

Justice for the Poor Program

December 2006

BACKGROUND

It is now widely accepted that justice institutions are crucial for good governance and sustainable development, as underlined by the World Development Report 2006.¹ Justice institutions play a key role in the distribution of power and rights. They also underpin the forms and functions of other institutions that deliver public services and regulate access to resources. Clear, equitable rules and processes can facilitate effective and peaceful transitional change, and can create the enabling conditions for a functioning social and economic net by challenging inequitable practices. At the same time, there is still limited understanding of how equitable justice systems emerge, and thus how they can be supported or promoted. While recent experience in promoting legal and judicial reform has generated some partial successes and lessons learnt, there is a growing understanding of the limitations of existing approaches.

OVERVIEW

Justice for the Poor (J4P) is an attempt by the World Bank to grapple with some of the theoretical and practical challenges of promoting justice sector reform in a number of countries in Africa (Kenya and Sierra Leone) and East Asia (Indonesia and Cambodia). J4P reflects an understanding of the need for demand-oriented, community-driven approach to justice and governance reform, which values the perspectives of the users, particularly the poor and marginalized such as women, youth and ethnic minorities.

J4P recognises that a large percentage of the community live under non-state or customary justice systems that are complex, numerous, and idiosyncratic. Such rules systems are deeply constituent elements of cultural norms and social structures, and, being unwritten, are extremely difficult for outsiders (national or international) to fully comprehend. Concepts of justice are closely intertwined with, and are embedded in, the social, economic, and political structures of a given society. Any attempt at pro-poor justice reform, therefore, needs to commence with a detailed understanding of these structures and processes (both formal and informal) whereby the poor achieve or are denied justice. Further, J4P does not focus on trying to externally engineer greater “compatibility” between state and non-state systems, but rather on creating new mediating institutions wherein actors from both realms can meet—following simple, transparent, mutually agreed-upon, legitimate, and accountable rules—to craft new arrangements that both sides can own and enforce. That is, J4P focuses more on the process of reform than on a premeditated end-state.

J4P also reflects an understanding that law and justice cut across all sections of socio-political and economic life, and that the ‘rules of the game’ in any given context have a direct impact on the effectiveness of different development interventions. Further, given that reform processes are often about ‘changing the rules’ or the distribution of resources, they are also inherently conflict ridden. Experience suggests that where development initiatives have built-in mechanisms for managing disputes, they can improve the effectiveness of

¹ World Bank. 2006. *World Development Report 2006: Equity and Development*. New York: Oxford University Press

projects and reduce the likelihood of conflict arising.² Such mechanisms address the legal or justice-related elements of the development process by providing outlets for and tools to communities to resolve disputes which impact on access to resources and, by extension, standard of living. J4P therefore operates alongside or within broader development interventions to make development processes themselves more equitable and inclusive, and to provide tools for the management of conflict associated with such processes.

The J4P program is being implemented as a collaborative effort between the Legal Vice Presidency, Development Research Group, Social Development, Public Sector Governance and the World Bank Institute of the World Bank. Creating a joint agenda enhances the range of expertise that can be brought to the program, and enables a cross-disciplinary and cross-sectoral approach to justice reform.

OBJECTIVES

J4P has a dual set of overall objectives. In most developing countries, the formal institutions of justice are not yet capable of reaching out to or effectively serving the poor and marginalized. Hence, J4P aims to address the immediate justice-related needs of the poor – to “tend to those wounded by a broken system not yet fixed.”³ At the same time, it seeks to help “fix” the system by supporting bottom-up demand for reform. In summary, the objectives of the program are:

- a. In the short-term, to enhance access to justice for poor communities and improve local governance
- b. In the long-term, to bring about incremental systemic change to justice sector institutions and systems of governance

On a more practical level J4P aims to fill knowledge gaps and enhance development effectiveness by:

