymbroeck (ed.) *Comprehensive Legal and Judicial Development*, Washington, DC: World Bank, pp.369-396.

Programming of this nature often does not work. Matt Andrews has documented how blueprint approaches to reform leads to the creation of 'isomorphic mimicry' – where an institution may appear to have been reformed, but remains unchanged underneath.¹⁵ One can think of numerous new court buildings, police stations, uniforms, ICT systems and even laws that too often belie unreformed practices in the way things actually work. These reforms can constitute 'quick wins,' enabling donors to move money and demonstrate tangible outputs – imperatives that have become more important in the climate of 'results' and high-value programmes.¹⁶ Yet they

have not reliably delivered the level of impact donors want to see – primarily, improved justice outcomes for the poor and vulnerable.

Trialling new approaches to justice programming is thus needed given the idiosyncracies of this sector and the need to deliver sustained results to end-users. While these new approaches are as yet far from the norm, two emerging examples in the justice sector are set out in Box 2, demonstrating what this might look like. These approaches aim for flexibility, alignment to local priorities, and solving particular justice problems, rather than wider institutional strengthening.

Of course, politically smart and locally led programming also requires that we redouble efforts to invest in the analytical tools and frameworks that enable us to work differently by understanding the ways in which justice is embedded within broader political processes. This can be done, for instance, through high quality and continuous analysis of

¹⁵ Andrews, M. (2012) *The Limits of Institutional Reform in Development: Changing rules for realistic solutions*, Cambridge: Cambridge University Press.

¹⁶ Denney, L. and Domingo, P. (2014) 'Security and Justice Reform: Overhauling or tinkering with current programming approaches,' ODI Report, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8895.pdf>.

BOX 2: EXAMPLES OF POLITICALLY SMART, LOCALLY LED JUSTICE PROGRAMMES

LASER – The DFID HQ-funded Legal Assistance for Economic Reform Programme aims to improve investment climates in eight developing countries by helping to identify and solve commercial law and justice problems, as well as documenting and sharing lessons about how to do this. Problem-driven and iterative in nature, LASER supports partner governments to develop initiatives that are country owned and led. Its logframe commits to activities under broad outputs, but the specifics are determined at the country level with counterparts on a rolling basis.

In Rwanda, for example, the government was losing significant resources in litigation around commercial investment contracts – spending approximately US \$3.4 million each year in court awards and compensation. After a process of problem deconstruction, it became clear that the contracts themselves and their management were at the root of the problem – contracts were poorly drafted and management decisions for public procurement were being taken without legal advice. The LASER team is now supporting government legal officers to draft high quality model contracts, and to develop contract management tools, as well as training government counterparts in their use.

DFID Nepal Security and Justice for the Poor Programme – This is an example of a politically informed, locally led approach approved at the business case level by a donor (though not yet by the Government of Nepal). The programme aims to improve security and access to justice for the poor and excluded, especially women. It has three distinct outcome areas, bringing together what would often be separate programmes in order to increase coherence and reduce time spent on reporting and management. These cover access to justice, safety and security, and criminal violence response, with work to be tailored to each area and monitored independently to ensure learning. The programme design does not pre-specify which partners or which funding modalities will be used, allowing for maximum flexibility and facilitating the country office to respond to programming and partner needs as they arise. The programme also includes a funding channel to a joint donor grant facility, in order to avoid duplication and pool efforts, and conducted a joint scoping exercise with the Nepal Police.

the wider political economy that grapples with the nature of the political settlement and the elite pacts and incentives of key actors. Such analytical tools are critical to identifying potential reformers and opportunities for change that politically smart and locally led ways of working can then support.

IMPLICATIONS FOR WAYS OF WORKING

How do we apply these lessons and concepts more broadly in the justice sector, in order to achieve better outcomes? Below, we set out emerging implications for those involved in programming.

