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# The World Bank: New Directions in Justice Reform

A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption



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The World Bank

This publication has been prepared as a companion piece to “Strengthening Governance: Tackling Corruption – The World Bank Group’s Updated Strategy and Implementation Plan,” under the guidance of an Advisory Group that consisted of Daniel Adler, Lisa Bhansali, Christina Biebesheimer, James A. Brumby, Anupama Dokeniya, William Dorotinsky, Varun Gauri, Guenter Heidenhof, Hans Jurgen Gruss, Nick Manning, Alexandre Marc, Vivek Maru, Richard Messick, Phillip Keefer, Paul Prettitore, Graham Teskey, and David Varela. It has been considerably enriched by a vigorous internal and external consultation process that yielded comments from representatives of the World Bank, other international organizations, civil society groups, donor agencies and foundations, nongovernmental organizations, the private sector, and agencies of a variety of governments. The paper has also benefitted from review by the Bank’s Governance and Anticorruption Council, and from contributions from members of the Justice Reform Practice Group of the Legal Vice Presidency of the World Bank, in particular, Daniel Adler, Peter Chapman, Deval Desai, Vivek Maru, Nicholas Menzies, Abigail Moy, Richard Nash, and Barry Walsh.<sup>1</sup>

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<sup>1</sup> Pictures for the cover were provided by the Justice Services Improvement Project in Peru (*Proyecto de Mejoramiento de los Servicios de Justicia*), the Justice for the Poor Program and Barry Walsh.

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## I. Introduction

1. *This paper elaborates new directions in justice reform under the World Bank's Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption (Updated Governance and Anticorruption (GAC) Strategy.)* On March 27, 2012, the World Bank Board of Executive Directors approved an Updated Governance and Anticorruption Strategy. As part of the preparatory process, several companion pieces were developed to inform the Strategy as regards specific areas of governance important to the Bank's development mandate. This paper, *New Directions in Justice Reform*, was developed as one such companion piece to the Updated GAC Strategy. The Strategy commits the Bank to putting in place a revised approach to strengthening justice systems, which it defines as a critical element of any country's institutional system.<sup>2</sup> *New Directions in Justice Reform* constitutes the Bank's first institution-wide approach to justice reform, and as such introduces the revised approach to justice reform to which the Bank is committed under its Updated GAC Strategy

2. *The relevance of justice reform to GAC is twofold.* First, a lack of access to justice is itself a central dimension of poverty, and second, a functioning justice system is an important part of what the GAC Strategy describes as a capable and accountable state. The World Bank's focus on governance and anticorruption follows from its mandate to reduce poverty, since a capable and accountable state creates opportunities for poor people, provides better services, and improves development outcomes.<sup>3</sup> The Bank's Updated GAC Strategy points out that one of the functions of a capable state is to dispense justice, and recognizes that justice institutions (i) assist in countering corruption, (ii) support oversight and monitoring of the executive's actions, (iii) help ensure that the government is accountable to citizens, and (iv) facilitate constructive engagement between state and nonstate actors. The Strategy also notes that the judiciary is among those institutions that not only respond to, but also help create, change, and sustain the "rules of the game," that is, the institutional environment in which development takes place.

3. *The Bank's work on justice reform will necessarily focus on justice systems.* To be meaningful, however, this requires an ongoing engagement with the substantive question of how justice is advanced. This paper sets out a justice reform agenda conceived in terms of "actual realizations and accomplishments" that matter to users (and potential users) of the justice system, more so than "the establishment of what are identified as the right institutions and rules."<sup>4</sup> Keeping this vision of justice at the forefront, it also recognizes that results need to be pursued in a way that reflects an understanding that the path to substantive progress in justice reform is often uncertain, contested, and subject to setbacks.

4. Section II of the paper explains why justice systems are relevant in pursuit of the GAC agenda. Section III reviews the Bank's experience in justice reform to date, and Section IV elaborates an approach to justice reform going forward, proposing five strategic priorities for improving the Bank's performance in this important field.

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<sup>2</sup> World Bank, "Strengthening Governance, Tackling Corruption: The World Bank's Updated Strategy and Implementation Plan" (Washington, DC: World Bank, 2012), 28.

<sup>3</sup> World Bank, "Strengthening World Bank Group Engagement on Governance and Anti-Corruption" (Washington, DC: World Bank, 2007), ii.

<sup>4</sup> Amartya Sen, *The Idea of Justice* (Boston, MA: Harvard University Press, 2009), 9.

## II. Justice Systems and their Relevance to the GAC Agenda

5. *For the purposes of this paper, a justice system can be thought of in terms of the formal and informal institutions that address breaches of law and facilitate peaceful contests over rights and obligations.* In organizational terms, a justice system may span all three branches of government and multiple nonstate actors, including: the courts, the police, prosecutors' offices, public defenders, state and civil society legal aid providers, alternative dispute resolution mechanisms, administrative adjudication and enforcement mechanisms, customary and community-based institutions, anticorruption and human rights commissions, ombuds offices, and property and commercial registries (see Annex A for details on the scope of the justice system).