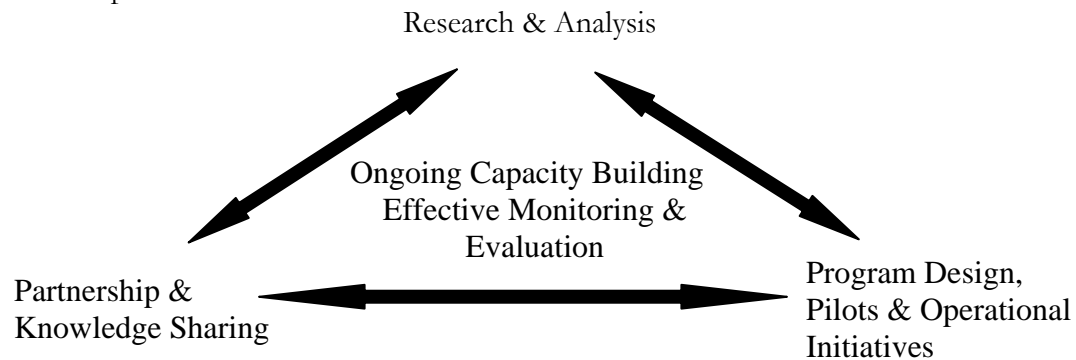
- Building a solid, empirically-based understanding of the dynamics of local level decision making and dispute resolution processes, and the circumstances in which prevailing institutions and rules systems create and maintain (and yet sometimes also help overcome) inequality traps
- Enhancing the capacity at the local level to conduct policy research, engage with the reform process and undertake evidence based policy reform
- Designing, implementing and evaluating innovative, pro-poor justice initiatives, including activities as part of broader governance and/or sector programs (“mainstreaming”)
- Enhancing donor harmonization and local ownership of reform processes
- Promoting knowledge exchange and information dissemination.

² Barron, P., C. Smith, and M. Woolcock. 2006 “Local Conflict and Community Development Projects: Assessing the Impact of the Kecamatan Development Project in Indonesia”, *Working Paper 10*, Social Development, World Bank, Jakarta.

³ Vivek Maru (2006) “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide” 31 *Yale Journal of International Law* 427

APPROACH

The J4P program adopts an integrated approach to understanding the development process. In each context, the J4P program is tailored to the country priorities and mapped onto existing or proposed projects in such areas as community development, land tenure, local governance, natural resource management and justice sector reform. The program has an emphasis on both practical operational research- “learning by doing”-, and on immediately feeding the results of the research into improved practice. Innovative and rigorous monitoring and evaluation is also emphasized. Importantly, the program focuses on enhancing local research and development capacity, with local staff and organizations leading or being key partners in the process.



Research and Analysis

J4P employs integrated mixed method approaches, drawing on both qualitative and quantitative data, to develop an in-depth empirically based understanding of how power is exercised through different decision-making and dispute resolution processes. Research findings are used to inform and develop operational activities and provide baseline data for ongoing monitoring and evaluation.

Research is undertaken in partnership with local researchers and NGO’s in order to enhance local abilities to promote empirically based reform. Findings are also used to help identify the range of stakeholders with incentives and disincentives for reform, including potential local partners and champions.

Program design, pilots and operational initiatives

J4P staff work closely with local governments and country teams to (a) assist in the design and supervision of justice related aspects of planned or ongoing development projects; and (b) design pilot projects to improve access to justice with a view to developing supportable and sustainable operational models for the delivery of legal services to the poor.

Rather than focusing on stand-alone “judicial reform” projects, J4P seeks to promote initiatives that are appended on to (and/or incorporated into) more mainstream development projects, seeking to use the powerful incentives associated with accessing material resources for roads, schools, etc. as a basis for establishing new precedents and procedures for decision making and priority setting.

Effective Monitoring and Evaluation

J4P looks to expand and improve approaches to monitoring and evaluation as part of the central focus on building an empirical knowledge base of the dynamics of law and the effects of different interventions on processes of social change. While there is now a general consensus that justice and governance reforms are crucial for stable and equitable development⁴ there is little documented evidence of whether and how different development interventions achieve their purported aims. This is particularly the case for access to justice and “demand-driven” initiatives.

Ongoing Capacity Building

The J4P research and operational activities recognize the primary importance of local organizations in implementing policy reform and through working in partnership with these organizations invests significantly in developing the skills and capacity of these institutions and their staff through direct training and, more importantly, by facilitating horizontal peer learning between J4P implementing partners on the ground.

Partnership and Knowledge Sharing

J4P aims to enhance collaborations and partnerships between different government, non-government and donor organizations. The team runs learning events and workshops aimed at enhancing public participation in broader policy debates, encouraging collaboration across institutions, and developing a community of practice in the area. Such events have been run at the country, regional and international levels.

Indonesia

The Indonesia J4P is the longest running country program, which has been in existence since 2002.⁵ Detailed case study research has produced two major analytical papers – *Village Justice in Indonesia* and *Mapping Reformers*, with several more studies in progress, including *Village Judicial Autonomy* (on non-state justice systems),⁶ *Implementation of Regional Regulations, Corruption in the Regional Parliaments* and *Women’s Access to Justice*.

