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JUSTICE LIKE A RIVER:

WHY DEVELOPMENT NEEDS JUSTICE

Jamie McIntosh and Hiroko Sawai

Without legal protection from violence, the lives and the livelihoods of the global poor are at perpetual risk. Four billion people on our planet live in that risk.

Most of the world's poor are consigned to "live outside the ambit of the law."¹ Lacking safety, security, and protection, the global poor take the brunt of the world's abuse: trafficking for labour or sex, violence, robbery, illegal detention, illegal property seizure, extortion, sexual assault, and the like. Laws against these things exist, but "even the best laws are mere paper tigers [when] poor people cannot use the justice system to give them teeth."²

People cannot flourish, economically or otherwise, in the face of pervasive injustice.

Human development "aims to enlarge people's freedoms to do and be what they value and have reason to value . . . [It] empowers people to be responsible and innovative actors . . . [viewing] people not as passive victims but as entrepreneurs and active agents . . ." ³ Injustice strips poor of power, thwarting responsible and creative enterprise.

Gary Haugen, the founder of International Justice Mission, has been instrumental in calling global attention to the crisis of lawlessness faced by the global poor. Living

outside a functional justice system, he argues, makes all other humanitarian investments and efforts unsustainable: micro-business is thwarted when money from a micro-loan is stolen. Education initiatives fall short of their intended aims of empowering young girls when the pupils are molested by their teachers or neighbours with impunity. A widow remains unable to till her crops with her new farming equipment because both it and her land have unlawfully been taken from her by violent relatives. When the poor are unable to use the laws in place to ward off corruption, extortion, oppression, or abuse, injustice thrives and development collapses. As a result of corruption, even development assistance itself is open to being misappropriated by those in power at various levels.

As Haugen and Victor Boutros argued in an article in *Foreign Affairs* entitled “And Justice for All: Enforcing Human Rights for the World’s Poor,” a failed justice system precludes any kind of sustainable development. After witnessing such vulnerability first-

hand through prior international development work, it was the efficacy of IJM’s comprehensive approach that prompted me to launch IJM Canada—mobilizing this country to help ensure the protection of the global poor through functional justice systems.

Canada and the world must make it a top priority to bring this vulnerability to an end.

THE EFFECTS OF BROKEN PUBLIC JUSTICE SYSTEMS

There is compelling evidence that when the poor are able to benefit from the protection of a functioning public justice system, they can and do prosper—and the benefits can be far-reaching, extending to the national level.

Individuals left unprotected by their public justice systems—perhaps enslaved as bonded labourers, perhaps denied a basic education due to a sexual assault that resulted in a pregnancy—are frequently left without the opportunity to enter the formal economy as a result of the abuse.

With a working justice system, the number of those able to enter the formal economy increases, the tax base is widened, and national revenue is increased. Local markets are expanded and financial activity at all levels is increased. As rule of law becomes entrenched in practice, the systems of oppression that exploited the vulnerable poor begin

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to crumble. As the benefits from rule of law begin expand, increasing numbers of people will come to expect—and even demand—a functioning justice system.⁴ This increase in financial activity and market development can have international implications as well. Foreign direct investment (FDI), enterprise, and trade relationships are easier to attract when partner nations and investors feel secure.

The work of building functioning justice systems does not replace all other development work, but

Haugen argues that a functioning public justice system is necessary to make every other development initiative sustainable.

Functioning justice systems are an inseparable companion to development. The implications for the international development community are clear: helping to build effective public justice systems in the developing world must be part of the development agenda of multilateral institutions, non-governmental organizations, and national foreign aid programs.

In developing contexts, the various components of the public justice system—the police, prosecutors, defense counsel, and courts—often work against the poor in providing the protections of the law. Consequently, those in poverty do not view the justice system as a place of protection. When justice systems are broken or weighted against the poor, judges can be bribed or witnesses can be induced or intimidated into giving false testimony against the victim. The poor are often harassed or brutalized by the police.

Even in cases where local police are dedicated to serving the interests of justice, they often lack the resources, training, and mandate to conduct proactive investigations. In the end, poor people in need of legal assistance typically do not approach the police for help; rather, they run away from them. Likewise, for the poor, access to basic legal resources to defend against injustice or to fend off its advance is practically non-existent. A poor person rarely has the financial means to pay legal fees, whether to negotiate a contract or defend him or herself in court. Without access to state-sponsored legal representation, the poor must navigate the complexities of their nation's legal system without an advocate or a guide. Consequently, the innocent can languish in prison for years on unsubstantiated accusations.⁵ Even if a poor person could afford to pay for legal representation, in a developing country he or she might not be able to find an available lawyer to take on the case.

