

Keynote Address

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It is with great honor and deep gratitude that I welcome you all to this Regional Workshop for Strengthening the Criminal Justice System. Thank you for taking the time to participate in this workshop despite the demands of your official functions. I would especially like to express the appreciation of the Asian Development Bank (ADB) for the support extended by the Ministry of Law, Justice and Parliamentary Affairs of Bangladesh to this workshop. I also thank the governments of India and Pakistan for their generous cooperation in this endeavor.

For the next 2 days, we will have in-depth deliberations on various topics aimed toward strengthening the judiciary, the prosecutorial service, and the police, as well as improving access to law and legal education. Some of you participated in a symposium that ADB organized in January 2005 on Challenges to Implementing Access to Justice Reforms. That symposium covered a wide range of issues that affect the delivery of true justice to citizens. Besides judicial reform, police reform was tabled as a subject at that occasion. That was important because often it is the judiciary that tends to be in the limelight while less attention is given to other aspects that are as essential to making the overall system work. We hope that this workshop will take the discussions that started at last year's symposium a step further. Thus, a number of studies have been prepared upfront, which we hope will be refined and validated through deliberations at this workshop. Rather than trying to cover the breadth of the judicial system, we will focus on one aspect, which is strengthening the criminal justice system. We will look at the judiciary, the prosecutorial service, and the police as major interdependent play-

ers in the criminal justice system. Likewise, we will also examine access to law and legal education, since these are crucial elements to strengthening the criminal justice system. Besides narrowing the subject matter, we will also narrow the geographical area. Thus, the focus of the discussions will be on how the system works—or does not work—in Bangladesh, India, and Pakistan, three countries whose legal systems share the same roots.

Let us take a step back and look at the emergence of legal systems. As society became more complex and a web of interests, needs, relationships, systems, cultures, and beliefs evolved, people started to claim rights and impose obligations on other people and society as a whole. The concept of the State took form. Citizens began to demand protection and state responsibility. The State began to assert its primacy while people sought participation in state affairs. The intersecting perspectives on these matters inevitably led to conflicts which became more and more difficult to settle. Obviously, the parties including the State, involved as they were, could not be expected to resolve their own conflict. The need for a standard means of conflict resolution became clear and a system had to be devised to respond to this need. The system must be one that would provide standard procedures for settling conflicts and a set of rules that would guide the acts of all parties concerned—from the conflicting parties to the persons assigned to investigate, prosecute, and decide the conflicts. Further, the system must establish the relationship between the State and its citizens as well as the relationship among citizens. This gave birth to a justice system that covered two major areas: civil and criminal. Although

these two areas are part of the same justice system, there are peculiarities that require a specific approach and separate treatment of each. As mentioned earlier, this workshop will only focus on the criminal justice system.

The criminal justice system refers to the system used by the government to maintain social control, enforce laws, and administer justice. It has become a basic necessity in every society as an ally of the State in the maintenance of law and order, occupying the forefront of the enforcement of the rule of law. At the same time, however, it also serves as protector of any person in conflict with the State and the law. In the Western context, it has been held that the criminal trial “overshadows all other ceremonies as a dramatization of the values of our spiritual government, representing the dignity of the State as an enforcer of law and at the same time the dignity of the individual when he is an avowed opponent of the State, a dissenter, a radical, or even a criminal.”¹ In other words, the criminal justice system performs the dual role of protecting both the State and the offender.

With this idiosyncratic duality, theories regarding the purposes of a criminal justice system abound. It is viewed simultaneously as a means of punishment, rehabilitation, deterrence, incapacitation, and reintegration. As a means of punishing the guilty, the criminal justice system is expected to be stringent and exacting, ensuring the conviction of the guilty and the meting out of a commensurate penalty. As a mechanism of rehabilitation, the system is expected to reform offenders and make them law-abiding. As a strategy of deterrence, the system is looked upon as a foreboding presence that would discourage crimi-

nal intentions. As a manner of incapacitation, it is relied upon for protection of society from convicted criminals. As a facilitator of reintegration, it is expected to provide ways for criminals to return to society and become productive citizens.² These theories may multiply depending on a people’s view of criminal justice.

Nevertheless, whatever the stated purpose or the dominant theory is, there appears to be a consensus on the essential attributes of a criminal justice system. These are efficiency, effectiveness, and fairness.³ Efficiency refers to the utilization of resources in a cost-effective manner to accomplish statutory goals and improve public safety. Effectiveness refers to the observance of equity, proportionality, constitutional protections to defendants and convicted offenders, and public safety in the administration of justice. Fairness entails objectivity, impartiality, and equal treatment of like offenders.⁴

How these ideals are to be achieved, however, will depend on the main players in the criminal justice system: the police, the prosecution service, and the courts. Each of them has a particular role to play. The police is assigned the tasks of

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¹ T. Arnold. 1962. *The Symbols of Government*. New York: Harcourt, Brace and World, pp. 128–130. In G. Cole. 1993. *Performance Measures for the Trial Courts, Prosecution, and Public Defense*. *Performance Measures for the Criminal Justice System*, p. 86.

