

Access to Justice and Nondiscrimination

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For a legal system to impart justice, laws must be drafted, implemented, and enforced in a manner that does not discriminate between citizens and that provides them with the means, if necessary, to resolve disputes in a timely and effective manner through formal or informal means. ADB has applied the lessons learned in its projects to ensure that citizens' poverty and vulnerability do not also result in legal discrimination that further compounds economic and social marginalization.

Legal Identity Regional Research

An ADB regional technical assistance project proposes to explore the relationship between the existence of proof of legal identity— such as a birth record—and access to resources, services, and opportunities in Bangladesh, Cambodia, Nepal, and Timor-Leste. It has been estimated that up to 63% of births annually in South Asia are unregistered, with 22% unregistered in East Asia and the Pacific. Fewer births are registered in rural areas than urban areas, and the registration rate for girls is less than boys, as is the registration of births from some minority groups.

This lack of registration appears to have significant economic, social, and political consequences. Those who are unregistered are impeded in their capacity as citizens to access services. Proof of legal identity or a birth record is linked in varying degrees across countries to the provision of education opportunities, immunization, formal employment in the private and public sector, financial services, social security, access to justice, property rights, participation in the decision-making process through voting, marriage rights, citizenship rights, and inheritance rights.

Registration is often a fundamental prerequisite for social participation and inclusion. It is also potentially useful in efforts to curb child labor, child marriages, and child prostitution and trafficking. Yet compulsory registration also opens up avenues for rent-seeking by officials and has the potential for misuse of information. The ADB study is exploring how a balanced approach to these issues can be undertaken.

Pakistan's Access to Justice Program

ADB's largest law and policy reform project is the Pakistan Access to Justice Program (AJP), which helps the Government of Pakistan improve access to justice through five interrelated governance objectives:

- Providing a legal basis for judicial, policy, and administrative reforms
- Improving the efficiency, timeliness, and effectiveness in judicial and police services
- Supporting greater equity and accessibility in justice services for the vulnerable poor
- 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
- Ensuring greater transparency and accountability in the performance of the judiciary, the police, and administrative justice institutions

Although ADB's Board of Directors approved funding for AJP in December 2001, it was preceded by several preparatory technical assistance projects over 3–4 years that assessed the reasons why legal and judicial reforms in the past had systematically failed. Options for reform were also pilot-tested. These technical assistance projects included research on court users and would-be litigants, and found that any judicial system reform would need to deal with supply constraints—the quality of court facilities, automation, and procedures—and demand, including legal literacy, public access to information and the creation of special purpose bodies that would give citizens improved access to the judicial process.

After only two years of implementation, early results from the AJP include the following:

- Striking reductions in the number of court cases pending in the North West Frontier Province (NWFP). In the High



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Court based in Peshawar, the number of cases disposed of in 2002 increased by 222% over those in 2001. Across the three benches of the High Court in NWFP, there was a 35% reduction in the number of cases pending at the end of 2002, compared with 2001. In the district courts of NWFP, there was a 177% increase in the number of cases disposed of in the same period. In some districts pendency rates have come down dramatically with no criminal case outstanding over one year. Punjab has also registered similar results; in one large district there are no cases, civil or criminal, pending for a period longer than two years.

- Member Inspection Teams (MITs) within the judiciary monitor judicial performance and investigate complaints about the district judiciary. For the first time in 2002–2003, all courts within the NWFP were inspected and the performance of judges assessed by MITs. An incentive and reward policy was established that provided a monetary reward to judges on the basis of their performance.
- Procedures for citizens to lodge complaints in relation to a member of the judiciary were advertised in local newspapers. As a result of this, MITs received 864 complaints from July to December 2002. For the year ending 31 December 2003, the Peshawar High Court is in the final stages of preparing a similar report providing a more detailed breakup of the

nature and ultimate disposal of these complaints.

As there is a range of stakeholders in the AJP at federal, provincial, and subprovincial levels, including local government authorities and specific committees with judicial and policing functions, civil society groups, NGOs, and citizens, the performance monitoring and evaluation system aims to create opportunities for stakeholder involvement in monitoring and evaluation activities. The system seeks to foster opportunities for citizens to participate in performance review evaluation activities in addition to citizens' initiatives to monitor reforms.

The AJP includes the creation of an innovative special purpose fund, the Access to Justice Development Fund (AJDF), which is a statutory endowment created to provide independent budgetary support to the judiciary, particularly the subordinate judiciary, and carry forward other AJP reform objectives.

Evaluation is the lynchpin of ADB's AJP in Pakistan, necessitating the creation of new performance monitoring and evaluation (PME) tools that are appropriate for a law and policy reform technical assistance program. The PME system is integral to project implementation as a satisfactory annual PME report is essential for the release of the next loan tranche as well as the development of the next phase of the project's activities as outlined in a memorandum of understanding.