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***Interim Institutions and the Development  
Process: Opening Spaces for Reform in  
Cambodia and Indonesia***

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## **Abstract**

While there is broad agreement among scholars and practitioners on the importance of ‘good governance’, ‘the rule of law’ and ‘effective institutions’ for ensuring positive development outcomes, we have a much poorer understanding of how such goals should be realised. Whether informed by modernisation theory, Marxist perspectives or neoclassical assumptions, the prevailing imperatives guiding the work of development actors—from international agencies to national line ministries and local non-government organisations—tend to produce reforms that encourage (and in some cases actively require) rapid, linear, technically driven transitions to pre-determined end-state institutional forms deemed to be global ‘best practice’. Drawing on two very different cases from Indonesia and Cambodia, we outline an alternative, more process-oriented approach that focuses on building ‘interim institutions’—that is, formal or informal institutions conceived of in terms of their potential to engage with and incrementally transform the political economies within which they exist. Successful interim institutional approaches, we suggest, are hybrid in their nature; they are based on local knowledge but promote principles of rule-based, transparent and accountable decision making towards an end-state which emerges through a process of equitable political contestation (‘good struggles’), and is thus largely unknowable *ex ante*. A key goal of development assistance strategies should be to support the emergence of interim institutions which can both facilitate and be transformed by such contests.

**Keywords:** Interim institutions, Political contestation, Development processes, Rule of law, Local knowledge

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‘You can’t cross a chasm in two jumps.’  
Western economists to Russia, early 1990s<sup>1</sup>

‘You cross the river by feeling the stones underfoot.’  
Deng Xiaoping on the principles underpinning China’s economic reforms<sup>2</sup>

‘There is no end. There is no beginning. There is only the infinite passion of life.’  
Federico Fellini

This paper draws on two seemingly very different cases of institutional change—the first pertaining to labour arbitration in Cambodia, and the second to a participatory development project in Indonesia—to identify common implications for a more general theory of, and strategy for, governance reform. The development issues which the two narratives address could not be more different. The labour arbitration initiative was designed to address the problem of industrial disputes in Cambodia’s emerging garment sector. The Kecamatan Development Project (KDP) is a huge nationwide initiative by the Indonesian government (supported by the World Bank), launched in the aftermath of the fall of the authoritarian Suharto regime in 1998, that uses community-based facilitators and forums to allocate resources at the sub-district level; pragmatically, it was designed to support rural livelihoods and infrastructure provision, but politically it was designed to help lay the civic foundations of local democratic government. The theme linking these cases is that they demonstrate what we describe as ‘interim institutional approaches’ to the achievement of governments which are more responsive to the concerns of citizens in general, and the needs of the poor in particular.

The cornerstone of the interim institutional approach is the acknowledgment that equitable, rule-based systems for allocating resources and resolving disputes—i.e., the very content and legitimacy of modern institutions of government—emerge significantly as a product of political processes. This is important, not only because it is how effective institutions were forged in today’s wealthy countries (Bates 2000), but also because the tools which contemporary development agencies have traditionally used to promote governance reform have rested largely on technical inputs and assistance modalities, e.g., the use of international ‘best practice’ models supported by external expert-driven assistance packages and technical capacity-building programmes. While such approaches have political aspects, these are rarely engaged with explicitly. On the other hand, those who overtly problematise power often find it difficult to engage with the operational dilemmas of development practice (e.g. Carrol 2006; Li 2007)—they are

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<sup>1</sup> Adams and Brock (1993: 40). The quote per se is attributed to Jeffrey Sachs, but the text makes clear that a host of other prominent economists at the time endorsed rapid (rather than gradual) reforms in Eastern Europe.

<sup>2</sup> Adams and Brock (1993: 41) provide the words but not the source of this aphorism. We are grateful to Bin Wong for further clarification and discussion.

quick to cite instances where (or to claim that) development projects have been 'de-politicised'<sup>3</sup> but are slow to offer concrete and supportable alternatives.

The interim institutional approach offers strategies for thinking about the political aspects of governance in operational terms. It is a process-focused approach. Rather than starting from a concept of how an ideal set of 'end state' institutions might look, and encouraging (even making continued assistance conditional on) linear progress towards it, an interim institutional approach focuses from the outset on the process whereby more equitable relationships of power might be brought about. In doing this, it asks the following questions:

- 1) What spaces exist for the negotiation of development conflicts?
- 2) How can these spaces be filled with institutions that both respond to the realities of power as it is currently exercised and provide the potential to transform these in the direction of greater equity and participation?

This paper provides an initial attempt to outline a theory of interim institutional design. In doing this it first provides a brief presentation of two illustrative case studies; it then teases out from these cases the key elements of the interim institutional approach. The paper concludes with a reflection on the potential challenges, pitfalls and unresolved issues relating to the concepts it raises and the approaches it advocates. In accordance with its own core principles, we invite others working on law and governance reform to develop a body of empirically grounded case studies which explore, critique or refine the arguments presented.

### **Case 1: Labour relations in Cambodia**

Our first case study relates to labour relations in Cambodia. The context for this case is the emergence of Cambodia as a garment exporter in the mid-1990s, a situation that occurred not so much because of the natural advantages that the country had as a site for garment manufacturing, but because of its cheap labour, increased political stability, and the restrictions placed on major exporters (particularly China) as part of the Multi-Fibre Arrangements (MFAs) which regulated international trade in textiles until their expiry in December 2004. Following a rapid expansion of the industry between 1995 and 1998, the US government sought to impose quotas on Cambodia's textile exports. At the same time, local unions were becoming more active, industrial action was increasing and international labour rights groups were drawing attention to working conditions in Cambodia's factories (Polaski 2006).

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<sup>3</sup> And/or are implemented, despite their putative pro-social content or discourse, as part of an unrelenting 'neo-liberal' development agenda.

This combination of factors informed the negotiation of a bilateral trade agreement between the US and Cambodia which was concluded in January 1999. In effect, the agreement imposed quotas on a range of Cambodia's garment exports; however, building on similar clauses in other bi-lateral trade deals driven by the US, the agreement provided that Cambodia would support the implementation of 'a program to improve working conditions in the textile and apparel sector, including internationally recognised core labour standards, through the application of Cambodian labour law' (CBTA 1999: 4). Moreover, in order to provide an incentive for such improvements, the agreement also established a system whereby quotas would be increased by 14 percent<sup>4</sup> per year if the US determined that 'working conditions in the Cambodia textile and apparel sector substantially comply with such labour law and standards' (*Ibid.*: 5). The agreement created an immediate commercial incentive for improved implementation of the labour law for all stakeholders—employers, unions, and government as a whole, which auctioned the quotas to manufacturers, but crucially also for high-ranking government officials for whom rent-seeking opportunities were widely held to exist in allocation of quotas (Kolben 2004: 86). The question remained, however, whether and how the labour standards clause would be implemented, given the absence of credible country systems for enforcing the law or resolving disputes.

