

Law and
Policy Reform
at the
Asian
Development
Bank

2003 Edition

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FOREWORD

Since the publication of the last edition of *Law and Policy Reform (LPR) at the Asian Development Bank (ADB)* in December 2002, ADB actively continued with its LPR work across a broad range of areas in its developing member countries (DMCs). Part 1 of this publication is a brief overview of such activities in late 2002 and 2003.

Part 2 of this publication presents the final overview report and country-level summaries of the regional technical assistance (RETA) project No. 5987 for Judicial Independence. As part of ADB's mandate to deepen understanding of and promote knowledge sharing on important development issues, this RETA focused on the subject of judicial independence given the importance of the judiciary in achieving good governance and pro-poor economic growth. An independent judiciary that operates in a transparent and accountable manner is essential to the functioning of a market system that many countries in the region now aspire to. Creation of an enabling environment for the private sector, the functioning of regulatory regimes and a system of rights and duties that gives the poor a stake in the system all assume a functional judicial system run by an independent judiciary that can redress wrongs perpetrated by private parties or the state and uphold the rights granted to citizens under the law.

The project was approved in late 2001 and encompassed nine DMCs: Bangladesh, Cambodia, Indonesia, Lao PDR, Nepal, Pakistan, Philippines, Thailand, and Viet Nam. Two workshops were held

among ADB staff and the Asia Foundation's research team for this project to discuss the approach and substance of the research in March and July 2002 in Bangkok and Manila, respectively. On 6-7 August 2003, an international symposium was held in ADB's Headquarters in Manila to discuss significant issues arising from the country reports. Supreme Court Chief Justices, justices and judges of other courts, Ministers of Law/Justice, other government officials, NGO representatives including bar associations, and experts from around the world were invited. The sensitive nature of some of the issues did not impede frank and open discussions by all the participants, as reflected in this final report. An earlier draft of this report was also shared with Chief Justices of many other countries in the region on the occasion of 10th Conference of Chief Justices of Asia and the Pacific held in Tokyo in September 2003 in conjunction with 18th Biennial Conference of LAWASIA.

A major characteristic of this project was that it aimed to explore the issue of judicial independence not only from an academic point of view, but also from practical and realistic aspects facing day-to-day operation of the judiciary, such as judicial selection, appointment and promotion procedures, judges' tenure and removal mechanisms, judicial remuneration and resources for court administration. The project also explored the position of the judiciary and the courts in relation to citizens, and their impact on economic development, and governance. The relationship between the citizens and the courts is also being

explored through a small-scale regional technical assistance No. 6063 on Public Opinion Surveys on Judicial Independence and Accountability. Under this SSTA, public polling has already been conducted in two of the RETA participating countries, i.e., Cambodia and Thailand.

Judicial independence is central to sound governance of a nation, and is therefore one of the most critical elements for economic development. The report provides useful information, data, and analysis

on the issues surrounding judicial independence in participating DMCs, and is expected to provide useful inputs for developing practical and effective reform plans by countries in the region.

I would like to thank Mr. Hamid Sharif, Assistant General Counsel, and Mr. Motoo Noguchi, Counsel, in the Office of the General Counsel for planning and implementing this important project, and overseeing the production of this publication.



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