For Funders

1. **Realism.** There is an overarching need to be realistic about objectives ascribed to justice programming, recognising the often limited role that external assistance can play in reforming local processes of power and contestation. Moreover, complete solutions are unlikely to be able to be determined at the outset of programming but rather emerge through trial and error over time.
2. **Adaptable operational modalities.** Compromise must be found between the need for bureaucratic certainty to meet organisational rules and the need for country level flexibility to ensure programming remains relevant. Politically smart and locally led approaches will benefit from adaptable terms of reference and theories of change, 'rolling' country-level log-frames (if they must be used at all), shorter term workplans and grants with relatively loose conditions. Working politically does not necessarily mean doing different things, but rather doing things differently by changing processes and dominant ways of thinking.
3. **Risk mitigation.** Funders currently require high levels of bureaucratic and managerial certainty specifying results, delivery timeframes and overall cost, especially at the political level where concerns about reputational and fiduciary risk are keenly felt. To encourage change in ways of working it is thus important to document and communicate successes achieved through politically smart and locally led approaches, while accepting this will necessarily involve some degree of failure.
4. **Partnership between funders and implementers.** Funders need to be comfortable with a high level of delegation, empowering politically savvy operators at the country level to

respond in real time to issues as they arise in justice programming. This does not mean that funders should be unengaged in programming decisions, effectively outsourcing political relationships. Rather, funders and implementers should develop partnerships that go beyond a contractual relationship to include regular discussions on the substance (not merely the process) of programmes. This should allow implementers the space to operate as full partners and at arms length from the funder, but also keep the funder engaged, especially on political issues that arise with counterparts.

5. **Creative funding modalities.** Many justice programmes tend to be single-donor funded with implementation units operating in parallel to government institutions (with some exceptions, such as multilateral basket funds). But working in politically smart and locally led ways requires the ability to work directly with partner governments and through their systems where possible; moving from risk avoidance to risk management; and encouraging donors to work together to ensure coherence. One way to achieve this is through greater use of pooled or basket funds, with ideally limited donor earmarking, and, where appropriate, ex-post reimbursement processes to support government systems while ensuring accountability of financial expenditure.

For Country Level Implementation

1. **Focus on justice problems, not the justice sector.** If the aim is to improve justice outcomes for people then it is important to hone in on problems that people face (such as protecting girls from violence on the way to school). While sector-wide approaches may seem more comprehensive, they are often too ambitious for what external actors can realistically achieve in short timeframes and create unrealistic expectations. Solving tangible problems is one way to get around this while making genuine improvements in peoples' lives.
2. **Realism.** While competitive procurement processes, as well as unrealistic terms of reference can create an overly ambitious environment, programme implementers should be more upfront about what is feasible within the scope of a programme and not over-promise on what can be delivered. Otherwise justice programmes end up failing the most important group – the poor and vulnerable.

3. **Political savvy staff is paramount.** As we have noted, justice reform is all about the politics. As a result, smart, politically attuned operators are needed to navigate complex and changing political realities. Technical expertise can always be brought in but smart operators who have a deep understanding of the context and engage in continuous 'learning by doing' are more difficult to find.
4. **Build trust with local counterparts.** Early success may be achieved by finding entry points that are less politically contested. Working alongside and supporting local partners to address and solve problems they identify should be the main objectives, particularly at the outset. The trust built can then be leveraged into more controversial areas of the justice sector.
5. **Keep money out of the equation.** Even if the funder imperative is to spend large pots of money quickly, this should not be central to discussions with counterparts as it can disincentivise locally led problem solving. This means moving away from justice programmes that offer new buildings, equipment and trainings as incentives for partnership. These

tools may still be required, but should not be the default entry point.

6. **Invest in small bets,** that trial multiple approaches to solving the same problem, with effective monitoring systems in place that can then determine which work best and, where possible, take them to scale. This will involve some degree of failure but losses will be more limited than where investment focuses on just one solution over a 4-5 year timeframe. Not only will this approach help to resolve problems more efficiently, but it will also contribute to building the evidence base for what works in the sector.

None of this is to suggest that politically smart, locally led approaches are a panacea and that by working in these ways programming will be perfected and justice reform rendered simple. However, based on early results across multiple sectors, the changes suggested here do, we believe, offer a more promising avenue for improving people's access to quality justice by recognising the specific role of development assistance in supporting locally brokered solutions to what are inherently political problems.

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