After some negotiation, this question was answered by the establishment of two ILO Projects (funded primarily by the US government<sup>5</sup>): one which would operate an independent system to monitor working conditions in garment factories (the working conditions improvement project); and another which focused on the development of transparent, fair and expeditious dispute procedures (the labour dispute resolution project). It is the work of this latter project, and in particular its efforts in supporting the establishment of an arbitration tribunal for labour disputes, that we pick up in this case study.<sup>6</sup>

Compared to the working conditions improvement project which stressed, at least in its initial phases, the need for reliable and independent monitoring of working conditions in the garment sector, the labour dispute resolution project was an attempt at an engagement with the question of how labour rights and harmonious industrial relations could be promoted using country systems. The core problem in this respect was the lack of credible institutions for law enforcement and dispute resolution. When the project was established in 2002 there were basically three ways to deal with labour disputes: (1) negotiated outcomes could be sought, either at the enterprise level or without recourse to industrial action; (2) the issue could be

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<sup>4</sup> This figure was increased to 18 percent when the agreement was extended in 2001.

<sup>5</sup> Financial contributions from the Royal Government of Cambodia and the Garment Manufacturers Association of Cambodia were also received.

<sup>6</sup> For further analysis of the trade agreement, see Abrami (2003), Polaski (2004, 2006), Kolben (2004).

referred to the Ministry of Labour for conciliation or enforcement proceedings; or (3) disputes could be dealt with by the courts.

Each of these methods of dispute resolution had significant drawbacks. Systems of grievance handling at the factory level were under-developed and the failure to manage conflict was leading to increasing levels of (often violent) industrial action. The labour inspectorate was responsible for both conciliation of labour disputes and enforcement of the law, but suffered from all of the deficiencies of the Cambodian public service. Capacity was limited and, at around US\$40 per month, official wages were well below that required to support a family. In these circumstances, labour inspectors developed reliance upon informal payments from industry to support their livelihoods and, as such, their credibility as neutral conciliators or enforcers of the law was heavily compromised. The courts suffered from similar problems. The UN Special Representative for Human Rights in Cambodia summarised these as follows:

The issue of impunity lies at the centre of problems in the administration of justice and continues to be compounded by the lack of neutrality and independence in the judicial and law enforcement systems, as well as by a low level of professionalism in those bodies. Inadequate funds are allocated to the administration of justice. The judiciary is subject to executive interference and open to corruption from interested parties. Judges have concerns about their personal security (...). Law enforcement officials often fail to enforce court orders and judgements, and sometimes act in open defiance of their terms.<sup>7</sup>

There existed a range of possible responses to these circumstances. A provision for a labour court existed in the labour law, and a rights-based approach to industrial relations could have led to a focus on the judiciary, with the argument that equitable institutions for the enforcement of law are the *sine qua non* of rights. However, based on his experience working on judicial reform in Cambodia, the ILO's Chief Technical Advisor came to the conclusion that it is very difficult to get classical institutions of the rule of law (those which are both independent and have the power to make binding decisions) to work in settings where government is dominated by a strong neo-patrimonial executive.<sup>8</sup> The result of pursuing the rule of law directly, he anticipated from observing previous attempts at legal and judicial reform in Cambodia, would be either that (a) the process of setting up a new labour court would be stalled or (b) the new institution would be immediately captured by powerful government and private sector interests. As a result, a choice was made to focus on the establishment of a new arbitration tribunal, called the Arbitration Council, a body which was also provided for in the 1997 law but had

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<sup>7</sup> Third Report to the UN General Assembly, dated 22 August 2003, paragraph 25. The World Bank's own 'rule of law' measure (Kaufmann, Kraay and Mastruzzi 2007) ranked Cambodia 180th in 2006 (out of over 200 countries and territories), a position little changed from that in 2000, when the arbitration council was proposed.

<sup>8</sup> See also Kheang (2004: 5), who posits that Cambodia is a 'state dominated by networks of patron-clientelism [and] sustained by corruption' and that this state of affairs fundamentally 'inhibits the development of an independent judicial system.'

never been operationalised.<sup>9</sup> Articles 309 to 317 of the Cambodian Labour Law set out a framework for the arbitration of those collective labour disputes that could not be resolved by conciliation. The body to conduct these arbitrations, called the Arbitration Council, was established by Prakas (Ministerial Proclamation) 338 of 2002 (Pr. 338/2002) and the first cohort of 21 arbitrators began their terms of office on 1 May 2003.

The Arbitration Council is a tripartite body composed of members nominated by unions, employer organisations and the government. Despite this composition, the Arbitration Council also has aspirations to independence, in that its members are not considered representatives of the stakeholder groups which nominated them. Rather, they are required to approach each case on its merits. In order to enhance the independence of the newly established institution, the ILO coordinated the selection of the first cohort of arbitrators and ensured that none of the major stakeholder groups had objections to any of the appointments.<sup>10</sup>

Each case which is referred to the Arbitration Council is decided by an arbitration panel of three. Of these three members, one is chosen by each of the parties to the dispute and the third arbitrator (the chairperson of the panel) is chosen by the two arbitrators already selected by the parties. This panel is responsible for hearing the dispute, and making orders, with a view to settling the dispute between the parties. In making such orders, the panel is free to grant any civil remedy or relief which it deems just and fair in the circumstances.

Though arbitration is a mandatory part of the process for the resolution of collective labour disputes under Cambodian law, decisions or awards of the Arbitration Council are generally non-binding. An award will be enforceable immediately (a) if the parties have agreed in writing to be bound by the award, or (b) if the parties are bound by a collective agreement which provides for binding arbitration. In all other cases, a party who does not wish to be bound by an award may file an opposition within eight days of receiving notification of the award, with the effect that the award is without legal effect. If, on the other hand, neither party files an opposition to the award within the time permitted, the award becomes enforceable. Technically, enforcement would require one party to commence proceedings with the court, in which case the court should issue an order for the execution of the award unless there were clear reasons to set the award aside.<sup>11</sup> To date, however, we are not aware of any cases in which this has occurred. Practically, it is not expected that enforcement would be feasible, due

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<sup>9</sup> Though there is no indication that it was ever operational, an Arbitration Council is also provided for in the 1972 Labour Law. The origins of the institution are not clear, though French (or ILO) influence is indicated as similar provisions exist in the Labor Code of the Cameroon.

<sup>10</sup> The Arbitration Council has won praise for its independence and responsiveness. A recent USAID report on transparency and accountability in Cambodia identified it as the 'a model of legal credibility and transparency in an environment where the lack of rule of law remains the norm' (USAID 2005: 79). Similarly, Ear (2007: 85) describes the Council as a 'singular exception to the donors' failure in rule of law' and a recent survey on commercial law in Cambodia suggests that 'The success of the Labor Arbitration Council makes it a promising regional model.'

<sup>11</sup> As provided for in Pr. 38/2002.

to (a) the high costs and delays involved in court proceedings in Cambodia,<sup>12</sup> and (b) the susceptibility of the courts to corruption, which would most likely result in one or other party to the dispute having the case heard *de novo*.<sup>13</sup> In any case, fully reasoned decisions of the Council are published and circulated, both in hard copy and via the internet.<sup>14</sup>

As a tripartite body that generally issues non-binding and practically unenforceable awards, the Arbitration Council is something of a hybrid between an institution of the rule of law and a forum for social dialogue between organised labour and management. Yet it would appear from the Cambodian experience that this sort of institution can be used as a tool for focusing and legitimating collective action, with a view to the development of more harmonious, equitable and constructive industrial relations. According to its own statistics, the Arbitration Council's case load has increased sharply since its inception in May 2003. From 31 in the first year it has risen to 158 cases in 2008. The success rate has remained steady; of the 575 cases received through September 2008, 68 percent were reported as resolved successfully.

