



WHAT HAS WORKED IN RULE OF LAW PROJECTS TO FIGHT POVERTY AND CORRUPTION, AND TO BUILD CAPACITY

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At the center of the concept of the rule of law is the idea that all people -- whether they are high government officials or impoverished fishermen -- will be treated equally by the law and legal institutions. No one is above the law. In development literature many have criticized donor-assisted programs in developing countries that seek to strengthen the rule of law. I have written extensively on the topic. The failure of most rule of law interventions boils down to two problems. One problem is that projects are misconceived, poorly designed and poorly implemented. The other problem is that the expectations of donors are bloated -- too much change is expected in too short a time -- so the goals and objectives of projects are unrealistic. Keep the second problem of unrealistic expectations in mind as this lecture proceeds.

Today I am going to talk about three rule of law projects that achieved some level of success. One project was designed to fight corruption and increase accountability, another project was to fight poverty and marginalization of disadvantaged groups in society, and a third project is to build the capacity of local legal actors to effectuate changes in their society.

I. Fighting Corruption and Increasing Accountability

In the early 1990's I was involved in making a grant from The Asia Foundation to the Philippine Center for Investigative Journalism (PCIJ) that was led by a group of extraordinary journalists who wrote for the leading Philippine newspapers and were also stringers for the *New York Times*, the *Guardian*, and the like. The grant was to produce investigative articles generally that explored governance in the Philippines. Both the Foundation and the journalists involved understood the importance of the arm's length nature of the grant. The grant could have absolutely no "foreign agenda"—or even the appearance of a foreign agenda—that could appear to target specific public institutions or individuals. I learned that the PCIJ was writing an article on the Supreme Court, but I had no idea about the contents of the story. Then one fine morning I went out to my driveway in Manila and picked up my copy of the local newspaper, the *Philippine Daily Inquirer*, and read the screaming headlines across the front page: "Supreme Court Justice Caught Taking Bribe in Telecommunications Case." Three days later the justice implicated stepped down from the bench and eventually the case was decided against the telecommunications monopoly that initiated the bribe in the first place. In one sense, this grant was an absolutely amazing success. The telecommunications monopoly in the Philippines was horrific. It assured that Filipinos paid too much for too little. Telephone service was poor and expensive.

In another sense, the grant was a more qualified success for those who might expect the grant to root out corruption in public institutions. The telecommunications case stimulated a nationwide discussion about judicial corruption. It was a nice moment in the rule of law business. But, among other things, the Chief Justice of the Supreme Court at the time was not interested in reform. Indeed, he and his lawyer-son were significant beneficiaries of the status quo. The brushfire debate about judicial corruption died down and did not seem to trigger legal institutional reform at least in the short-term.

This grant worked for three reasons. First, the grant agreement was flexible; it was not straight-jacketed with many indicators of success. Second, it placed funds in the

hands of extremely capable journalists who were very serious about their craft. So this grant had strong human agency on the ground. Without strong human agency on the ground, projects will fall short of their goals and objectives. Third, the journalists seized upon a political environment in which the President of the country and others were very concerned about the performance of the telecommunications industry.

II. Fighting Poverty and the Marginalization of Disadvantaged Groups

During the 1990s, the Asia Foundation and the Ford Foundation provided a decade of assistance to a group of high-quality legal resource nongovernmental organizations (NGOs) in the Philippines who represented various disadvantaged sectors: fisherfolk, farmers, women, upland communities, and the urban poor, among others. These legal resource NGOs received referrals from paralegals, and they represented these disadvantaged communities, often before administrative agencies, to assure that the communities received fair treatment. The legal resource NGOs achieved many micro-successes for their client populations. The role that paralegals played in these stories was vital. Paralegals in the developing country context are community organizers who are aware of the law and legal rights. They worked to connect community needs and demands with lawyers able to help. They are worth their weight in gold as actors in grassroots legal development. It is important to note that the legal resource NGOs took up cases of common concern to a client community rather than individual cases of grievance. That made the services and impact of these legal resource NGOs quite different from legal aid groups that represent individuals and individual grievances. The success of these very well qualified legal resource NGOs in advocating before administrative agencies in particular on behalf of their disadvantaged client populations was impressive. On that level, the success of these donor-assisted legal resource NGOs was terrific

On another level, the strategic plans of each of the NGOs sought “structural change” in society and governance as their overarching goal. These NGOs sought to fundamentally restructure Philippine society at large with measurably greater equity and equality. These fabulously productive NGOs have never achieved that higher order goal. But along the way, they have done a great deal of good for the communities they represent. Sometimes it is not only donors who have unrealistic expectations of what donor assisted funding can do; sometimes grantees are also somewhat unrealistic about what can be done.

This set of grants to legal resource NGOs worked for three reasons. First, the lawyers that staffed the legal resource NGOs and the community organizers who worked with them were extraordinarily capable. The lawyers had the technical expertise to provide first-rate legal representation, but they also were able to navigate the politics of representation before administrative agencies. Second, certain reform-minded bureaucrats were supportive of the action of the legal resource NGOs pressing the bureaucracy to provide to disadvantaged groups the benefits to which they were legally entitled. Third, the Philippines has a rich history of community organizing and collective action at a grassroots level. This grant tapped into that history.

