Overview of the Global Justice for the Poor Program

The World Bank’s Justice for the Poor1 (J4P) research program is a multi-country study that seeks to develop an empirically-based understanding of how the poor or excluded navigate through local justice systems, in order to inform and evaluate innovative efforts at local-level justice reform.2 The program recognizes that rules systems that most affect the poor frequently fall outside of formal justice structures, and that efforts that focus solely on formal institutions, while valuable, can exclude large segments of the population. The J4P approach focuses on the demand side of justice reform, seeking to understand the perspective of the poor and marginalized. It considers the role local value systems play in determining how people perceive and interact with justice, the formal and informal institutions, the locally-developed and externally-influenced. It also analyzes the ways in which local power and authority structures are perceived and gain legitimacy.3 Building an understanding of local traditions and realities, as well as resources that affect decisions about whether and where to pursue justice, can enable more effective targeting and programming for poor and marginalized populations.4

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1 J4P is a global research, knowledge sharing, and development program currently operating in four countries (Kenya, Sierra Leone, Cambodia, and Indonesia). The Africa component is supported by the BNPP trust fund (Justice for the Poor: Breaking Legal Inequality Traps at the Local Level, $450,000, Dec 2005 – Dec 2007).
4 Certain characteristics, such as gender, age, and economic status, are often associated with increased poverty and/or marginalization. However, because no research to date has created an exhaustive and universal list of the characteristics associated with marginalization, the term “marginalized” is used broadly here. The
J4P research in Indonesia and Cambodia has shown the value of this approach. J4P’s flagship program in Indonesia combines grassroots community-based legal aid with development of stronger local government and judicial institutions, currently implemented through four major justice projects. In particular, the J4P research in Indonesia has informed the work of the Support for Poor and Disadvantaged Areas (SPADA) program, which seeks to integrate neglected and conflict areas in Aceh and Maluku Provinces in reconstruction efforts. In Cambodia, the J4P team has examined community resistance to external development pressure in rural areas, resolution of land disputes, and access to information. This research has fed into the design of the World Bank-funded Demand for Good Governance and Empowerment of the Poor (Siem Reap) projects, is linked to the Bank’s Land Management and Administration Project (LMAP), and continues to link its research to ongoing and planned operations in-country.

The J4P team has expanded its research to Sub-Saharan Africa through a BNPP Grant. This Africa component is currently supported by a US$450,000, multi-country trust fund. Preliminary research in Sierra Leone has examined dispute resolution in ethnically- and economically-diverse fishing areas along the country’s western coastal areas, linking to the Bank’s Institutional Reform and Capacity Building project and a community-driven development grant. Kenya’s economic and socio-political characteristics present an excellent opportunity to evaluate innovative approaches to local-level justice sector reform, and will provide a contrast to the on-going research in Sierra Leone.

**Kenya Country Context**

*Overview of Justice Systems in Kenya*

Grievances or conflicts in Kenya’s communities can be addressed through a variety of formal or informal justice mechanisms. The Constitution of the Republic of Kenya, which was adopted in

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6 For more information on the Justice for the Poor program in Indonesia, see generally www.justicefortheoor.id.

7 The Support for Poor and Disadvantaged Areas project (Project ID# P078070) is funded by a World Bank / IDA loan of US$104 million. Approved: 09-Jun-05. Closing: 30-Dec-11.

8 The Demand for Good Governance project (Project ID# P101156), which is currently in the pipeline, is funded by a World Bank / IDA loan of US$12 million. The upcoming KH Empowerment for the Poor in Siem Reap program (ID# P097082) is funded by an IDA loan of US$15 million.

9 The Land Management and Administration Project (Project ID# P070875) is funded by the World Bank / IDA in the amount of $24.3 million. Approved: 26-Feb-02. Closing: 30-Dec-07.