For all its accomplishments, the Arbitration Council is not without its critics. Representatives of the union movement complain that enterprises do not always give effect to arbitral awards. Accordingly, they argue it would be better if the Arbitration Council could issue binding awards, or if a labour court which had greater power existed. Says one enterprise-based union representative: 'The Arbitration Council is good but the Arbitration Council's awards are not enforceable. For example, in this company the Arbitration Council made an order that the company had to pay the 10,100 riel health-check fee but the company simply didn't.' Notes another: 'The Arbitration Council has no power ... Nowadays they intend to create a labour court. It is good. I think we already have [an] Arbitration Council; we should make the Arbitration Council have more power.'

Employers have been generally supportive of the institution, and the peak organisation of Cambodian garment manufacturers (GMAC) continues to recommend its use to its members. Their position appears to be that Cambodia relies on a 'sweatshop-free' reputation, which means that factories must comply with the Labour Law and that, therefore, there is a need for a legal institution that impartially adjudicates on questions of law. Nevertheless, GMAC has on occasions been critical of what it perceives to be a pro-worker bias at the council.

From a more analytical point of view, one must also acknowledge that there are clear limits to the effectiveness of the Arbitration Council in the current context. For example, it deals almost

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<sup>12</sup> See for example World Bank (2008), which rates the cost of enforcing a standard commercial contract at 102.7 percent of the value of the contract.

<sup>13</sup> A recent corruption perception survey reported that bribes are paid in all or nearly all court cases (Center for Social Development 2005).

<sup>14</sup> Awards are available online at [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org) [accessed 25 March 2009]. For a discussion of the impact of the publication of these decisions, see Adler (2005).

exclusively with cases arising from the garment and tourism industries. Workers from these sectors are able to use the Arbitration Council because they are organised and because their employers are dealing with international clientele for whom labour standards are an issue. Workers in other sectors, particularly the most vulnerable of workers—for example child labourers, plantation workers and those working in the informal sector—are generally unorganised, and without support from trade unions they will have great difficulty in accessing a negotiation-based forum such as the Arbitration Council. Similarly, the Arbitration Council offers no form of redress for individual grievances unless they are supported by a union; and even where they are supported by unions, the case resolution rates cited above show a significant proportion of cases where employers (as they are legally entitled to do) simply object to and then refuse to implement the Council's awards.

These inherent limitations notwithstanding, the important accomplishments of the Arbitration Council, substantively and politically, should not be minimised. Faced with the daunting challenge of finding a viable mechanism for conducting negotiations between a weak neo-patrimonial state, well-resourced international companies, and fledgling labour unions representing the interests of a membership comprised disproportionately of young women, the Council has managed to address hundreds of different cases and, for the most part, find workable resolutions minimally acceptable to all parties. Imperfect and (some might say) informal as these resolutions may be, they nonetheless have the legitimacy and content forged through a domestic political process that all sides can own and uphold.

## **Case 2: The Kecamatan Development Project, Indonesia**

The East Asia financial crisis in 1997-1998 created multiple crises in Indonesia. For its citizens it was a welfare and livelihoods crisis (especially for the urban poor), but for its government and for international development agencies it was an overwhelming economic and legitimisation crisis, on the one hand leading to the toppling of the long-standing Suharto regime and, on the other hand, eroding the credibility of the World Bank in one of its largest client countries, only a few years after having openly declared Suharto's Indonesia to be 'the jewel in its crown' (see Guggenheim 2006). The immediate development problem was largely one of ensuring financial stability and domestic security, tasks for which a combination of local technical expertise and an infusion of external resources (both financial and human) were relatively well suited, even if, in the preceding years, many of these same 'experts' had overlooked, or been oblivious to, the extent and impending consequences of the economic mismanagement unfolding around them. The key medium-term development problem, however, was at once both clear and complex, namely: how to design and implement a local new democratic governance infrastructure to perform the vital everyday functions of the new proto-democratic state. Given the legacy of its recent autocratic history (which had largely ignored or subverted social institutions), its enormous geographic, demographic

and linguistic diversity, and the intensity of its ongoing successionist conflicts (only most visibly in East Timor and Aceh), it was not at all obvious what Indonesia's first policy step should be.

If this problem had been construed as just another technocratic challenge,<sup>15</sup> the response would have been some variant on 'importing' the blueprints for those democratic state institutions deemed to be most effective ('best practice') elsewhere, followed by a series of 'capacity building' workshops by foreign 'experts' for government officials, loans to help build the institutions for upholding these blueprints (elections, courts, law schools), and perhaps exhortations to encourage 'transparency' and 'accountability' through the holding of periodic elections and the opening up of the press. As with the economic transitions in Eastern Europe earlier in the decade, the imperatives of the development agencies, the assumptions underpinning their advice, and the perceived immediacy of the crisis would most likely have combined to produce a technocratic assistance package predicated on an assumption that institution building, and correcting the issues that occur during implementation, is largely 'a technical problem that [can] be solved with more technical assistance, better fiduciary controls, and tighter supervision by project managers' (Guggenheim 2006: 126). Put differently, the strong preference of these imperatives would be to attempt to make the political transition from autocracy to democracy in a single bound.

This did not happen. Instead, the government and the World Bank (in partnership with other donor agencies) embarked on a very different strategy, one that enabled both the new government and the Bank to distance themselves politically from the recent past, while also putting in motion a new approach to delivering resources and building the local state in Indonesia, one designed on social rather than economic theory. This approach—made manifest as the Kecamatan Development Project (KDP)—centres on using local representative community forums (*kecamatan* councils, a long-standing though at-the-time largely defunct social institution in Indonesia) as a forum wherein villagers, not government officials or external experts, determine the form and location of small-scale development projects via a competitive bidding process. In KDP, groups of villagers (at least two of which must comprise predominantly women) submit proposals for small-scale ventures of their choosing; these proposals are then assessed on the basis of their technical merit, cost-effectiveness, sustainability, likely poverty impact, and number of beneficiaries. During the preparation of their proposals, all villagers have access to both social facilitators (to ensure that the project's relatively simple rules and procedures are understood and upheld, and associated grievances promptly addressed) and technical assistance (e.g., engineers, to assist with the design and costing of infrastructure proposals): these twin inputs maximise the likelihood of the *kecamatan* council being able to preside over a suitably diverse range of high-quality proposals, and

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<sup>15</sup> Such technocratic challenges were numerous (and in their own very difficult) in the post-1997 moment; the closing of numerous banks, for example.

the resultant allocation mechanism being carried out smoothly. Transparency is maintained by (a) requiring all proposals to contain at least three quotes for materials and services, and for these quotes to be announced at the review meeting, (b) giving journalists full access to meetings and the opportunity to report openly (i.e., without review by KDP officials) on what they see and hear, and (c) ensuring that the outcomes of decision meetings are posted on community bulletin boards, giving some villagers an unprecedented experience of participation in local decision-making.

As befits the nature of a competition, some proposals are funded and some are not, generating the potential for dissent and subversion; as such, a vital task of both the forums and facilitators is to ensure that meritocratic decisions are made and upheld, that the basis of final funding decisions is made clear and public, and that individuals or groups with grievances (or just routine feedback) have an accessible place to express them, wherein their concerns will be taken seriously.

