



Progress Report on Tranche Release

Program Number: 32023-01
Loan Number: 1897/98
July 2007

Pakistan: Access to Justice Program

Asian Development Bank

CURRENCY EQUIVALENTS

(as of 25 July 2007)

| | | |
|---------------|---|-----------------------------|
| Currency Unit | – | Pakistan rupee(s) (PRe/PRs) |
| PRe1.00 | = | \$.01655 |
| \$1.00 | = | PRs60.42 |

ABBREVIATIONS

| | | |
|-------|---|--|
| ADB | – | Asian Development Bank |
| ADR | – | alternative dispute resolution |
| AJDF | – | Access to Justice Development Fund |
| AJP | – | Access to Justice Program |
| APR | – | annual performance review |
| BBLC | – | bench-bar liaison committee |
| CCLC | – | citizen-court liaison committee |
| CPLC | – | citizen-police liaison committee |
| GDP | – | gross domestic product |
| IA | – | implementing agency |
| IPS | – | independent prosecution service |
| LJCP | – | Law and Justice Commission of Pakistan |
| MOL | – | Ministry of Law |
| MOU | – | memorandum of understanding |
| MTBF | – | medium-term budgetary framework |
| NJPMC | – | National Judicial Policy Making Committee |
| NWFP | – | North-West Frontier Province |
| PMU | – | project management unit |
| PO | – | police order |
| PPMU | – | provincial program management unit |
| PRM | – | Pakistan Resident Mission |
| PSPCC | – | public safety and police complaints commission |
| SHC | – | Sindh High Court |
| TA | – | technical assistance |

NOTES

- (i) In this report, "\$" refers to US dollars.
- (ii) The fiscal year (FY) of the Government ends on 30 June. "FY" before a calendar year denotes the year in which the fiscal year ends.

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I. INTRODUCTION

1. A loan to the Government of Pakistan for the Access to Justice Program (AJP)¹ was approved by the Asian Development Bank (ADB) on 20 December 2001, took effect on 24 December 2001, and was set to close on 30 June 2005. The loan closing date was later extended thrice, twice by 1 year, first to 30 June 2006 and then to 30 June 2007, and once by 3 months from 30 June 2007 to 30 September 2007. The AJP is aimed at (i) providing security and ensuring equal protection under the law to citizens, particularly the poor; (ii) securing and sustaining entitlements and thereby reducing the vulnerability of the poor; (iii) strengthening the legitimacy of state institutions; and (iv) creating conditions conducive to pro-poor growth, especially by fostering the confidence of investors. The Ministry of Law (MOL) is the Executing Agency, and the federal Implementing Agencies (IAs) are the Law and Justice Commission of Pakistan (LJCP), the Federal Ombudsman, the Federal Judicial Academy, the Ministry of Interior, and the Higher Education Commission. In the provinces, the departments of law, finance, judiciary, ombudsman, and home are the IAs, and the planning and development departments or boards have a coordinating role.

2. The program loan comprises three tranches plus an incentive tranche, each to be released after compliance with specified policy actions. The first tranche of \$100 million (¥7,714,192,000 and SDR28.793 million) was released on 27 December 2001. The incentive tranche of \$50 million (¥3,051,500,000 and SDR19.561 million) was released on 20 November 2002 instead of the scheduled release date of 30 June 2002, and the second tranche of \$100 million (¥9,154,500,000 and SDR19.560 million) on 22 December 2004 instead of 30 June 2003. The release of the third tranche of \$80 million (¥9,467,958,000) has similarly been moved from 31 December 2004 to 30 June 2007. This progress report outlines the reforms implemented under the AJP, along with the achievements that show compliance with the conditions for the release of the third tranche.

3. The AJP's performance has been monitored closely. This report particularly notes the achievements since the progress report of December 2004 before the release of the second tranche. Two annual performance reviews (APRs) have been conducted since then: the first, from 11 December 2005 to 31 January 2006, which led to the signing of separate memorandums of understanding (MOUs) for technical assistance and program loans, and the second, from 28 March 2007 to 26 April 2007. The Pakistan Resident Mission (PRM) has met regularly with the MOL to review AJP performance, and has had sustained dialogue with key stakeholders.

II. DEVELOPMENTS IN PAKISTAN AND PROGRAM IMPLICATIONS

4. Pakistan's macroeconomic indicators have improved since 2002, the first year of the AJP. Gross domestic product (GDP) growth in FY2006 was a robust 6.6%, compared with 3.3% in FY2002. Although the fiscal deficit increased to 4.2% in FY2006 (3.4% of GDP excluding earthquake-related expenditure) from 3.3% in FY2005, it was less than the FY2002 figure of 4.3%. To promote growth, the Government has pursued an expansionary fiscal policy in the last 2 years. The current account registered a large deficit of 3.9% of GDP in FY2006 compared with a surplus of 1.9% of GDP in FY2002. Foreign direct investment increased by 130.9% in the 4 years, to \$3.5 billion in FY2006, including \$1.5 billion in privatization proceeds. Foreign exchange reserves increased from \$4.3 billion in FY2002 to \$10.8 billion in FY2006. But

¹ ADB. 2001. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to the Islamic Republic of Pakistan for the Access to Justice Program*. Manila (Loans 1897/1898-PAK for \$330 million, approved on 20 December 2001).

whereas the economy has improved, factors such as slow growth of exports, the widening deficit in the current account, continuing high inflation, and the emerging power shortage are potential risks to the country's medium-term economic prospects.

