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**REPORT ON THE ASIAN DEVELOPMENT BANK'S
LAW AND POLICY REFORM ACTIVITIES IN SUPPORT OF
POVERTY REDUCTION**

**Prepared by the
Office of the General Counsel**

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FOREWORD

The Asian Development Bank (ADB) has a long-standing commitment to law and policy reform (LPR) in our developing member countries (DMCs) as a means of strengthening fair and equitable interactions between citizens, the private sector and state institutions. The following report (the “Report”) summarizes the efforts of the ADB in LPR over the past decade, demonstrates how these interventions support poverty reduction in Asia and points the way toward future LPR initiatives in order to achieve development effectiveness.

The Report shows that ADB has made consistent efforts to help the poor to become more productive by supporting policies that emphasize social inclusion, reform of the administrative organs of government to make them more responsive to citizens’ needs and to take measures to enhance the environment for private sector development. Indeed, we think that these initiatives work together to produce better results.

For example, legal empowerment has been used as a method of enhancing the position of the poor by reforming the land registration system in Cambodia, redefining land tenure relationships in the province of Sindh in Pakistan and exploring the relationship between legal proof of existence and access to resources, services and opportunities in Bangladesh, Cambodia, East Timor and Nepal.

Courts in many of our DMCs do not have the institutional capacity to act as an effective, separate and equal arm of the state. In many countries the justice sector is chronically underfunded and expenditures on justice and law and order have not been part of development priorities. As a result capacity of the judiciary is generally weak and courts are clogged with cases. Serious procedural delays in reaching decisions are frequent. Added to this are issues of judicial corruption and lack of accountability of the courts. ADB has provided technical assistance to the courts in Pakistan and India for introduction of modern delay reduction techniques. In the North West Frontier Province of Pakistan some early results are impressive, for example, in Abottabad district there is no criminal case that is pending for more than a year. In the Philippines ADB is supporting efforts to make the judiciary financially independent while increasing transparency in use of funds. ADB has also supported judicial training in several of its DMCs including Viet Nam, Cambodia, PRC and Mongolia.

ADB’s private sector development has employed loans, equity investments, partial credit and political risk guarantees, and technical assistance to further enhance the capabilities of the private sector in our DMCs to produce higher levels of economic growth. A recent rupee-denominated ADB bond issue will lead to further development of the commercial bond market in India. Our work concerning insolvency and secured transactions has helped us to articulate some of the core principles that underlie all well-functioning financial systems. Assistance to the Government of the People’s Republic of China in connection with its accession to the World Trade Organization has taught us important lessons concerning substantive law reform, appropriate institutional reform and the adoption of appropriate measures for judicial review, in connection with the implementation of WTO requirements.

Going forward, it is important to prioritize our work to bring greater focus on initiatives that are likely to bear fruit. OGC’s experience in Asia, as indicated by the Report, suggests that we can make a substantial contribution to development effectiveness by strengthening our own capacity and that of our DMCs in (i) financial sector reform in selected areas such as insolvency, secured transactions, and capital markets law reform, (ii) regulatory reform in certain sectors such as electricity, gas and water law reform, (iii) legal and administrative governance

(ii)

reform to promote transparency and accountability and (iv) key emerging or strategic issues, such as anti-money laundering and the legal aspects of regional trade and economic arrangements.

Regardless of whether one places emphasis on economic growth, social development or governance, it is important to recognize that law helps transform policy into reality on the ground. It is the “intellectual bridge” that supports all of the ADB’s activities and should be seen as an integral part of ADB’s development agenda.

Arthur M. Mitchell
General Counsel

I. INTRODUCTION

1. Since 1993, the Asian Development Bank (ADB) has initiated or played a key role in about 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 (this work is collectively referred to by the ADB as its Law and Policy Reform (LPR) activities). These activities increased significantly after the Board adopted the Governance Policy.¹

2. The adoption of the Governance policy spurred LPR activities particularly for creation or strengthening of legal frameworks for a market economy and capacity building of the judiciary and government lawyers.

3. In 1999, the ADB rededicated itself to the eradication of poverty in the region with the Poverty Reduction Strategy embodying the ADB's commitment and approach to this task.

4. In the Poverty Reduction Strategy, the ADB acknowledged a move away from income levels as the chief indicator of poverty through a definition that accentuates equality of rights and opportunity:

“poverty is a deprivation of essential assets and opportunities to which every human is entitled. Everyone should have access to basic education and primary health services. Poor households have the right to sustain themselves by their labour and be reasonably rewarded, as well as having some protection from external shocks. Beyond income and basic services, individuals and societies are also poor – and tend to remain so – if they are not empowered to participate in making the decisions that shape their lives.”²

5. As a result of the new Poverty Reduction Strategy, the ADB expanded its LPR activities to interventions that address broad access to justice issues such as legal empowerment of the poor to ensure equality of access to entitlements and opportunities as well as participation in local governance structures and decision-making processes affecting their livelihoods and basic rights. At the same time, the ADB has continued to support initiatives designed to strengthen the enabling environment for sustainable economic growth as well as improve governance. ADB's LPR activities have also nurtured change in the field of LPR incrementally through regional cooperation efforts.

6. This paper explores how ADB's LPR activities have supported the overarching goal of the ADB – poverty reduction. Part II looks at the scope of the ADB's LPR work and the current priorities. Part III identifies areas of strength and expertise stemming from the ADB's experience of ten years LPR work and why this work is integral to the ADB's broader development objectives. Part IV looks at future directions in the ADB's LPR activities.

¹ ADB. 1995. *Governance: Sound Development Management*. Manila.

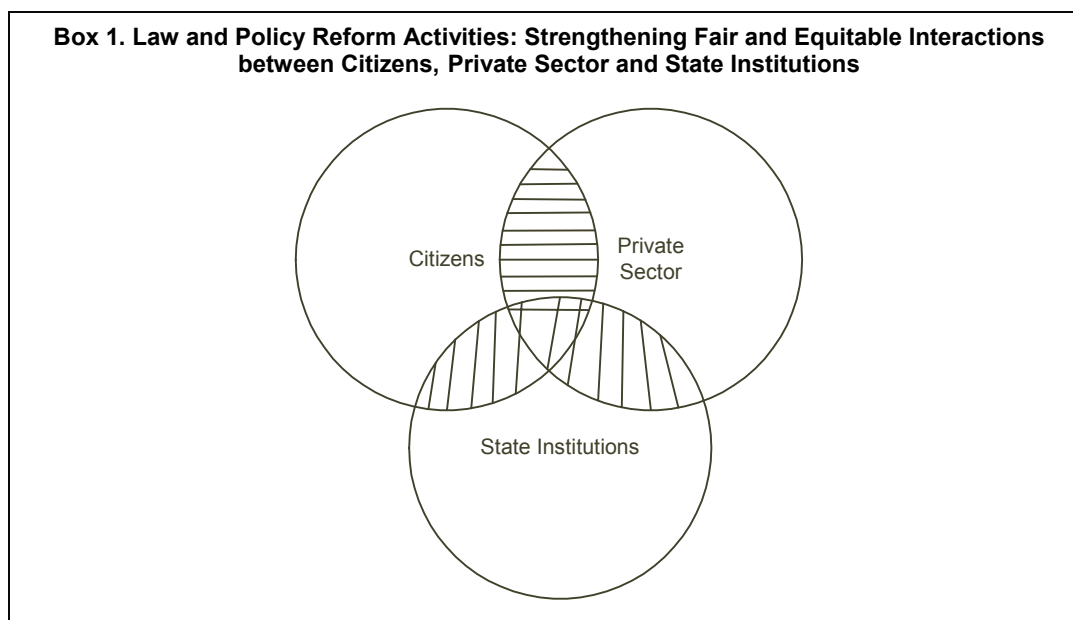
² ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*. Manila.