6. *Justice systems matter for development, though the precise channels of causation are complex.* People around the world wish to live in a fair society, one in which power is not exercised arbitrarily and basic rights are respected. Justice institutions are important in determining the extent to which a polity reflects these societal expectations of fairness. Society expects a justice system that ensures that laws are effectively implemented and respected. There are also strong expectations that a justice system be fair and accessible. More instrumentally, justice systems have been identified as having the following important developmental functions:

- a. *Preventing and mitigating conflict, crime, and violence.* As the *2011 World Development Report* (WDR) makes clear, conflict, crime, and violence are major barriers to development. Recent analysis suggests that of the various dimensions of the rule of law, the basic control of violence has the strongest correlation to economic growth in developing countries.<sup>5</sup> Justice systems play an important role in this respect—in terms of providing both legitimate processes for the resolution of grievances that might otherwise lead to conflict, and disincentives for crime and violence.
- b. *Ensuring executive accountability.* Administrative justice institutions, ombuds offices, prosecutors, and courts address breaches or grievances related to the executive. Countries and development partners should pay greater attention to administrative law and related grievance processes because of their fundamental role in constraining arbitrary decision making, promoting effective delivery of basic services, enforcing regulatory frameworks, and constraining elite capture of public resources.
- c. *Fostering private sector growth in compliance with legal and regulatory frameworks.* A justice system enforces the rules that govern business transactions and plays a central role in determining how the costs and benefits of private sector activities are distributed. This is the case from a range of perspectives. Thus institutional economists identify predictable contract enforcement, property rights, and systems for the resolution of business disputes as key determinants of economic development. At the same time, sociolegal scholars remind us that the institutions of justice required for the private sector to flourish may lie outside the formal legal system.<sup>6</sup>

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<sup>5</sup> See, for example, Stephan Haggard and Lydia Tiede, "The Rule of Law and Economic Growth: Where are We?" *World Development* 39, no. 5 (2011): 673–85.

<sup>6</sup> Compare Douglass North, who posits 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," with J. K. Winn's description of the pluralistic nature of the legal basis for Taiwan's twentieth-century economic

7. ***Justice systems in many of the Bank’s client countries fall short of effectively playing these roles.*** While the performance of national justice systems is variable, citizens in a range of countries report difficulties in accessing justice. Justice institutions are reportedly not investigating, trying, and punishing corrupt officials, and the resolution of disputes is costly and uncertain; justice systems could also do more to assist with the redress of complaints about government performance. Particularly in fragile and conflict-affected states, the majority of the population may have little recourse to formal justice institutions; instead, for dispute resolution, conflict prevention, interpretation of laws and rules, and public safety, they may turn to religious authorities, customary or community-based institutions, or a mix of both formal and informal justice institutions. The Bank’s Country Policy and Institutional Assessment (CPIA) indicators for the rule of law have not improved overall in developing countries in the past half decade, though there has been some improvement in the Europe and Central Asia (ECA) region. In Latin America and the Caribbean (LAC) and South Asia, rule of law indicators deteriorated substantially; other regions show no significant changes over the period.<sup>7</sup>

### III. Justice Reform at the Bank: Achievements, Lessons, and Challenges

8. This section reviews the Bank’s work on justice reform over the period 1994–2011, with a view to identifying trends and lessons.

#### A. Lending operations focused on institutions of the justice sector

9. ***Since 1994, the Bank has invested \$850 million in 36 projects solely dedicated to justice reform*** (sometimes known as stand-alone justice reform projects). Projects in this portfolio—which includes 20 closed projects and 16 active projects across all regions—focus primarily on improving the performance of courts. Most support training for justice sector actors, some involving not only courts but also specialist tribunals, ministries of justice, bar associations, and legal aid entities. Some pick up a particular development need within the justice sector, such as commercial courts, enforcement process improvement, or insolvency offices. Others address the lawmaking process, and most include activities dedicated to ensuring that citizens have access to laws and court decisions. The largest dollar investments in this portfolio are aimed at infrastructure, which accounts for 40 percent of total spending, and at court and case management (judicial process), which represent 26 percent of total spending (see figure 1).

10. ***The volume of lending for projects solely dedicated to justice reform has fluctuated around a mean of \$24 million in commitments per year since 1994.*** Despite a commitment in the 2007 GAC Strategy that the Bank would scale up support for judicial reform,<sup>8</sup> an increase in lending for stand-alone justice reform projects in recent years is not evident. With a 63 percent

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transformation. See Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge, UK: Cambridge University Press, 1990), 54; and Jane K. Winn, “Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan,” *Law & Society Review* 28 (1994): 193.

<sup>7</sup> Independent Evaluation Group (IEG), *IEG Annual Report 2011: Results and Performance of the World Bank Group* (Washington, DC: World Bank, 2011), 11. See also World Bank CPIA data, “Property Rights and Rule-Based Governance” rating, which measures the extent to which private economic activity is facilitated by an effective legal system and rule-based governance structures in which property and contract rights are respected and enforced.

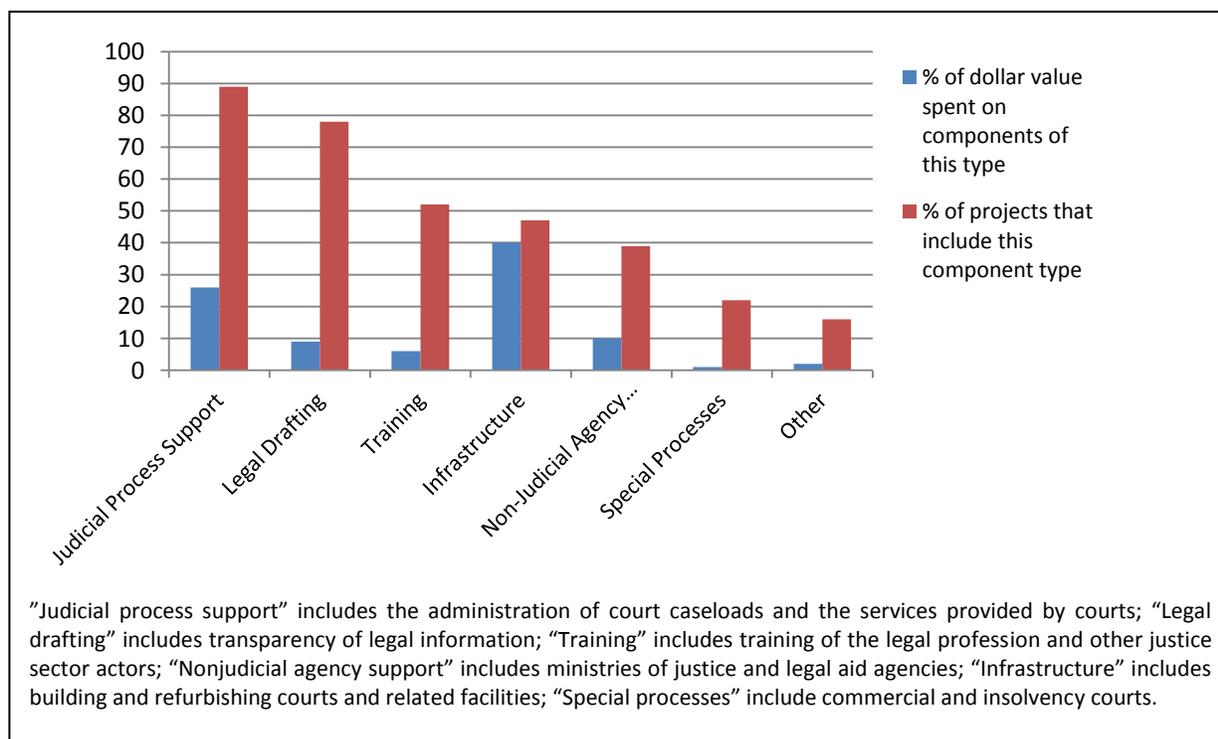
<sup>8</sup> World Bank, “Strengthening World Bank Group Engagement,” 18.

