

Institution: University of Warwick
Unit of Assessment: School of Law
Title of case study: Governance, Legal Reform and Access to Justice
<p>1. Summary of the impact: Professor Faundez's research has set out how legal reform projects should be designed and implemented in order to be successful in the context of existing local conditions and to ensure access to justice for indigenous peoples and other vulnerable groups. His work as policy advisor both to development agencies (the World Bank, the UK's Department for International Development (DFID), and the Inter-American Development Bank) and to Non-Governmental Organisations (NGOs) (Amnesty International, the World Justice Project) has helped these organisations broaden their approach to the design, implementation and evaluation of legal reform projects. The range of his publications – from academic articles to specially commissioned reports – has ensured a fruitful dialogue with practitioners in the field of law and governance.</p>
<p>2. Underpinning research: The research underpinning this case study was carried out by Faundez from 1994 to the present. Throughout this period, he has held a full-time appointment as Professor of Law at the University of Warwick. His work on access to justice relies on his expertise and practical knowledge of governance and legal reform issues in Latin America (Chile, Perú and Colombia) and Southern Africa (Namibia and South Africa). In particular, his research on governance and legal reform is informed by two main insights relating to (1) the conception, scope and design of legal reform projects; and (2) the capacity of state law to reach vulnerable people living in areas where the presence of the state is limited.</p> <p>On the first issue (1) his research shows that these projects, as originally conceived, had serious shortcomings because they were based upon the mistaken assumption that law is a purely technical artefact that can be easily transplanted without taking into account local conditions. Accordingly, his research argues that in order to succeed, legal reform projects should focus on developing societies as a whole, rather than on an ideal type of legal model based on developed Western democracies (see 3a, b, c and g).</p> <p>On the capacity of state law to reach vulnerable people living in areas where the presence of the state is limited, his research demonstrates that the objective of achieving market-friendly legal systems cannot be realised without taking into account the social and economic circumstances of vulnerable groups, who, in developing countries, are largely outside the formal economy and with no political or legal rights. Accordingly, a key strand of his research is to examine in detail whether and, if so, how law operates in areas where state institutions are either weak or absent. This aspect of his research focuses on the plight of indigenous peoples and other vulnerable groups such as workers in the informal economy. His research draws on domestic law and international Law (as reflected in International Labour Conventions) and human right standards, as interpreted by international courts, in particular the Inter-American Court of Human Rights (see 3e, f and g).</p> <p>A distinctive feature of Faundez's work has been his continuous effort to promote a dialogue between development practitioners and academics. His 1994 book, <i>Affirmative Action—International Perspectives</i>, was published by the International Labour Organisation (3d) and <i>Good Government and Law</i> (3a) was the main output of a conference that had been funded by the British Council with the specific aim of building links between academics and practitioners.</p>
<p>3. References to the research (indicative maximum of six references)</p> <p>Research on the design and scope of legal reform projects</p> <p>(a) Faundez, J. (1997) 'Legal Technical Assistance', in J. Faundez (ed), <i>Good Government and Law: Legal and Institutional Reform in Developing Countries</i> (Macmillan), pp. 1-24 [submitted to RAE 2001; cited in <i>Social & Legal Studies</i> 8:94 as an 'excellent summary of the crisis of the law and development movement'].</p> <p>(b) Faundez, J. (2001) 'Legal Reform in Developing and Transition Countries: Making Haste Slowly', in R.V. Van Puymbroeck (ed.) <i>Comprehensive Legal and Judicial Development</i> (World Bank), pp. 369-396 [peer-reviewed chapter; submitted to RAE 2001].</p> <p>(c) Faundez, J. (2010) 'Rule of Law or Washington Consensus: the evolution of the World Bank's approach to legal and judicial reform', in A. Perry-Kessaris (ed), <i>Law in Pursuit of Development: Principles into Practice?</i> (Routledge), pp 180-201 [peer-reviewed chapter; part of submission to REF 2014]</p>