5. The AJP is supporting the growth objective by working toward five interrelated improvements in governance: (i) a legal basis for judicial, police, and administrative reforms; (ii) more efficient, timely, and effective judicial and police services; (iii) greater equity and accessibility in justice services for the vulnerable poor; (iv) greater predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions in the federal, provincial, and local governments; and (v) more transparent and accountable judiciary, police, and administrative justice institutions. The AJP's reform agenda, introduced in a challenging reform environment, seeks fundamental policy shifts in the way justice sector institutions function. Institutionalizing such reforms is a long-term process that may outlive the program, and certain reform components have had to undergo adjustment in the wake of the revival of the legislature in October 2002. But after years of continuous engagement with key institutions, unflagging work by champions of reform, and competent technical assistance to IAs in comprehending and resolving technical issues, the program has introduced and institutionalized tough reforms. Undoubtedly the most high-profile ADB operation in Pakistan in recent years, the AJP—its actions and successes—is often referred to as a high-priority reform agenda of the Government, by the President, the Prime Minister, and provincial chief ministers. The program has received considerable press in recent years, and it is fair to say that the general perception of ADB and its overall performance in Pakistan has been coloured by the successes and failures attached to the AJP.² Its most creditable achievement by far has been making the public and policy makers more aware of the huge governance deficit in the justice sector.

6. The AJP has supported substantial investments in infrastructure to improve the physical conditions and the environment in the justice sector. There has been significant progress toward independent prosecution, effective consumer protection, a stronger judiciary, more robust family laws, a professional police force, and the establishment of the Access to Justice Development Fund (AJDF). Reforms in these areas have meant promulgating comprehensive legal instruments and the supporting institutional and fiscal arrangements.

7. The AJP was launched in December 2001, at a time of high security alertness in the region. While acting as a vital ally in the war against terror on its western borders, Pakistan was caught up, on its eastern borders, in a precarious military standoff with India. The military government had entered the last year of the 3-year transition back to democracy, provided in the Supreme Court decision of 2000. The AJP launch came before the reconvening of the national and provincial legislatures in October 2002. The program was designed to support major changes and realignments in federal-provincial and state-society relations. "Access to justice" was a key point of the seven-point reform agenda announced by the President immediately after the military takeover in 1999. With elected representatives, a highly polarized parliament debated extensively the Legal Framework Order, which sought to legitimize and continue the constitutional amendments and other legislative reforms introduced by President Musharraf's government (including statutory reforms promoted by the AJP). It took the Government an year to negotiate a political compromise with both a strong opposition and dissenting voices within its ranks. The Legal Framework Order was passed as the Seventeenth Amendment to the Constitution in December 2003. It provided for the inclusion of the Local Government Ordinance 2001 and Police Order (PO) 2002 in the Sixth Schedule of the

² ADB. 2007. *Completion Report: Pakistan Country Strategy and Program 2002–2006*. Islamabad (paragraph 21).

Constitution. Any amendments to these laws between now and 2009 must therefore be approved by the President.

8. The justice sector leadership in Pakistan has remained stable since the submission of the 2004 progress report. The federal minister, appointed in June 2004, and the secretary, appointed 3 months later, continue to hold their positions. But a political crisis looms followed by a move of the Government in March 2007 to remove the chief justice of Pakistan (CJP), who has served since 30 June 2005 and chaired the National Judicial Policy Making Committee (NJPMC) and the LJCP, both important agencies for the AJP. On 20 July 2007, the Supreme Court set aside the Government's reference and restored the CJP. The relationship between the Government and the judiciary however continues to be strained and has in some cases slowed the pace of implementation of the judicial reforms. Political activity has been intense and, with elections scheduled for early 2008,³ the crisis could escalate and impact Pakistan's future political landscape. The situation, could determine a new place for the judiciary as a vital pillar of the state of Pakistan. The federal minister for inter-provincial coordination in his recent proposal (April 2007) for greater provincial autonomy—a critical issue that Pakistan faces as a federation—has also included provisions to augment greater judicial autonomy. A comprehensive program for replacing the traditional tribal policing system—called Levies—with a regular policing system on the lines followed by the rest of Pakistan is also under implementation in the province of Balochistan.⁴ Security throughout Pakistan continues to be a concern, with perceived increase in police violence; collapse in prosecution under local and special laws; continued attempts on the lives of senior political and military leaders; military operations in the North-West Frontier Province (NWFP) against militant groups; and attacks in Balochistan claiming the lives of notable tribal leaders, law enforcers, and civilians.