success rate,<sup>9</sup> justice reform-focused projects somewhat underperformed broader public sector management projects (75 percent). Some regions (in particular, ECA and LAC) have had a significant investment lending (IL) portfolio on justice reform, as well as important justice elements in Development Policy Loans (DPLs), for example, in the case of strengthening the enforcement of judicial decisions through the Economic Recovery DPL in Croatia.<sup>10</sup>

## B. Justice reform components in other projects

11. *In addition to stand-alone operations, a significant portion of the Bank’s work on justice reform comprises components of other development projects.* Over the past two decades, the Bank has financed 388 investment lending projects having at least 10 percent of expenditure allocated to “law and justice” or the “rule of law.” In addition, the Bank approved 174 development policy loans with one or more rule of law or law and justice prior actions. Based on a study of a sample of these projects, it is estimated that 30 percent included significant justice reform efforts (as opposed to efforts in support of the drafting of substantive law). Thus a private sector development project in Guinea-Bissau, for example, included a component focused on improving access to justice for firms, a Poverty Reduction Support Credit in Benin helped establish a Legal and Judicial Information Center, and a land project in Peru improved the mechanism for resolving land disputes.

**Figure 1. Distribution of Activity and Investment in “Stand-Alone” Judicial Reform Projects**



Source: Estimates based on World Bank data

<sup>9</sup> Success here is defined as an IEG rating of Moderately Satisfactory, or 4 and above on a 6-point scale.

<sup>10</sup> For details, see World Bank, “Croatia. Economic Recovery Development Policy Loan Project: Summary of Discussions” (Washington, DC: World Bank, 2011), available at <http://go.worldbank.org/6MM1QWPHR0>.

### C. Grants, research, and special initiatives

12. *The above lending activities are complemented by grants and research activities that have supported analytical and advisory work in relation to anticorruption agencies, ombuds offices, legal aid and legal empowerment, and the protection of basic rights.* In the justice field, countries tend to be reluctant to borrow for bottom-up activities (including research) and the Bank has sought to fill this gap through activities supported by trust funds. The Justice for the Poor (J4P) program,<sup>11</sup> for example, is supporting research and operational innovation around the themes of access to justice, service delivery, and natural resources governance in a range of countries in the East Asia Pacific and Africa regions, work that has helped inform and shape significant operational and policy advocacy engagements. There is also work ongoing in the Central African Republic to map traditional justice institutions and trace the paths of nonstate conflict resolution, with the aim of informing community-driven development and decentralization efforts. The Institutional Development Fund (IDF) has financed key organizational reforms in Latin America, and the Japan Social Development Fund (JSDF) has been used to promote access to justice issues in the ECA and Middle East and North Africa (MENA) regions. In some middle-income countries, client governments are approaching the Bank for its technical expertise in justice reform through Fee-Based Services (FBS), a trend that is expected to increase.

### D. Institutional integrity

13. *The Bank's Institutional Integrity Vice Presidency (INT) investigates fraud and corruption in Bank-funded projects and makes referrals to national authorities when it determines that national laws have been broken.* Within the overall GAC approach, actions by national authorities in follow-up to referrals are critical to ensuring that justice is served and that victims of fraud and corruption are compensated. These actions range from the investigation, prosecution, and conviction of individuals and entities whose involvement in defrauding or corrupting Bank projects violated national criminal law, to civil suits to recover assets and the proceeds of crime, to administrative measures barring firms from competing for government contracts, to proceedings suspending or terminating individuals from public service employment. However, despite a number of successes, the hoped-for vigorous global response from national authorities has not been consistent. Meaningful impact has been hampered by criminal justice systems that do not always function optimally, prescriptive criminal code provisions that sometimes prevent prosecutions, and the occasional failure of authorities to interrogate key fact patterns. The Bank then has a strong corporate interest in greater collaboration with national authorities in pursuing a zero-tolerance policy on fraud and corruption in connection with its own operations.

### E. Achievements and challenges

14. *The Bank has not to date conducted a systematic evaluation of its work on justice reform.* Nevertheless, a range of Bank-funded initiatives have been reviewed and shown to have supported the advancement of justice from a user perspective. Mobile courts initiated under a Bank project in the Philippines, for example, allow judges to travel to prisons and underserved communities to adjudicate, leading to the release of thousands of pretrial detainees. A

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<sup>11</sup> For information, see the J4P website at <http://www.worldbank.org/justiceforthe poor>.

community paralegal program in Sierra Leone supported by a Bank-administered trust fund was found to empower clients and communities to achieve redress for grievances that had otherwise stagnated. In Kosovo, an IDF grant funded improved justice statistics and thereby helped strengthen transparency; in Russia, a JSDF grant empowered poor and vulnerable rural populations in two regions to obtain better access to justice; and in Ecuador and Guatemala, Bank-supported projects helped rationalize management, improve human resources allocation, and expand access to justice for marginalized groups.<sup>12</sup> Box 1 below describes the outcomes of yet another such program, the Honduras Judicial Branch Modernization Project.