II. THE SCOPE OF THE ADB'S LAW AND POLICY REFORM ACTIVITIES

7. During the last ten years, the Office of the General Counsel (OGC) and the other departments of the ADB have increasingly been mainstreaming law and policy reform through about 400 technical assistance and loan projects. This includes the largest legal and judicial reform program on a global scale – the Pakistan Access to Justice Project involving loans of over \$350 million to work with the government of Pakistan on a matrix of judicial, police, administrative and policy reforms. This also includes 66 technical assistance projects that OGC has initiated and administered.

8. For ADB the definition of governance includes “the institutional environment in which citizens interact among themselves and with government agencies/ officials”³. As a legal system encompasses the rights and obligations of any individual, business or institution that are supported by formal or informal enforcement mechanisms, the LPR activities of the ADB cut across a range of sectors. Put simply, law underpins most aspects of social, economic and political activity including citizens’ interactions with each other, with private sector entities aimed at growth and prosperity and with the government. As growth is widely recognized as the main driver of poverty reduction, the ADB’s LPR activities support an enabling environment for a market-based economy in which the private sector is the engine of growth. However, as the ADB’s poverty reduction strategy includes emphasis on addressing the non-income dimensions of poverty, LPR activities support a wide array of reforms to strengthen active citizenship including institutional reforms to ensure growth with equity.

9. The ADB’s LPR activities can be viewed as strengthening a range of fair and equitable interactions between citizens, business and state institutions and can be diagrammatically presented as the shaded area in Box 1.



10. With a view to ensure access to justice for all concerned, ADB channels its LPR work into four priority areas through activities that:

³ ADB. 1995. *Governance: Sound Development Management*. Manila.

- (i) strengthen the enabling environment for economic growth;
- (ii) empower the poor by raising awareness of legal rights and obligations and strengthen their ability to contribute to local governance structures and decision-making processes affecting their livelihoods and basic rights;
- (iii) support equality of access to justice and non-discrimination in the application and enforcement of laws and policies; and
- (iv) contribute to regional cooperation in strategic areas of LPR.

11. These priority areas support the overall policy aim of poverty reduction through complementary approaches that create an enabling environment for private sector led growth through more efficient systems of regulation of public goods and services; empower citizens in their interactions with public and private sector institutions; create and administer more transparent and predictable systems of laws and dispute resolution and ensure that those laws are implemented and enforced in an equitable and non-discriminatory manner. The ADB's definition of poverty reduction recognises that a developing member country must have both the capacity to generate income through public and private sector endeavours and the policies and laws to ensure that its citizens have equal access to "essential assets and opportunities". LPR represents the building blocks for both pieces of the puzzle. This paper seeks to demonstrate how the ADB's LPR activities work at the nexus of the interactions between citizens, business and state institutions in order to:

- (i) support citizens' access to essential assets and opportunities;
- (ii) strengthen the state's role as provider of essential public goods and services (including security of person and a system of justice), and regulator of economic activity; and
- (iii) create an enabling environment for private-sector led growth.

12. The manner in which the ADB has undertaken LPR activities has undergone change over the ten years since this work began but has included the following types of interventions:

A. Legislative and Institutional Reform

- (i) Legislative reform, including legal frameworks for decentralised government;
- (ii) Administrative reforms;
- (iii) Regulatory reforms;
- (iv) Policy or standard setting reforms;
- (v) Assisting governments in considering how to effectively manage government legal services; and
- (vi) Working with judges and court registrars to make courts work more effectively, deliver judgments of high quality and disseminate information on their work practices in a more transparent manner to the public that they serve.

B. Transparency and Dissemination of Information

- (i) Awareness raising and capacity building in relation to legal reforms introduced, including with poor communities within the Developing Member Countries (DMCs);
- (ii) Information dissemination and the promotion of transparency in relation to laws, court judgments and administrative practices and policies by institutionalising a right to information or obligation to disclose information;

- (iii) Creation of an Asian legal database linking English translations of laws, court judgments and commentaries on laws from DMC jurisdictions accessible via the Web; and
- (iv) Working with courts and public sector institutions to publish information on their role and performance through annual reports; websites or information kiosks within the institutions.

C. Capacity Building and Institutionalising Training

- (i) Working with government institutions and regulatory agencies to strengthen capacity to deliver services to the poor and other members of society;
- (ii) Creation of continuing legal education institutions for lawyers, judges, prosecutors and government officials; and
- (iii) Creation of training materials on new laws and policies including the creation of on-line databases of in-house training materials for government departments with offices scattered geographically.

D. Research

- (i) Commissioning research in strategic areas of LPR and gathering key players from DMCs to consider these findings.

13. Box 2 describes the wide range of subject matters that this work has covered.

Box 2. Scope of law and policy reform activities

The law and policy reform work of the ADB has a broad scope and has included the following areas of activity:

- | | |
|---|--|
| ▪ Access to Justice | ▪ Public Sector Performance Incentives |
| ▪ Administrative Law | ▪ Continuing Legal Education |
| ▪ Alternative Dispute Resolution | ▪ Court Delay Reduction |
| ▪ Anti-corruption laws and institutions | ▪ Court Management Reform |
| ▪ Anti-money laundering | ▪ Insolvency |
| ▪ Banking Law | ▪ Judicial Education |
| ▪ Commercial Laws | ▪ Judicial Independence |
| ▪ Customs Administration | ▪ Land Reform |
| ▪ Environmental Law | ▪ Legal Advocacy |
| ▪ Insurance Law | ▪ Legal Information Systems |
| ▪ Labour Law | ▪ Private Sector Financing of Infrastructure |
| ▪ Pension Law | ▪ Regulatory Reform |
| ▪ Public Sector Accountability Mechanisms | ▪ Secured Transactions |
| | ▪ Trade Law |

III. THE ADB'S EXPERIENCE IN LAW AND POLICY REFORM ACTIVITIES

14. One of the strengths of the ADB's LPR work has been its contribution toward supporting a reform dynamic within certain DMCs. The ADB has been able to leverage the existing internal reform dynamic by supporting strategic contributions. The interplay of the following three elements has allowed pro-reform DMCs to move quickly to benefit from ADB financial resources in support of LPR activities aimed at poverty reduction:

- (i) Targeted research - both country and region specific - on key LPR areas that are then pilot-tested prior to wider implementation within the DMC;
- (ii) The bringing together of key legal stakeholders from DMCs at regional meetings to share research results, discuss pilot studies and observe how reforms are working "across the border" in possibly similar sub-regional settings;
- (iii) The interaction of ADB lawyers with DMC government lawyers, judges and the wider legal community through Country Programming and loan-processing missions building a dialogue that enables governments to trial and then implement legal and judicial reforms on a broad scale.