At one important level, KDP is simply (or perhaps not so simply) a more efficient and effective mechanism of getting valued development resources to a designated target group (in this case, the rural poor). Empirical research (Alatas 2005) has demonstrated that roads built by KDP, for example, are of higher quality, are better placed, and built at lower cost than comparable ones constructed by government engineers. This alone is an important accomplishment, and in certain administrative quarters is sufficient to justify (or at least vindicate) the KDP approach. KDP's more ambitious agenda, however, is concerned not only with the efficient delivery of standard development *products* but also with the more equitable transformation of local political structures and decision-making *processes*. The key challenge was (and remains) changing the mindset of both government and World Bank officials from a modus operandi driven by the imperatives of agency supply to one in which projects respond to community demand (Guggenheim 2006: 126). It seeks to achieve these goals by giving villagers, especially marginalised groups (such as women and the poor), their first ever experience of participation in local decision-making and priority-setting, believing that the visceral experience of engaging in qualitatively different procedures of equitable deliberation will establish vital (and potentially irreversible) precedents, with enduring spillover effects into other realms of social and political life. A recent major study (Barron, Diprose and Woolcock, forthcoming) suggests that such processes have been effective in this regard, at least with respect to enhancing the capacity of KDP participants—vis-à-vis participants in other development projects—to constructively manage everyday disputes, especially those generated by the project itself (e.g., by the competitive bidding mechanism).

If KDP is built on different principles to those of more orthodox development projects, it is instructive to understand the diversity of forces, and the factors underpinning their convergence, that made such a design both thinkable and do-able.<sup>16</sup> Some of these

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<sup>16</sup> Guggenheim (2006) provides a detailed first-hand account of these issues.

forces—e.g., the broader economic and political crises in which Indonesia and the World Bank were enmeshed<sup>17</sup>—have already been alluded to, but others were also significant. First, KDP was in part a product of a major social research project, the Local Level Institutions (LLI) study. This research was conducted to assess some of the central hypotheses emerging from Putnam's (1993) seminal study of civil life and government effectiveness in Italy. The LLI findings stressed the importance to villagers of their own social institutions for managing external infusions of resources as well as distributional (and other) conflicts, even as it demonstrated just how diverse and adaptable those social institutions were. It also identified the sub-district (*kecamatan*), not the hamlet below or the district (*kabupaten*) above, as the administrative unit villagers felt comfortable approaching. Crucially, LLI also provided a core team of Indonesian and World Bank staff with direct and extensive field experience of current conditions in the villages.<sup>18</sup> Second, KDP was not an imported organisational blueprint, nor solely the end product of scholarly pursuits, but in part a refined and formalised extension of existing Indonesian social institutions and norms of reciprocity (e.g., *gotong royong*<sup>19</sup>). It was also a beneficiary of the lessons of earlier Indonesian development programmes (such as the Village Infrastructure Project) which had shown, for example, that illiterate villagers were quite capable of interacting with formal organisations when procedural rules, accounting requirements, and the terms of engagement were kept relentlessly simple and uniform. Thirdly, KDP's guiding principles were consistent with a more general trend towards administrative decentralisation in East Asia generally and Indonesia in particular, thereby expanding its appeal to (or at least reducing resistance to it among) those with broader oversight of development policies and programmes.

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<sup>17</sup> It is important to note that KDP was initially conceived in the final days, not the aftermath, of the Suharto regime. The impetus to rapidly scale it up and extend its national coverage—including to urban areas via the Urban Poverty Project (UPP), a KDP clone—however, was boosted enormously by the political pressures faced by all the post-Suharto governments, namely to juxtapose current policies with past practices, and to quell actual or potential civic unrest. And, as indicated, in the post-Suharto era the World Bank also had a deep abiding interest in supporting projects (such as KDP and UPP) that were both qualitatively different *and* able to absorb large amounts of money.

<sup>18</sup> Importantly, this process repeated itself when Indonesia faced its next major crisis, this time a natural disaster in the form of the Asian tsunami of December 2004. Leaving over 130,000 dead in Aceh alone, one upside of the tragedy was that it gave both sides in the 30-year civil war in Aceh—the Indonesian government and the Free Aceh Movement (GAM)—a pretext for moving steadily towards a peace agreement, which was duly signed in August 2005 in Helsinki. The key members of the World Bank team dispatched to assist with development activities surrounding the consolidation of the peace process were front-line staff from the Bank's 'KDP and Community Conflict Negotiation' study, a large social research project of 68 collected case studies documenting the dynamics of local conflict trajectories and the role, for better or worse, of development projects in shaping those trajectories (see Barron, Diprose and Woolcock forthcoming). By their own account, this intensive and extensive research experience gave the staff concerned a good measure of the skills and confidence they needed to do such sensitive (and suddenly high profile) work in post-tsunami Aceh.

<sup>19</sup> On this, see Bowen (2003).

Taken together, the conjoining of these otherwise disparate factors constitutes a historically unique, and perhaps unrepeatably, event. At one level, this should properly be interpreted as grounds for considerable caution regarding the extent to which projects—no matter how putatively ‘successful’, empirically grounded or thoughtfully conceived<sup>20</sup>—can or should be replicated elsewhere. At another level, however, it behoves us to identify and focus on the principles—rather than the specific defining administrative features—that underlie, explicitly or implicitly, particular development interventions, especially those concerned with enhancing the quality of ‘institutions’ and ‘governance’.

### **Common lessons from different cases: Principles in practice**

These are but two cases, and naturally one should be wary of reading too much into them. Nevertheless, we have outlined them here because we think they represent innovative and instructive responses to a particular *type* of development problem, one which the development field now broadly agrees is important, but for which its dominant response modality is largely ill-equipped. This problem manifests itself in calls for ‘governance reform’ and ‘building the rule of law’, but the analytical category into which it falls vis-à-vis other more familiar development problems (such as building roads, irrigation systems and telecommunications networks) remains largely unexplored, and its significance underappreciated (Evans 2004). If the problem of ‘governance’ is merely a variant on these more familiar problems, then the dominant response modality—i.e., hiring teams of external technical experts, convening high-level meetings with line ministry counterparts, hosting week-long training seminars, working to known completion timelines and assessing success against the attainment of clear performance metrics—will readily accommodate it. We suggest, however, that governance is a qualitatively different problem from road building,<sup>21</sup> and that, accordingly, a qualitatively different response modality is required to implement and assess responses.<sup>22</sup> The two cases outlined above give a sense of what these different responses might look like in practice; in this section we seek to outline what these differences might look like in theory.

As a first analytical approximation, governance and legal reform can be seen as a type of development issue that we might call an ‘adaptive’, as opposed to a ‘technical’, problem (see Heifetz 1994). Technical problems draw on universal professional

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<sup>20</sup> On the role of case studies in the development of theory, see George and Bennett (2005).

<sup>21</sup> This is not to suggest, of course, that these familiar development problems are ‘easy’ and the response to them correspondingly straightforward; they clearly are neither. We are arguing, however, that technical problems match more readily onto a well-established administrative infrastructure and body of ‘universal’ professional knowledge than do large components of governance and legal reform problems, and that attempts to respond to such problems with the response modality of technical problems is itself a reason they so often prove intractable.