**15. *Despite these successes, the overall outcomes of the Bank’s justice reform efforts have been uneven. Interventions have produced positive results for users, as reported above.***

Achievements are often reported in terms of *outputs*, such as the passage of new legislation, training of judges, construction of court infrastructure, and improvements in systems for case handling. Where *outcomes* are measured, there has been criticism for focusing on efficiency issues (such as reducing case backlogs) in circumstances where these concerns may not have the highest priority.<sup>13</sup> Moreover, while project designs may cite higher-level goals, the chain of causation between these goals and the proposed activities are arguably often weak, which in turn makes outcome-level evaluation difficult. Although some projects are based on a solid assessment of the political economy, others gloss over problems related to governance and power and blame poor judicial performance on technical issues, such as funding, the state of the regulatory framework, a lack of equipment, or the absence of training. Other challenges for these projects include: unrealistic reform agendas given the local political economy, project designs that are insufficiently focused on the needs of end users, overly short time horizons, inadequate implementation capacity, and a near absence of rigorous, systematic evaluation.<sup>14</sup>

**16. *The Bank is not alone in finding justice reform challenging.*** Many multilateral and bilateral donors, as well as universities, foundations, bar associations, and other nonprofit entities, are engaged in justice reform. Scholars and practitioners do report successes, but also elaborate on the challenges facing justice reform efforts,<sup>15</sup> pointing especially to a serious knowledge on justice reform. The availability of information on the functioning of justice systems in developing countries is limited, as is generalizable evidence on the impact and dynamics of reform efforts.

**17. *After summarizing the results of Bank-financed operations in the justice sector as “rather modest,” a 2010 “Justice Note” from the Bank’s Africa region identifies further lessons learned.*** A number of these lessons are worth highlighting. They include the need first,

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<sup>12</sup> IEG, *IEG Annual Report 2011*, xix, 77.

<sup>13</sup> The IEG *Annual Report 2011* notes that among six recent country program evaluations that assessed justice sector interventions, outcome ratings in the justice area were satisfactory in two (Bangladesh and Peru) and unsatisfactory in three (Georgia, Mozambique, and Uganda). *Ibid.*, 77.

<sup>14</sup> These were key messages from participants in the consultative process that informed the drafting of this paper. See also Linn Hammergren, “International Assistance to Latin American Justice Programs: Toward an Agenda for Reforming the Reformers,” in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, ed. Erik Jensen and Thomas Heller (Stanford, CA: Stanford University Press, 2003).

<sup>15</sup> See, for example, Jensen and Heller, *Beyond Common Knowledge*; Thomas Carothers, ed., *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006); Linn Hammergren, *Envisioning Reform: Improving Judicial Performance in Latin America* (State College, PA: Penn State University Press, 2007); and Michael Trebilcock and Ronald Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (Cheltenham, UK: Edward Elgar Publishing, 2008).

for the Bank to invest in its own institutional expertise to design, advise on, and manage justice reform projects; second, to link capacity building and material inputs to specific performance and service improvements, applying a “problem-solving approach”; third, to sequence reforms in an incremental fashion that allows achievable but meaningful project outcomes; fourth, to adopt approaches that respond to the needs of the poor and reflect local institutional realities; fifth, to build demand for reform among stakeholders as a key to motivating improved performance; and finally, to develop more effective modalities for engaging in justice reform in postconflict settings as emphasized in the WDR 2011.<sup>16</sup>

#### **Box 1. Achievements of the Honduras Judicial Branch Modernization Project**

***Facilitating access to justice for vulnerable groups (the poor, ethnic minorities, and women).*** The project established six justice of the peace (JP) courthouses in the Honduras Poverty Corridor, improving access to the rural poor and Afro-Honduran and indigenous communities. The project also launched mobile JP courts in each of the country’s three main cities serving poor neighborhoods, 60 percent of whose users are women and 63 percent illiterate or with only primary education. The project also established new unified trial courts in Tegucigalpa and San Pedro Sula that deal mostly with cases of domestic violence and family matters (e.g., child support). Finally, the project strengthened the Public Defense Services that provide legal representation for low-income adult criminal defendants, at-risk youth, and adolescent offenders. Overall, for a population of roughly 1.94 million citizens in the project area, 233,712 vulnerable individuals received justice services, an average of 58,428 per year.

***Supporting a national campaign against domestic violence.*** In Honduras, about 18 percent of women who are or have been married have experienced violence, 16 percent have suffered violence at the hands of a family member or spouse/partner, and 13 percent have been victimized by a spouse or live-in partner. Many domestic violence incidents go unreported, and in victimization surveys, women are often reluctant to acknowledge abuse by a partner or family member. To deal with these issues, the project financed a national campaign against domestic violence that reached 3,938 community leaders, of whom 2,110 (54 percent) were women.

***Increasing clearance rates for noncriminal cases.*** Improvements ranged from 26 percent preproject to 57 percent in unified trial courts, 60 percent in JP courts in the Poverty Corridor, and 75 percent in Mobile JP courts in Tegucigalpa and San Pedro Sula. Average length of case resolution for noncriminal cases was reduced from 1,251 to 316 days. According to a survey carried out in all participating courts, the quality of service was rated satisfactory by 96 percent of users (70 percent “very good” and 26 percent “good”).

***Promoting transparency.*** To address low levels of trust in the judiciary, the project adopted a transparency strategy. Twelve information kiosks were financed to provide information, such as case status, how to access the judicial system, steps to present a claim, relevant laws, and court locations. Each kiosk provides services to approximately 200 users per day.

