

Part I:
Law and Policy Reform
Activities in Support of
Poverty Reduction:
Highlights for 2003

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Introduction

Since 1993, the Asian Development Bank (ADB) has played a key role in law reform, legal and judicial policy reform, legal and judicial institutional reform, and legal empowerment initiatives in the Asia and Pacific Region (this work is collectively referred to by ADB as its “law and policy reform” activities). The Office of the General Counsel (OGC) has, in close partnership with the regional departments of ADB, initiated and administered about 70 projects involving law and policy reform activities. This includes the largest legal and judicial reform program ever undertaken by ADB—the Pakistan Access to Justice Program (AJP), which involves loans of over US\$350 million to work with the government of Pakistan on a battery of judicial, police, administrative and policy reforms.

OGC’s law and policy reform activities reflect ADB’s rededication in 1999 to poverty reduction as its overarching goal pursuant to its Poverty Reduction Strategy. In this strategy, ADB moved from using income levels as the chief indicator of poverty, toward 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.”¹

As a result of the Poverty Reduction Strategy, OGC has refocused its energies toward supporting law and policy reform activities that have an impact on reducing poverty by empowering the poor to contribute to local governance structures and decision-making processes affecting their livelihoods and basic rights. At the same time, OGC has continued to support initiatives designed to strengthen the enabling environment for sustainable economic growth, and improve governance. OGC’s law and policy reform activities have also nurtured change in law and policy reform through regional cooperation efforts.

OGC channels its law and policy reform work into four priority areas through activities that

- (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,

¹ ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy*. Manila.

- (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 law and policy reform.

These priority areas support poverty reduction through complementary approaches that empower the citizen in their interactions with public and private sector institutions, create more efficient systems of regulation of public goods and services, 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.

Highlights of Law and Policy Reform Activities in 2003

This section describes the major achievements in 2003 in the four priority areas mentioned above.

Strengthen the Enabling Environment for Economic Growth

Shaping New Laws for a Market Economy: OGC's law and policy reform activities have supported strengthening of the enabling environment for private sector economic growth. These include assisting with the building blocks of economic activity such as supporting the drafting of new economic laws in transition economies, or the modernization and harmonization of economic laws in countries where the State and the private sector are assuming new roles. ADB has supported the drafting of new economic laws in virtually all of its developing member countries (DMCs), most recently in the following: People's Republic of China (PRC), the Kyrgyz Republic, Lao People's Democratic Republic, Mongolia, Nepal, Pakistan, and Tajikistan.

In the PRC, for example, OGC has been assisting the National People's Congress achieve its target of establishing in 10 years a legal framework suitable for a market economy. This assistance has included

- (i) legislation drafting support for an anti-monopoly law and research on unification of laws governing corporate organizations; (ii) unification of laws governing foreign invested enterprises and unification of both domestic and foreign invested enterprises under one corporate law system; (iii) land administration, property registration, and secured transaction for financing projects involving land development; and (iv) research and legislation drafting support for proprietary law, land law, and law on land administration.

Strengthening the Judicial System: An impartial and efficient judicial system is a critical element for sustainable economic growth and good governance. In 2003, Supreme Court chief justices, ministers of law and justice, leading academics, and civil society representatives participated in ADB's symposium on Judicial Independence, the final report of which follows. In the Philippines, 2003 also saw the finalization of recommendations for submission to the Philippine Supreme Court on the following: the judiciary's financial and administrative independence and accountability, the judicial nomination process and judicial career development, and the strengthening of the Philippine Judicial Academy's capacity to deliver continuing judicial education. These recommendations followed several consultations, meetings, focus group discussions, and presentations and workshops, which were held nationally, regionally, and with specific stakeholder groups—the recommendations had been presented at various stages of development to test their soundness and acceptability, and to encourage stakeholder inputs into the reform proposals. Technical assistance for improving the administration of the Supreme Court of Indonesia was approved in 2003 and will commence in 2004.