BONDED LABOUR

The absence of a public justice system that works for the poor has allowed practices such as debt bondage to proliferate, despite laws criminalizing this practice around the world. Bonded labour is a contemporary form of slavery in which an employer offers a small loan in exchange for work at the employer's facility until the debt is repaid. However, the labourer (and often his or her family) becomes enslaved in an exploitative working arrangement wherein the minimal wages, false charges against those wages, and dramatically inflated interest rates make repayment of the loan impossible. The existence of specific laws against the practice means little in practice for the millions of people forced to work in debt bondage at rice mills, rock quarries, brick kilns, silk farms, salt pans, fisheries, and other industries all over South Asian countries.

Development and poverty alleviation initiatives — whether agricultural programs, microfinance, training programs, or similar endeavours— are of no benefit to bonded

labourers who lack basic human freedoms. Bonded labourers have no choice about where they live and work, or how they survive. Often they work in extremely dangerous conditions and for oppressively long hours, are paid less than subsistence wages, and face an increasing burden of debt (from exorbitant interest charged on the original loan or artificial deductions against their wages.)

The enslavement of millions of its citizens in debt bondage significantly hampers a country's development objectives. The International Labour Organisation has found a high correlation between poverty and bonded labour. Moreover, considering the high correlation, the ILO posited that bonded labourers undoubtedly fall within the 522 million poor people in South Asia.⁶ People enter into a situation of bonded labour as a response to an economic crisis—a home washed away by floods, a hungry child, a necessary medical procedure—but their bond also keeps them trapped in poverty. According to calculations by the ILO, in the Asia-Pacific region, the total amount of unpaid

wages to people in forced labour is estimated at approximately US\$ 8.9 billion annually.⁷ This amount, of course, is lost to the country's economy both in terms of market activity and the country's tax base.

The number of children exploited as bonded labourers also ensures generational poverty. Child labourers face major health and physical risks: they work long hours and are required to perform tasks for which they are physically and developmentally unprepared. They are frequently precluded from obtaining an education, often abused, and exposed to dangerous chemicals. Such exploitation impairs their health and social and cognitive development, and also solidifies their fate as unskilled, low-paid workers.

ILLEGAL PROPERTY GRABBING AND FOOD SECURITY

The absence of a functioning public justice system that protects the poor also hampers development in sub-Saharan Africa. For example, throughout the region, widows are often the victims of succession-

related property grabbing. The United Nations reports that 30% of all Ugandan widows have been victims of illegal land seizure.⁸ Although almost all African countries have laws preventing gender discrimination and protecting the inheritance rights of women, land succession is often guided in practice by distortions of customary law. When a husband dies, the widow is often ejected from her home through intimidation, threats, and physical violence. For the widow and her children, being forced off their land means the loss of adequate housing and the primary means by which to feed themselves and secure an income. The lack of protection of women's land rights also has direct implications for the development of agriculture and food security for the entire region.

According to the International Labour Organisation, women in Africa produce approximately 80% of the continent's food, mainly through subsistence agriculture on small land-holding.⁹ However, African women own less than 2% of the land.¹⁰ Women also do most

of the work in storing, processing, transporting, and marketing food. Thus, securing women's land rights becomes a priority, not only for gender equality but also for food security. Property-grabbing separates land from the women who work it, hampering the productivity of the seized land and undermining food security and economic development. Research has shown that when women farmers receive the same levels of education and experience and farm inputs as men, they can increase their yields for some crops by 22 percent. But if women have no security as landowners, this promise can never be realized.¹¹

COMBATTING HIV/AIDS

Property grabbing also undermines the effort to combat the HIV/AIDS pandemic in sub-Saharan Africa. Without the enforcement of property-grabbing laws, widows in sub-Saharan Africa are more susceptible to the customary practice of "widowhood cleansing" or "widow inheritance" and are at risk of acquiring HIV/AIDS.¹² A case study by Human Rights

Watch showed that “Kenya’s raging HIV/AIDS epidemic thrives on women’s property rights violations,”¹³ and found that the regions within Kenya with the common practice of wife inheritance and widowhood cleansing were also the regions that had the highest percentage of HIV infections.¹⁴ Other women driven from their homes and forced into destitution by property grabbing turn to prostitution as the only alternative to starvation for themselves and their children, increasing the risk of both contracting and spreading HIV/AIDS.