9. **Governance Deficit and the Future of Justice Sector Reforms in Pakistan.** Nevertheless, the AJP has been implemented in a challenging and uncertain environment. The program has helped foster policy debate on key issues of justice sector reform. The 2007 APR noted that, with better understanding of issues and the reform momentum gained over the last 6 years, the senior leadership of provincial IAs is now demanding a second generation of justice sector reforms specific to the provinces. These demands, though different from province to province, convey clearer priorities and resource requirements—ideal mix for locally conceived governance reform. Great interest has been expressed in consolidating and further deepening the reforms, particularly in public safety, alternative dispute resolution (ADR), judicial performance, administrative justice, and prosecution services. There is also strong support for extending the scope of the reforms to prisons and bar councils. So far, the Punjab Local Justice Support Program is the only province-specific reform program for the justice sector in the 2007 pipeline. As envisaged at the design stage⁵, the AJP has succeeded in generating demand and building momentum for reforms in the justice sector in Pakistan.

³ The eighth general elections for the national and four provincial assemblies will be held in January 2008.

⁴ Balochistan occupies 43% of the area of Pakistan and has 4.96% (according to 1998 census) of its population. The province, a vital territorial link between the Central Asian republics and the Arabian coast, is facing a low-level localized insurgency. In response, along with other measures, the Government is converting rural tribal regions policed by loosely structured levies—"B" areas, as opposed to "A" areas in the towns policed by regular police forces—into regular police districts, thus ending the dichotomy between "A" and "B" areas. Nineteen of the 29 districts of Balochistan have been converted, and the process is expected to be completed by 2008. Implementation and enforcement have, however, been fraught with difficulties.

⁵ "The Mission considered the Program as a first stage of the 10 to 15 year period required for institutional and attitudinal changes, and would address basic policy issues and capacity needs. At the end of the program implementation, the ADB and the Government could review the progress made and consider additional support required." (Management Review Meeting for the approval of the Access to Justice Program, 20 August 2001)

III. PROGRAM PERFORMANCE AND STATUS OF POLICY ACTIONS

A. Policy Actions for the Release of the Third Tranche

10. This report notes the achievements since the progress report of December 2004, which determined that, of the 14 policy actions that had to be complied with for the release of the second tranche, the Government had fully complied with 11—all five deferred incentive-tranche policy actions and six second-tranche policy actions—and substantially complied with the three other second-tranche policy actions. On 17 December 2004, ADB approved the release of the second tranche and transferred to the third tranche the requirement of full compliance with the three second-tranche policy actions.

11. Since the release of the second tranche, the Government has consistently engaged with the IAs to maintain full compliance with all policy actions that have been fully complied with. The 2007 APR and this progress report review the compliance status of 15 policy actions—12 third-tranche policy actions and three deferred second-tranche policy actions. All other policy actions remain fully complied with except on one of the incentive-tranche policy actions relating to establishment of police complaint authorities (PCAs). This was due to the subsequent amendment to the PO 2002 to merge these bodies with district public safety commissions. Further discussions on this is provided in paragraph 30.

12. The assessment of the progress of the program is guided by (i) the progress report of 2004; (ii) the 2005–2006 APR; (iii) the technical assistance and program loan MOUs implementing the recommendations of the 2005–2006 APR; (iv) the 2007 APR from 28 March to 26 April 2007, which conducted a thorough assessment of compliance with policy actions; and (v) the documentary evidence submitted by the IAs to substantiate compliance.

B. Status of Third-Tranche Policy Actions

13. It is noted that the Government had made marked progress since July 2006. Of the 12 third-tranche policy actions, eight had been fully complied with and three substantially complied with, whereas waiver is being requested on one of the policy actions (Table 1).

Table 1: Status of Third-Tranche Policy Actions

| Policy Action | Compliance Status |
|--|--------------------------|
| 1. Operationalize medium-term budgetary framework at Federal and Provincial levels for judicial sector, providing formulae for allocations to lower courts. | Substantial compliance |
| 2. The Law Commission and High Courts to evaluate separately and make public analysis of efficiency and equity impacts of ADR, Small Causes Courts, AMs, and delay reduction procedures to inform sector policy and resource allocation, and make recommendations for changes. | Full compliance |
| 3. Substantial compliance and implementation of the approved phased plan in each province for separation of civil and criminal courts. | Full compliance |
| 4. To enhance performance, at least one external audit of all superior courts shall have been conducted. In case of subordinate courts, annual external audit to cover a random sample of 15% of subordinate courts. | Full compliance |
| 5. Inspection of all district courts to be completed by each High Court. | Full compliance |
| 6. Enter into arrangements for a center of excellence in legal education that is technically and financially sustainable and has a positive regard for social equity. | Full compliance |
| 7. Implement the program of affirmative opportunity | Full compliance |
| 8. Each province to establish and adequately resource PSCs in substantially all districts. | Substantial compliance |

| | |
|--|------------------------|
| 9. Implementation of the phased plan to establish independent prosecution service. | Full compliance |
| 10. Reward and sanction performance systems established within police forces to promote citizen orientation, human rights, and gender sensitization. | Full compliance |
| 11. Implementation of the plan, developed under the Incentive Tranche release condition to enhance police performance. shall be underway in accordance with the plan | Substantial compliance |
| 12. CPLCs established in substantially all districts. | Waiver |

ADR = alternative dispute resolution, AM = *anjuman musalihat* (local conciliation committee), CPLC = citizen-police liaison committee, PSC = public safety commission.