III. Building the Capacity of Local Legal Actors to Effectuate Reform

The Rule of Law Program at Stanford Law School supports excellence in legal education in some of the world’s least developed countries. It seeks to create a cadre of future leaders capable of affecting change in state legal institutions, in the bureaucracy more generally, and in political institutions and the private sector. The program partners with existing local educational institutions interested in offering a dynamic legal curriculum that hones the students’ critical thinking skills, nurtures a set of internalized norms, and develops an *esprit de corps* among both faculty and students. Over the last seven years Rule of Law Program has had or continues to have programs in Afghanistan, Kurdish Iraq, Rwanda, Timor Leste, and Bhutan.

The bread and butter of the Rule of Law Projects is authoring and publishing high quality textbooks tailored to the local legal system and social context. Unfortunately, such books simply do not exist in most developing countries. Many of the standard legal texts in Iraq and Afghanistan, for example, were published in the 1960s and 1970s. In Timor Leste and Bhutan there were no textbooks critically analyzing the laws of those countries until Stanford's Rule of Law Program partnered with educational and legal institutions in those countries. Moreover, in Timor Leste there were no law books in Tetum, the language spoken by the majority of Timorese. So we had our textbooks translated into Tetum. In Afghanistan our textbooks are translated into Dari and Pashto.

Of course the goal is to ultimately reach a point where Timorese scholars are authoring books on Timorese law and Afghans write about their own property doctrine. But what we have heard again and again from our local partners is that it is unrealistic to think that this can happen quickly. Many current professors had their own educations disrupted by years of conflict, lack access to secondary and even primary resources, and do not have a model for how to approach legal pedagogy. So we research and write our textbooks in a highly collaborative and iterative process with our local faculty, whereby our students benefit from the partners' substantive legal and cultural knowledge, and we draw on the best of Stanford and local educational approaches.

Since 2007, Stanford law students have written seventeen textbooks in this manner, critically analyzing the laws of four countries: Afghanistan (8), Timor Leste (5), Kurdish Iraq (2) and Bhutan (2). In each of the countries, textbooks fill country-specific needs.

Of the various Rule of Law Projects, the Afghanistan Legal Education Project has undertaken the most project design work, assisting the American University of Afghanistan to establish a Department of Law and 132-credit BA-LLB program. The curriculum is tailored to the needs and demands of Afghans. The curriculum features a relatively extensive module on comparative law and comparative legal analysis because our graduates need to be able to navigate a landscape with multiple legal regimes that

include customary law, Islamic law, a blend of civil and common law, and international law.

Early on in the development of the Afghanistan project some aspired to a totally secular curriculum. That was never realistic. Islamic law with all of its complexities and permutations is at the center of social, political and economic debates. With a strong pedagogical progression, a set of courses assure that AUAF law graduates have a firm understanding of essential elements of the most important issues relating to Islamic law and its interpretation. Full-time Afghan law faculty teach the courses related to Islamic law and Stanford law students provide research assistance support to those faculty.

Our textbooks are becoming the most systematic and extensive body of scholarship on Afghan law and are available not just to students at AUAF, but also to law students across the country and actors within the public and private sectors. All of our textbooks are put online and are free of charge.

These legal education projects will have many long-term benefits in building the capacity of local legal actors and nurturing the leadership of the future, but they will not produce results on a short-term timetable. The Afghanistan project has been running for seven years and next spring we will graduate our first batch of five students. The numbers will grow considerably in future years, but donors need to take a long view of the value of excellence in university education.

At least five interrelated factors contribute to the success of the legal education projects. First, again, they are staffed with people both in the developing countries and at Stanford with extraordinary human resource capacity. Our full-time international Afghan law professors are superb. They are very capable teachers. And my students who write the textbooks have world-class research and writing skills. Second, my students, but more importantly, the students in the developing countries in which we work, are demanding more and more textbooks and more and more classes. Student demand is essential to the success of the projects. Third, our curriculum is relevant; tailored to local needs and

analyzes local problems related to the law. Fourth, the Dean of Stanford Law School and the presidents and rectors of the universities with which we associate are strongly supportive. Fifth, at least for the Afghanistan project, we have a donor who understands the long-term importance of excellence in legal education.

So there you have three rule of law projects that have achieved or are achieving success in fighting corruption and increasing accountability, fighting poverty and the marginalization of disadvantaged groups, and building the capacity of local legal actors to effectuate reform. All of the projects benefited from the strength of human agency, not just in technical capacity, but also political capacity to navigate the local environment. All of the projects had flexibility in terms of implementation. Projects need to be able to adapt to ever-changing circumstances on the ground and invest in people who will exercise good judgment. All of the projects in various ways respond to local demand for accountability, for equity and equality, and for educational opportunity.