For widows who are suffering from HIV/AIDS themselves, violations of their property and inheritance rights make them less able to cope with the detrimental effects of the disease. They are unable to obtain nutritious foods that they would otherwise grow themselves to maintain their health in the face of HIV infection; they lose assets that they could use for medical care, and are deprived of the shelter they need to endure this debilitating disease. Conversely, research has shown that a secure home and all that comes with it allows women and

girls to better mitigate the negative personal and financial impact of HIV/AIDS, and that it may actually *prevent* women from contracting the disease.¹⁵

REFORMING THE PUBLIC JUSTICE SYSTEM IN THE DEVELOPING WORLD

There is a general consensus that upholding women’s property and inheritance rights is of critical importance in strategies to ensure food security in Africa and to combat the AIDS pandemic.¹⁶ There is also no question that having millions of poor people in South Asia enslaved in debt bondage is both morally repugnant and practically devastating for human development. The challenge, however, is not in creating more laws to protect women’s property rights or to criminalize slavery and debt bondage—those already exist. The challenge instead is to regularly enforce those laws already in place.

Canada’s foreign aid strategies have included “rule of law” initiatives. But when initiatives focus on reforming institutions (such as

training the judiciary and lawyers or reforming court processes), they meet with limited success in actually enforcing rights on behalf of the poor.¹⁷ Because law enforcement occurs on the ground level, strategies that develop the capacities of street-level law enforcement are paramount—in particular, as they affect the poor.

THE CASEWORK MODEL

International Justice Mission has pioneered a promising model: human rights lawyers and law enforcement professionals collaborate with local law enforcement in the developing world to identify individual victims and assist them in obtaining justice within the local public justice system. IJM is able to use the data from a large volume of individual cases to gather concrete information for assessing what structural changes are necessary to make the justice system work for the poor.

For instance, in addressing the needs of widows who have suffered from property grabbing in Uganda, Rwanda, and Zambia, IJM uses this

collaborative casework approach to reach a legally binding solution that helps victims return to their lawful home and secure the return of stolen property by directly representing the victim through negotiation and mediation, or through civil litigation if necessary. In cases of severe abuse

The challenge is to regularly enforce those laws already in place.

in which the wrongdoer refuses to rectify his misdeeds, IJM facilitates the criminal investigation and prosecution of perpetrators, in order to deter similar future crimes.

IJM's experience of doing casework over nine years in Uganda has helped identify the areas in the Ugandan public justice system that allow property grabbing to occur with impunity—including issues of access to the court system, costs of legal representation, lack of capacity of the local police to investigate and prosecute property grabbing crimes, and lack of public knowledge of succession-related laws.¹⁸ Having identified the points at which the public justice system

has failed to afford widows and orphans protection against property grabbing, the casework approach then addresses those gaps through training local leaders, women's groups, and community members on the problem of property grabbing; providing training on writing wills; training police on property grabbing offenses and how to effectively investigate and prosecute such cases; and providing *pro bono* legal services.

Thus the casework approach helps individual victims find redress for the injustice they suffer, serves as an essential diagnostic and assessment tool in identifying the specific challenges of building effective public justice systems, and starts the process of addressing those specific challenges.

The collaborative casework approach also provides valuable training for local public officials in the context of actual cases. In India, caseworkers from IJM investigate and document cases of debt bondage, partner with the local police to release the bonded labourers and their families from the facilities where they are held,

and ensure that the freed slaves obtain release certificates through the local magistrate.¹⁹ IJM lawyers also work to pursue perpetrator accountability, so that slave owners are prosecuted and given sentences commensurate with their crimes. The casework approach creates an opportunity for police officers, judges and magistrates, and public prosecutors to hone and develop their professional skills. Working collaboratively on actual cases and enforcing the laws on behalf of the poor results in gains for the local authorities—public recognition for integrity and competence. As the local authorities receive support and training while experiencing rare success in enforcing the laws, many begin to take initiative to learn to do their job well, starting a process by which the public justice system begins to work for the poor.