14. *Operationalize medium-term budgetary framework at Federal and Provincial levels for judicial sector, providing formulae for allocations to lower courts: **Substantial compliance.*** The medium-term budgetary framework (MTBF) provides for a rolling-budget approach, with integrated planning of the recurrent and development components of budgets for the effective allocation of resources. The MTBFs for the Lahore and Peshawar high courts are in operation and are now being used to make allocations. The MTBFs for the the Balochistan High Court and Sindh High Court (SHC) have been submitted to the provincial departments of finance, who have issued commitment letters indicating that future allocations will be guided by the MTBFs. MTBFs are being prepared for the Supreme Court and Federal Shariat Court and are likely to be finalized shortly.

15. *The Law Commission and High Courts to evaluate separately and make public analysis of efficiency and equity impacts of ADR, Small Causes Courts, AMs, and delay reduction procedures to inform sector policy and resource allocation, and make recommendations for changes: **Full compliance.*** A comprehensive study of the impact of ADR, small causes courts, local conciliation committees, and delay reduction through data and analytical input from all high courts was completed in May 2007. The study concluded that ADR measures have been slow to yield the desired results. Major recommendations included amending the Civil Procedure Code to give judges discretion to refer cases for ADR (if appropriate), establishing dedicated small claims and minor offenses courts (SCMOCs), training SCMOCs and family court judges in ADR techniques, empowering them to refer cases to professional mediators, and providing time for ADR, to reduce unnecessary delays. A statutory autonomous national commission for ADR has also been proposed, to conduct public dialogue, research, training, registration, and regulation of private mediators. The functions of the commission would include setting competency criteria and performance standards, and monitoring ADR services. The report on the study, after LJCP-led consultations, has been issued to the four high courts for implementation.

16. *Substantial compliance and implementation of the approved phased plan in each province for separation of civil and criminal courts: **Full compliance.*** The judiciary has made substantial progress in implementing this policy action despite the difficulties faced. About 65% of the subordinate courts in the country now perform either civil or criminal work exclusively. According to official information from the high courts, separation is complete in all districts of Balochistan and 65% of the courts in NWFP. Fifty-nine percent of the courts in Sindh and 60.8% in the Punjab deal exclusively with either civil or criminal matters. In remote districts the high courts find it difficult to separate criminal and civil courts given the smaller number of judges available. Further, beyond expectations, the policy action has now been translated into a mandatory provision of the law through the Law Reforms Bill, which has been approved by the National Assembly and is likely to be approved shortly by the Senate.

17. *To enhance performance, at least one external audit of all superior courts shall have been conducted. In case of subordinate courts, annual external audit to cover a random sample of 15% of subordinate courts: Full compliance.* Under Article 169 of the Constitution of Pakistan 1973, the Auditor General of Pakistan (AGP), a constitutional office, is the external auditor for all federal and provincial authorities and bodies. Accordingly, public accounts are regularly audited by the AGP. Until 2003–2004, the AGP audited all superior courts, including the Federal Shariat Court. [There has also been an annual audit, on a random basis, of more than 15% of subordinate courts.]

18. *Inspection of all district courts to be completed by each High Court: Full compliance.* High-court member inspection teams conduct ongoing performance inspections of subordinate court judges, including case and case-flow management, case-review disposal, and quality of judgments. All high-court judges are assigned different groups of sessions divisions to inspect. Inspection notes reviewing performance and making recommendations are issued after each inspection. Additionally, at the district level, district judges inspect courts and jails.

19. *Enter into arrangements for a center of excellence in legal education that is technically and financially sustainable and has a positive regard for social equity: Full compliance.* Sponsored by the Higher Education Commission, the project document for the establishment of the National Law University (NLU), at a cost of \$6.92 million, was approved by the Central Development Working Party on 21 March 2006. Campuses will first be established in Lahore, Karachi, and Islamabad, and later in Peshawar and Quetta. The project document provides that the institution should “benefit those coming from disadvantaged backgrounds like e.g. the weaker economic sections, female students, etc. who can ill afford expensive studies abroad” and “help alleviate the gender disparity in education.” The education will be “an opportunity-oriented option emphasizing development, especially for those in backward areas and for disadvantaged gender and less represented groups.” To attract high-quality faculty, provisions have been made for competitive remuneration packages and fellowships for doctoral degree programs in foreign universities.

