



LAW AND DEVELOPMENT: An Essential Dimension of Governance

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As the governance debate unfolds, it can be safely said that there is now a general consensus that creation of “an enabling environment” for economic development necessarily implies the need for laws to regulate society and the creation of institutions to ensure consistent application and enforcement of laws. This growing importance of law in the development process is reflected in the increase in the number of law-related projects and the amounts committed for them by both bilateral and multilateral donors in recent years. For example, the latest issue of the *Law and Development Bulletin*, a six-monthly Bank publication that compiles information on law-related development programming in the Asian and Pacific Region, lists 231 law-related technical assistance projects undertaken by the Bank and other multilateral institutions. Yet even this compilation is incomplete because it does not encompass legal components of project, program, and sector loans financed by the Asian Development Bank and the World Bank.

This increased focus on legal dimensions indicates that there is now a far greater realization of the importance of law in the development process than ever before. This can be attributed to a number of factors.

- First, the clarity of the perception that a wholesale revamping of the legal system is necessary to effect the transition from state-planned central economies to liberalized market-oriented economies in such countries as the Cambodia, People’s Republic of China (PRC), Lao People’s Democratic Republic, Mongolia, and Viet Nam.
- Second, the growing recognition that the private sector and private sector lenders must be encouraged to play a more active role in the development process than was permitted in

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many developing countries during the past thirty years, and that such investors and lenders require a predictable framework of rules in which commercial activity and lending activity can be conducted, including accessible and comprehensive legal rules which are actually applied and the breach of which gives rise to sanctions.

- Third, a realization that the effectiveness of government in implementing development-oriented public policies involves the use of law as an instrument of social change as well as social control, and that inefficiencies in the legal system have been a contributing factor to ineffective development policies.
- Fourth, in some countries the recognition that law and legal process can help protect the citizenry from the excesses of an overreaching state (in the PRC immediately after the Cultural Revolution, in the former Soviet Union under the Gorbachev reforms, and in Eastern Europe, the "rule of laws and not of men" has been a phrase oft-repeated by the leaders of new or reformist governments).

A focus on the legal dimensions of the development process, however, means more than simply the creation of "modern" laws which are accessible, comprehensible, and usable. There is a growing realization that specific legal interventions in the context of the Bank's project, sector, or program lending must be complemented by a more systemic approach to law and development. A systemic approach to law reform involves shifting the focus away from the "black-letter law" of the legal rules toward the institutional capabilities of the legal system, including the judiciary and government

administrative and regulatory agencies. It calls for greater attention to the education, skills, and in-service training of the judiciary and government officials staffing legal and regulatory institutions. A systemic approach implies a shift of focus to the resources made available to the courts and regulatory agencies and to the efficiency with which such resources are utilized. The enactment of new legislation and regulations is, in some respect, the easiest part of donor-assisted law reform: it is often relatively short-term work and inexpensive. Institutional reforms and the development of the necessary human resources within such institutions, however, require longer-term commitments and greater resources.

As a step towards a systemic approach, a hallmark of the Bank's recent law-related technical assistance has been an emphasis on (i) continuing legal education for existing professionals, especially in the public sector; and (ii) enhancing the capacity of local institutions to provide training in newly-enacted laws and regulations for a market economy. Two examples of the Bank's approach are

- the Bank's technical assistance in Cambodia, PRC, Mongolia, and Viet Nam, for institutionalizing continuing legal education; and
- the recently approved technical assistance for Mongolia on Restructuring and Capacity Building in the Ministry of Justice.

As the Bank and other donors come to realize the importance of a systemic approach to law reform, an important role they can play is to familiarize developing member countries with "best international practices" in solving common problems often faced by different legal systems. An eclectic approach to law reform which draws upon different

international experiences is not altogether uncommon to the region as evident, for example, from the legal systems of South Asia (Bangladesh, India, Pakistan, and Sri Lanka), the PRC, and Japan. Indeed, in the case of Japan, the Meiji Restoration in 1868 saw a remarkable period of 20 years of institutional modernization. Feudal privileges were ended and a market economy was created for land, labor, and capital. And even though there were no foreign donors in the 1860s and 1870s to provide legal technical assistance to the Japanese reformers during the Meiji Restoration, foreign advisers played a significant role. Hermann Roesler, a German, played a significant role in the writing of the Japanese Constitution, which became effective in 1890. Two French advisors, Georges Boussquet and Gustave Boissonade, came to Japan in the 1870s to teach law and became quite active in the drafting of various codes and working with the courts in interpreting various laws. Five major codes were enacted. The enactment of such codes was an ongoing process, as Japanese jurists made efforts to adopt foreign models to Japanese customs and mores. Indeed, the first codes of the Meiji Restoration were generally supplanted within 10 to 20 years by new codes which were viewed as more appropriate to Japanese conditions, though still patterned after European (and particularly German) models.

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Law, more than most intellectual disciplines, has been much influenced by foreign models. In the donor community today we may refer to the search for appropriate models and for the adaptation to local conditions as the application of "international best practice". The same process was at play during the Meiji Restoration, as Japanese jurists sought appropriate foreign models, and then sought to adopt them to Japanese conditions. The same process has been at play in other countries over the course of a far longer period of time and the techni-

cal assistance provided by the Bank and other donors is consistent with this historical process and has indeed helped to catalyze this process.

As the Bank and its developing member countries continue dialogue on law and development and other governance issues, experience of countries in which similar problems have been solved will enrich this dialog and assist in the search for workable and efficient solutions to governance issues. I am sure that today's seminar with its distinguished speakers and guests from around the globe will demonstrate the usefulness of such an eclectic approach.