<sup>22</sup> On the importance of understanding how different types of project responses are likely to generate very different impact trajectories over time, see Woolcock (2009).

knowledge (e.g., medicine, physics), have solutions that are (in principle) knowable *ex ante*, and, given adequate time and resources, can be largely be solved by small teams of experts (i.e., ‘ten smart people’<sup>23</sup>). Taming hyperinflation, enhancing crop yields and building sewers are all examples of technical development problems. Actually implementing the solution may of course require many other skills and logistical support structures, but the core analytical problem itself—i.e., what should be done, by whom—is primarily technical in nature; it is eminently reasonable to expect that the ‘ten smart people’ (in this instance: macroeconomists, agronomists and civil engineers) can discern what needs to be done, can outline a plausible implementation timeline and budget, and speak credibly to various stakeholders (including everyday citizens) about the expected benefits and costs. If these people are not available locally, it is relatively unproblematic to hire them from abroad. Few of these conditions hold, we argue, with institutional reform.

A moment’s reflection should make this clear. Institutional development necessarily brings about (even requires) ‘great transformations’ (Polanyi 1944) in rules, identities, social relations, political structures and configurations of power. These transformations rarely happen in an integrated, predictable, or ‘smooth’ manner; instead, they are likely to be piecemeal, surprising and punctuated (i.e., characterised by relatively long periods of stasis and stability that give way to short moments of abrupt—perhaps even radical or violent—change as the prevailing political equilibrium finally gives way). One overarching development goal, and one of the defining features of a ‘modern’ state, is the building of a coherent but countervailing network of institutions wherein the political energy discharged through ongoing social and economic change finds a constructive (rather than disabling or destructive) outlet.

If long time periods and complex punctuated transitions accompanied by intense conflict are the historical norm for how institutional change occurs, the prevailing organisational imperatives of most development actors—from multilateral agencies to national ministries to local non-government organisations—favour policy and project interventions that seek to get as quickly as possible to whatever is currently deemed to be the ideal institutional ‘end state’. These actors embody, require and perpetuate these imperatives primarily because, as modern institutions, it is how they render ‘legible’ (Scott 1998) ‘non-modern’ institutions, peoples and landscapes, in all their enormous idiosyncratic variety, for the purposes of management, control and exchange. The academic disciplines most congenial to this modality of development interaction—most notably engineering, accounting and economics—thus have the highest influence and enjoy the greatest prestige. Irrespective of a given country’s (or community’s) ‘starting point’, these imperatives favour technical expert-driven processes of institutional change that seek to ‘jump straight to Weber’ (Pritchett and Woolcock 2004)—that is, to an idealised counterpart bureaucratic structure, or, less ambitiously, to put in place an idealised

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<sup>23</sup> This phrase comes from Pritchett and Woolcock (2004).

regulatory structure and then seek to realise it through a gradual process of socialisation and capacity building. Of course, this is rarely how effective institutions were created and consolidated in today's wealthy countries, but because the dominant assumptions underpinning contemporary development assistance imperatives imply that institutions are largely technical (rather than inherently political) creations, it readily follows—just as it did for socialist 'great leaps forward' campaigns and capitalist 'shock therapy' consultations before them—that today's poor countries seeking to enhance their 'good governance' strategies should not have to 'reinvent the wheel', but simply adopt the 'best practices' and 'tool kits' currently on display elsewhere, preferably as quickly as possible.

Such approaches are flawed, not simply on efficiency grounds (i.e., to which the counter-response should not be: if only more local knowledge was taken into account, then we would get 'better' institutions faster); rather, the very problem of institutional design is so deeply complex precisely because it embodies constitutive elements that are at once technocratic, standardised, *and* idiosyncratic. The technical elements can be addressed by diligent (professional) experts; the standardised elements can be borrowed from elsewhere; but the answer to or resolution of the idiosyncratic elements (which are large and interactive) are inherently unknown and unknowable *ex ante*. Moreover, the identification and articulation of 'the problem' will itself require political processes of negotiation and contestation, even as 'the solution' will entail not just arriving at 'an answer' (in the technical sense) through such procedures, but also depend on building committed constituencies to sustain support for it. This is the sense in which institutional problems require 'political' solutions: their content, legitimacy, longevity and adaptability necessarily turn on their having been subjected to intense scrutiny from a broad cross-section of stakeholders, with all of the compromises, disappointments and 'messiness' that this inherently entails. Development policy, at least in the realm of governance and institution building, is thus a task of ensuring 'good struggles'.

For these reasons (among others), the passage to 'modern' institutions—contra both modernisation and Marxist theories—is not necessarily one of convergence with respect to institutional form. Observed more closely, even 'western' institutions (e.g., courts, banks) are very different from one another; though the functions they may perform are similar, the forms they take—and how they came to assume those forms historically—are in fact quite different. Even (or especially) when some institutional ideas have been 'borrowed' (or imposed) from elsewhere, their specific content and legitimacy turns on the extent to which they have been forged in and through a political process broadly deemed to be equitable (i.e., inclusive, accountable, transparent). If the desired institutional end-state (e.g. a commercial or criminal code) is not simply a modified version of a particular 'western' counterpart (but is largely unknown and unknowable at the outset); if the goal is not to reach that end-state (whatever its form) in a single leap (but in incremental steps); and if the content and legitimacy of the decision-making process to produce that end-state institution requires inputs from and responsiveness to

a broad cross-section of society, then the more immediate challenge is one of building 'interim institutions', or opening local political spaces wherein the 'good struggles' for reform can be waged. This process more closely approximates how 'effective' institutions came to exist (and continue to function) in today's rich countries (Haggard et al 2008<sup>24</sup>), yet it provides a distinctive challenge to the dominant modus operandi of contemporary development policy and practice.

The interim institutional approach engages with these problems by trying to smooth, while still engaging with, the struggles inherent to the modernisation process. Hence interim institutions must have the potential to *engage with*, while also participating in the *transformation of*, the political economies within which they exist. While Guggenheim is clear that KDP has succeeded in establishing a cost-effective system for the delivery of local development initiatives that respond to the needs of Indonesian villagers, he speaks of KDP as 'a wager that Indonesia's reform will succeed in moving away from the development authoritarianism of the New Order government toward a model built on representative institutions' (138). But in fact it was more than a wager; the betting metaphor suggests that the punter only benefits from, but is not able to influence, the outcome being bet on. Drawing this distinction, KDP was more of an investment than a wager; an investment predicated on the assumption that the sort of transformation Guggenheim discusses will come about and that KDP might be able to contribute to that process. Thus he describes KDP as contributing to a 'reordering (..) of local political relationships' (2006: 138), and finds that the 'true test' of the success of the project will lie in the 'extent these changes carry over into other areas of community decision making'. While acknowledging that the project has different goals for different stakeholders (134), for Guggenheim, KDP was aimed at nothing less than the transformation (albeit gradual) of state–society relations in Indonesia.

In pursuit of this transformative agenda, it is notable that KDP and the Arbitration Council are both of the state and outside the state. There are good reasons for this. The no-man's-land between the state and civil society is fertile ground for an interim institution. The scope for reform of the central institutions of the state (such as the courts or intra-government fiscal transfer systems) will be narrow, as the vested interests defending the status quo around these institutions are generally strong. On the other hand, the state matters, and the potential to promote reform from outside—i.e., from the 'demand side' alone—will often be limited. The characteristic of being sufficiently removed from the state to escape the pull of its vested interests, but close enough to have reform spill over into the mainstream, may be a key characteristic of interim institutions. In the case of KDP, this hybrid status was achieved by cooperating with the government at the national

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<sup>24</sup> 'Notwithstanding the passion of the development policy community for spreading judicial best practice', Haggard et al (2008: 221) correctly argue, 'caution should be exercised in the introduction of an alien legal system. ... [I]t is a grave error to think of law as a technology that can be readily transferred elsewhere. Rather than a movable technical apparatus, law is a set of institutions deeply embedded in particular political, economic, and social settings.'

and sub-district levels but significantly bypassing the district and the province. It was also pursued by engaging a cadre of facilitators who were employed by the state but were outside the civil service. This latter point was crucial in establishing an organisational culture within KDP that was significantly different from that of the government at large. The establishment of the Arbitration Council follows a similar path. Though the Council is a statutory body created by the Labour Law (1997), the political economy of its creation allowed for the ILO to lead the process of selecting arbitrators. This provided for the selection of arbitrators who came to their posts as genuine independents and having been endorsed (at the level of 'no objection') by both unions and employer organisations. While the Council's core administration is carried out by a secretariat staffed by officials from the Ministry of Labour, arbitrators were provided with long-term on-the-job training under a programme supported by the ILO. Once again, we see hybrid structures, with interim institutions existing on the fringes of the state.