## **IV. Priorities for Strengthening the Bank’s Approach to Justice Reform**

18. ***On the basis of the above assessments of the Bank’s experience in justice reform, a simple scaling-up of current efforts is not advisable.*** Rather, the Bank needs to develop new models and approaches that will be more effective in addressing the justice needs of our client countries. This will involve identifying and building on existing learning as well as consolidating efforts around the development of new approaches to justice reform. This section establishes priorities for the Bank’s work on justice reform, including priorities for realigning the Bank’s instruments and resources in this field. These priorities are:

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<sup>16</sup> World Bank, “Africa Regional Justice Note: A Review and Lessons Learned,” Report 57986 (Washington, DC: World Bank, 2010).

- a. applying a **problem-solving** and **empirically based approach** to justice reform anchored in the needs of end users, one that focuses on actual realizations and accomplishments rather than the establishment of what are identified in advance as the “right” institutions and rules;
- b. identifying **flagship justice reform initiatives** as sites of learning and innovation;
- c. **integrating justice reform** into Bank operations and analytical and advisory activities;
- d. developing a focus on **justice reform in fragile and conflict-affected states**; and
- e. developing **organizational structures** that strengthen the Bank’s ability to realize the vision presented in this paper.

19. *In identifying these priorities it should be clear that the Bank does not claim to have a blueprint for success in justice reform.* The structural nature of the struggles over justice and the frequent need to confront vested interests imply risks of failure. The arc of history—to paraphrase Martin Luther King, Jr.—may bend toward justice, but progress is hardly guaranteed in the course of a Country Assistance Strategy (CAS) period or project cycle. Genuine justice reform is invariably a multigenerational endeavor and will often be resisted by local elites or entrenched professions. Task teams will have to balance the pursuit of higher-level goals with the definition of achievable outcomes, while the risks of engagement on justice reform will need to be weighed against the risks of nonengagement.

### **Priority 1: Develop a problem-solving and empirically based approach to justice reform**

20. *The Bank’s approach to justice reform should start with a consideration of a country’s justice reform problems either holistically or in relation to an identified sector.* Based on current policy discussions, it is clear that this analytic lens can include a broad array of civil and criminal justice institutions. The WDR 2011 highlights how criminal violence undermines development outcomes and the consequent need for capable institutions that can deliver citizen security; a recent Legal Note clarifies that this is an area in which the Bank can engage, given that many criminal justice reform activities fall within the Bank’s mandate.<sup>17</sup>

21. *Data is the foundation of an evidence-based approach to justice reform.* As such, in countries that request justice reform programs, the Bank will work with government and research partners to ensure that information on the workings of the justice system is collected, including the experiences of women and other oft-marginalized groups. Strong diagnostics should inform the design of interventions by providing data on the actual functions of the justice system, the political economy of reform and its risks, and the way potential reforms might translate into progress towards justice.

22. *The move toward an evidence-based approach to justice reform should be clear throughout the project cycle, from design to monitoring and evaluation.* Practitioners and scholars recognize serious knowledge gaps in justice reform. There is limited empirical data on the functioning of justice systems in many of the Bank’s member countries, and even less

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<sup>17</sup> Anne-Marie Leroy, “Legal Note on Bank Involvement in the Criminal Justice Sector” (Washington, DC: World Bank, 2012); see also World Bank, “Staff Guidance Note: World Bank Support for Criminal Justice Activities,” Justice Reform Unit, Legal Vice Presidency (Washington, DC: World Bank, 2012).

evidence on the impact and dynamics of reform efforts. This is in part because the field must contend with tough information challenges, outcomes that are difficult to measure, causal chains that are hard to trace, and necessarily long-term reform processes. However, more needs to be done to respond to these challenges if the Bank’s justice reform efforts are to move forward and focus primarily on “actual realizations and accomplishments”<sup>18</sup> that matter to end users, including the implementation of rigorously designed impact evaluations.

23. ***While analysis of justice systems will take a broad view, reform efforts should be strategic and specific.*** A problem-solving approach to justice reform is one in which “initiatives are dedicated to solve identifiable problems.”<sup>19</sup> Interventions should focus on the identification and resolution of binding constraints that may impede improvements to justice system performance; international experience may be relevant here, but reform strategies should take on concrete functional problems, rather than pursue some ideal justice system model. While taking into account the views of professionals in the system, such as judges, lawyers, and administrators, the diagnosis of problems should be anchored in the priorities of end users—citizens and firms. Rather than beginning with the question of how to modernize the court system, such efforts should begin by asking where failings of the justice system are a constraint to equitable development. The answer might be, for example, that conflicts over land and natural resources require peaceable mechanisms to contest ownership rights, or that private sector growth is hindered because small and medium enterprises cannot securitize their assets. The analysis would next ask what justice sector functions need to be improved—often as part of a multisectoral response—in order to effectively resolve the identified problem, and whether these are actionable with support from the Bank.

24. ***Finally, under the heading of problem solving, it is worth noting that justice reform is characterized by many of the risks—of political economy, of a tenuous and largely unproven results chain—that affect much public sector governance work.*** These are sometimes exacerbated by the multibranch nature of the justice system, wherein by design, justice institutions are working at cross purposes. The risk management recommendations in the Bank’s new Public Sector Approach, including support for staff in diagnosis and design, in the use of the revised Operational Risk Assessment Framework, and in the forthcoming results-based lending instrument, will thus be fully applicable to justice reform projects.<sup>20</sup>

25. ***An evidence-based approach to justice reform entails doing better in defining results and results chains that link activities to indicators of higher-level goals.*** A results focus needs to be better integrated into the design, monitoring, and evaluation of justice reform strategies and operations. An impact evaluation needs to be prioritized and embedded into theories of change that map the causal chain from programmatic inputs to broad societal impacts, with associated indicators. A problem-solving approach suggests that project indicators are best developed consultatively by all stakeholders (end users, including citizens, firms, civil society representatives, and government officials) who have an interest in and influence over the proposed reforms. In addition to project outcome indicators (for example, the timely publication of decisions by courts), impact indicators (such as homicides per 100,000 population) can

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<sup>18</sup> From Sen, *The Idea of Justice*, 9.