EVALUATING THE CASEWORK MODEL

The efficacy of the collaborative casework model was demonstrated recently in a multi-year pilot, "Project Lantern." It was designed to produce a replicable model for reducing the

prevalence of sex trafficking and the commercial sexual exploitation of children in Metro Cebu, the Philippines. Over a four-year period, IJM worked with local law enforcement by providing information concerning suspected sex traffickers, supporting the arrest and prosecution of sex traffickers, ensuring proper care of rescued victims, and building the capacity of local counter-trafficking stakeholders in Cebu through training and professional support.

A study conducted by independent researchers found a game-changing 79% reduction in the availability of minors for sex after the four years, a dramatic reduction of the public market in minors trafficked for commercial sexual exploitation.²⁰

The study concluded that “at an overall level, Project Lantern’s law enforcement-based approach to combating sex trafficking in Metro Cebu has demonstrated its merit by contributing to significantly enhanced police operations, services to rescued victims, and prosecution of criminals as well as to a public justice system that is

increasingly capable and mobilized to crack down on and deter sex traffickers.”²¹

Although Project Lantern is relatively small-scale and the collaborative casework approach undoubtedly requires sustained commitment over a long period of time,²² it is clear that when focused resources are dedicated to rescuing and restoring victims, punishing perpetrators, strengthening the capacity of local law enforcement, and bolstering political will, an under-functioning public justice system can be transformed into one that protects vulnerable individuals.

EVALUATING THE CASEWORK APPROACH

The poor in the developing world eke out a precarious existence, not only because of their poverty, but often because the law affords them no protection from abuse and injustice. In that context, development flounders. However, when the public justice system provides protection from exploitation, corruption, and

oppression, the poor can thrive. Thus a public justice system that provides equal protection for all citizens of a nation, including its poorest and most disadvantaged, is a necessary companion to development. As Haugen and others have argued,

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this must have clear implications for the global development agenda. In order for enterprise or development to be effective, investment must simultaneously be made in the country's public justice system.

For example:

- Where funding and programs are aimed towards agricultural development and food security in Africa, an indispensable component should be funding for and initiatives to build a functioning public justice system to prevent property grabbing

from widows and vulnerable women. In fact, the U.N. Food and Agricultural Organization recommends that women's "inheritance and contract rights . . . be made a priority food security issue."²³

- Investments into reforms to uphold women's inheritance and property must also be an essential component of the strategy to combat AIDS/HIV in Africa, since the failure to prevent property grabbing leads to extreme vulnerability for women impacted by and can even contribute to the spread of HIV/AIDS.
- Programs and initiatives to advance universal primary education among the poor in South Asia will be far more effective if investment is also made into the public justice system so that bonded labour is ended, perpetrators are punished, and the children and families held in debt bondage are released and allowed a chance at obtaining an education.

These investments into reforming the public justice systems of

developing countries must be country and context specific, and must result in making justice a practical reality in the lives of poor and vulnerable individuals.

If introduced alongside current Canadian international development initiatives, investment in a collaborative casework model—like the one advanced by IJM—can result in functioning public justice systems that ultimately advance enterprise and development initiatives.

A case-driven approach, by starting with one particular type

of injustice in one geographic area, provides a clear picture of specific obstacles in the public justice system in that area; thus, targeted resource investment can effectively strengthen the system. Building on the success of a transformed justice system in one sector, the process can be repeated and the gains leveraged to help replicate the process elsewhere, rolling a momentum ending oppression, protecting the vulnerable, and sustaining an environment within which humans can flourish.