15. A further element contributing to the dynamism of the ADB's LPR work has been a willingness to experiment, conduct research, trial-test the results and revise approaches if necessary prior to wider implementation in the field. Some of the successes will be documented in the examples given within this section. The challenges will be explored in more detail in Part IV of this paper.

A. Strengthening the Enabling Environment for Economic Growth

16. **Shaping New Laws for a Market Economy:** ADB's LPR activities have supported a wide array of activities designed to strengthen the enabling environment for private sector led economic growth. These include assisting with the building blocks of economic activity such as supporting the drafting of new economic laws particularly in the transition economies or the modernisation and harmonisation of economic laws in countries where new policies are being developed to shape new roles for the state and the private sector. The ADB has supported the drafting of new economic laws in several DMCs including: the Kyrgyz Republic, Lao PDR,⁴ Mongolia,⁵ Nepal,⁶ Pakistan, the PRC,⁷ and Tajikistan.⁸

17. **Training on New Laws and Policies:** The next phase of assistance from a LPR perspective is the provision of assistance to train government officials, lawyers and judges on how to implement the new laws. In the early years, OGC was involved in stand alone training projects. More recently, training has been included as one of a number of components within broader LPR technical assistance projects that aim to assist DMC governments to (i) enhance

⁴ ADB. 1998. *Technical Assistance to Lao PDR for Development and Application of the Secured Transactions Law & Bankruptcy Law*. Manila.

⁵ ADB. 1993. *Technical Assistance to Mongolia for Developing Mongolia's Legal Framework*. Manila.

⁶ ADB. 2000. *Technical Assistance to Nepal for the Company, Insolvency and Secured Transactions Law Reform*. Manila.

⁷ ADB. 1998. *Technical Assistance to PRC for Legislation Drafting Support for Securities Law*. Manila.

ADB. 1999. *Technical Assistance to PRC for Development of Economic Laws*. Manila.

ADB. 2001. *Technical Assistance to PRC for WTO Membership and Foreign Trade Law Reform*. Manila.

⁸ ADB. 1999. *Technical Assistance to Tajikistan Dissemination of Laws and the Strengthening of the Legal Information System*. Manila.

the performance of public institutions (especially courts, ministries of Justice and regulatory institutions) and build responsiveness to citizen's needs and demands; (ii) where necessary, establish or strengthen market institutions and (iii) enhance access by citizens to legal information and formal or informal dispute resolution bodies.

18. **Institutionalising Legal and Judicial Training:** ADB has devoted significant resources to the task of strengthening the knowledge and skills of government officials, lawyers and judges. The challenge of making this training more sustainable in a DMC setting has led to the ADB developing a number of approaches.

- **Assisting DMCs in the establishment of legal training institutions:** In the Maldives,⁹ Mongolia,¹⁰ Nepal, Pakistan and Viet Nam,¹¹ ADB has worked to train staff and develop training materials for continuing legal education institutions that will train judges, prosecutors, lawyers and government officials.
- **Development of training curricula for national training institutions:** In projects involving legislative and policy reforms, ADB has developed training curricula for national training institutions such as judicial colleges, or university law courses that cover the new laws and policies. Examples include a course on the new Cambodian land law reforms for the Judicial Training School in Phnom Penh¹² and support for establishment of a new law school in the Maldives together with development of curricula and capacity building of the faculty.
- **Intranet or Web-based access to training materials:** ADB has also worked with a government department in Thailand to develop a Thai language database of self-training materials on insolvency and business reorganization for the over 2000 staff of a government department dispersed across 94 offices.¹³ The database is accessible via the department's intranet and the Internet and allows employees within the organization to easily access notes, checklists or documents to assist them implement their work. A database administration facility also allows the host organization to easily amend and update the training material.

19. **Making Laws More Transparent:** Access to information about laws, court judgments and policies is a core element of good governance. It allows local entrepreneurs, foreign investors, and citizens to know what the law is and how it has been interpreted in court cases. OGC has worked on both a regional and in-country level on projects that make laws and legal information more transparent.

- **DIAL (Development of the Internet for Asian Law)** is a catalog and search facility of legal materials on the Internet from all countries worldwide funded by the ADB that aims to make it easier to find and use legislation-related materials on the Internet. The DIAL

⁹ ADB. 1998. *Technical Assistance to Maldives for Strengthening the Maldivian Legal System*. Manila.

ADB. 1999. *Technical Assistance to Maldives for Strengthening Legal Education and Judicial Training*. Manila.

¹⁰ ADB. 1997. *Technical Assistance to Mongolia for the Retraining of Legal Professionals in a Market Economy*. Manila.

ADB. 2002. *Technical Assistance to Mongolia for the Retraining of Legal Professionals in a Market Economy II*. Manila.

¹¹ ADB. 1997. *Technical Assistance to Vietnam for the Retraining of Government Legal Officers*. Manila.

¹² ADB. 2000. *Technical Assistance to Cambodia Implementation of Land Legislation*. Manila.

ADB. 2003. *Technical Assistance to Cambodia Implementation of Land Legislation II*. Manila.

¹³ ADB. 2000. *Technical Assistance to Thailand for the Training in Business Reorganization and Insolvency*. Manila.

project also provided [in-country training](#) in Internet legal research to government lawyers in seven DMCs: the People's Republic of China, Mongolia, Pakistan, Indonesia, the Philippines, Viet Nam and Cambodia.¹⁴ The DIAL project has now been merged with the World Legal Information project (URL: worldlii.org) which is the largest internet based provider of free legal information in the world.

- **Nepal, PRC and Tajikistan Legal Information Systems:** ADB has assisted the Tajik Law Reform Commission to harmonise, publish and disseminate a collection of laws of the Republic of Tajikistan in the Tajik and Russian languages.¹⁵ The collection of over 5000 legal instruments (laws, international agreements, parliamentary and government decrees, and presidential edicts and directives) were published in hard-copy and made available on the Intranet of the Ministry of Justice and will shortly be made available via the Internet. A similar project is underway in Nepal to create an on-line legal information system of laws, regulations and court decisions that will be accessible via the Internet. The support to PRC resulted in the publication of a sixteen volume loose-leaf publication of PRC Laws and Regulations, carrying the officially authenticated English translation of laws and regulations.