10 The Trust Fund (No.056558) was approved in November 2005 and closes on December 2007.


12 The J4P Kenya research will focus on “grievances”, defined here as violations of rights or law that could result in a claim for redress, whether or not that claim is ever pursued. This term, used instead of the more common “dispute” or “conflict”, allows the project to capture cases in which aggrieved parties do not pursue redress.
1963 and has been amended over thirty times since then, is based largely on English law, though it incorporates elements of Kenyan statutory law, Kenyan and English common law, Islamic law, and customary law.¹⁴ The formal court system consists of Resident and District Magistrates’ Courts, Senior Resident and Chief Magistrates’ Courts; a High Court, and a Court of Appeals. However, as in many developing countries, Kenyan citizens often face substantial barriers in accessing the formal court structures. These barriers include, *inter alia*, substantial delays and comparatively high usage costs, limitations on available remedies, perceptions of bias, language barriers, inadequate information and legal aid, and corruption, as well as differing views of justice.¹⁵

As a result, where possible, local communities often pursue cases through alternative justice systems rather than the formal courts. Alternative justice includes, *inter alia*, traditional systems, peace or reconciliation forums, Islamic courts, and interventions of the official local chiefs. The latter are part of the Provincial Administration and are mandated to provide dispute resolution services. While there are no recognized customary courts in Kenya, the Judicature Act of 1967 permits the use of the customary law of an ethnic group in civil cases as long as it does not conflict with statutory law and is not “repugnant”.¹⁶ Local chiefs often employ both statutory and customary or informal conflict resolution methods to resolve conflicts.

The interface of these different avenues can be challenging for those who have a grievance, as people are forced to choose between multiple, and often conflicting, justice and rule systems. As local justice methods are based largely on local value systems, they can provide conflict resolution in a way that is perceived as more legitimate in the eyes of the involved parties.¹⁷ Nevertheless, these systems can also be discriminatory and be captured by vested interest to further empower the elite at the expense of other community members. They may also be ill-equipped to address issues involving actors outside of the communities, such as corporations, or between communities with competing rule systems.

**Opportunities for Intervention**

With the change of government in 2002, a new focus on governance and anti-corruption work emerged in Kenya. Anti-corruption and good governance practices have also been high on the agenda of donors and the Kenyan public. The newly elected government had promised to tackle corruption as a main feature of their successful campaign. In 2003 the new administration

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established the Kenya Anti-Corruption Commission, a public body charged with pursuing cases of corruption and providing civic education in order to prevent corruption.\textsuperscript{18}

The Government of Kenya has been implementing a Governance, Justice, Law and Order Sector Reform Programme (GJLOS) for approximately three years, which integrates a large number of governance and justice reform activities, funded by several donors, under one umbrella.\textsuperscript{19} One of the programme’s objectives is improving access to the official justice system. GJLOS also supports quantitative research on the judiciary. It recently implemented a quantitative household survey, which included questions on access to justice.\textsuperscript{20} GJLOS actively pursues input from civil society and donors, and is particularly interested in supplementing its current knowledge base with qualitative research.\textsuperscript{21}

Complementary to GJLOS, the Office of the President has initiated significant work on peacebuilding and conflict resolution in areas where official institutions have been unable to prevent conflict. The National Steering Committee on Peace Building and Conflict Management was established in 2001. This Steering Committee is charged with the coordination and harmonization of peacebuilding and conflict management interventions, and is currently drafting a policy framework for peacebuilding, which includes the integration of local value systems and a linkage between conflict resolution and development work.\textsuperscript{22}

Local and international NGOs have also been active in anti-corruption, governance, and justice reform efforts in Kenya. Kenya has a strong civil society which often produces independent and informative work. The richness of the country’s skilled and experienced NGOs provides an excellent opportunity for J4P to form partnerships that can further enrich local perspectives and insights.

\textit{The World Bank in Kenya}

At present, a series of activities are also being implemented within the Bank’s portfolio in the areas of governance, justice, anti-corruption and community-driven development. The World Bank is focusing on developing strategies with the Government, particularly for improving governance and reducing avenues for corruption, and is part of the GJLOS program. The 2007 Kenya Country Assistance Strategy has been re-oriented around equity and governance issues. Further, the World Bank recently undertook a Country Social Analysis in Kenya, which emphasized the problems of corruption and inefficiency of institutions. The initial findings of this assessment suggest that, where appropriate, institutions should be based on the strength of indigenous features.\textsuperscript{23}