20. *Implement the program of affirmative opportunity: Full compliance.* The MOL issued a guiding policy and in turn the high courts have variously adopted and are implementing their respective policies to remove barriers to entry and encourage women to enter the judicial profession. Since the launch of the AJP, the high courts have taken steps to increase the number of women judges, including preferential home-based postings and job quotas for women. As a result, compared with 2001, percentage of women in the total number of judges of the subordinate judiciary in Pakistan has nearly doubled⁶ now.

21. *Each province to establish and adequately resource PSCs in substantially all districts: Substantial compliance.* Police Order 2002 was amended in 2004. The district public safety commissions and police complaint authorities were merged into public safety and police complaint commissions (PSPCCs), combining the functions of both the organizations. The composition of the PSPCCs was changed to include parliamentarians. The process of forming these bodies is a complex one, their membership being derived from the following sources: (i) members of the federal and provincial legislatures from the district concerned; (ii) elected members of the district council; and (iii) independent members. The complexity is compounded by the coalition nature of the federal and provincial governments. The formation of these bodies

⁶ Source PMU: Share of women judges in the total number of judges has nearly doubled in all provinces during the period 2001-2007 (Balochistan, from 5.88% to 11.19%; NWFP, from 7.61% to 13.72 %; Punjab, from 3.67% to 5.76%; Sindh, from 7.30% to 15.45%). Overall, for the entire subordinate judiciary in Pakistan, the share of women judges in total number of judges has increased from 5.27% to 9.75%.

also entails tough political decisions, as elections are scheduled for early 2008. But, despite the difficulties, substantial progress has been made in the establishment of the commissions, which is now in advanced stages. In Punjab, there are 35 districts. Members from federal and provincial legislatures have been appointed for 34 districts, the members from the district councils have been appointed for 32 districts, and independent members have also been appointed for 29 districts. In NWFP, there are 24 districts. Members from federal and provincial legislatures have been appointed for 23 districts, and the members from the district councils have been appointed for 22 districts. The selection panels for the appointment of independent members have also been notified for 23 districts. In Balochistan, there are 29 districts. Members from federal and provincial legislatures have been appointed for all districts, the members from district councils have been appointed for 20 districts, and independent members have been appointed for 6 districts. In Sindh, there are 23 districts. The case for appointment of members from federal and provincial legislatures is being considered by the Chief Minister, the members from the district councils have been appointed for 6 districts and the process of constitution of selection panel for the appointment of the independent members has also commenced. Adequate budgetary resources have been provided to the district PSPCCs throughout the country.

22. *Implementation of the phased plan to establish independent prosecution service: **Full compliance.*** The 2007 APR discussions noted substantial progress in establishing the independent prosecution service (IPS), with institutional frameworks already in place in all four provinces. Balochistan, the Punjab, and Sindh have separate, dedicated prosecution departments. In NWFP, the service is attached to the Home Department. Adequate budgetary resources have also been provided to all provinces. In all four provinces, laws have been passed to create specialized provincial criminal prosecution services (Balochistan Prosecution Service Act 2003, NWFP Prosecution Service Act 2005, The Punjab Criminal Prosecution Service Act 2006, and The Sindh Criminal Service Ordinance 2007). Some public prosecutors have been retained, but arrangements are being made for the recruitment of new public prosecutors including the formulation of rules of service.

23. *Reward and sanction performance systems established within police forces to promote citizen orientation, human rights, and gender sensitization: **Full compliance.*** Such systems are substantially operating in all four provincial police forces. The provinces have variously introduced significant measures including performance-based monetary allowances, gender-specific training, service penalties for failure to register first-information reports and for misconduct, cash awards and promotions for well-performing officials, and appointment of special duty officers in police stations to ensure decent and proper interaction with citizens.

24. *Implementation of the plan, developed under the Incentive Tranche release condition to enhance police performance shall be underway in accordance with the plan: **Substantial compliance.*** In pursuance of the police performance enhancement plan developed under the incentive-tranche, significant investments have been made to augment the capacity of federal and provincial police departments. The plan comprised 11 schemes, in which 5 schemes were confirmed for completion and the remaining 6 schemes were to be implemented subject to availability of funds. Of these 11 schemes, 8 have already been completed (including the 4 confirmed schemes), and remaining 3 are under implementation since necessary funds have been made available. In addition to the requirements of the police performance enhancement plan, the provincial police departments developed and implemented their own performance enhancements plans as well to augment capacity and facilities of their respective departments. The AJP resources have been used to strengthen the newly established separate investigation

wings, to establish forensic facilities, to build the capacity of police officials, and to strengthen the police records and office management systems, among other things.

