

Introduction

Presented here are the findings of a multi-country study on judicial independence funded under Regional Technical Assistance No. 5987 by the Asian Development Bank (ADB) and carried out by The Asia Foundation (the Foundation). This report assesses the status of judicial independence and accountability in nine Southeast and South Asian countries: Bangladesh, Cambodia, Indonesia, Lao, People's Democratic Republic, Nepal, Pakistan, Philippines, Thailand, and Viet Nam.

The process leading up to the Final Judicial Independence Symposium, which was held on 6–7 August 2003, included two internal meetings attended by the research team members, ADB staff, and other experts. An inception meeting was held in Bangkok on 22–23 March 2002 and an interim meeting was held at ADB in Manila on 23–26 July 2002. Members of the Asia Foundation project team attended both meetings, as did ADB representatives, Mr. Hamid Sharif, Assistant General Counsel, and Mr. Motoo Noguchi, Counsel, Office of the General Counsel. After the Interim Meeting, a draft of the conceptual framework and methodology was revised to reflect the consensus and understanding reached by the participants at the Interim Meeting. After the Interim Meeting, the country authors (see Appendix 1 for a list of the participating consultants) revised and refined their country-level draft preliminary findings, and the research team leaders, in turn, revised their overview draft preliminary findings.

The findings presented here have been further revised based on presentations and discussions at the Final Judicial Independence Symposium in August, 2003. Revisions reflect the input and perspectives of the high caliber participants in the Symposium,

including chief justices, justices, ministers of justice and law, and eminent members of the profession and civil society, as well as the international and domestic consultants to this conference and the professional staff in the Office of General Counsel at the ADB.

This report consists of two major sections: “Overview” and “Country-Level Summaries.”

Overview

The Overview is divided into three parts and includes three appendixes. Part One of this report establishes a baseline of views both outside the judiciary (e.g., the practicing bar, businesspersons, civil society, academia) as well as inside (e.g., the Asian Chief Justices’ “Beijing Statement of Principles of the Independence of the Judiciary,” and many views sympathetic to judiciaries presented by country authors that grew out of their own experience with judiciaries, interviewing judges, and studying the judiciaries in their respective countries);¹ it raises three questions integral to an inquiry into judicial independence; and it lays out a conceptual framework for assessing judicial independence.

Part Two applies the conceptual framework to the following five categories of assessment: (i) the structure and organization of courts in the respective countries; (ii) procedures for judicial selection, appointment, and promotion; (iii) judges’ tenure and removal mechanisms; (iv) judicial remuneration and resources for court administration; and (v) public confidence in the judiciary and its relationship to economic development and governance. The domestic

¹ Of course, one purpose of the August symposium was to elicit the comments and perspectives of leading Asian jurists.

country consultants used this framework as they conducted the country studies and developed their draft preliminary findings. Their work provides the foundation on which the overview is built.

Part Three provides a brief set of recommendations to supplement the much more detailed recommendations identified in the each of the country-level findings.

Appendix 1 provides an overview of the judicial organization and structure in each of the nine countries. Appendix 2 maps various external and internal pressures that are applied to the institution of the judiciary as well as to individuals within the judiciary. Appendix 3 lists the international and country consultants to this project.

Country-Level Summary

The country-level findings illustrate the rich data set generated by this study. Each country-level report

- (i) introduces the history of the development of the judiciary,
- (ii) sets forth the basic structure of the judiciary,
- (iii) outlines external and internal pressures by and on institutions and individuals that challenge or encourage judicial independence, and
- (iv) situates the judiciary in relation to public perceptions, governance and economic development in each of the respective countries.

In this section, the nine countries are listed in alphabetical order for ease of reference.