\textsuperscript{19} The Programme is coordinated by a Project Coordination Unit located in the Ministry of Justice. For more information, please see http://www.gjlos.go.ke/
\textsuperscript{21} Meeting with Staff of the PCU, November 2006.
\textsuperscript{23} World Bank, (Forthcoming). \textit{Country Social Analysis, Republic of Kenya}.
The World Bank is also implementing or funding community development and conflict resolution activities, through projects such as the Arid Lands and Resource Management Project (ALRMP) and the planned Western Kenya CDD and Flood Mitigation Project. 24 The Bank’s ALRMP, which is in its second phase and eleventh year, focuses on natural resource and drought management, community-driven development, and local economic development. 25 In 2003, project managers decided to integrate support to conflict resolution activities into the ‘natural resource management’ component of the project. 26 Recent reviews have indicated that the current conflict resolution activities are frequently too high level to be considered locally-relevant, and that the CDD council members at the village level could be important brokers for conflict resolution at the local level. They thus recommended more emphasis on more fully integrating the project’s conflict management work at the local level, and on improving linkages between this work and CDD during the project’s next four years.

Program Considerations

Due in part to a large donor presence and an active civil society, abundant literature exists on official justice systems, as well as conflict and development in Kenya. Recent studies have examined topics such as local dispute resolution practices 27, the role of resource scarcity in conflicts and land tenure disputes 28, and pastoralism in North and Northeast Kenya 29. While a comprehensive literature review is ongoing, these and other studies have informed this concept note and the design of this project.

North/northeast Kenya has a history of marginalization through lack of governmental attention and development. Its predominantly pastoralist communities live detached from governmental institutions and services. This disconnect is particularly problematic during the frequently occurring droughts, which often result in a rise in cattle rustling and contribute to conflicts that can lead to

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24 The Kenya Arid Lands Resource Management Project (Project ID #P078058) is a World Bank IDA funded loan in the amount of USD$60 million. Originally approved in December of 1995, it received additional funding and began a second project cycle in June of 2003. Approved: 06/03. Closing: 06/10. For more information, please see http://www.aridland.go.ke/. The Western Kenya CDD and Flood Mitigation Project (ID #P074106), which is currently in the pipeline, is a World Bank IDA funded loan in the amount of $85.5 million. This project is expected to commence in mid-2007.


larger raids and unrest. In areas where pastoralists live in close proximity to agriculturalists, access disputes can be amplified as contradicting ideas of land ownership and use must be negotiated to avoid conflicts.

A more ‘modern’ cause of conflict are grievances over community funds. Although external actors often assume that the community speaks in a single voice, who has access to community funds can be highly disputed within the communities, and a project’s externally imposed participatory mechanisms can further marginalize the powerless. A focus on grievances and dispute resolution mechanisms concerning perceived mismanagement and decision-making over the use of community funds can improve the overall use of the funds, as well as inform the Bank’s work on governance and anti-corruption.

In view of the geographic, political, and socio-cultural diversity of Kenyan society, attempting to capture the entire country in one study would result in recommendations too general for implementation. Therefore, J4P Kenya focuses instead on specific regions where the volume, diversity, and impact of grievances are especially sizeable, multiple justice systems exist, levels of poverty are particularly high, and the Government of Kenya and key donors have prioritized efforts to improve the delivery of justice.

A six-week preparation mission in May/June 2006 and ongoing consultations with stakeholders identified the following regions and projects as matching each of the selection criteria:


With poverty rates approaching 58% in some districts, a historic disconnect from the central government, frequent conflicts over scarce natural resources, indistinct tribal boundaries, and a tendency for grievances to spill across tribal, regional, and sometimes international borders, North and Northeast Kenya stood out as prime areas for conducting operationally-relevant research. The presence of multiple donor initiatives, including ALRMP, which is currently in its second phase, the Government of Kenya Secretariat of Conflict Prevention’s peace committees, and macro-level policy studies by UNDP and USAID on the underlying causes of pastoralist conflict, reflected stakeholders’ strong interest and commitment to understanding insecurity in this part of Kenya. The proposed research seeks to fill in the remaining gaps in the literature, particularly in regards to understanding which conflict resolution mechanisms community members use and why, assessing how well the mechanisms provide justice to the marginalized, and providing data on the efficacy of conflict resolution approaches under ALRMP and how such efforts can be linked to CDD initiatives.

