

Insolvency and Secured Transactions Reform

ADB has pioneered in assisting in insolvency and secured transactions reform in its DMCs. Capturing the increased momentum toward financial sector reform that emerged in the wake of the Asian financial crisis, an ADB regional technical assistance project analyzed insolvency and business reorganization frameworks across 11 Asian jurisdictions and proposed recommendations for further reform. This research then formed the basis for a publication on good practice standards that are considered essential to debtor-creditor relations in a sound corporate insolvency environment. Acknowledging the pioneering nature of this work, the United Nations Centre for International Trade Law (UNCITRAL) incorporated these good practice standards into its draft *Legislative Guide on Insolvency Law*.

The fallout from the Asian financial crisis also highlighted the importance of developing a framework for regional cooperation to address the growing problem of cross-border corporate insolvency. ADB's two regional meetings of key stakeholders on strengthening national insolvency frameworks led to a further commitment by four DMCs to consider ways of cooperating in cross-border insolvency.

ADB research into secured transactions, commissioned under a regional technical assistance, led to the development of a strategy for secured transaction law reform for several DMCs, and a series of follow-on country initiatives in Bangladesh, India, Indonesia, Lao People's Democratic Republic (Lao PDR), Sri Lanka, and Viet Nam. This research also led to the publication of the *Guide to Moveables Registry*. ADB's research pioneered an integrated approach to insolvency and secured transaction law reform to ensure that insolvency reforms support secured lending and contribute to a more predictable debtor-creditor legal regime.

Empowering

At the heart of ADB's definition of poverty is the critical concept of empowering the poor "to participate in decisions that shape their lives." This involves citizens having the knowledge and resources to interact in an informed manner with employers, other citizens, the state, and with private and public sector institutions in relation to their legal rights and obligations. It also involves the state—including devolved government institutions—to develop mechanisms that enhance citizens' participation in governance structures at national and subnational levels.

Legal empowerment is critically linked to the participation of the poor on issues that affect their livelihood, basic rights, and security. Legal empowerment, in essence, includes a range of activities that promotes awareness by the poor of their rights to public goods and services as well as more basic legal rights concerning respect for and security of the individual. As the poor may also be illiterate, raising awareness of new laws and policies may have to be conducted through national campaigns involving comics, radio broadcasts, television programs, or the performing arts. Legal empowerment activities can also encompass developing mechanisms for interaction with and bringing formalized grievances by citizens to government institutions or the judiciary.

ADB has undertaken pilot studies on the use of legal empowerment activities in sector loans to gauge whether awareness of legal rights and the means to enforce them may strengthen the socioeconomic impact of development projects in other sectors such as agrarian reform, irrigation, health, or natural resource management and conservation. While the impact of these pilot studies will take more time to assess, the initial findings are encouraging (*see succeeding articles*).

Land Law Reform in Cambodia



A meeting of Cambodia Ministry of Land Management, Urban Planning and Construction staff, local authorities, and villagers was held at a proposed site for a social land concession pilot program under the ADB-financed Land Law Implementation Project.

The majority of land in Cambodia is unregistered, resulting in uncertainty and confusion regarding land ownership and land rights. Through two consecutive projects, ADB is helping the Government of Cambodia establish landownership and related landrights laws to help resolve these issues. ADB has assisted in developing a legal framework for establishing cadastral commissions, which are administrative bodies responsible for hearing land disputes about unregistered land at the district, provincial, and national levels. The ADB support included training for commissioners in dispute resolution; in 2002–2003 the commissions considered 979 cases of which 226 have been resolved. Before the establishment of these commissions, all disputes over Cambodian land, whether registered or not, went directly before the courts.

the Poor

Legal Empowerment: Advancing Good Governance and Poverty Reduction

In 2000, ADB commissioned a study of how legal empowerment—or the use of law to increase the control that disadvantaged populations exercise over their lives—contributes to good governance, poverty reduction, and other development goals. The research included seven country studies identifying the constraints faced by the poor in accessing the legal system and participating in local or national governance structures. These constraints included:

- Lack of economic independence
- Minimal understanding of law and the rights it confers
- Limited access to affordable legal services
- Lack of knowledge, incentives, and resources among government officials
- Limitations in the outreach and capacity of civil society organizations to provide

The ADB projects are raising public awareness of land law and increasing people's access to mechanisms to realize their rights under the new law. Given that illiteracy prevented many Cambodians from gaining access to written accounts of the new law in newspapers, the project included the filming of a public awareness video in drama format, entitled *Our Land*, and a cartoon book of the video. The video was shown daily for two weeks and then weekly on the Government of Cambodia's television channel. About 2,500 copies of the cartoon book have been produced in the Khmer language and distributed through non-government organizations (NGOs). To assist poor people who cannot afford lawyers, or who live in remote areas of Cambodia, ADB is supporting the training of grassroots NGO staff to represent the poor before cadastral commissions.

Legal empowerment can be undertaken by assisting poor communities to take action to assert their rights or enforce judgments through formal or informal decision-making bodies



- Provide legal services to the disadvantaged
- Inconsistency between formal law and traditional values
- Poorly drafted or contradictory laws and regulations
- Failure to implement sound laws
- Traditional use of law as an instrument of control
- Corruption

Legal empowerment can be undertaken through various activities and strategies including:

- Raising awareness of the law and the rights it confers through print media, television, radio, the performing arts, the Internet, distance education, community-based training, and training of trainers
- Providing assistance to poor communities to take action to assert their rights or enforce judgments through formal or informal decision-making bodies such as legal aid, assistance from paralegals, alt-

ernative dispute resolution, and public interest litigation cases (or class actions)

- Fostering participation by the poor, or NGOs representing their interests, in local governance structures relating to issues that affect their lives, including community participation in justice monitoring committees such as the Citizen Liaison Coordinating Committee in the North West Frontier Province, and the Pakistan and Criminal Justice Coordinating Committee in Sindh, Pakistan.

The governance dimension of legal empowerment acts in two complementary ways: in the short term, the poor are better able to play an informed role in local decision making to advance their rights and interests, and, in the longer term, the mobilization of public interest and expectations can have a catalytic impact in making public institutions more responsive and accountable to the needs and rights of the poor.