NOTES

1. United Nations Commission on Legal Empowerment of the Poor. *Making the Law Work for Everyone Vol 1* (2008): 25, accessed February 28, 2011 [http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20\(final%20rpt\).pdf](http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20(final%20rpt).pdf)
2. Ibid, 31
3. Sabina Alkire, "Human Development: Definitions, Critiques, and Related Concepts" *Human Development Research Paper 2010/01* (2010): 43-44, accessed March 1, 2011 http://hdr.undp.org/en/reports/global/hdr2010/papers/HDRP_2010_01.pdf
4. United Nations Commission, 4-5.
5. The International Center for Prison Studies at King's College in London found that nearly 70 percent (67% of pre-trial detainees/remand prisoners) of Indian prisoners have never been convicted of any crime. International Center for Prison Studies at King's College, London "World Prison Brief for India" (2008), accessed Feb. 28, 2011 http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=94
6. International Labour Organization, *A Global Alliance Against Forced Labour* (2005): 31, accessed March 3, 2011 www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf, also citing World Bank, *World Development Report 2000-2001: Attacking poverty*, 22.
7. International Labour Organization, "The Cost of Coercion", *International Labour Conference* (2009): 32, accessed March 3 2011 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf. See also International Labour Organization, "New ILO report says "cost of coercion" to workers in forced labour surpasses USD 20 billion per year", *Press Release* (2009), accessed March 3, 2011 http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_106219/lang-en/index.htm
8. Geraldine Sealey, "African widows left destitute by relatives snatching property" *Christian Science Monitor* (2003) at 9, accessed March 3, 2011 <http://www.csmonitor.com/2003/0513/p07s02-woaf.html>.
9. International Labour Organization, *Global Trends for Women* (2009) at 15, accessed March 30, 2011 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_103456.pdf
10. UNIFEM, *Facts and Figures on Gender and Climate Change*, accessed 27

April 2011 http://www.unifem.org/partnerships/climate_change/facts_figures.php#1

11. Based on research by International Food Policy Research Institute in Kenya, cited in *Global Trends for Women*, 15,

12. “Wife inheritance” involves the widow being forced to marry the brother or even the father of her deceased husband; “widowhood cleansing” involves forced sexual activity with a social outcast to remove the evil spirit of the deceased husband.

13. Janet Walsh from “Congressional Testimony on HIV/AIDS and Women’s Property Rights Violations in Sub-Saharan Africa” *United Nations Department of Economic and Social Affairs Conference*, April 10, 2003, accessed March 30, 2011 <http://esaconf.un.org/WB/default.asp?action=9&boardid=26&read=1830&fid=317>

14. Human Rights Watch, *Double Standards: Women’s Property Rights Violations and their Consequences*, (2003) accessed March 29, 2011 <http://www.hrw.org/en/node/12352/section/4>.

15. Centre on Housing Rights and Evictions, *Shelter from the Storm: Women’s Housing Rights and the Struggle against HIV/AIDS in Sub-Saharan Africa* (2009) at 206, accessed March 5, 2011 <http://www.cohre.org/sites/default/>

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16. For instance, the UN Food and Agricultural Organization recommends that women’s “inheritance and contract rights should be made a priority food security issue” (UN FAO, *Women: the Key to Food Security*, accessed March 25, 2011 <http://www.fao.org/docrep/x0171e/x0171e07.htm#TopOfPage>). See also *UN Backgrounder to International Women’s Day* (2004), accessed March 25, 2011 http://www.un.org/events/women/iwd/2004/aids_backgrounder.pdf

17. See Stephen Golub, “Beyond Rule of Law Orthodoxy: the Legal Empowerment Alternative”, *Carnegie Endowment Working Paper No. 41* (October 2003) at 11-12 and notes.

18. For more information, see International Justice Mission Uganda, *Baseline Study Report on Succession-Related Property Grabbing in Mukono County, Uganda* (2008).

19. In this way, the collaborative casework approach has translated paper promises protecting workers from debt bondage into a practical reality for thousands of bonded labourers. Social workers with IJM also ensure that the freed slaves are provided with the full spectrum of

government rehabilitation services to which they are entitled, including financial compensation.

20. International Justice Mission, *Project Lantern Results Summary* (2010): 1, accessed online April 27, 2011 http://www.ijm.ca/resources/ijm//PDFs/Project_Lantern_Results_Summary.pdf

21. Andrew Jones, Rhonda Schlangen and Rhodora Bucoy. *An Evaluation of the International Justice Mission's "Project Lantern": Assessment of Five-year Impact and Change in the Public Justice System*. (2010): 5 accessed online April 28, 2011 http://www.ijm.ca/resources/ijm//PDFs/Project_Lantern_Impact_Assessment.pdf

22. The next phase of Project Lantern involves making sustainable the sharp reduction in the exploitation of minor girls for commercial sex by further strengthening the public justice system so that it functions effectively against

commercial sexual exploitation without the assistance of an IJM project.

23. UN FAO, "Women, Land Tenure and Food Security," *Women: the Key to Food Security* (1997), at 8, accessed March 25, 2011 <http://www.fao.org/docrep/x0171e/x0171e07.htm#TopOfPage>.