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West Kenya and the Western Kenya Community-Driven Development and Flood Mitigation Project.

According to the 2003 poverty map, over 60% of the populations of Nyanza and Western Provinces live below the official poverty line.\(^3\) The region faces many challenges, among them insufficient official natural resource management and environmental degradation, high birthrates that have resulted in population pressure, and among the highest HIV infection rates in the country.\(^4\) In contrast to the North and Northeast, the official judicial system in Western Kenya is often utilized for small conflicts, as such is seen as a viable alternative to local justice mechanisms. The Bank’s West Kenya CDD and Flood Mitigation Project, which was appraised in December 2006, will work to strengthen community decision making powers and foster decentralization and district planning mechanisms, particularly around water management. By working with the CDD project, J4P will be strategically placed to investigate grievances over natural resources and community funding with a specific focus on women’s rights and empowerment.

Given resource constraints, Phase I research will focus on one initial district (to be determined in consultation with the research partner) in North and Northeast Kenya. In the future, and dependent on additional sources of funding, the J4P team hopes to expand its research to other sites in North and Northeast Kenya, as well as West Kenya and other areas, where appropriate. Detailed project proposals and concept notes will be developed for additional phases of the project as these pieces move forward. Outputs from Phase I can also be used to inform the design and implementation of the Western Kenya CDD project.

Project Objectives

In keeping with the World Bank’s work in Kenya and the global Justice for the Poor program, J4P Kenya’s main objectives are:

The project’s key objectives are to:

1. Understand how justice systems function at a local level, and how individuals and communities navigate those systems in order to resolve grievances.
2. Inform operations and policies of Bank activities, such as the ongoing Arid Lands and Resource Management Project, and planned Bank projects.
3. Inform activities of the Government of Kenya, such as: a) the access to justice work of GJLOS, b) distribution of community funds, and c) the policy development on peacebuilding and conflict management under the Office of the President.
4. Build the capacity of a local partner institution and a team of local researchers to design and implement high-quality research (particularly research that uses high-quality qualitative methods), to disseminate findings, and to use such findings to inform ongoing policy reform.

Key Research Questions and Focus

\(^3\) Republic of Kenya, 2003, p. 73-74
Through initial literature reviews, preliminary analysis from other Justice for the Poor programs, and discussions with academics and practitioners in the fields of justice and governance in Kenya, the following research questions have been identified as a starting point for research:

1. What types of intra-communal grievances exist and how are they resolved? Are specific groups marginalized in that process?
2. Which kind of grievances exist between local communities and outsiders? Who takes decisions over how to address them? Do solutions serve the marginalized and the poor?
3. Who are the main authorities or power holders in the communities? Where do they derive their authority and legitimacy?
4. What are prevailing social norms and governance rules regarding how collective decisions are made, how public resources are mobilized and utilized, and how authority is exercised?
5. Do different groups have noticeably different attitudes towards and perception of authorities, and different degrees of participation in collective action?
6. What barriers to effective justice and governance exist, and which individuals, groups, and communities are most affected? How are these barriers overcome, or how could they be overcome? Which groups have a vested interest in maintaining the barriers? How are the answers to all of these questions changing over time? How and why does local-level justice and governance improve or deteriorate?
7. Which justice mechanisms are available or used by different social groups to claim their rights, and which authorities select the system(s) to apply?

In order to fill those knowledge gaps, the focus of the research will be on understanding and comparing the dynamics of local level decision-making in regard to two broader sets of grievances:

1) **Grievances over natural or biological resources**
2) **Grievances triggered by development projects/funds**

The J4P project team has selected these grievances because they allow for a focus on both a persistent source of conflict that is being addressed (to varying degrees of effectiveness) through existing institutions, and a newer source of conflict that allows for study of conflict resolution activities in their infancy. However, J4P is aware that field research may determine that these concerns are not relevant, are not informative, or impact the poor and marginalized to a lesser degree than other conflicts (such as crime or intrafamilial conflicts) in research sites. J4P will carefully monitor preliminary research findings to determine if a change or broadening of scope is justified by project findings.