² J. Dilulio Jr. 1993. *Rethinking the Criminal Justice System: Toward a New Paradigm*. *Performance Measures for the Criminal Justice System*, p. 6.

³ *Performance Measures for the Criminal Justice System* v. 1993

⁴ See footnote no. 3.

enforcing the law and investigating violations thereof. They serve as the gatekeeper of the criminal justice system in that they trigger the initial stage that brings into play the entire criminal justice system. The prosecution service acts on behalf of the State and pursues the case against a violator. The court conducts trial of the case and, based on the facts and legal issues presented, makes a ruling. Thereafter, the police once again enters the picture to enforce the court's judgment. Thus, the respective performances of and interaction among the police, prosecutors, and judges determine the kind of criminal justice system a particular jurisdiction will have.

The relationship between the police, the prosecution service, and the courts can either be that of cooperation or conflict depending upon the nuances in each jurisdiction: national history and culture, political and legal system, economic development, and social structure, among others. During the workshop, it would be worth exploring as to what would be the general principles to determine the appropriate relationship model, especially in the context of the jurisdictions in Bangladesh, India, and Pakistan. We also hope that this workshop could elicit insights on how to enhance the existing relationship among these three to strengthen the criminal justice system.

Aside from the interrelationship between these actors in the process, their respective performances are also crucial in making the criminal justice system efficient, effective, and fair. The pressing question, therefore, is how to measure the performance of these institutions. What are the standards by which we could evaluate the police, the prosecution service, and the judiciary?

For measuring police performance, the traditional yardsticks have been the following: (i) reported crime rates; (ii) overall arrests, (iii) clearance rates, which reflect the ability to solve crimes; and (iv) response times, which measure the ability to arrive at the crime scene at the shortest possible time. These yardsticks were formulated based on the perceived main functions of the police, namely, to reduce crime and to apprehend offenders.⁵ With the evolution of the role of the police in the criminal justice system as well as in society as a whole, these performance measures

have to be reformed. Performance measures "must not only reflect but also shape community expectations of the police."⁶ As such, other measures have been suggested. First, there should be barometers to measure professionalism such as audited clearance and arrest rates, statistical evidence on use of force, brutality, discourtesy, and corruption. Second, there should be measures of the quality of service provided by the police. These should reveal both departmental and individual performances. Third, trust and confidence of the citizens in the police should also be measured. This could be seen in the community's reliance on the police as revealed by reports and calls to the police for service.⁷ Fourth, measures to ensure accountability to the public should also be in place. Given these measures of performance, how can the police gain a high rating in each of these barometers? We hope to answer these questions in the course of this workshop.

For measuring the performance of the judiciary, specific areas have been identified: (i) independence and accountability; (ii) competence; (iii) efficiency, expeditiousness, and timeliness; (iv) equality, fairness, and integrity; (v) access to justice; and (vi) public trust and confidence.⁸ Independence is measured in terms of the judiciary's separation from the other branches of government and its freedom to decide on cases devoid of any external pressure, political or otherwise. Actual and perceived independence of the judiciary must both exist.⁹ Accountability is measured by the existence of checks and balances on the judiciary's performance and utilization of public funds.¹⁰ There must be transparency in the court's activities. To measure competence, we can look at the qualifications of incumbents as well as the promotion, rewards, and compensation systems in place. To measure efficiency, expeditiousness, and timeliness, we answer the following questions: Who benefits from the existence of courts? Are criminal courts able to perform their functions, including promulgation of judgments, in a timely manner? Are courts able to implement changes in the law immediately?¹¹ The yardsticks of equality, fairness, and integrity would be the court's observance of due process and equal protection in its procedures and decisions. Access to

⁵ G. Alpert and M. Moore. 1993. Measuring Police Performance in the New Paradigm of Policing. *Performance Measures for the Criminal Justice System*, p. 120.

⁶ See footnote no. 5, p. 119.

⁷ See footnote no. 5, p. 122.

⁸ See footnote no. 1, pp. 93–103; R. Messick. *Key Functions of Legal Systems with Suggested Performance Measures* pp. 3–6.

⁹ R. Messick. *Key Functions of Legal Systems with Suggested Performance Measures*, p. 3.

¹⁰ See footnote no. 8, p. 4.

¹¹ See footnote no. 8, p. 5.

justice is revealed by the openness, inclusiveness, and ready accessibility of the system in that it is not unnecessarily intimidating and burdensome so as to deter anyone desiring to utilize it. Public trust and confidence are most desirable judicial virtues that are measured by the public's respect for the justice system and the law. Again, the foregoing are ideals that every judicial reform initiative should aspire for. There must, however, be a process to identify and prioritize the reforms to be undertaken to achieve these ideals.