Research on Access to Justice and Vulnerable Groups

(d) Faundez, J. (1994) *Affirmative Action—International Perspectives* (International Labour Organization, ILO) [widely cited and influential book, also translated into Spanish (2000)]

(e) Faundez, J. (2005) 'Community Justice Institutions and Judicialization: Lessons from Rural Perú', in A. Angell and R. Sieder (eds.), *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan), pp.187-209 [peer-reviewed chapter; submitted to RAE 2008]

(f) Faundez, J. (2006) 'Should Justice Reform Projects Take Non-State Justice Systems Seriously? Perspectives from Latin America', *World Bank Legal Review: Law Equity and Development*, pp.113-139 [peer-reviewed publication; submitted to RAE 2008]

(g) Faundez, J. (2011) 'Legal Pluralism and International Development Agencies: State Building or Legal Reform?' 3(1) *Hague Journal on the Rule of Law*, pp. 18-38. Also published in B. Tamanaha, C. Sage and M. Woolcock (eds), *Legal Pluralism and Development—Scholars and Practitioners in Dialogue* (New York: Cambridge University Press, 2012), pp. 177-196 [peer-reviewed publication; submitted to REF 2014]

Research on Democracy and Legal Empowerment

(h) Faundez, J. (2005) 'Democratization through Law: Perspectives from Latin America' 12(5) *Democratization* pp.615-624 [peer-reviewed publication; submitted to RAE 2008]

(i) Faundez, J. (2009) 'Empowering Workers in the Informal Economy' 1(1) *Hague Journal on the Rule of Law* pp.156–172 [peer-reviewed publication]

4. Details of the impact: Faundez's research has had an impact on the development of legislation, on policy-makers' understanding of legal reform and the implementation of policy, and on the work of NGOs.

Impact on the development of legislation: The publication of *Affirmative Action* (3d) led to Faundez being invited by the ILO to assist the Governments of Namibia and South Africa in drafting their affirmative action legislation in employment. The legislation was enacted in each country in 1998. It was the first affirmative action law enacted in a developing country that was consistent with the principles of international law, and continues to have an impact on the rights of individuals in those countries today (5c). This is reflected in the positive evaluation of affirmative action by the US State Department in its 2012 report (5g): it noted that 'Namibia's Affirmative Action Act strives to create equal employment opportunities, improve conditions for the historically disadvantaged, and eliminate discrimination. The commission facilitates training programs, provides technical and other assistance, and offers expert advice, information, and guidance on implementing affirmative action in the work place.' It also noted how practical steps had been taken in different industries to embed affirmative action and increase Namibian participation, with companies in the fishing sector paying lower quota fees 'if they operate Namibian-flagged vessels that are based in Namibia, with crews that are predominantly Namibian' and that the Minister of Mining and Energy 'has made clear that prospective mining companies must "indicate and show commitment to empower previously disadvantaged Namibians" in their applications for exploration and mining licenses.'" One empirical study (5h) has noted that the affirmative impact legislation has had a positive impact in both South Africa and Namibia, with enhanced representation of people from designated groups in positions of responsibility, although progress has been slower for women and people with disabilities.

Impact on policy-makers' understanding of legal reform: Faundez's research on access to justice and on empowerment and democracy (see 3e-i) has been influential in shaping the policy of inter-governmental organisations, such as the World Bank and the Inter-American Development Bank, and of bilateral donor agencies, such as DFID. It has contributed to shifting the focus of legal reform projects from an almost exclusive focus on an ideal-type vision of state institutions towards the wider institutional approach that takes into account the plight of vulnerable groups (5b).

On the basis of his work on democracy and legal empowerment (see e.g. 3h), in 2007 the ILO invited Faundez to carry out a study on whether international labour standards, as embodied in relevant treaties and recommendations, benefit workers in small and micro-enterprises, most of which are in the informal sector. The ILO published his resulting report in 2008: *A View on International Labour Standards, Labour Law and MSEs* (ILO: Geneva, Employment Working Paper No. 18). This has provided valuable research evidence to inform policy debates in this area. It also

achieved a wide readership by being available to download from the ILO's website, thus contributing to improved understanding of this area (5c).