A number of strategies appear to be instrumental in achieving this goal of moving from engagement to transformation:

### **1. Finding 'cracks'**

To the extent that interim institutional approaches promote more equitable state–society relations, they need to identify and exploit cracks in the infrastructure of power (cf. Hirschman 1963). Approaching the sorts of transformations contemplated around issues where the power of existing elites is at its strongest and most entrenched would be unlikely to succeed. Identification of potential avenues for reform requires detailed knowledge of the local, national and international political economy. In relation to KDP, Guggenheim (2006:135) describes how its designers capitalised on '[h]istorical developments in Indonesia and the World Bank [which] created a dynamic that opened the door for a national community development program'. Initially (in the mid-1990s) these were elements based within the Suharto government, who perceived a need 'to shore up its base among the masses' (118), but who was confronted by 'the consolidation of a rentier bureaucracy', which had 'left the government with virtually no way to implement its own programs, even when it genuinely wanted to shore up its base among the increasingly restive population' (119). At the same time, the World Bank was confronted by an increasingly well-articulated critique of its focus on national level policy reform and large infrastructure projects. Both of these factors, when combined with the changes in Bank management which occurred following the appointment of James Wolfensohn to the presidency in 1995, opened the political space for the development of a community development project like KDP. This space was further prised open following the 1997 Asian financial crisis and the ensuing (re)emergence of widespread poverty, on the one hand, and radical successionist movements, on the other. These factors allowed for the rapid scaling up of KDP in the post-Suharto era. Awareness of the macro-level political economy was complemented with an understanding of the

dynamics of local institutions and decision making which was emerging from a programme of ethnographic research (the local level institution studies, LLIs). These studies gave reformers within the World Bank and the Indonesian government the empirical evidence required to support a critique of existing development practice and establish the KDP model.

In a similar fashion, the opportunity to establish an independent Arbitration Council in Cambodia was enabled by a set of political factors. These included conditionalities relating to labour rights contained in bilateral trade agreements with the US; the emergence of a potentially volatile union movement; and growing sensitivities of international consumers to the conditions in which their clothing was produced. While this set of factors did not cause a transformation in labour relations of itself, it did create an enabling environment for a set of incremental reforms, of which the work on labour arbitration described above was one. It is interesting to note that the understanding of the labour relations work which was done in Cambodia was not research-based. Rather, reform rested more on intuitive understandings of the local context which emerged from the personal and professional experience of individuals working for the ILO and the Cambodian Ministry of Labour.

## **2. Managing conflict**

Development resources are introduced into community contexts that have strong (if non-obvious to outsiders) pre-existing rules determining decision-making procedures and power relations. Elites can be presumed to like these rules and relations the way they are, and thus can be expected to resist or actively subvert attempts to introduce systems or priorities hostile to their interests or preferences. Development efforts that endeavour to 'empower' otherwise marginalised groups, for example, can be expected to generate conflict precisely because any such empowerment, by definition, is likely to challenge prevailing arrangements.

Conflict is also likely to stem from failed development efforts—that is, where expectations are raised regarding the provision of new resources and the means of allocating them, but where some combination of broader systematic breakdown (e.g., an economic crisis), malfeasance or incompetence by front-line staff, or 'elite capture' (i.e., the propensity for elites to secure for themselves a disproportionate share of development resources) results in those expectations being dashed. Whether because of 'failure' or 'success', then, development projects that engage with and seek to change rules systems and political structures are likely to generate conflict. Accordingly, providing clear, legitimate and accessible mechanisms for responding to actual and/or potential sources of conflict is a central pillar of the interim institutions approach. In this sense, however, all such projects put into motion processes that are merely a microcosm of the larger dynamics of social transformation that characterises 'development'. Class

relations, gender dynamics, demographic distributions and the political salience of different occupational groups (among other things) are all altered by economic growth, rising levels of education, improved healthcare, expanded access to justice, and new employment opportunities; historically, no country's passage from being mostly poor to mostly rich has occurred without extended and extensive episodes of conflict (much of it violent) (Bates 2000).

Awareness of the possibility (indeed likelihood) of conflict as a constant companion to development is one thing, but discerning what exactly to do in response to that awareness is quite another. National policymakers and development agencies are most immediately responsible for the policies and projects they oversee, and thus at a minimum should ensure that they have adequate procedures in place for addressing the conflicts those policies and projects generate. But if it is the broader development process itself that is also inherently a driver of contention, then political, business and civic leaders need to tap into and harness new sets of ideas about how related struggles might get solved in context-specific ways, even as the ferment unleashed by such encouragement may itself stoke discontent. It is precisely because the resolution of this kind of conflict is unknowable *ex ante*, however, that the gradual process of crafting political solutions to political problems via political mechanisms should be pursued. It is through such a process that the content, legitimacy and supportability of any such solution are forged.

### **3. Principles and process: The importance of crafting equitable 'rules of the game'**

Interim institutional design, by its very nature, is focused more on the process of social change and the functions and principles that guide that process, rather than what the form, 'content' or outcomes of such a process might look like. Guggenheim states that 'unlike most projects, KDP has virtually no 'content', no specification about the kinds of groups that can join the project and the kinds of proposals they can make' (2006: 127). He sees KDP as 'deceptively simple', with the entire project consisting of 'little more than a disbursement system linked to a facilitated planning and management procedure' (127). Similarly, at one level the Arbitration Council is merely a forum for resolving disputes. It does not predetermine who should come before it, what sorts of problems it will solve or what the outcomes of those disputes will be. Yet, despite what might be seen as a lack of content, both programmes are explicitly principle-based, reflecting what might be seen as the 'core principles' of an equitable 'rule-based' system: independence and transparency of decision making, effective participation, due process and non-discrimination (Sage and Woolcock 2006). These principles are in fact the 'content' of the programmes; it is these principles that mean that marginalised groups can begin to participate in the process of 'negotiating rights'.

As outlined above, KDP operates on the basis of a simple set of rules that arguably embody these principles.<sup>25</sup> Members of the decision-making council are elected and all those submitting proposals are invited to participate in the meetings. Decision-making meetings are open to the general public (and thus the scrutiny of the media) and once decisions are made they are publicised on village notice boards. Further, decisions at the *kecamatan* level are final, meaning that those in power further up the hierarchy cannot interfere in the process, although an avenue for complaints is available at the provincial level. The principle of non-discrimination is reflected in KDP's participatory and meritocratic model of decision making, but also through what can be seen as 'affirmative action' provisions, such as the requirement that village groups submitting proposals must send at least two women to the *kecamatan* decision meeting and the fact that both a man and a woman must be elected to represent the project within the village.

