



World Development Report 2017

Governance and the Law

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Executive summary - “Not new, but overdue.”

On Wednesday 15th February at the Dutch MFA, Mr. Edouard al-Dahdah, senior public sector specialist at the World Bank presented the 2017 World Development Report on Governance and the Law, accompanied by reflections by Mrs. Engelshoven (vice mayor, The Hague), Mr. Heemskerk (Netherlands Executive Director of the Board of the World Bank Group) and Mr Rebergen (Director General International Cooperation).

The report was warmly received, with some hailing it as a game-changing document. It certainly reads differently from what one might expect of a World Bank resource. Not only does it assess the economic drivers and consequences of poor governance and shaky rule of law, it also forays into the realm of political decision-making, analyzing why some policies and laws are effective and others fail. In doing so, it encourages practitioners and donors to eschew best practice, and move towards approaches that are best fit. Moreover, it explicitly probes the ways in which power asymmetries underpin poor governance and unresponsive institutions, perpetuating inequality. In response to that asymmetry, it also offers some approaches to shift power even in the face of resistance from elites.

The report also highlights the need for interventions to be contextual, focus clearly on addressing problems specific to each society, and ensure work prioritizes improving institutional functions over form. It stresses the importance of being politically smart, cognizant of local norms and rules, and recommends being more realistic and committed to long-term, incremental improvements. And it extols the potential of being as concerned with the role of law (which is concerned with how it functions for people and influences behavior) as much as the rule of law.

In doing so, the report confirms much of what many have been saying for a while. While there are some excellent analytical tools presented throughout, the value of this report lies not just in what is presented, but in the fact that the World Bank is talking about the role of power and politics at all. Indeed as Mr. al-Dahdah, one of the principal authors of the report, remarked, WDR17 is ‘not so much new, but overdue.’

In that sense, the WDR17 is an important document that throws much needed weight behind the shift towards context-specific, conflict sensitive, long-term, peaceful and political interventions committed to encouraging more responsive, accountable and inclusive governance and rule of law institutions.

Key concepts

In his presentation, Mr. al-Dahdah outlined two questions at the core of the report: why do ineffective policies often persist? And why do some that are known to be beneficial remain elusive?

In looking to tackle these, he quickly dismissed three easy answers that policy analysts have typically reached for: policies fail because they did not follow best practice; because of a lack of capacity; or because of a lack of political will. Instead the report argues that, above all else, it is the *functions* of governance and institutions that we must take task with rather than their capacities or form. To this end, WDR17 determines that three key institutional functions matter for effective governance: enabling *commitment* to policies in the face of changing circumstances; enhancing *coordination* to change expectations and elicit socially desirable actions by all; and inducing *cooperation* to prevent free riding and induce voluntary compliance.

However, the most important point WDR17 has to make is that the quality of these functions are influenced by power. We heard how power plays out as contestation within a decision making space, or 'policy arena,' in which actors (both state and non-state) interact to design and implement policies. The quality and inclusivity of that space and those policies directly affect peace, development and other outcomes. By focusing on the political economy of this policy arena, WDR17 departs from the World Bank's technical roots. In doing so, the report frames

governance and the rule of law not as mere instruments of law and order, but as institutions subject to contestation and bargaining over how power is understood, exercised and ultimately experienced.



Where commitment, coordination and cooperation are lacking, and where there are power asymmetries, it is unlikely that governance will be equitable, conflict sensitive, and/or broad based. Indeed the report indicates it is more likely that these functions will have been captured, marked by clientelism, and exclusive by design. What is more, these patterns of capture and exclusion may also be locally locked into norms and rules.

Figure 1, Source, Mr. al-Dahdah's presentation

This is where the *role* of law, as opposed to the rule, comes into play. WDR17 demonstrates how formal state law interacts with a range of alternative legal, social and informal rule systems (see fig. 1). The norms that emerge from this complex series of relationships serve to order power, dictate the actors involved in contestation and their levels of ambition, and shape behavior. Thinking about the law in this way encourages better appreciation of how it works in practice for people (or not), and goes beyond a focus on the mere forms of the laws themselves – the existence which by no means leads to their intended effects.