25. *CPLCs established in substantially all districts: Waiver.* The policy action, drafted before the passage of the PO 2002, requires mandatory establishment of the citizen-police liaison committees (CPLCs). An enabling legal framework enacted later through the Article 168 of the PO 2002 provides for the establishment of voluntary, self-financing, and autonomous CPLCs. So far, CPLCs have been established in all provincial capitals and in some districts including Faisalabad and Sialkot. The provincial governments are keen to establish CPLCs in as many districts as possible wherever demand is expressed by the civil society. To achieve meaningful compliance and provide sustainable basis to this new institution, the provincial governments decided to work on the demand side and consequently a district public awareness campaign is being conducted, with technical assistance (TA) loan resources of the AJP. The policy action and the PO 2002 take different approaches to the establishment of the CPLCs. The policy action considers their establishment mandatory whereas the spirit of relevant provision of the PO 2002 suggests a more logical position of establishing these bodies only in response to genuine demand from the civil society. Creation of an enabling legal framework and supporting intervention to generate demand are sound evidences of the strong commitment of the Government in this regard. In view of the fact that inclusion of civic bodies in public sector decision-making is a function of longer interaction between the Government and the civil society, it will be advisable that the process be allowed to mature in a logical manner. A waiver of this policy action is therefore requested.

C. Status of Deferred Second-Tranche Policy Actions

26. The progress report of 2004 found full compliance with six policy actions and substantial compliance with three. The requirement of full compliance with the three policy actions was transferred to the third tranche. One of the three has since been fully complied with.

Table 2: Status of Three Outstanding Second-Tranche Policy Actions

| Policy Action | Status of Compliance |
|--|-----------------------------|
| 1. Enact and bring into force consumer protection laws, and adequately resourced institutional framework for enforcement of these laws. | Substantial compliance |
| 2. Reexamine immunity of public servants and establish a legal and institutional framework to hold public servants accountable and liable for omissions and commissions. | Substantial compliance |
| 3. Institute improved incentive and sanction systems for the judiciary through: | Full compliance |
| (i) adoption of each High Court of performance standards, which shall be linked to career progression; | (i) Full compliance |
| (ii) improvement of terms and conditions for judicial services at the subordinate level by each provincial government; and | (ii) Full compliance |
| (iii) adoption by each provincial government of transparent recruitment procedures for subordinate judiciary. | (iii) Full compliance |

27. *Enact and bring into force consumer protection laws, and adequately resourced institutional framework for enforcement of these laws: Substantial compliance.* Consumer protection laws have been passed in all the provinces (Balochistan Consumer Protection Act 2003, Sindh Consumer Protection Ordinance 2007, Punjab Consumer Protection Act 2005, NWFP Consumer Protection Act 1997⁷). The function of consumer protection has been entrusted to the provincial departments of industry in three provinces (Balochistan, NWFP, and the Punjab) and to the department of agriculture in Sindh. These departments are providing

⁷ Amendments inspired by AJP were introduced through NWFP Consumer Protection (Amendment) Act, 2004.

adequate budgetary resources for running the secretariats of the consumer protection councils. Consumer courts with jurisdiction to hear consumer-related cases have been established in all four provinces. Consumer councils have also been formed in all provinces except Sindh, where the creation of such a council is in the advance stage.

28. *Reexamine immunity of public servants and establish a legal and institutional framework to hold public servants accountable and liable for omissions and commissions:* **Substantial compliance.** The current immunity of public servants has been reexamined and progress has been made in establishing the legal framework for accountability in the public service. The Removal from Service Ordinance, passed in 2000, curtails the immunity of public servants to some extent. A number of officers have been subjected to penalties under this law. Additionally, the Government has proposed the Law Reforms Bill 2007, which has been approved by the National Assembly and is likely to be approved shortly by the Senate. The bill provides for a redefinition of good faith to remove immunity in case of negligent actions by public servants. The high courts have already nominated judges in each district to hear tort cases against public servants.

29. *Institute improved incentive and sanction systems for the judiciary through: (i) adoption of each High Court of performance standards, which shall be linked to career progression; (ii) improvement of terms and conditions for judicial services at the subordinate level by each provincial government; and (iii) adoption by each provincial government of transparent recruitment procedures for subordinate judiciary:* **Full compliance.** This policy action has three components. Condition (i) has been fully complied with, as all provinces have variously adopted performance-based incentive systems suited to their respective human resource management policies. Best-performing judges in the various categories receive monetary and/or non-monetary benefits according to the policies of the high court of the province, and their performance is considered in promotions. Condition (ii) has also been fully complied with, the terms and conditions for the judiciary having been significantly improved. Under AJP, a judicial allowance (27–56% of basic pay) is now given to all judges of the subordinate judiciary throughout Pakistan. Balochistan and Sindh grant a utility allowance of 10% of basic pay, and the Punjab has agreed to increase its judicial allowance to accommodate a utility allowance as well. In NWFP the matter is being pursued with the Department of Finance. The provision of a pooled transport facility is also being considered in all four provinces; it has already been provided in at least five districts in NWFP, and the SHC has also included transport in its MTBF. Condition (iii) has similarly been fully complied with. All provinces have adopted transparent procedures for recruitment into the subordinate judiciary. Direct recruitment to the subordinate judiciary, involving selection without evaluation, has been replaced by a process that provides for evaluation. In Sindh, recruitment is carried out by a three-member committee consisting of judges of the SHC; in the other three provinces it is done by the public service commissions.