Based on the initial analytical findings, the J4P Indonesia team has developed an integrated strategy that incorporates the three types of activities listed above. It promotes a model of legal empowerment, which equips communities with the tools they require to use the law to demand better justice services and better public service delivery from local government. The model combines grass roots community-based legal aid with strengthening of local government and justice sector institutions. The main operational strategy is the formation of networks of paralegals at village and sub-district level to provide a first point of contact for villages seeking legal assistance. The paralegals are linked to legal aid lawyers and civil society networks at district level and above, ultimately feeding into district, provincial and national-

⁴ The importance of such reforms has been underlined in the most recent *World Development Report 2006* on Equity and Development

⁵ See www.justiceforthe poor.org and World Bank (2006)

⁶ A preliminary draft of this paper was presented at the XV International Congress on Legal Pluralism, *Law, Power and Culture: Transnational, National and Local Processes in the Context of Legal Pluralism*, University of Indonesia, 29 June – 2 July 2006. See Matthew Stephens & Samuel Clark (2006) “Local, Not Traditional Justice: the Case for Change in Non-State Justice in Indonesia.”

level policy makers. Community leaders are also given training in mediation and fair and effective dispute resolution techniques. Variations on this model are being implemented through four major programs:

- *Support for Poor and Disadvantaged Areas Project (SPADA)*⁷ – the Mediation and Community Legal Empowerment (MCLE) component of SPADA creates a structure from province to village level providing legal aid, legal education and mediation services to poor communities in post-tsunami and post-conflict areas in Aceh and Maluku provinces. The team is currently working on developing effective M&E strategies to capture the effects of the *MCLE Component* on people’s ability to effectively claim and protect their rights and resolve disputes, both in terms of SPADA-related disputes and to broader local tensions and conflict.
- *Women’s Legal Empowerment (WLE)* – This pilot is being implemented in three provinces (West Java, Central Java and West Nussa Tenggara) by a local women’s NGO (PEKKA) working with the National Police. Women’s Police Desks in each location facilitate a Multi-Stakeholder Forum with representatives from the police, prosecutors, General and Religious Courts, local government officials and civil society groups. The forum’s main function is to facilitate dialogue on women’s legal rights and to deliver legal training on women’s rights issues for female paralegals, survivors of violence and women in general.
- *Revitalization of Legal Aid* – This pilot works to revitalize and strengthen existing local community legal aid posts and promote mediation services in three provinces (Lampung, West Java and West Nussa Tenggara), with a particular focus on legal issues faced by laborers and farming communities.
- *Village Judicial Autonomy* – As many as 90% of all disputes are resolved through non-state justice systems operating at local level. While more accessible and socially accepted, inequities often exist. Working in two provinces, the Village Judicial Autonomy pilots aim to develop an equitable model of non-state justice which serves the needs of the poor and marginalized and better defines the interface between state and non-state justice.

All J4P activities fall under an umbrella MOU with the Government of Indonesia and the UNDP, the purpose of which is to promote donor harmonization and to support the Government to develop its first ever National Access to Justice strategy.

For more information on the Indonesia J4P visit www.justiceforthe poor.org

Cambodia

J4P has been underway in Cambodia since mid-2005. In its initial stages, the project has focussed on a range of research activities, each related to the main areas of strategic focus set out in the Bank’s Country Assistance Strategy. Four major publications have been produced. These are:

⁷ SPADA stands for Support to Poor and Disadvantaged Areas project. This project is in part a product of earlier related work in Indonesia on understanding local conflict trajectories, which provided much of the initial testing ground for the methodological tools now being employed in the global J4P studies. The various written outputs of the local conflict study are available at www.conflictanddevelopment.org

- A report looking at development and resistance to development in rural areas [*Justice for the Poor: An Exploratory Study of Collective Grievances over Land and Local Governance in Cambodia*].
- A piece on land disputes focusing on the work of a newly established land tribunal (the Cadastral Commission) and the impacts of various initiatives to improve its performance [*Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*]; and
- An evaluation of an NGO run pilot initiative to support commune councils in their dispute resolution work;
- A research report on freedom of expression and access to information in Cambodia [*Freedom of Expression and the Media in Cambodia*]

A further research initiative looking at labor dispute resolution is nearing completion.

One of J4P Cambodia's key objectives is to increase public discussion and debate on justice related issues. In pursuit of this goal, J4P has developed a partnership with Cambodia's national media training institute. This cooperation has resulted in a workshop on legal issues for journalism students and a student-produced current affairs radio program on the topic of land dispute resolution. Further student produced radio programs on issues of restorative justice and the Khmer Rouge tribunal are planned.