J4P will link with ALRMP and analyze the ongoing mechanisms of conflict resolution that are supported by it, as well as the project’s CDD component. Research will focus on innovative models to better integrate conflict resolution into CDD. Through this the Bank can demonstrate in practice how justice work can be linked to economic development and address poverty at the local level from different angles. Further, it can demonstrate how development projects can provide mechanisms for resolution of conflicts that accompany the provision of funds in a community.

In addition to research on ALRMP, J4P will study different conflict resolution and justice mechanisms as a key to determining how these and other mechanisms gain legitimacy and authority,
and how they provide access to justice for the poor. Moreover, a focus on community dynamics in decision-making over community funds, beyond CDD, will reveal local power structures and issues of access to such resources. As these issues can have a pronounced impact on women, J4P will disaggregate data to ensure it captures the perspectives of women and how women claim their rights (or why they do not do so) in relation to access to land, water or other natural resources, and how the peace committees support this access.

Capacity Building and Partnerships
Per the objectives, one crucial component of J4P Kenya is developing a partnership with a local research institution or NGO and building the capacity of a research partner to conduct in-depth qualitative research on justice topics. An international consultant will serve as the coordinator of the research activities in partnership with a local organization, which will be selected through a competitive process. Design of the study, hiring of researchers, and implementation and analysis of field research will occur in a partnership between the Bank and the selected local organization. This ensures integration of local expertise and local ownership.

Research Methodology
Research methodology will build upon lessons learned in ongoing J4P research in Indonesia, Cambodia, and Sierra Leone. The research will emphasize qualitative research methods, supplemented by quantitative data drawn primarily from the GJLOS National Integrated Household Baseline Survey, the Kenya Institute for Public Policy Research and Analysis decentralization surveys; and ALRMP’s monitoring and evaluation data, as well as data from field guides that will be developed with the research partner. Qualitative research tools, including semi-structured interviews, focus group discussions, participant observation, case studies, and other participatory methods, will be used to delve deeper than statistics to capture processes of justice and how individuals experience justice and governance in their everyday lives. While this personal data is, by its nature, more difficult to generalize, it can provide a more thorough picture of phenomena which are abstruse and dynamic.

Phase I research in North and Northeast Kenya will be implemented in two stages: a) training and initial research to establish a knowledge base; and b) in-depth research in selected communities. Project sites will be selected in cooperation with the local partner institution. Research will begin in a single district for security, funding, timing, and feasibility reasons. While J4P recognizes that this may initially limit the applicability of the research to the broader region, this focus reflects the advantage of qualitative methods in producing research that is “deep” rather than “wide”, as explained below under ‘Generalizability’.

Stage I: Training and Initial Research
Kenya’s academic, NGO, and private sectors offer considerable capacity in research, covering topical areas such as conflict prevention and mediation, local dispute resolution mechanisms, and constitutional reform. Most research that is offered, however, relies on quantitative tools, and only some meet international standards. Very few organizations offer substantial experience in the types

37 Available at http://www.aridland.go.ke/pages.asp?p=MES.
of in-depth case study development and qualitative research that J4P is pursuing. In order to achieve the high-quality qualitative field research required by J4P, there is ample need for capacity building on qualitative research techniques.

In keeping with Objective 4, building the capacity of a local research partner, the first stage of research will primarily consist of intensive classroom- and field-based training in research methods, with an emphasis on gathering and analyzing qualitative data. However, J4P will encourage hiring of individual researchers with advanced experience in using qualitative research methods in order to limit training delays. Training materials for this stage will build off of those developed in Indonesia and Sierra Leone, modified for the Kenya context.38

After undergoing intensive classroom training, the research team will be deployed to a project site to gather basic information about the population maps of the resident ethnic groups, common grievance types, mechanisms of dispute resolution, and presence and use of community funds. This data will mainly be collected at the provincial level. The data collected in Stage I will then be analyzed and compiled, incorporating data from existing field studies and a comprehensive literature review, into a preliminary report mapping conflict occurrence and prevention measures in the region. A primary purpose of this data is to help direct the research teams towards the most appropriate community sites for further, in-depth research.