For the prosecution service, the measures of performance are competence, efficiency, accountability, and independence. Competence and efficiency are manifested in the turnaround time of the caseload and percentage of convictions in cases brought to trial. Accountability and independence are two sides of the same coin. Independence of the prosecutor relates to the level of discretion in deciding whether or not to prosecute a case and in the manner in which a case is prosecuted. The prosecutor should be able to decide based on professional considerations, rather than political expediency. On the other hand, with independence comes accountability, which means in this context that the prosecutor should be able to explain and defend a decision to prosecute a case or not.¹² Among the three major players in the criminal justice system, the prosecution service is probably given the least attention. However, its improvement is just as important as the enhancement of the police and the judiciary. To have a competent, efficient, independent, and accountable prosecution service is important, and reforms toward the attainment of such a prosecution service must be taken in the same aggressive manner as police and judicial reforms.

I present the foregoing indicators of performance as probable guides in our discussion of the various reform initiatives in the police, prosecution service, and the judiciary. I will not pretend to know what kind of reforms are needed or would be best for any jurisdiction. In the end, each society should decide for itself what systems are most fitting at a given point in time. Societies are not static and what is a widely accepted system today may be found wanting tomorrow. However, I do wish to stress that as these three institutions are equally important in

strengthening the criminal justice system, reforms in any one institution must be done in coordination with the two others. This is because the failure of one of the institutions would affect the performance of the others, which can cause the entire system to break down. Thus, the lesson has been that absence of parallel institutional reforms will tend to negate any progress of reforms in one area alone. It has been observed that "reform of the police and the offices of public prosecutors are key complementary reforms, which, if left unattended, will constrain efforts to improve the judiciary."¹³

At this point, I would like to give a brief overview of the work done by ADB in the area of law and policy reform, in particular, as it relates to the topics of this workshop. Over a period of more than a decade, ADB has initiated over 400 technical assistance and loan projects in the broad areas of law reform, legal and judicial policy reform, legal and judicial institutional reform, as well as legal empowerment initiatives.

I should mention here the largest legal and judicial reform program that ADB has undertaken to date, which is the Pakistan Access to Justice Program. This program was specifically designed to empower the poor and other vulnerable groups. The program has five interrelated governance objectives: (i) providing a legal basis for judicial, policy, and administrative reforms; (ii) improving the efficiency, timeliness, and effectiveness in judicial and police services; (iii) supporting greater equity and accessibility in justice services for the vulnerable poor; (iv) improving predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions at the federal, provincial, and local government levels;

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¹² See footnote no. 9, p. 6.

¹³ Economic Commission for Africa. *Striving for Good Governance in Africa. Synopsis of the 2005 African Governance Report 27.*

and (v) ensuring greater transparency and accountability in the performance of the judiciary, the police, and administrative justice institutions.

In Bangladesh, ADB is rendering technical assistance to support good governance initiatives and establish legal and policy frameworks to support anticorruption initiatives. The assistance includes the review of the current curricula of legal education institutions and a proposed road map for improvement. In India, ADB is currently administering technical assistance aimed at reducing Delhi court congestion and developing sustainable improvements in the delivery of and access to speedy justice. ADB has also provided assistance to Indonesia to improve the administration of the Supreme Court as well as commissioned a diagnostic study on the Indonesian public prosecution service. In the Philippines, ADB provided assistance to the Project Management Office of the Supreme Court of the Philippines to strengthen the independence, accountability, impartiality, and competence of the Philippine judiciary. In this connection, ADB also provided support to the Philippine Judicial Academy to deliver judicial training.

ADB has also initiated projects aimed at making legal information transparent and accessible. An example of this is the Development of the Internet for Asian Law (DIAL), a catalog and search facility of legal materials on the internet worldwide which is now merged with the World Legal Information project, the largest internet-based provider of free legal information in the world. In the People's Republic of China, Nepal, and Tajikistan, ADB provided assistance for the collection and publication of, as well as provision of online access to, their legal instruments.

A number of other projects are also aimed specifically at strengthening the knowledge and practical legal skills of government officials, lawyers, and judges. These include assisting our developing member countries (DMCs) in establishing legal training institutions and developing training curricula for national training institutions. In this connection, ADB projects have trained staff and developed teaching materials for continuing legal education institutions for judges, public prosecutors, lawyers, and government officials. This occurred in Maldives, Mongolia, Nepal, Pakistan, and Viet Nam.

We hope to continue to have similar interventions to strengthen the criminal justice system in our DMCs. However, we can only do this with your active collaboration. Experience has taught us that any successful legal and judicial reform process will require strong political will from the government. Once the political will is present, then it will be easier for the government to allocate the necessary resources for the reform process to proceed, whether it is human or financial resources.

Another lesson that we have learned is that the reform agenda must come from within. This will increase the chance of continuity since most reform process is done in a gradual and phased manner. The role of institutions, such as ADB and other donors, in this process is to provide the necessary support either as financiers, technical experts, or policy dialogue partners.

In conclusion, I hope this workshop will be able to contribute to the improvement of the criminal justice system in the region which, in turn, will support the journey toward achieving the multi-tiered goal of development.