At the Arbitration Council, relatively straightforward procedural and substantive regulations direct operations and ensure a level of independence and non-discrimination. As outlined above, members of the council are nominated by all the key stakeholder groups and are not considered representatives of those groups. Hearings are conducted with both parties present and decisions, based on published laws and regulations, are made on the merits of each case. Reasons for decisions are published.

It is not unreasonable to argue that the power of these institutions is based in part on the non-threatening yet 'transformative' nature of these principles. There is growing evidence, for example, that international human rights principles and language, such as non-discrimination, are important tools for social justice movements around the world (Merry 2006) and have been over a longer historical timeframe (Hunt 2007). In this way, law can be a powerful normative tool for changing and consolidating both social norms and institutional practices. It is important, however, to warn against expecting too much from enforceable norms in situations of unequal power. Instructive in this regard are the insights of Braithwaite and Drahos (2000) into the inaccessibility of coercive systems to the weak and their preference for building law from the bottom up in circumstances of significant power imbalance: 'Dialogue builds concern and commitment first; when there is shared concern, a regime can move on to agreement on principles, then to agreement on rules, then to commitment to enforce rules' (Braithwaite and Drahos 2000: 553-554)<sup>26</sup>.

Reflecting an understanding of the value of adopting and normalising principles and practices before law making, KDP has been introduced in phases. The first phase of KDP focused on planning, defining roles of facilitators and independent monitoring; the next phase focused on enhancing the capacity of key players, while the most recent

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<sup>25</sup> On the principles underpinning the World Bank's governance programme in Indonesia more generally, see Wong and Guggenheim (2005) and Guggenheim (2008).

<sup>26</sup> Debates pertaining to the normative power of law also apply here.

phase (which includes expansion into a full nationwide programme) has focused on institutionalising the system by enshrining the key principles and procedures in district laws and regulations. Such an approach may thus initially appear (and indeed be) politically benign but evolve over time into something that is actually (or potentially) quite revolutionary. To connect this point with those made above, filling organisational and political 'cracks' with initiatives that seem benign but in fact have transformative potential is a major reason for focusing on processes and functions rather than institutional forms (i.e., what institutions 'look like' and whether they are 'legible' to external actors) during periods of institutional reform. This transformative potential for non-violent change is enhanced when it opens spaces for 'good struggles' that are mediated by principles of equity (fair and accessible rules of the game), transparency (making public how and why decisions made) and legitimacy (promoting context-specific mechanisms for dealing with conflict, claims and grievances that have themselves emerged through an equitable process of political contestation).<sup>27</sup>

#### **4. Harnessing of collective action and diverse viewpoints**

*... democracies must rely on institutions that encourage collective interpretation through social processes of interaction, deliberation and reasoning. Political debates and struggles then connect institutional principles and practices and relate them to the larger issues, how society can and ought to be organized and governed. Doing so, they fashion and re-fashion collective identities and defining features of the polity—its long-term normative commitments and causal beliefs, its concepts of the common good, justice, and reason, and its organizing principles and power relations. (March and Olsen 2006: 10)*

As indicated above, the interim institutional approach is, among other things, an attempt to engage constructively with particular *types* of development problems, namely those—such as institution building and reform—that require inputs from a range of interests whose motives, resources and expectations may be diametrically opposed. The issue being addressed—working conditions, resource allocation procedures, land title claims—presents itself in such a way that all relevant stakeholders at least have an interest in engaging, whether it be to initiate or thwart proposed change. As such, the question then becomes: precisely because the question as to nature of the most desirable result is not settled, how can dialogue or contestation between the contending parties be structured in a way that ensures that the losers remain invested in the process? Assuring the legitimacy of the process is crucial in this regard, and legitimacy, to cite March and Olson (2006: 10) again, 'depends not only on showing that actions accomplish appropriate objectives, but also that actors behave in accordance with (...) procedures ingrained in a culture.'

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<sup>27</sup> See also Rao (2008), who argues that such spaces for negotiation and dispute resolution (in developing countries especially, but also elsewhere) can be called 'symbolic public goods'.

In this instance, the diversity of the stakeholders themselves may become an asset if it increases the likelihood that more and better alternatives will emerge,<sup>28</sup> but only if the tone and terms of engagement are equitable and legitimate. This is especially important for erstwhile marginalised groups, whose adverse circumstances and discursive routines will further undermine their ‘capacity to engage’ (Gibson and Woolcock 2008) in such deliberative settings. At their best, however, both KDP and the Arbitration Council provide venues wherein the ‘playing field’ is rendered at least somewhat more equitable than it would be otherwise, by altering the terms of recognition between the contending parties, and the modalities by which outcomes are reached. Understanding also that the positions of the marginalised are unlikely to be heard individually, the interim institutional approach legitimates and provide a space for collective action.

### **5. The importance of actors: Policy entrepreneurs and local translators**

Both of the cases presented here highlight the central role that different actors have on the processes of reform at the level of both policy and practice. Socio-political change is instigated, directed and facilitated by people. There is no technical solution that can be inserted into a political crisis (such as occurred in Indonesia in the late 1990s) or that can be used to solve socio-economic pressures (such as those surrounding the garment industry in Cambodia around the same time). People—both leaders and doers—are key to such processes. What is often unique about these people is their ability to cross institutional and cultural lines, to ‘translate’ and to help build coalitions between different sets of interests—i.e., to help them to ‘look both ways’ (Merry 2006). In so doing, they strive to walk the fine line between being knowledgeable insiders and impartial outsiders. Importantly, this is the case whether they operate at the policy or the operational level.

Leaders or ‘policy entrepreneurs’ operate at the policy level and are often key to the development of effective, innovative and ‘adaptive’ approaches to reform. By understanding the socio-political dynamics within which they are working, policy entrepreneurs are able to identify critical points of potential change in the socio-political landscape (*finding cracks*), and promote and/or establish institutional spaces for negotiating reform (*opening spaces*). These institutional spaces are not, however, designed as technical solutions to a problem, but rather as spaces wherein ‘good struggles’ can be facilitated. In turn, the effective management of contestation, or ‘good struggles’—such as community groups using an equitable and accessible forum to compete for limited resources, or employers reaching an agreement about employment conditions with employees—is heavily dependent on the existence of good ‘front-line providers’, who again must be able to foster, translate and facilitate relationships

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<sup>28</sup> See Page (2007) for a formal model and demonstration of the benefits of diversity in decision making.

between different social groups; the manner in which such 'policies' are actually experienced by citizen/clients turns heavily on the discretion of such front-line providers, while the very act of delivering them necessarily requires large numbers of face-to-face transactions (Pritchett and Woolcock 2004). Resolving labour disputes and instigating local development projects are tasks that inherently cannot be mechanised (and are not, even in high-income countries); effective entrepreneurs, translators, and facilitators are essential to such processes (see also Rondinelli 1993).