<sup>19</sup> Eric Scheye, “Some Thoughts on Law and Justice: What to do about the Crisis of Confidence?” (Canberra: Australian Agency for International Development (AusAID), 2011).

<sup>20</sup> See “The World Bank’s Approach to Public Sector Management 2011–2020: Better Results from Public Sector Institutions” (Washington, DC: World Bank, 2012), 15–16.

contribute to both diagnoses (understanding the problem) and advocacy (spurring reform). Given the inherently complex nature of justice, indicators are invariably simplified proxies, and their use and interpretation—especially standard indicators across jurisdictions—require much caution. Good practice therefore requires using clusters of indicators derived from a variety of sources (for example, administrative data, expert assessment, and stakeholder surveys).

### **Box 2. Labor Dispute Resolution in Cambodia: Problem Solving in Action**

The Cambodian Arbitration Council provides an example of the application of an iterative, problem-solving approach to justice reform. The council emerged as a response to a specific challenge: the need for a legitimate forum for resolving workplace disputes in a context of increasing international investment.

Labor relations in Cambodia in the 1990s were fraught with tension and labor conditions were poor. Studies of the textile industry at the time indicated that the workers faced long hours, forced overtime, subminimum wages, workplace safety violations, and antiunion discrimination. Illegal strikes were widespread. The 1997 labor law was designed to improve employer-employee relations and provide for greater employee protections (including the right to unionize). However, a lack of enforcement hampered confidence in the law. Neither workers nor employers trusted the court system, which was seen as corrupt, expensive, and slow. The Ministry of Labor played a frontline role in labor dispute resolution but salaries for labor inspectors were low and confidence in their capacity and independence limited.

With growth in formal sector employment, particularly in the garment industry, Cambodia needed a legitimate forum for labor dispute resolution. Leveraging incentives created by a trade agreement with the United States, an International Labor Organization project worked with the Ministry of Labor to create the Cambodian Arbitration Council. Arbitrators were nominated by government, unions, and employers. A key innovation important to the council's early success was its nonbinding model of decision making; parties were permitted to lodge objections and thereby render decisions of the council unenforceable. This feature was pivotal in overcoming suspicion and attracting initial participation from unions and employers. The council succeeded in resolving 70 percent of the 1,056 cases it received from its establishment in 2004 through June 2011. Based on its increased legitimacy and dependability in those years, union and employer representatives agreed in 2010 that certain types of cases no longer needed the option of nonbinding arbitration. Since then the number of cases subject to binding arbitration has increased from less than 10 to over 50 percent.

Under the World Bank-supported Demand for Good Governance Project, the Cambodian government is investing in legal awareness and dispute-resolution skills among employers and unions. At the same time, the council is receiving support to ensure that its capacity and systems are able to respond to the challenges of an increasing trend toward binding arbitration. Outcomes are monitored regularly across a range of indicators, including case flow, case outcome, quality of written judgments, stakeholder awareness of the labor dispute-resolution process, the absence of corruption, and stakeholder confidence in the independence and effectiveness of the council.

26. *In addition to in-depth studies and ongoing program evaluation, the consultation process for the development of this companion piece emphasized the need for rapid diagnostic tools that allow potential reformers to embrace opportunities for reform.* The Action Learning Program in LAC, which was designed by the World Bank Institute (WBI) at the request of the Latin America Judicial Summit, provides one model for facilitating the development of a justice reform strategy. The program brought together multiple justice system stakeholders from five countries in the region that commissioned rapid diagnostic assessments and then used the information to formulate reform action plans. The process supported a national capacity for data collection, allowed for cross-country learning and collaboration, and cultivated coalitions for reform. This model could be adapted for use in other regions, including states that are fragile or conflict-affected.

27. ***The 2012 World Development Report (WDR 2012) recognizes that justice systems play a critical role in making rights effective for women.*** Even when laws exist, women’s demand for justice may be constrained by factors such as lack of rights awareness, social norms, or bias in service provision. Increasing women’s access to justice is a key element in closing the gender gap in voice and agency, one of the four priorities for action identified in the WDR 2012. The Bank will seek to strengthen the gender component in the design, monitoring, and evaluation of its justice programs, and also to develop expertise and guidance to assist country and Bank teams in this work.

## **Priority 2: Identify flagship justice reform initiatives as sites of learning and innovation**

28. ***The problem-solving and evidence-based approaches to justice reform outlined above will be advanced through a series of flagship initiatives.*** These should serve as sites of focused learning and innovation.

29. ***Stand-alone justice reform operations will continue to meet an area of demand from the Bank’s member countries.*** These operations provide an opportunity to engage with a country’s justice reform challenges more broadly, including by working with stakeholders beyond the state. Greater emphasis on functional problem solving, and on monitoring and evaluation, as discussed above, should lead to significant improvements in design. In addition, the Bank will engage with clients in the following areas:

- a. ***Strengthening the human resources of justice institutions.*** One challenge in stand-alone projects is the availability of professional staff to lead reform efforts. Some reforms have struggled because of a lack of in-country professionals interested in and capable of implementation. The concept of professional court administrators—those who are in a position to oversee court reforms—emerged in the United States in the 1950s and has spread more recently to Canada, Australia, and much of Europe. As in those countries, the introduction of professional court administrators in areas of Central and Latin America has been associated with measured improvements in court performance. However, such court professionals are still relatively uncommon in many other parts of the developing world. Thus, beyond the traditional focus on the training of justice sector staff, the Bank will pay greater attention in its stand-alone operations to the challenge of supporting a cadre of people who have the authority and capability to lead reforms. This may require building technical assistance components into projects and supporting change management training for those in leadership positions in justice institutions.
- b. ***Incorporating the experience of justice institutions at the local level.*** Taking account of the experience of justice at the local level—including hybrid and customary institutions, and the involvement of legal aid and legal empowerment organizations—will benefit justice reform projects. This emphasis flows from the focus on justice system users and a recognition that for many of the world’s citizens, the most important institutions of justice lie outside the formal system. Engaging with the complex relationship between customary and formal justice systems or recognizing community paralegals as frontline providers of justice services may be relevant in this context.