D. Status of Incentive-Tranche Policy Actions

30. The October 2002 progress report concluded that the Government had fully complied with 18 of the 23 incentive-tranche policy actions. Subsequently, the 2004 progress report noted full compliance with the remaining five policy actions. One policy action sought the establishment of police complaint authorities (PCAs) and the provision of adequate resources to them. However, there has been a change in legislation, which altered the nature of the PCAs. Police Order 2002, which stipulated the establishment of PCAs, was amended in November 2004, merging PCAs with district public safety commissions into district public safety and police complaint commissions (PSPCCs) combining the functions of both organizations without compromising with their operational autonomy from the executive. The complex process of

forming the PSPCCs is in its advanced stages in NWFP and the Punjab and NWFP, and is moving forward in Balochistan and Sindh. Adequate budgetary resources have been provided to PSPCCs throughout the country.

E. Summary of Progress

31. Overall, progress is characterized by (i) enhanced citizen engagement for improved justice service delivery; (ii) greater functional specialization in the justice sector; (iii) the need for integrated monitoring and statistical systems throughout the justice sector; and (iv) consolidation of reform achievements with second-generation reforms. These features are summarized below.

32. **Promising Signs of Civil Society Engagement for Improved Justice Service Delivery.** Before the AJP, oversight and public grievance redress were executive functions of the administrative department, and, since 1983, with the establishment of the first Ombudsman office in Pakistan, public complaints against “maladministration” have been heard by the Ombudsman. But the judiciary remains beyond the jurisdiction of the Ombudsman. To strengthen accountability for service delivery and enhance liaison between citizens and service providers, the AJP introduced citizen engagement in oversight, public grievance redress, and liaison—a major policy shift in the justice sector. New laws provided for bench-bar liaison committees (BBLCs), citizen-court liaison committees (CCLCs), CPLCs, PSPCCs, and consumer protection councils, among others, with varying degrees of responsibility for public oversight, planning input, and consultation on justice sector service delivery. District BBLCs and CCLCs have been established by the Peshawar and Balochistan high courts. The Sindh High Court has also established BBLCs and will look into the establishment of CCLCs. The Lahore High Court has agreed to examine the experience of other provinces and also to pilot BBLCs and CCLCs. The district CPLCs are “voluntary, self-financing autonomous bodies” in the provincial capitals and some major urban centers. As voluntary bodies, the CPLCs, feasible where there is a relatively active civil society, have helped bridge the divide between service providers and users. Under the TA loan, a comprehensive proposal to widely publicize the CPLCs and to generate and support demand for their establishment is being implemented.

33. **Public Oversight over the Police.** Police oversight, formerly an executive function of the district magistrate, a mid-level civil servant, has been entrusted to the national, provincial, and district PSPCCs, which provide both citizen oversight and public grievance redress. The district PSPCC also approves and monitors the local policing plan and is therefore a key oversight mechanism for local policing. Under PO 2002, equal numbers of elected district council members and appointed independent members constituted the district PSPCCs, and elected and independent members alternated as chairpersons to ensure independence. The 2004 amendments to PO 2002, however, empowered provincial governments to appoint provincial and national parliamentarians to the district PSPCCs up to one third of their membership. This, added to the resulting one third of members elected by the district council, has increased the political composition of the PSPCCs. Certain quarters of civil society have raised concerns that reducing the proportion of the independent members to one third may compromise the independence of the PSPCCs. The provincial governments have variously issued PSPCC rules to clearly define responsibilities and enable the PPSCs to carry out their mandate effectively. In the Punjab, the Home Department has established a public safety wing to support the functioning of PSPCCs. Under the TA loan, proposals are being implemented to raise public awareness and strengthen local ownership and accountability of district PSPCCs.

34. **Prosecutorial Specialization in the Criminal Justice System.** In the absence of a specialized prosecution service, minor crimes were both investigated and prosecuted by district

police officials. Serious offenses were prosecuted by public prosecutors, who also dealt with civil matters as district attorneys. For service matters such as performance and promotions, they were administratively attached to the provincial departments of law, usually headed by a member of the judiciary. In both instances, the potential conflict of interest undermined prosecutorial autonomy. Specialized IPSs headed by prosecutor generals have now been established in all four provinces.⁸ Some members of the judiciary and legal profession, however, argue that laws and institutional frameworks need to ensure further the recruitment of high-quality prosecutors and give prosecutors greater autonomy. In consultation with the IPS, technical assistance is being designed to support the formulation of IPS rules and processes and performance monitoring systems, and the training of prosecutors.