20. **New Regulatory Institutions and Mechanisms:** As DMCs have moved from centrally planned economies to more market based economies, governments have explored ways to increase the role of the private sector in the provision of core public utilities or services such as water, energy, roads and other forms of public infrastructure. The ADB has responded to DMC requests for information on how to structure the contractual and financial arrangements for these public private partnerships as well as the policy implications of different forms of regulation. Training on these issues for government officials from a range of sectoral ministries has been conducted in Bangladesh, India, Indonesia, the PRC and Viet Nam.¹⁶ The ADB has also conducted research that surveyed and evaluated regulatory frameworks for private sector infrastructure development in Bangladesh, India, Indonesia, Malaysia, Pakistan and Philippines and evaluated how the regulatory regimes performed from a governance perspective.¹⁷ The research findings on issues such as price and profitability; service coverage and quality; and investment were incorporated into the training programmes conducted in the five DMCs.

21. **International Trade:** Capturing the economic and social benefits of increased trade in goods and services is of central importance to many DMC governments. The Doha Development Round of trade negotiations under the WTO will be a critical round of negotiations as developing countries are seeking significantly enhanced market access for their goods, in particular agricultural goods, in the markets of their developed country trading partners. 18 DMCs are members of the WTO; 19 DMCs are not members with 9 of these in the process of acceding to the WTO. In the case of the PRC, the ADB responded to a request for assistance in the preparation stages of the PRC's accession to the WTO.¹⁸ The technical assistance included assisting the then Ministry of Foreign Trade and Commerce (MOFTEC) with the drafting of key

¹⁴ ADB. 1996. *Regional Technical Assistance for the Feasibility Study for Project Dial*. Manila.

ADB. 1998. *Regional Technical Assistance for the Development of the Internet for Asian Law*. Manila.

¹⁵ ADB. 1999. *Technical Assistance to Tajikistan for the Dissemination of Laws and the Strengthening of the Legal Information System*. Manila

¹⁶ ADB. 1997. *Regional Technical Assistance for the Legal Training in BOT/BOOT Infrastructure Development*. Manila.

ADB. 1999. *Regional Technical Assistance for the Legal Training of Government Officials in Private Infrastructure Development*. Manila.

¹⁷ ADB. 1997. *Regional Technical Assistance for the Governance and Regulatory Regimes for Private Infrastructure Development*. Manila.

¹⁸ ADB. 2001. *Technical Assistance PRC for the WTO Membership and Foreign Trade Law Reform*. Manila.

pieces of legislation to ensure its consistency with WTO rules and supporting government officials in their understanding of major issues in the WTO Doha Development Agenda and regional trade and economic integration arrangements. Subsequent to the PRC becoming a Member of the WTO, the ADB has responded to a further request for technical assistance to strengthen the ability of the judiciary to conduct an independent judicial review of administrative decisions affecting foreign trade matters as required under the WTO agreements.¹⁹ The technical assistance project will assist with two major challenges for the PRC government in implementing its WTO obligations: how to address the legal and institutional issues arising with judicial review in the PRC context and how to strengthen the capacity of the court system to conduct judicial review of WTO related matters.

22. Insolvency and Secured Transactions Reform: The beneficial combination of the timeliness and quality of research matched with regional endorsement by key stakeholders has been strikingly demonstrated in the area of insolvency and secured transactions reform. Capturing the increased momentum toward financial sector reform spawned in the wake of the Asian financial crisis, an OGC regional technical assistance project analysed insolvency and business reorganization frameworks across eleven Asian jurisdictions and proposed recommendations for further reform.²⁰ This research was then channelled into the elaboration and publication of good practice standards that are considered essential to debtor-creditor relations in a sound corporate insolvency environment.²¹ Demonstrating the pioneering nature of this work, the United Nations Centre for International Trade Law (UNCITRAL) has incorporated their good practice standards into its draft Legislative Guide on Insolvency Law.

23. The impact of the Asian Financial Crisis also highlighted the importance of developing a framework for regional cooperation to address the growing problem of cross-border corporate insolvencies. OGC's two regional meetings of key stakeholders on strengthening national insolvency frameworks lead to a further commitment by four DMCs to consider ways of cooperating in the area of cross-border insolvencies.²²

24. The ADB research in the area of secured transactions commissioned under a regional technical assistance lead to the development of a strategy for secured transactions law reform for several DMCs and a series of follow-on country initiatives in Bangladesh, India²³, Indonesia, Laos²⁴, Sri Lanka and Viet Nam.²⁵ This research also led to the publication of a "*Guide to Moveables Registries*".²⁶ Importantly, the ADB's research pioneered an integrated approach to insolvency and secured transaction law reform so as to ensure that any insolvency reforms support secured lending and contribute to a more predictable debtor-creditor legal regime.

25. Box 3 looks at how this body of LPR work supports the ADB's activities promoting economic growth, the development of good corporate governance standards and the preservation of jobs where possible.

¹⁹ ADB. 2002. *Technical Assistance PRC for the Enforcement of WTO Rules by Judicial System*. Manila.

²⁰ ADB. 1998. *Regional Technical Assistance for the Insolvency Law Reform*. Manila.

²¹ ADB. 2000. *Law and Policy Reform at the ADB Vol. I, Insolvency Law Reforms in the Asian and Pacific Region*. Manila.

²² ADB. 2001. *Regional Technical Assistance for Promoting Regional Cooperation in the Development of Insolvency Law Reforms*. Manila.

²³ ADB. 2002. *Technical Assistance to India for the Support for Registration System for Secured Transactions*. Manila.

²⁴ ADB. 1998. *Technical Assistance to Lao PDR for the Development and Application of the Secured Transactions Law & Bankruptcy Law*. Manila.

²⁵ ADB. 1997. *Technical Assistance to Vietnam for the Registration System for Secured Transactions*. Manila.

²⁶ ADB. 2002. *Law and Policy Reform at the ADB, A Guide to Movables Registries*. Manila.