- c. *Increasing the application of core public sector management expertise to justice sector institutions.* Areas like budget reform, financial management, and human resources are critical for improving the performance of any state institution. In part because of concerns about independence of the judiciary, court systems have been slow to adopt general public sector reforms. Experience in Organisation for Economic Co-operation and Development (OECD) countries and Latin America suggests that it is possible to modernize management—for example, incorporating performance data and meritocratic principles into budgeting and human resources management—without compromising independence. The Bank will apply learning and expertise from general public sector management to the justice sector; examples of applying that expertise through a range of new lending and nonlending instruments are in box 3.

### Box 3. New Lending and Nonlending Instruments for Justice Reform

**Rapid Assessments and Action Plans (RAAPs) are flexible tools to address the short-term and subnational dimensions of justice reform.** Through a simple methodology based on standardized questionnaires, RAAPs allow a quick review of key aspects of institutional performance (human resources management, financial management, revenue administration, information technology, public procurement) and: (i) identify the main weaknesses in each area; (ii) assess the impact of such weaknesses in terms of service delivery; and (iii) propose a set of short-term practical solutions.

**Public expenditure and institutional reviews (PEIRs) may be adapted for use in justice reform.** The Bank is engaging ministries of finance and justice institutions in El Salvador, Croatia, Honduras, Serbia, and Morocco to explore the efficiency of public expenditure in the justice sector through adapted PEIRs. The objective of a PEIR is to help policy makers improve security/justice sector performance and public trust through the more effective utilization and management of available resources.

**Performance-based reforms and the program-for-results (P4R) model.** An outcome-focused approach for the reform of justice institutions can be built on the Bank's own experience with other government agencies. That work provides valuable lessons about how to structure performance-based reforms that lead to improved institutional performance and increased public trust. P4R activities in the justice field may be designed to work in parallel to: (i) improve the delivery of justice services, with emphasis on access by vulnerable groups; and (ii) revamp the internal management functions of the institutions, with a focus on planning, monitoring, and evaluation.

**A number of countries may be interested in Development Policy Loans (DPLs) to support justice reform programs.** DPLs can be a suitable instrument in countries with relatively strong justice institutions and robust financial management systems. Provided that there is a high level of institutional commitment and ownership, DPL triggers could be agreed around policies expected to have a significant impact on justice services delivery. The potential of DPLs in justice reform has been explored in Guatemala and Morocco, and a DPL with triggers related specifically to security and justice institutions is being processed for Honduras.

- d. *Refocusing assistance towards equity, inclusion, and accountability.* The Bank's justice reform portfolio has tended to focus on issues of efficiency and effectiveness of the court system. These should continue to be priorities, but the Bank will also aim to develop assistance instruments with clients that explicitly serve the poor and marginalized, and target outcomes in terms of equity, inclusion, and accountability, which are more closely linked to progress in terms of substantive justice. Noting that progress towards these outcomes will be comparatively difficult to achieve and measure, the Bank will work together with clients to ensure that achievable but meaningful targets are set.

### Priority 3: Integrate justice reform in targeted Bank operations and analytical and advisory (AAA) work

30. **Reform in the justice sector can be important to broader development outcomes.** The expansion of basic services creates new entitlements, which in turn raise the question of how citizens seek redress in the event of a breach. Investment in natural resources, for example—whether for infrastructure, agriculture, energy, or carbon—can generate contests over land rights and benefit flows. Forestry experts highlight the need for better enforcement against illegal logging, land experts stress the need for legal aid and dispute resolution in support of land reforms, and private sector experts demand mechanisms for the faster and cheaper resolution of labor and commercial disputes. Administrative law institutions are crucial for ensuring that sectors like health, education, energy, infrastructure, and agriculture—where much Bank investment lies—deal effectively with policy breaches and disputes arising from service delivery.

31. **The Bank will build on existing work that integrates justice reform through targeted operations and AAA.** This will involve collaboration with colleagues from sectors interested in the greater integration of justice reform into development programs and processes, particularly around service delivery and natural resource governance (two themes that were highlighted during consultations). The World Bank’s J4P program provides a model of how justice can be better integrated into broader development work by providing outlets for resolving the disputes that often arise from the development process. J4P has in-country teams in seven countries in East Asia and the Pacific and two countries in Africa. Under this model, in-country teams have undertaken empirical research on the dynamics of dispute resolution and worked to improve the way the Bank’s broader development efforts address justice reform, whether through AAA, specific investment lending, or development policy work. The Bank’s justice reform specialists will expand this approach through collaboration with sectoral task teams, supplemented where necessary with support from donor trust funds.

#### Box 4. Social Impact of Courts on Ensuring Executive Accountability

- **Recent research has shown the significant impact courts may have on the lives of ordinary people.**<sup>21</sup> The first systematic and comparative effort to document the impact of courts on policy making across the developing world reviewed five country cases—Brazil, India, Indonesia, Nigeria, and South Africa—to explore court involvement in the enforcement of social and economic rights in the areas of health and education. The study tested theories that might account for the varying levels of “judicialization” of social rights across countries and policy areas, and the differential court impact on the actual distribution of health care and education services. The report concluded that efforts to promote legal procedures to facilitate collective claims and universalize the particular policies adjudicated in courts—such as Brazil’s *ação civil pública*, India’s Public Interest Litigation, South Africa’s binding precedent, and Indonesia’s abstract challenges to legislation—will be effective when national legislation provides a basis for claims, and when courts perceive that governments and the public are committed, or at least receptive, to the policy directive being ordered. Overall, the study found that the results of litigation are much more positive for the poor than conventional wisdom would suggest.
- **Further work is now being done on compliance mechanisms that seek to ensure that judgments are enforced by the executive,** based on case studies in Colombia and Costa Rica. This work will evaluate whether variations in compliance can be explained by the type of remedy courts seek, the way courts

<sup>21</sup> Varun Gauri and Daniel M. Brinks, eds., *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge, UK: Cambridge University Press, 2008).

express their orders or judgments, or the nature of the public officials asked to comply, and whether the practice of compliance monitoring improves implementation.