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 World Trade Organization (WTO) will be a critical round of negotiations as developing countries are seeking significantly enhanced market access for their goods, in particular, agricultural goods. Eighteen 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, ADB has been providing assistance since the preparation stages of the PRC's accession to the WTO. This assistance included deepening the understanding of government officials of the core areas of the WTO agreements and assisting the then Ministry of Foreign Trade and Commerce with the drafting of key pieces of legislation to ensure its consistency with WTO rules. Subsequent to the PRC's becoming a member of the WTO, OGC has been assisting the PRC government on two major challenges in implementing its WTO obligations: (i) addressing the legal and institutional issues arising with judicial review, and (ii) strengthening the capacity of the court system to conduct judicial review of WTO-related matters.

Training on New Laws and Policies: In 2003, OGC continued to provide training to (i) enhance the performance of public institutions (especially courts, ministries of justice and regulatory institutions) and build responsiveness to citizens' needs and demands; (ii) where necessary, establish market institutions; and (iii) enhance citizens' access to legal information, and formal or informal dispute resolution bodies. ADB has developed a number of approaches to meet the challenge of making training sustainable in DMCs:

- Assisting DMCs in establishing legal training institutions: In Maldives, Mongolia, Nepal, Pakistan and Viet Nam, ADB continues to train staff and develop training materials for continuing legal education institutions that will train judges, prosecutors, lawyers and government officials.
- Developing 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 in 2003 included a course on the new Cambodian land law reforms for the Judicial Training School in Phnom Penh, and support for establishment of a new law school in the Maldives.
- Accessing training materials through Intranet or Web sites. OGC has also worked with a government department in Thailand to develop a Thai language database of self-train-

ing materials on insolvency and business reorganization for the over 2,000 staff of a government department dispersed across 94 offices. The database is accessible through 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.

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. For example, in 2003, ADB completed its assistance to the Tajik Law Reform Commission for harmonizing, publishing, and disseminating a collection of Tajik laws in the Tajik and Russian languages. The collection of over 5,000 legal acts (laws, international agreements, parliamentary and government decrees, and presidential edicts and directives) were published, made available on the Intranet of the Ministry of Justice, and are expected to be made available via the Internet shortly. A similar project is underway in Nepal to create an online legal information system of laws, regulations and court decisions that will be accessible via the Internet.

Empowering the Poor

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, and with private and public sector institutions in relation to their legal rights and obligations. It also involves the State, or devolved government institution, developing mechanisms that enhance citizens' participation in governance structures at federal, provincial and local levels.

ADB is undertaking pilot studies on the use of legal empowerment activities 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. 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 labor law.

Land Law Reform: The great majority of land in Cambodia is unregistered. OGC has been involved in two projects in Cambodia to establish a legal system with respect to ownership and related land rights. The implementing mechanisms will resolve the existing uncertainty, disputes and chaos. The first project developed a legal framework for establishing “cadastral commissions,” i.e., 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.

Both OGC projects raise public awareness of the Land Law and increase people’s access to mechanisms to realize their rights under the new law. Realizing that illiteracy was a barrier to the public’s awareness of the new law, OGC’s assistance included the filming of a public awareness video entitled “Our land,” and a cartoon book of the video. The video was shown everyday on the government TV channel for two weeks and almost weekly since. Approximately 2,500 copies of the cartoon book have been produced in the Khmer language and distributed through nongovernment organizations (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, who could represent them before the commissions.

Bonded Labor: 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 generally makes cash advances for agricultural inputs, consumption, and emergencies, and keeps the ledger of accounts of these transactions. An illiterate tenant is unable to monitor the book-keeping and becomes vulnerable to any manipula-

tion of the accounts by the landlord. The tenant’s debt, whether real or fictitious, accumulates over the years. Because he/she cannot leave the landlord without clearing the debt—as the records by the landlord are maintained—he becomes a bonded laborer.