Policy entrepreneurs and good 'translators' are clearly present in both the case studies we have presented. In Cambodia, the ILO's Chief Technical Advisor (CTA) pushed for the establishment of an institution that served as a neutral forum for the resolution of contests between workers and employers, yet which remained non-threatening to—and possibly therefore possibly independent—by remaining outside of the central legal and administrative frameworks. The Chief Technical Advisor was able to do so, in part, because of his position of neutrality vis-à-vis key stakeholders. The tripartite structure of the ILO (representing workers, governments and employers) gives it a unique status among international organisations (whose members are states). The CTA, with a significant background in Cambodia, was more of a 'translator' than the average international official and it is tempting to suggest that his embeddedness in the local context carried with it a little more *resolve* than that with which many projects that *skid across the surface* of a country like Cambodia are run.<sup>29</sup> Crucially, the front-line actors in the process—i.e., those chosen to sit on the Arbitration Council itself—were chosen in part because of their ability to be at once outside the main structures of political power, while being accepted by those in power.

In the case of KDP, the Bank's social development team self-consciously, and in an entrepreneurial manner, developed an approach to governance reform based on social theory, despite the large pressures and incentives to focus more narrowly on 'economic' policy, both institutionally within the Bank and in the face of what was deemed an 'economic' crisis. Being based on social theory, the resulting institution also focused on actors involved in community decision making, i.e., representative community groups assisted by trained facilitators. While focused on elected village representatives who shepherd projects through the various village institutions and decision-making processes, these village facilitators are supported by multiple tiers of translators and facilitators at the *kecamatan*, district and provincial levels. These front-line 'policy entrepreneurs' are active agents of and catalysts for social change, mediating the space between the formal rules and procedures of KDP, on the one hand, and, on the other, the idiosyncratic realities and particularities of the communities in which they are based.

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<sup>29</sup> The allusion here is to Chopra (2002: 995-998), who in a scathing assessment of the United Nations' work in Timor Leste notes that the 'shallow resolve of international officials (...) [could not] confront resistance or liberation movements or warlords and factions playing to win (...) [and thus] the whole state-building enterprise (...) skidded on the surface of the country...'

## **Conclusion: A self-critique and an invitation**

Arguments for the beneficence of ‘good struggles’ as the basis for a development strategy concerned with designing ‘interim institutions’ are not without their own problems.<sup>30</sup> Some, for example, could reasonably argue that advocating for institutions that are less than ‘the global best practice’ makes one an apologist for half-baked or inadequate solutions. Similarly, in an age of globalisation, interim institutions may be overwhelmed by larger forces and processes. One of the key claims of advocates for interim institutions is that their power resides in large part through their capacity to generate influential demonstration effects—that is, that by introducing new ‘democratic’ precedents and procedures for local decision making and priority setting, they render unacceptable previous practices tilted heavily (and consistently) in favour of local elites. Critics could retort (perhaps not unreasonably) that such effects are likely to be sporadic, and ineffectual in the face of long-standing and deeply-entrenched networks of patronage politics. Finally, some have also argued that this approach merely puts a social institutional mask on an otherwise persistent ‘neo-liberal’ (‘post Washington consensus’) agenda.

The response to these concerns is relatively straightforward: (a) ‘half-baked’ institutions only warrant that pejorative label when the end state towards which they are aspiring is known and desirable. With most processes of institutional change, however, it is not at all obvious what the end state is, and thus whether or not any given institutional form is ‘fully’, ‘half-’ or ‘not at all’ baked. We may have a better solution for another context, but if that solution is unlikely to work in the context in which we are working, another solution is not half-baked; (b) similar arguments apply to supporting ‘non-rule-of-law’ institutions; the crucial (overriding?) point is that the ‘interim institution’ provides a space in and through which different parties—some of whom may otherwise be separated by vast power and cultural differences—can engage with one another. Just because an institution for (say) resolving conflict outwardly displays the features of a rule-of-law system, does not ensure that all parties will ascribe to its legitimacy and processes, or will be able to function effectively within it (indeed, they may actively resist rule-of-law-based resolution if they believe—not inaccurately—that such a system will inherently favour the other party (or parties)).

The concern that an ‘interim institutional’ approach is likely to be ineffectual in the face of entrenched and/or vastly more powerful interests is a serious one. Doubtless there will be many episodes in which precisely this will happen. In and of itself, however, such a result should not discredit the general approach, not least because the same criticism

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<sup>30</sup> On the virtues and limits of interim governance institutions in consolidating peace agreements, see Lyons (2004) and Rothchild and Roeder (2005). Our arguments in this paper pertain to broader processes of institutional change that accompany economic development.

can be levelled at any approach to reform. It is in the nature of identifying solutions to these types of problems that they are likely to encounter resistance from those who have a stake in maintaining the status quo, and that they will inherently be imperfect (and thus unlikely to satisfy everyone). Resistance or rejection may of course come from other quarters, including the fact that the response may indeed be entirely inappropriate and/or carelessly implemented. Discerning which of these reasons underlies the ‘failure’ is the task of senior leaders, but for present purposes a short-run setback per se should not be a basis for abandoning an interim institutional approach. Social movements of all kinds in search of progressive social change, from universal suffrage to ending slavery, all had to make a first step and all encountered initial resistance, but these early setbacks—or so it became clear after the fact—were a crucial platform on which, over time, incrementally more effective political strategies were assembled and ever-larger supportive constituencies mobilised.

Are arguments for incrementalism and hybrid forms of engagement between formal and informal systems a conservative (‘neoliberal’) strategy of institutional reform? Perhaps, but compared to what? If one’s preferred model of institutional change is radical action, anarchism or subversion, then anything else is bound, by definition, to be ‘conservative’. Conversely, if one supports the long-standing tradition of ‘legal transplants’, wherein rules systems from one (Western) country are imported into and imposed upon another, the interim institutional approach seems relatively progressive.<sup>31</sup> These are not ‘straw man’ alternatives; over the last 40 years the literature has been dominated, implicitly if not explicitly, by contributions at both ends of the spectrum. The intellectual roots of the interim institutional approach, rather, are grounded in pragmatism, political history, legal anthropology and economic sociology—which is to say, in trying to identify effective strategies for institutional reform that derive their content and legitimacy from the historical and cultural context in which they are embedded, and which take seriously the need to provide tangible incentives and transparent rules systems to structure and mediate interaction between parties when their respective interests, resources and power may be otherwise qualitatively different and/or fundamentally misaligned.

We conclude with an invitation. As outlined above, an interim institution is a step along a path; improving the quality of the ‘map’ to guide the taking of the next steps, like an interim institution itself, requires inputs from a broad range of stakeholders, the better to determine the destination, the nature and location of obstacles, and the preferred means of getting there. In asserting that the crafting and transformation of legal, political and social institutions is not just a technical challenge but one that also requires the waging of ‘good contests’, we invite others to contribute to, critique, even refute the arguments

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<sup>31</sup> From a human rights perspective, one could argue that the role of powerful international agencies is not to offer ‘interim’ options, but rather to stand up to entrenched interests and assert or uphold ‘universal’ standards. That may be so in clear-cut cases; for present purposes the essence of our argument applies most forcefully to more ambiguous (yet prosaic) challenges of institutional reform.

we have outlined here. The sorts of questions that might be addressed (and/or the debates that might be had) include: To what extent does the category of interim institutions provide a useful lens for development practitioners and how could it be refined to do so? What other cases in development practice can usefully be thought of as interim institutions, and what do these tell us about the phenomenon? What sorts of institutions need to be developed using interim approaches, as opposed to those that we understand and can control well enough to design *ex ante* with the desired effect?

If scholarship advances through contestation conducted within familiar norms of intellectual inquiry and deliberation, so too may emerging ideas on how best to respond to the types of development problems encapsulated in the challenge of enhancing the quality of governance and building the rule of law.

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