- **In some countries, the benefits and risks of this sort of court judgment are being debated**, given that the effective recognition of economic and social rights may have a significant impact on the public budget.

#### **Priority 4: Develop a focus on justice reform in fragile and conflict-affected states**

32. *The WDR 2011 highlights five key areas for improved donor work on justice in fragile and conflict-affected states (FCS) that will be taken up.* These are: (a) making justice strategies more “fragility-focused” by grounding them in political economy and local context analysis, and understanding the complexities of coordinating among all the relevant state and nonstate justice institutions; (b) promoting “best-fit”—rather than best practice—justice initiatives that earn the trust of the population because of their greater compatibility with the local context; (c) investing in research to increase the understanding of how to support the emergence of legitimate and effective justice institutions; (d) committing to the long-term time horizons required for meaningful change, while supporting the early signaling of change that convinces stakeholders that it is desirable, real, and potentially durable; and (e) improving integrated donor action and reducing confused and conflicting approaches by strengthening global, regional, and national partnerships and leveraging the comparative advantages of others, while building on areas of justice reform in which the Bank has experience.

33. *With notable exceptions, the Bank’s experience in justice reform has been in middle-income countries.* To build expertise and respond to demand in contexts of fragility, the Bank will intensify analytical work, develop operational tools and guidance, and increase support for justice reform in Bank policy, AAA, and operations in FCS. Taking the WDR 2011 as the starting point, the Bank will bring together state-of-the-art thinking on conflict, justice, and development, along with a series of case studies to provide a conceptual and empirical basis for policy and operational recommendations. Consistent with Priority 3 above, the Bank’s work in FCS will mainstream justice in two ways: (a) by developing innovative approaches to improving justice service delivery in contexts of fragility, conflict, and low capacity, and (b) by working with specific Bank projects in a range of sectors to incorporate design and implementation mechanisms that address and mitigate justice stresses. This work stream will be pursued in close collaboration with the Bank’s new Center for Security, Conflict, and Development in Nairobi.

#### **Priority 5: Develop structures to enhance the Bank’s ability to deliver on justice reform**

34. *A series of organizational and resource changes are needed to strengthen the Bank’s ability to realize the vision presented in this paper.* The justice reform community of practice in the Bank is spread across all regional vice presidential units (VPUs), the Legal Vice Presidency (LEGVP), a range of networks, the International Finance Corporation (IFC), and INT. This is appropriate, given that justice is an element of many kinds of Bank development work, and that justice reform benefits from diverse areas of expertise. These arrangements have, however, made it difficult for the Bank to develop a suitably strategic and coordinated approach to justice reform.

35. ***The Bank has a small cadre of roughly 30 staff who specialize in issues of justice reform***, about 20 of whom sit in LEGVP, mainly in the Justice Reform Practice Group (LEGJR). The remainder are located in the regions, mostly attached to the Poverty Reduction and Economic Management (PREM) network, but also the Sustainable Development Network (SDN). The number of staff with real specialization in justice system reform is actually very small, such that leveraging existing specialists well, training staff who seek to develop specialized ability in justice, and hiring where possible will all be critical for advancement of the Bank's work in this area. These justice reform specialists are complemented by a broader community of practice that spans the Bank, including IFC and INT.

36. ***There is no one unit in the Bank responsible for coordination, knowledge sharing, and advancing the agenda set out in this companion piece.*** The Bank's Independent Evaluation Group Annual Report 2011 *Results and Performance of the World Bank Group* notes that the Bank "does not have an institutional center for its work in the area, which raises questions about consistency, coordination, policy formulation, portfolio monitoring, and quality assurance."<sup>22</sup> During the lifespan of GACII, this institutional center will be developed, based on recognizing and strengthening the coordinating role of LEGVP (particularly through LEGJR) working closely with PREM and other Bank units. This will involve providing core strategic and intellectual leadership and knowledge management functions, and establishing appropriate institutional arrangements for a community of practice that will help align regional work with the approach set out here, promote cross learning among justice reform experts, and develop external partnerships that respond to client needs. The community of practice will support country and sector management units by mobilizing staff with appropriate expertise to be available under cross-supported arrangements for Bank and country teams dealing with complex justice issues, ensuring that justice experts are present when justice issues are discussed in the context of operational decisions. This will be important for Bank justice work in middle-income countries, as well as for work in newer areas such as criminal justice reform and justice in FCS.

37. ***The Global Forum on Law, Justice and Development (GFLJD) is a significant new World Bank initiative in this respect.***<sup>23</sup> The GFLJD is envisaged as a permanent forum for promoting law and justice in the development process. It will operate through a global platform for the exchange and cogeneration of innovative and customized solutions to law and justice-related development challenges by a community of practice involving the Bank, member country institutions, universities and think tanks, and international and civil society organizations.

## V. Next Steps

38. ***Progress toward these priorities will be coordinated under a three-year action plan to be developed in partnership with the various units that are working on justice reform in the Bank.*** This will form part of the broader GAC Update implementation plan and should include commitments for deliverables that would allow the Bank to demonstrate progress on the new directions in justice reform that are set out in this document.

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<sup>22</sup> IEG, *Results and Performance of the World Bank Group* (see n. 6).

<sup>23</sup> For more information, see the GFLJD website, <http://bbi.syr.edu/gfljd/>.

## Annex A

### *Stylized Representation of a Justice System*

The diagram below demonstrates the scope of the justice system. It is a stylized depiction of justice institutions, not a prescription; in practice, specific institutional forms vary significantly across legal systems and across countries.