Box 3. Insolvency and Secured Transactions

Sound regimes for insolvency and secured transactions contribute to an enabling environment for the private sector as well as protecting employment opportunities for citizens in the following ways:

- **Preserving jobs where possible:** Efficient insolvency laws should include mechanisms that provide for the continuation of an insolvent corporate debtor where possible. The presence of effective 'rescue' processes, in which creditors and shareholders have confidence, are likely to increase the possibility of businesses being rehabilitated with the result that employees retain their means of livelihood.
- **Enforcing appropriate standards of corporate governance and responsibility:** Insolvency laws and processes can provide a means of investigating and reporting on the management and conduct of an insolvent corporation leading to an awareness of what practices lead to the corporation being declared insolvent. In cases where there appear to have been infringements of laws by corporate managers or directors, action could be taken to prosecute these cases building awareness nationally of what constitutes illegal corporate conduct.
- **Creating a transparent, predictable and equitable environment** for the resolution of the affairs of a corporation that is insolvent: Sound insolvency laws permit all economic actors (corporate debtor, creditors, shareholders, managers, employees and government) to understand in advance how their interests will be protected in the event the corporation is declared insolvent.
- **Increasing SME access to credit:** Secured transactions regimes can allow small and medium sized enterprises and farmers to use moveable property, such as equipment and raw materials, as collateral for credit. As the poor often have no real estate or imperfect title to their land it is even more important that effective methods of using moveable property to secure credit can be developed. These systems of secured transactions using moveable property are relatively undeveloped in the Asian context and severely constrain the ability of the poor to obtain credit for their enterprises or farms.
- **Lowering the cost and maturities of credit:** When the debtor can offer private creditors collateral for a loan, they offer larger loans, at lower interest rates, payable over longer periods of time. Compared to a debtor who cannot offer good collateral, one with such moveable property collateral can anticipate receiving six to eight times more credit, taking two to ten times longer for repayment, and paying interest rates 30 percent to 50 percent lower.¹ A sound secured transactions regime using moveable property would not only provide access to credit for SME entrepreneurs and farmers but would lower the cost and extend the repayment terms of this credit. Similarly, when the insolvency risk for a particular country is predictable and financial institutions can ascertain and price this risk, the cost of credit is stabilised and eventually lowered.
- **Strengthening Asian Financial systems by diversifying the sources of credit:** Evidence from the Asian financial crisis highlighted the potential destabilising impact of financial systems that were overly dependent on the banking sector for credit and on real estate as collateral for credit. Effective insolvency and secured transactions regimes that support moveable property as sources of collateral for credit can reduce these risks.

¹ ADB. 2000. *Law and Policy Reform at the ADB Vol. II, Secured Transactions Law Reform in Asia: Unleashing the Potential of Collateral*. Manila.

B. Empowering the Poor

26. At the heart of ADB's revised 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 as well as with private and public sector institutions in relation to their legal rights and obligations. It also involves the state, including devolved government institutions, developing mechanisms that enhance citizen's participation in governance structures at national and sub-national levels.

27. The ADB has again commissioned innovative research examining 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. Box 4 explores some of the findings of the Legal Empowerment Study.²⁷

²⁷ ADB. 1999. *Regional Technical Assistance for the Legal Literacy for Supporting Governance*. Manila.

Box 4. Legal Empowerment: Advancing Good Governance and Poverty Reduction

In 2000, the ADB commissioned a study that examined 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 study 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 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 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 a variety of activities and strategies including:

- **Raising awareness of the law and rights it confers:** through print media, TV, radio, performing arts, internet, distance education, community based training, training of trainers;
- **Assistance to poor communities to take action to assert rights or enforce judgments through formal or informal decision making bodies:** e.g. legal aid, assistance from paralegals, alternative dispute resolution, public interest litigation cases (or class actions);
- **Participation by the poor, or NGOs representing their interests, in local governance structures relating to issues that affect their lives:** e.g. community participation in justice monitoring committees such as the Citizen Liaison Coordinating Committee in NWFP, Pakistan and Criminal Justice Coordinating Committee in Sindh, Pakistan.

The governance dimension of legal empowerment acts in two complementary ways: firstly 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 secondly in the longer-term, the mobilization of public interest and expectations can have a catalytic impact in terms of making public institutions more responsive and accountable to the needs and rights of the poor.

28. Legal empowerment is critically linked to the participation of the poor in issues that affect their livelihood, basic rights and security. Legal empowerment, in essence, includes a range of activities that promote 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, TV programmes or the performing arts. Legal empowerment activities can also encompass the development of mechanisms for interaction with and the bringing of formalised grievances by citizens to government institutions or the judiciary.

29. The Legal Empowerment Study recommended integrating legal empowerment components into mainstream socioeconomic development projects as well as into legal reform projects. The study noted that there is no standard “best practice” for legal empowerment and that the integration of legal empowerment work into ADB projects will involve experimentation and learning. However, in conclusion the Study noted “The very nature of legal empowerment work also lends itself to other development priorities, such as demonstrating the value of public participation and helping to advance it.”

30. The 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 socio-economic 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. The following examples demonstrate how legal empowerment activities can empower the poor to know and defend their legal rights in areas as diverse as land rights and labour law.

31. **Case Study – Cambodia Land Law Reform:** The great majority of land in Cambodia is unregistered. Through two consecutive projects, the ADB is involved in efforts in Cambodia to establish a legal system with respect to land ownership and related land rights.²⁸ The implementing mechanisms will help resolve the existing uncertainty, disputes and chaos. The first ADB-supported project developed a legal framework for establishing “cadastral commissions,” which are administrative bodies responsible for hearing land disputes over unregistered land at the district, provincial and national levels. ADB support included training for commissioners in dispute resolution. From 2002-2003, the commissions received 979 cases of which 226 have been resolved. Before the establishment of these cadastrals, all disputes over land, whether registered or not, went immediately to the courts.

32. The two projects are also raising public awareness of the land law and increasing people’s access to mechanism’s to realize their rights under the new law. Given that illiteracy was a barrier to relying only on 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 everyday on the government TV channel for two weeks and then almost weekly since. Approximately two thousand five hundred copies of the cartoon book have been produced in the Khmer language and distributed through NGOs. To help the poor who cannot afford lawyers or who live in remote areas, ADB is also supporting the training of grassroots NGO staff to represent the poor before the commissions.

33. **Case Study – Sindh Rural Development Project:** A majority of rural households in significant portions of Sindh Province in Pakistan do not own agricultural or household land. Under the traditional share-cropping tenancy system, the landlord meets the tenant’s economic needs through advances for agricultural inputs, consumption and emergencies with the accounts of these transactions kept by him. Extremely low literacy levels combined with low levels of transparency in the account keeping inhibit control by the tenant as to the account entries. The tenant’s debt accumulates over the years. Because he cannot leave the landlord without clearing the debt he becomes a bonded labourer. Box 5 demonstrates how legal empowerment activities have the potential to improve the legal rights and labour conditions of this particularly vulnerable group.

²⁸ ADB. 2000. *Technical Assistance to Cambodia Implementation of Land Legislation*. Manila.
ADB. 2003. *Technical Assistance to Cambodia Implementation of Land Legislation II*. Manila.