His work on non-state justice was cited in the Organisation for Economic Co-operation and Development's 2008 paper, *Enhancing the Delivery of Justice and Security*. Building on his body of work in the area of non-state justice and security systems, in 2009 he (together with Alison Lochhead and Lt. Col. Hugh Evans) was then requested by DFID to prepare a report on these issues. The resulting report, *Lessons Learned From Selected DFID Justice and Security Programmes—Study to Inform the White Paper Process* (2009) advised that 'DFID should reaffirm its comprehensive and pro-poor approach to justice and security, but should ensure that its programmes are firmly linked to sustainable development outcomes'. This Report was used as one of the background papers for the DFID's White Paper *Eliminating World Poverty: Building our Common Future* (2009). This White Paper drew specifically on the insight that security and justice projects should not lose sight of the close link existing between security, justice and sustainable economic growth (5f).

In 2010 Faundez was invited by the World Bank to participate in its Legal Pluralism and Development Policy workshop. This workshop led to the publication of an edited collection, published by Cambridge University Press in 2012, entitled *Legal Pluralism and Development Scholars and Practitioners in Dialogue*. This collection (see 3g), is the first World Bank-sponsored publication to include articles by leading international scholars and development practitioners with expertise in legal pluralism, reflecting an important development in the provision of research evidence to policy-makers (see 5b).

Following this publication, in 2012 the World Bank invited Faundez to be part of a group of experts to address issues relating to the justice-security-development nexus with special reference to fragile and conflict-affected countries. The aim of the project is to provide practical guidance on how the World Bank might promote legitimate and effective institutions to manage injustice and insecurity in fragile states. At the expert group meeting, held in November 2012, Faundez was invited to comment on the practical problems arising from the efforts to link justice with security and development concerns (5e). His comments, together with those of other participating experts, led to a revision of the World Bank's discussion paper on this topic (*The Justice-Security-Development Nexus: Theory and Practice in Fragile and Conflict-Affected States*). This discussion paper was published in 2013 by *The Hague Journal on the Rule of Law* (5(2)), a journal of which Faundez is co-editor-in-chief, again reflecting his role in promoting dialogue between practitioners and academia.

Faundez's 2003 Report for the DFID on non-state justice in Latin America has also contributed to improve public understanding of the issues, having been widely disseminated among development practitioners. This Report is also cited in the DFID's influential *Briefing Note on Non-State Justice and Security Systems* (DFID 2004), which continues to be a key reference point in this field (5a).

Impact on the evaluation of legal reform projects: Faundez's research into the design and scope of legal reform projects has also provided evidence to inform practice and the implementation of policy (see 5b). One example of a project benefiting from Faundez's expertise is the Capacity Building of the Sudan Judiciary Project, funded by a Multi-Donor Trust Fund administered by the World Bank. The aim of the project was to strengthen judicial independence so as to enable the judiciary to effectively and fairly apply the law. Faundez was invited by the World Bank to carry out a Mid-Term Review on the implementation of the project. Drawing on his experience evaluating justice reform projects for the World Bank and the Inter-American Development Bank (see in particular 3c and f), his report, *Capacity Building of the Sudan Judiciary (Sudan Multi Donor Trust Fund) Mid-Term Review* (2008), highlighted the problems inherent in the design of justice reform projects in contexts where the institutional environment is fragile and external intervention on matters concerning the judiciary are regarded as sensitive because of the authoritarian nature of the regime and the close link between legal and religious principles. Faundez also noted that the project had greatly underestimated the difficulties involved in delivering training programmes aimed at improving the capacity of officials working in the justice system. The project was adjusted accordingly and training has formed an important part of Phase II of the project (5i).