Stage II: In-depth Research
Field research locations for Stage II will be selected after the completion of Stage I research and analysis, taking into account ethnic diversity, mechanisms used for addressing conflict, grievance types, and the types of community funds present (including locations with CDD and such without), in addition to logistical concerns and the priorities of ALRMP project managers. In this stage, researchers will conduct district- and community-level field research in project sites, leading to the development of informative case-studies that track progress of both on-going and completed cases relevant to the research questions.

Additional stages of research will be added as necessary, and as time, funding, context, and capacity allow.

Generalizability
As this initial phase of research will focus on one district in North and Northeast Kenya, J4P recognizes that it may be seemingly difficult to generalize research findings from this area and apply them to the whole country. However, the value of intensive qualitative research of this type lies in its ability to highlight and examine the effects of different socio-economic and political relations on processes of change; such an in-depth approach assists in getting beyond the “what” to discover the “how” and “why”. Additionally, J4P will cross-compare findings with the wider conflict resolution literature to create a more nuanced picture of justice and conflict resolution mechanisms in action.

Ownership, Outputs and Dissemination

Ownership
As per the objectives, a key goal of the project is to provide research that is operationally relevant and is used to inform and evaluate policies and programs on justice and governance. J4P Kenya

38 These research guides will be made available upon request.
recognizes that this is not possible without gaining and sustaining the support of key project staff, civil society leaders, and government officials, and building coalitions for sustainable, demand-driven change. J4P recognizes that these individuals and organizations should be involved in every phase of the project, from planning and development to implementation and evaluation. To this end, the study will be implemented in close working relationship with the ALRMP’s HQ- and field-based staff, as well as with World Bank Kenya staff. The partnership with a local NGO or research organization will allow results to be taken on board in the CSO and NGO sector. Additionally, the Project Coordinator has introduced the project in meetings with various champions of reform in the Government of Kenya, including GJLOS, as well as to local civil society and community leaders.

An Advisory Committee will be established as part of this project, in order to incorporate the input of individuals with expertise in natural resource management, conflict prevention, and public policy in the Kenya context. In addition to providing assistance with analysis and interpretation of project data, these experts will help direct the research in ways that support their work as a further effort to ensure project relevance. J4P envisions that this committee will include key representatives from relevant departments in the Government of Kenya, in addition to key Kenyan civil society organizations.

Outputs and Dissemination
The primary output of the initial phase of J4P Kenya research, in North and Northeastern Kenya, will be a final report analyzing the data gathered in relation to the above mentioned research questions. Report findings shall then serve as a basis for workshops and discussions with the advisory committee and other stakeholders in order to jointly develop operational recommendations. The final report, including recommendations to different agencies, shall be published and disseminated. The main audience for the report shall be the World Bank, as well as Kenyan governmental and non-governmental agencies working in the justice and governance sectors. During the ongoing field research, intermediary reports presenting an overview of the gathered data and the research progress shall be drafted for internal purposes.

In order to reach a broad range of stakeholders, the program will prioritize experimenting with a number of different approaches to knowledge sharing and dissemination, including using new media and audio-visual technology, radio and a range of print media products. J4P will also maintain up-to-date information on the Kenya program on the J4P website, through publication of briefing notes and regular blogs.

Time Table for Phase I Research

Phase II research in additional program sites will commence in parallel should further funding be secured.

November/December 2006

③ Drafting and publishing of request for statement of interest to advertise for research partner
③ Shortlisting of proposed partner organizations
③ Drafting of request for proposals

39 www.worldbank.org/justiceforthepoor
③ Further development of cooperation with Bank operations / and other relevant stakeholders (ongoing)

January 2007
③ Request for Proposals for partner organization

February 2007
③ Selection of research partner

March – May 2007
③ Concept review meetings with key stakeholders
③ Advisory Committee members selected
③ Literature review (ongoing)

June – July 2007
③ Signing of contract with research partner
③ Recruitment of research team
③ Designing of detailed research methodology and key research questions
③ Workshop with practitioners/advisory committee to discuss research design
③ Training of research team
③ Stage I training / field research

August – October 2007
③ Subsequent field research and preliminary analysis
③ Discussions with stakeholders/advisory committee of research output
③ Development of further research question
③ Additional training as needed

November – December 2007
③ Drafting of research results
③ Discussion with advisory group of results
③ Initial recommendations to Arid Lands Project
③ General recommendation to justice and development practitioners.