Box 5. Sindh Rural Development Project

Improved Governance and Legal Support is one of five project components and includes the following activities:

- **Legal Awareness Raising:** The Project will assist in preparing and implementing a large-scale awareness raising and dissemination campaign in the Project Area on issues such as the amended Sindh Tenancy Act, the Land Revenue Act, debt bondage, the importance of registration as a tenant, and national identity cards. The campaign will include the translation of relevant legislation into local languages, media campaigns, in particular print media using simple language and pictures, community based training and popular entertainment.
- **Training of government officials** on their roles and duties under the legislation is also included under the project and is aimed at better implementation of the existing legislation.
- **Proper Account Keeping:** One of the main areas of contention in the implementation of the Sindh Tenancy Act is the lack of proper account keeping of the debts accumulated by tenants. The Project will assist in developing and reproducing a simple account keeping system that will be distributed in the Project Area.
- **Training on the maintenance and updating of land records:** To address the low level of compliance with the Land Revenue Act, in particular the updating and maintenance of land records such as *deh* (village) books and village forms, the Project will link with the Government of Sindh's Action Plan for Improved Land Revenue. The Project will train 575 revenue staff in the proper preparation of land and tenancy records. 40 Mukhtiarkars, District Revenue Officers and Tapedar instructors will be directly trained by the National Institute for Public Administration (NIPA).
- The project creates an **incentive** to update and maintain land records as it makes the release of loan funds for rural infrastructure and settlement improvement conditional upon the creation of a list of villages in the project area with a population of over 50 households indicating which of these villages is sanctioned or regularized or not and whether they are located on state or privately owned land.
- **Compliance with relevant legislation** will be strengthened by the training of paralegals and the provision of legal aid to the project's target groups. The paralegals will provide initial legal advice to the target group and, where necessary, facilitate their access to further legal aid under the Access to Justice Endowment Fund for Legal Aid under the existing ADB Access to Justice Project in Pakistan.
- **Civil society** will be involved in the Project through its role in actively monitoring project activities related to the improved governance and legal support mentioned above. Civil society groups will also be actively involved in monitoring the issuance of title deeds in those villages where improved settlement activities will be undertaken.

C. Supporting Equality of Access to Justice and Non-discrimination in the Application and Enforcement of Laws and Policies

34. In order for a legal system to impart justice, laws must be drafted, implemented and enforced in a manner that does not discriminate between citizens and provides them with the means, if necessary, to have disputes resolved with reasonable speed and effectiveness through formal or informal mechanisms. The ADB has undertaken research and applied the findings in projects that aim to ensure that a citizen's poverty and vulnerability do not also result in legal discrimination that further compounds their economic and social marginalisation.

35. **Sociolegal Status of Women - Regional Research:** In 1996, the ADB commissioned a study of the sociolegal status of women in four countries (Indonesia, Malaysia, Philippines and Thailand) to assess the legal constraints on women's participation in economic and social activities and to make recommendations for further action that can be taken by governments, the ADB, and civil society groups.²⁹

36. The regional study demonstrated the specific and inter-related ways in which women are denied equitable access to assets, resources, economic opportunities and are disempowered from pursuing and defending interests by legal, institutional and sociocultural barriers. These constraints intensified the impact of the 1997 economic crisis on women and continue to limit their options and ability to exercise control over decisions and circumstances affecting their lives. The four country reports confirm the need for equitable and gender-sensitive

²⁹ ADB. 2002. *Sociolegal Status of Women in Indonesia, Malaysia, Philippines and Thailand*. Manila.

implementation of laws, for the sensitisation of judicial and law enforcement personnel to women's issues and concerns, and for improvements in women's legal literacy and access to justice.

37. Legal Identity Regional Research: The ADB has initiated a further regional technical assistance that will explore the relationship between the existence of proof of legal identity - such as through a birth record - and access to resources, services and opportunities in four DMCs – Bangladesh, Cambodia, East Timor and Nepal. Annually it is estimated that 63% of births in South Asia go unregistered, with 22% unregistered in East Asia and the Pacific. Registration of births is lower in rural areas than urban ones, lower for girls than for boys, and lower for some minority groups. The 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 (e.g., access to scholarships, participation in exams, buying books), 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, inheritance rights. Registration, then, becomes a fundamental prerequisite for social participation and inclusion. It is also potentially useful in efforts to curb child labor, child marriages, child prostitution and trafficking. Yet compulsory registration also opens up avenues for rent-seeking by officials and has the potential to misuse information. The study will explore how a balanced approach to these issues can be taken.

38. Access to Justice Program, Pakistan: ADB's largest LPR project is the Pakistan Access to Justice program (AJP) which aims to assist the Government of Pakistan to improve access to justice through five inter-related 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; and
- (v) ensuring greater transparency and accountability in the performance of the judiciary, the police and administrative justice institutions.

39. Program Design and Research: The financing package for the AJP which was approved by the ADB Board in December 2001 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, piloted some options for reform and provided the basis for the larger and far more ambitious AJP. This analysis of project risk was critical given this history of non-implementation of reforms; political and economic instability in Pakistan and the magnitude of the eventual loans of \$350 million to the government of Pakistan for AJP. The early technical assistance projects included research on court users and would be litigants and found that any reforms to the judicial system needed to deal with both 'supply' constraints – such as the quality of court facilities, automation and procedures – and 'demand' – including legal literacy, public access to information and creation of special purpose bodies that would give citizens improved access to the judicial process.

40. **Building Knowledge and Experience Incrementally:** The ADB's approach has been to place significant resources at the project design phase. This initial research lends an empirical basis to the recommendations that are developed. In many cases, a number of recommendations will be pilot-tested to see whether the recommendations and underlying assumptions are appropriate or need to be revised. Evaluation of the pilot-test will then determine whether and how to proceed with the broader implementation of the project. Box 6 considers some of the research and pilot-testing initiatives within AJP.

Box 6. Pakistan Access to Justice

*"Improved Access to Justice is an absolutely necessary complement to devolution that is directly linked to poverty reduction. An important factor of grass roots support for devolution is precisely the restoration of the confidence of citizens in the police and courts."*¹

Early Results from the Access to Justice Program: In a program of this scope, it is not feasible to assess program impact after two year's implementation but early results from the performance monitoring and evaluation system point to the following:

●**Delay-Reduction in Courts:** In North West Frontier Province (NWFP) there have been some striking reductions in court cases pending. In the High Court based in Peshawar, the number of cases disposed of in 2002 increased by 222% over those in the previous year (16,158 cases disposed of in 2002 as against 7,260 in 2001). Across the three benches of the High Court in NWFP there was an overall reduction in the total cases pending by the end of 2002 of 35% over the number pending at the end of 2001 (10,880 cases versus 16,931 cases in 2001). In the high volume District Courts of NWFP the statistics are even more striking with the District Courts having disposed of 307,400 cases in 2002; a 177% increase over the number of cases disposed of in 2001.

●**Judicial Performance Monitoring and Rewarding Merit:** Member Inspection Teams within the judiciary have the responsibility of both monitoring judicial performance and investigating complaints regarding the District judiciary. For the first time in 2002-3 all courts within NWFP were inspected and the performance of judges assessed by the Member Inspection Team. An Incentive and Reward Policy was established that provided a monetary reward to judges on the basis of their performance. The policy entailed assessment of the work of the judicial officers against 10 different criteria, which attempted to capture both the qualitative as well as the quantitative aspects of the disposal.