The J4P Cambodia team is also working directly on the design of two World Bank funded projects which are currently under preparation. These are:

(1) *Demand for Good Governance (DFGG)*, a project which will support citizens to "hold the state accountable for its promises and performance, and to make the state responsive to their needs." In relation to the DFGG project, J4P is working specifically on administrative systems for dispute resolution and grievance handling, and how these can be made to work more effectively for the poor; and

(2) *Empowerment of the Poor (Siem Reap)*: This project, working in the northern province of Siem Reap, will support group formation among the poor and promote collective action to induce increased state responsiveness to their needs. The J4P team is working on the social action component of this project with a specific focus on the provision of practical legal and advocacy services to the poor.

An additional operational partnership exists in relation to the Bank's Land Management and Administration Project (LMAP), which has a component focusing on land dispute resolution. Here the J4P team is assisting in relation to the design of improved land dispute resolution initiatives.

Sierra Leone

In Sierra Leone, J4P has teamed up with another multi-country study, *Understanding Processes of Change in Local Governance*, to form an integrated research agenda on local-level justice and governance. The research is also linked to an ongoing joint evaluation program for the World Bank-sponsored Institutional Reform and Capacity Building Project (IRCBP) and GoBifo community-driven development project. Activities in Sierra Leone began in March

2006 and work in recent months has focused on mapping stakeholders, identifying possible research partner organizations, and narrowing down the thematic focus of the research program. Although final decisions about research design have not been made, the following categories have emerged as particularly promising: (a) land and natural resource management, and (b) claims or grievances involving local authorities. It is currently envisioned that the first six-month phase of research will run from November 2006 through April 2007.

Kenya

Given Kenya's vast size and significant donor funding, the Bank has taken a targeted approach to J4P in the country. During initial scoping missions, the J4P team identified two relevant ongoing/planned Bank operations to which the research can be mapped: (a) the Arid Lands Resource Management Project in Northern/Northeastern Kenya (implemented since the mid 1990s and currently in phase II) and (b) the Western Kenya Community Driven Development Project (planned to commence early 2007). In view of current funding and logistical constraints, and given the vast diversity of the two regions, the team agreed that J4P research should focus initially on the Arid Lands Resource Management Project in Northern/Northeastern Kenya. The focus of the research will be on understanding and comparing the dynamics of local level decision-making with regard to two broader sets of disputes: (a) everyday disputes (with a particular thematic focus, e.g., livelihood disputes in Northern Kenya, both intra-communal and inter-communal); and (b) disputes triggered by development projects (e.g., community decision-making over, and disputes pertaining to, the management of community funds). A cross-cutting theme for both sets of disputes is the application of multiple rules systems (e.g. formal and informal); to this end, the research will aim to gain a deeper understanding of their roles and functions, as well as the nature and extent of their relationship and interaction.

KNOWLEDGE SHARING AND DISSEMINATION

World Bank Legal Forum on Law, Equity and Development, December 1-2, 2005

The Legal Forum expanded on the issues highlighted in the World Development Report 2006, exploring ways to move the Bank's work forward in the area of equity and development, and in particular the role that law and lawyers can play in this agenda. The meeting was attended by approximately 200 Bank staff and 100 external participants, including government officials, academics, and representatives of intergovernmental organizations, donor agencies, civil society and private sector, thus building common understandings about ways of improving the quality and effectiveness of development work. Some of the best papers presented at the forum were compiled in an edited volume entitled *Law, Equity, and Development: New Perspectives*.⁸

Justice for the Poor Workshop, November 30, 2005

The J4P workshop centered on two major themes: *Origins and Content of Program Design*; and *Dynamics of Implementation and Impact*. The workshop established (and has since consolidated) a fruitful cross-country dialogue regarding experiences, opportunities, limitations, and constraints with J4P initiatives across development institutions. A number of

⁸ Sage, C. and M. Woolcock (eds.). 2006. *The World Bank Legal Review: Law, Equity, and Development*. Volume 2. Amsterdam: Kluwer.

recommendations came out of the workshop, most notably: (a) the need for an established network of practitioners who can share ideas, experience and knowledge; and (b) the desire for ongoing knowledge sharing events which explore in more detail some of the topics covered during the discussion.

E-Forum on Justice for the Poor, May 2006

In May 2006, the J4P team hosted an e-forum with the aim of bringing together a wide range of diverse practitioners working on these issues to share and disseminate country and cross-regional knowledge. The discussion focused on the following four topics: (a) origins of local level justice initiatives; (b) content and design of local justice reform efforts; (c) dynamics of implementation; and (d) efficacy of impact. There was an overall agreement among participants that a network or community of practice can be a useful venue for sharing knowledge and experience, and for building partnerships across institutions and activities.

CONTACT INFORMATION

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