Under the Sindh Rural Development Project approved in 2003, governance and legal support is one of the project components, and includes the following: (i) preparation and implementation of a large-scale awareness raising and dissemination campaign 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; (ii) training of government officials on their roles and duties under the legislation to help achieve better implementation of the legislation; (iii) development of a simple account keeping system (a key area of contention regarding implementation of the Sindh Tenancy Act is the lack of proper account keeping of the debts accumulated by tenants); (iv) training in maintaining and updating land records; and (v) training of paralegals and provision of further legal aid to the project’s target groups through the Endowment Fund for Legal Aid under the ongoing AJP in Pakistan.

AJP: ADB’s largest law and policy reform program, AJP, aims to assist the Government of Pakistan to improve access to justice through five inter-related governance objectives:

- Providing a legal basis for judicial, policy and administrative reforms;
- Improving the efficiency, timeliness, and effectiveness in judicial and police services;
- Supporting greater equity and accessibility in justice services for the vulnerable poor;
- Improving predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions at the federal, provincial and local government levels; and
- Ensuring greater transparency and accountability in the performance of the judiciary, the police and administrative justice institutions.

While it is not feasible to assess project impact after 2 years of implementation for a program of this scale, early results from the performance monitoring and evaluation system include :

- **Reduction of Delays in Courts:** In the 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 Courts 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 2001.
- **Monitoring of Judicial Performance 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 2002–2003 all courts within NWFP were inspected and the performance of judges assessed by the Member Inspection Team. An incentive and reward policy that provided monetary rewards to judges on the basis of their performance was established. 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.
- **Establishment of a Judicial Grievance Procedure:** The grievance redress 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 2003, the Peshawar High Court is in the final stages of preparing a similar report providing a more detailed breakdown of the nature and ultimate disposal of these complaints.
- **Creation of a Legal Empowerment Fund:** The AJP includes the creation of a highly innovative special purpose fund—the Access to Justice Development Fund (AJDF)—which is a

statutory endowment created to provide independent budgetary support to the judiciary, particularly the subordinate judiciary, and carry forward other reform objectives of AJP. The rationale for creation of AJDF 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, 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. Through financing windows, AJDF covers funding for the subordinate courts, legal aid and public awareness efforts, strengthening the quality of legal education in law schools in Pakistan and promoting applied research on the legal and judicial system.

Supporting Equality of Access to Justice and Non-Discrimination in the Application and Enforcement of Laws and Policies

In order for a legal system to impart justice, laws must be drafted, enacted 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. 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 his/her economic and social marginalization.

Legal Identity Regional Research: OGC has initiated a regional technical assistance project 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, Timor-Leste and Nepal. It is estimated that annually, 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. Unregistered persons 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 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, and 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. On the other hand, compulsory registration also opens up avenues for rent-seeking by officials and has the potential for misuse. The study will explore how a balanced approach to these issues can be taken.

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

ADB has been proactive in giving a regional focus to its research in strategic law and policy reform 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 publishing and disseminating the findings. In many cases, the ADB law and policy reform activities have led to the creation of formal and informal networks of lawyers and policymakers where they did not previously exist. ADB has also consistently applied its findings from

regional technical assistance research projects to follow-on country loan and technical assistance projects.

Anti-Money Laundering and Combating the Financing of Terrorism: ADB was one of the first international financial institutions to initiate technical assistance activities in the area of anti-money laundering. In December 2000, ADB developed a regional technical assistance that covered nine Asian and Pacific DMCs and was aimed at facilitating the adoption and implementation of internationally accepted standards and accelerating regional cooperation. 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 at many international and regional fora. The importance of the establishment of an effective national system against these threats became widely accepted.

Since this time, ADB has further strengthened its response to numerous DMC requests for assistance in the drafting of laws; training of personnel to develop capacity to implement and enforce these laws; developing national frameworks for monitoring suspicious financial transactions, and establishing an effective system for international cooperation. In April 2003, ADB issued its policy on combating money laundering and the financing of terrorism, and noted that 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.