●**Judicial Grievance Procedure Instituted:** The grievance redressal procedures for citizens to lodge complaints in relation to a member of the judiciary were advertised in local newspapers. As a result, the Member Inspection Teams received 864 complaints during July-December 2002. For the year ending 31 Dec 2003, Peshawar High Court is in the final stages of preparing a similar report providing a more detailed break up of the nature and ultimate disposal of these complaints.

Building Community Participation in Project Monitoring and Evaluation

There is a range of stakeholders in the Access to Justice program at federal, provincial and sub-provincial 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 PM&E system seeks to create opportunities for citizens to participate in performance review evaluation activities in addition to citizen initiatives to monitor reforms.

Legal Empowerment Fund : The Access to Justice Project includes the creation of a highly innovative special purpose fund – 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 reform objectives of AJP. The rationale for creation of this Fund is rooted in the inadequate funding of the legal and judicial institutions in the country and lack of formal arrangements for funding small-scale reform projects. AJDF has been capitalized by drawing US\$ 24 million from the AJP loan counterpart funds. In addition, an amount of US \$ 1 million has been allocated by the Government to finance AJDF-related expenditure in the period preceding the accrual of income from investment of the endowment income. The AJDF has the following financing windows:

Provincial Judicial Development Fund (to secure financial resources for the subordinate courts, **Legal Empowerment Fund (LEF)** (to fund legal aid and public awareness efforts, **Fund for Innovation in Legal Education (FILE)** (to strengthen the quality of legal education in law schools in Pakistan) **Federal Judicial Academy Fund (FJA)** to build its capacity to impart quality training **Judicial and Legal Research Fund (JLRF)** (to promote applied research on the legal and judicial system).

New evaluation mechanisms: ADB has made evaluation the lynchpin of its access to justice programme in Pakistan. This has required the creation of new performance monitoring and evaluation (PME) tools that are appropriate for a law and policy reform technical assistance programme. 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 an MOU. Another element of the AJP PME system is that it does not place the entire focus on stand-alone data collection against Monitoring Indicators. Instead, effort has been made to incorporate these Monitoring Indicators into the normal and routine reporting system of different implementation agencies. The agencies do not view the Monitoring system as a mere adjunct to a "donor driven reform project" but address the issue in the normal and standard working of their agencies thereby institutionalising the reporting and monitoring mechanism for the purpose of sustainability and ownership.

¹ *Accelerating Economic Growth and Reducing Poverty: The Road Ahead", Poverty Reduction Strategy Paper, Government of Pakistan (2003) p 59.*

D. Contributing to Regional Cooperation in Strategic Areas of Law and Policy Reform

41. The ADB has been proactive in giving a regional focus to its research in strategic LPR areas. This has involved commissioning research in selected areas across several DMCs, bringing government officials, lawyers, judges, members of civil society and academics together to discuss and comment on the research and then publishing and disseminating the findings. In some cases, including the example of the regional insolvency work discussed above, the ADB LPR activities have led to the creation of formal and informal networks of lawyers and policy makers where they did not previously exist. The ADB has also consistently applied its findings from regional technical assistance research projects to follow-on country loan and technical assistance projects.

42. The case-study below of the ADB's anti-money laundering regional technical assistance demonstrates how the ADB's regional research allowed it to quickly and effectively respond to DMC requests for assistance once the urgency of dealing with this issue and the related financing of terrorism became evident in late 2001. The ADB's role as a regional development bank allows it to forge cooperative relations with relevant international and regional institutions thereby providing a unified and strategic approach on key regional and emerging issues to DMCs.

43. **Anti-Money Laundering and Combating the Financing of Terrorism:** The ADB was one of the first international financial institutions to initiate technical assistance activities in the area of anti-money laundering. In December 2000, the ADB developed a regional technical assistance that covered nine Asian and Pacific DMCs aimed at facilitating the adoption and implementation of internationally accepted standards and accelerating regional cooperation.³⁰ Box 7 looks at what has been achieved as a result of this regional project.

Box 7. Anti-Money Laundering

In 2000, the ADB embarked upon a regional technical assistance project in the field of anti-money laundering in the Asian and Pacific region covering the Cook Islands, Fiji Islands, Indonesia, Marshall Islands, Nauru, Philippines, Samoa, Thailand, and Vanuatu. The dual aim was to facilitate the adoption and implementation of internationally accepted standards and accelerate regional cooperation and collaboration.

OGC worked with the Secretariat of the Asia Pacific Group on Money Laundering (APG), an implementing agency of this project, to strengthen the provision of information to DMCs through the holding of a seminar in June 2002 in conjunction with APG's annual meeting of that year and the establishment of an APG web site in October 2001. A training manual containing major international standards, prevention guidelines, and model laws was also produced and disseminated to DMCs in March 2003.

In each of the nine DMCs research was undertaken to assess the challenges facing each DMC in complying with internationally accepted standards for anti-money laundering and suggest necessary reforms. This research led to the ADB's further involvement in the area of anti-money laundering through providing country dialogue, technical assistance projects and loan components in these and other DMCs, including Cambodia, PRC, Indonesia, Lao PDR, the Philippines, Samoa, Vanuatu, Viet Nam and the Central Asian Republics. The aim of the assistance is to assist DMCs to meet the international standards on anti-money laundering, thereby establishing a robust legal and institutional framework that protects financial institutions from criminal misuse and ensures their integrity.

44. After the September 11 terrorist attacks in the United States in 2001, the threat of money laundering and terrorist financing were discussed as a priority agenda item by many international and regional fora. The importance of the establishment of an effective national system against these threats became widely accepted. Since this time, the ADB has further strengthened its response to numerous DMC requests to assist them in the drafting of laws; training of personnel to develop capacity to implement and enforce these laws; develop national

³⁰ ADB. 2000. *Regional Technical Assistance for Countering Money Laundering in the Asia Pacific Region*. Manila.

frameworks for monitoring suspicious financial transactions, and establish an effective system for international cooperation.

45. In April 2003, the ADB issued its policy on combating money laundering and the financing of terrorism, and noted that the ADB's activities in these areas were extensions of its work to facilitate poverty reduction, promote good governance and anticorruption, and strengthen the integrity of the national financial sector. The three pillars of the policy are: assisting DMCs in establishing and implementing effective legal and institutional systems; increasing collaboration with other international organizations; and strengthening internal controls to safeguard ADB funds.

IV. WHERE TO FROM HERE? FUTURE DIRECTIONS IN LAW AND POLICY REFORM ACTIVITIES

46. ADB's LPR activities over the past decade emphasise the centrality of law and policy reform in making poverty reduction a reality for ADB's DMCs. All three pillars of ADB's poverty reduction strategy (viz. economic growth, social development and governance) require legal underpinnings and assume a degree of capacity within government, private sector and civil society to engage and interact in a productive way. The underlying theme of ADB's LPR work has been the kindling of ideas through interactions with DMC officials; the commissioning of innovative research; and the pilot-testing of the research findings prior to their wider implementation in loan or technical assistance projects.