Operationalizing the Report

The presentation of the WDR17 was followed by four group discussions each focused on its relevance to interventions on development, the rule of law, governance, and fragility. Feedback from participants indicated that implementing the approaches in the report will require donor commitment to test and learn new ways of working. Ineffective governance can be persistent, but positive change is possible – although not if implementers stick to more of the same. Instead donors and practitioners must commit to thinking much more about influencing the behaviors of elites and other power groups operating within the policy arena. The WDR17 proffers the following entry points for doing this:

- Providing incentives – When the cost of losing power is low, elites are more likely to introduce accountability rules
- Challenging beliefs – International diffusion of norms can reshape the objectives of actors in the policy arena
- Encouraging sensitive contestability – for example, lifting restrictions on civil society and the media can reduce barriers to participation in the policy arena

Approaches along these lines can mitigate power asymmetries and close implementation gaps in order to bring about more inclusive and effective rules, policies and outcomes (fig. 2).

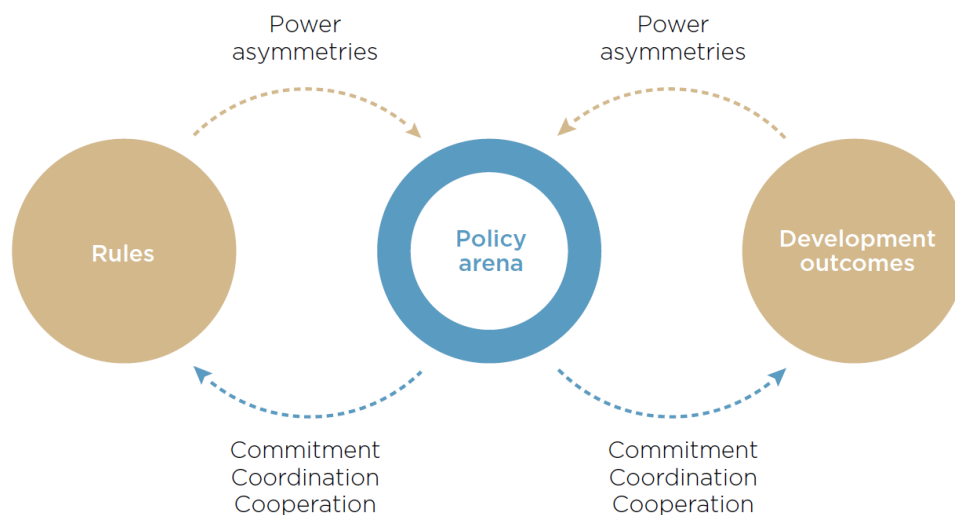


Figure 2, Source: WDR 2017 team. Note: Rules refers to formal and informal rules (norms). Development outcomes, in the context of this report, refers to security, growth, and equity. The actors in the policy arena can be grouped into elites, citizens, and international actors.

Conclusion – Worth the weight

The launch of the report also adds the World Bank's weight behind the notion that exporting institutions is largely facile. Institutions emerge from long, unending processes of negotiation that no isomorphic mimicry can replicate. Donors and practitioners would do well to think less about technical compliance, and more deeply about interventions that transform any discriminatory norms, rules and power asymmetries negatively influencing these negotiations.

This is of course easier said than done, and participants raised some highly pertinent questions in the final question and answer session. These included, are growth, equity and security mutually compatible, and if not what are the trade-offs? How can the report help advance the SDGs, and in particular goal 16? What type of interventions best challenge norms in ways that are conflict sensitive? Does the report's pragmatism signal a departure from a rights-based approach? How does the report's implied assumption of (normative) leadership among donors hold up in an increasingly multi-polar world? How open are we to supporting functions that work but are delivered by forms antithetical to our values? And, importantly, what impact will WDR17 have on the way the World Bank operates, given their chartered commitment to remain apolitical (cognizant that its economic work is, of course, highly politicized)?

The speakers acknowledged that much remains to be seen as the WDR17 moves from policy to practice. But perhaps what these questions do demonstrate is the need for much better analysis of problems, power, relationships, norms, opportunities and sensitivities affecting governance and legal structures and institutions. Better data and a deeper and richer political economy analysis could allow policy makers to make better choices at the right moments to nudge policies and behaviors in a positive direction – one where the functions of governance and the law uphold peace, inclusivity, human rights, and equality.



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