Impact on non-governmental organisations: Faundez's research on community justice and legal pluralism has also influenced the work of NGOs. Drawing on his research (in particular 3e, f

and h), he helped Amnesty International understand the complex legal issues relating to indigenous peoples in Latin America. In particular, his research helped Amnesty to clarify aspects of Bolivia's legislation relating to the relationship between state judicial systems and dispute resolution mechanisms employed by indigenous peoples in rural areas (*Ley de Deslinde Jurisdiccional*). As a consequence, in 2010 Amnesty issued an open letter to the Plurinational Legislative Assembly of Bolivia, which identifies the issues that legislators should take into account when defining the jurisdiction of various parallel systems of justice (5d).

Since 2009, Faundez has been actively involved in the activities of the World Justice Project, an NGO based in Washington that publishes the prestigious *Rule of Law Index* and constitutes a multinational and multidisciplinary initiative to strengthen the Rule of Law worldwide. He participated in their major research project on access to justice, which culminated in the publication of two edited collections (*Global Perspectives on the Rule of Law* and *Marginalised Communities and Access to Justice*) in the series *Law, Development and Globalization*, of which he is the sole editor (see 5k). Faundez also supported the World Justice Project in a study on the use of indicators for measuring the impact of rule of law and governance. The findings of this study were published as a special issue of *The Hague Journal on the Rule of Law* in 2011 (see 3g and 5k). His impact on this organisation was reflected in their invitation to him to serve as a Moderator for their Rule of Law Keynote Panel at the 2010 Latin America and Caribbean Rule of Law Conference: expressing their admiration for Faundez's long-standing multidisciplinary commitment to upholding the Rule of Law, they acknowledged his role as 'an inspirational leader' and his undertaking of 'a diverse array of noble and noteworthy causes, all of which have helped to promote effective Rule of Law for the development of communities of opportunity and equity' (5j).

5. Sources to corroborate the impact (indicative maximum of 10 references)

- (a) Director General of Policy and Global Programmes, UK DFID [can confirm impact of work on non-state justice systems].
- (b) Chief Counsel, Justice Reform Practice Group, Legal Vice-Presidency, World Bank [can confirm impact of work evaluating legal and judicial reform projects for the World Bank and the Inter-American Development Bank, where she was previously employed].
- (c) Director, Bureau for Gender Equality, International Labour Office [can confirm impact of work on affirmative action in Namibia and South Africa, as well as of the work on international labour standards and the informal sector].
- (d) Research Department, Amnesty International (London) [can confirm impact of advice on the rights of indigenous people in Bolivia.]
- (e) Senior Counsel, Director of Justice for the Poor Programme, World Bank [can corroborate impact on issues relating to legal pluralism and the justice-security-development nexus].
- (f) DFID (2009), *Eliminating World Poverty: Building our Common Future*, ch 4 para 10 [drawing on 2009 report *Lessons Learned From Selected DFID Justice and Security Programmes—Study to Inform the White Paper Process*]
- (g) US State Department (2012), *Investment Climate Statement – Namibia* [evaluating impact of affirmative action legislation in Namibia: <http://www.state.gov/e/eb/rls/othr/ics/2012/191205.htm>]
- (h) Sifani, J.N., (2009), *The Impact of Namibia's Affirmative Action Policy on Employment of the Designated Groups*, University of Namibia, Faculty of Economics [evaluating impact of affirmative action legislation in both Namibia and South Africa]
- (i) Capacity Building of the Sudan Judiciary:
http://www.undp.org/content/dam/undp/documents/projects/SDN/00045482/Signed%20Project%20Document_%20Phase%202.pdf [overview of achievements in training since 2008 review]
- (j) Invitation to serve as Moderator at 2010 Rule of Law conference [letter on file confirming Faundez's long-standing impact in the field]
- (k) World Justice Project webpage on research: <http://worldjusticeproject.org/scholarship> [illustrating Faundez's role in promoting and facilitating dialogue between NGOs and academic researchers]