47. As the ADB moves forward into the next decade of engagement in LPR it must address two core issues: (i) will the ADB seek to prioritise its interventions in the field of LPR, and if so, what will these key areas be? and (ii) are there lessons from the first decade that will inform how it will embark upon its task?

48. The following concluding comments seek to outline key elements of the ADB's future LPR strategy:

49. **Prioritise the areas of intervention of LPR activities:** As can be seen from Part II of this paper, the scope of the LPR work to date has covered many areas. This reflects in part the responsiveness of the ADB to DMC requests for assistance across a range of areas – a policy that will continue – and the fact that the Asia-Pacific region presents an extremely diverse group of countries in terms of their economic development, legal, social and political systems. It also reflects the mainstreaming of LPR in a broad range of sectors in which ADB operates. This also means that prioritisation of LPR activities cannot be delinked from the sector priorities reflected in DMCs' country strategies and policies, and are in large measure dependent on them.

50. The ADB will continue to be responsive to DMC requests for assistance while at the same time seeking to build its expertise in the following core areas:

- (i) Financial Sector Reform (e.g. insolvency, secured transactions and capital market law reform);
- (ii) Regulatory Reform (e.g. electricity, gas and water sector law reform);
- (iii) Legal and Administrative Governance (e.g. internal governance and systems and legal frameworks to promote transparency and accountability); and
- (iv) Key Emerging or Strategic Issues (e.g. money-laundering and legal aspects of the regional trade and economic integration arrangements).

51. The first two areas build on the research already undertaken to strengthen the enabling environments for the private sector. Both financial sector reform and regulatory reform support a significant part of ADB's lending to DMCs. Continuing its work on legal and administrative governance, ADB will support activities that make state institutions more effective and responsive to citizens' needs while at the same time providing assistance to reduce discrimination based on laws and policies or the manner in which these are applied or disregarded. In short, the ADB will remain committed to supporting access to justice for all the region's citizens. To return to the earlier diagram indicating how LPR activities strengthen interactions between citizens, business and state institutions in support of poverty reduction (see Box 1) – the first two areas of intervention will strengthen interactions between the state and the private sector while the third area will strengthen the interactions between citizens and both the public and private sector.

52. The fourth area allows the ADB to respond to emerging issues or, as it has in the past in the case of money-laundering, anticipate these developments by commissioning research and surveys prior to wider acceptance of the importance of the issue to the region. A current strategic issue that the ADB is focusing on is international and regional trade and its implications for the DMCs. Much work has to be done to (i) assist DMCs to participate effectively in the ongoing Doha Development Round of negotiations; (ii) ensure that the legal and policy framework of DMCs that are members of the WTO is consistent with their WTO obligations and (iii) assist DMCs in formulating advantageous regional trade arrangements that are consistent with WTO rules.

53. A particular insight gained from ADB's work over the last ten years is that a much broader view is required of what constitutes a "legal system" and hence "access to justice". ADB's experience in the field points to the need to move away from traditional definitions of the legal system that tend to be too limited to address the broader poverty reduction and development objectives of the ADB. Instead the legal system must be viewed expansively as encompassing the rights and obligations of any individual or private or public institution that is supported by formal or informal enforcement mechanisms. Just as the definition of what constitutes a legal system has expanded, so too has ADB's definition of what constitutes access to justice. Earlier definitions included a narrow and mostly formal set of institutions (courts, judges, prosecutors, and public defenders) and activities (litigation, law drafting, and legal aid). ADB's own experience on the ground in the development of the access to justice program in Pakistan, however, showed the inadequacy of this traditional definition. In the context of reducing vulnerability of the poor the following definition was adopted in the Pakistan program "Justice is understood as a function of the relationship between institutions responsible for delivering entitlements (public goods and services) predictably, affordably, and accountably and the ability of the poor to secure and sustain their access to key sets of assets". It is at this interface that justice or injustice is often dispensed.

54. **ADB Implementation of LPR Work:** OGC will continue to work with the regional divisions of the ADB to bring the latest approaches to the design, implementation and evaluation of LPR activities within country loan and technical assistance projects. It will also continue to be involved in country programming and loan processing missions to discuss LPR initiatives as part of a country's broader development objectives. In addition, ADB will strengthen the recently established LPR Unit in OGC which will represent a centre of expertise on LPR within the ADB to (i) develop with the regional departments a LPR strategy that responds to the needs of DMCs; (ii) initiate regional dialogue on LPR issues; (iii) be a resource on LPR approaches for other lawyers within OGC and ADB staff generally to enable them to mainstream LPR activities

as appropriate in ADB operations, and (iv) maintain contact with other key donors on LPR initiatives.

55. The following approaches that have proved successful in the first decade of LPR activities will be further developed and improved:

- o **Continuing to initiate regional dialogue on key LPR themes** to strengthen regional cooperation and increase knowledge of DMC approaches in a particular field. The ADB will explore the core LPR themes set out above on a regional basis from different perspectives and build on current knowledge and experience.
- o **Mainstreaming legal empowerment activities into Sector Loans and TAs.** Based on its experience to date, the ADB will integrate legal empowerment activities in a range of projects such as agrarian reform, education, health, natural resource management and conservation. Over time it will assess the impact of these activities and whether a citizen's knowledge of legal rights and ability to effectively seek redress contributes to good governance, poverty reduction or otherwise enhances the impact of the project's development goals. The ADB will continue to conduct targeted research on the legal impediments faced by the poor and vulnerable groups.
- o **Building partnerships** and supporting initiatives of relevant institutions within the region to support ADB's LPR work. ADB will continue to work with other international and regional organisations or institutions that undertake work in key areas of LPR. The ADB has entered into Memoranda of Understanding with organisations such as the World Trade Organisation and International Labour Organisation so that each organisation can build on each other's expertise thereby making a greater contribution to the development needs of DMCs.
- o **Measuring the development impact of LPR activities.** As the experience of the Pakistan Access to Justice project has demonstrated, ADB is committed to research and experimentation in developing new performance monitoring and evaluation models. ADB will research ways of more effectively measuring the impact of its LPR activities on poverty reduction. Some of the difficulties include questions of causality (whether the project activities have lead to changes within a country or other factors), the length of time taken for changes to become evident, or, at a more basic level, how to measure the impact on poor communities of LPR projects.
- o **Building the Resources within the ADB.** The point is often made that projects seeking to promote governance structures that address the legal constraints faced by the poor require different modes of thinking to the more traditional "blueprint" construction and infrastructure projects. Work to capture the knowledge and experience gained within the ADB and create functional guides and toolkits for lawyers, economists and other ADB personnel working on LPR projects are underway. Toolkits on trade law, regulatory framework, and the financial sector are under preparation.

56. With these elements of the LPR strategy in place, the ADB will be able to contribute more effectively to DMCs' efforts to build legal systems that support growth and prosperity while at the same time ensuring access to justice for all its citizens.