35. **Program Loan Utilization.** Program loan resources help address the problem of chronic underfunding in the justice sector. These resources have been variously used across the different provinces and IAs to construct new courts, litigant facilities, and infrastructure for police and prisons, and to provide vehicles and other equipment to justice sector institutions, and also support new institutions such as the IPS and Ombudsman offices. A better allocation that would also improve implementation could be based on effective provincial work planning that links needs with performance targets, requiring firm leadership and monitoring from the steering committees—a lesson that could be applied in future programs.

36. **Integration of Justice Sector Statistics for Effective Monitoring of Justice Services.** To strengthen policy formulation and analysis in the judicial sector, the NJPMC was established by a statute in 2002. It is chaired by the chief justice of Pakistan. The LJCP, another statutory body, is the NJPMC secretariat. Its mandate includes reviewing legislation and recommending law reforms for the entire justice sector. AJP's implementation experience has strongly brought out the need for an integrated national statistical system for the justice sector with uniform categories, indicators, and standards, and for information compiled across the sector to allow national comparisons and evaluations of the quality of justice services. Such a state-of-the-art statistical system will also be vital support for evidence-based planning for justice sector as well as national policies and other governance programs such as poverty reduction, and for wider research and policy analysis.

37. Overall, of the 15 policy actions assessed for the release of the third tranche, 9 have been fully complied with, five substantially complied with and waiver is being requested on one of the policy actions.

IV. STATUS OF PROGRAM IMPLEMENTATION

38. After the 2005 APR, the MOL and the PRM signed two MOUs in 2006 dealing separately with the AJP and TA loans. Key agreements included the enhancement by the MOL of the capacity of the project management unit (PMU), the provincial PMUs (PPMUs), and the LJCP, and the devolution to the provinces of TA loan investment contracting and management. To strengthen coordination between the PMU and PPMUs, regular monthly review meetings between the project director, provincial program managers, and advisory TA consultants were agreed on. Regular national and provincial program review and coordination committee meetings were to be held to review performance, and provide oversight and leadership to the AJP. Some progress has been made, but many of these actions have yet to be implemented effectively.

⁸ In NWFP, the prosecution service is headed by the Director General – Prosecution.

39. **Annual Performance Review.** The 2007 APR mission met with the IAs to (i) review policy action compliance and (ii) progressively evaluate the impact of reforms supporting the modification of reform policies and institutional arrangements. The mission noted that the Government had made considerable progress in complying with the policy actions and in implementing the reform agenda, and had secured much wider ownership of justice sector reforms. The IAs and other justice sector stakeholders, such as the bar councils and civil society organizations, are increasingly engaging with the PMU in support of the AJP.

40. **Work Planning, Monitoring and Evaluation (M&E), and Reporting.** The MOL and PRM agreed, in the 2006 MOU for the program loan, to institutionalize work planning, M&E, and reporting at the IA level to support policy action implementation and TA loan investments. However, for lack of capacity, the PMU could not ensure adequate work planning, M&E, and reporting support for the PPMUs to monitor policy actions and TA loan investments.

41. **Devolution of Program Management.** Recognizing the weak capacity of the PMU, the MOL and PRM agreed, through the 2006 MOU for the TA loan, to devolve the contracting and management of provincial TA loan investments to the provinces. For this, according to the MOU, the PMU should have revised the PC-II (the Government's project document) by September 2006. Initial reluctance to devolve management and contracting arrangements to the provinces delayed the process. However, the PMU has recently begun the process of obtaining the approval of the executive committee of the National Economic Council (ECNEC) for the draft revision in the PC-II reflecting the devolution.

42. **Strengthening of PMU and PPMU Capacity.** Under the 2006 MOU for the TA loan, the advisory TA consultants conducted a detailed assessment of the organization and capacity of the PMU and PPMUs, particularly the capacity of the PPMUs to manage devolved functions. The assessment and the capacity-building recommendations have been approved by the PMU. A modified organization structure is part of the draft revisions in the PC-II, which must be approved by the ECNEC for the appropriate budget to be provided.

43. **Coordination and Implementation between PMU and PPMUs.** The 2007 APR found that weak coordination between the PMU and PPMUs led to delays or duplicated effort in capacity building, proposal formulation, and implementation. As agreed in the 2006 MOU for the TA loan, the PMU must meet regularly with the provincial program managers for efficient and effective work planning and implementation by the PMU and PPMUs.

44. **Efficacy and Effectiveness of Program Loan Investments.** Program loan investments have been used to deal with the problem of chronic underfunding in the justice sector, especially in infrastructure. ADB has so far released \$250 million of the loan. Of the \$199.51 million allocated to the IAs, the Finance Division has released \$175.77 million to the federal IAs and the provincial governments. Federal and provincial utilization rates are better than last year's. The IAs, however, say that the releases are less than the entitlements, the Government is slow to release program loan funds to the provincial governments, which then park the funds with the provincial departments of finance, and the funds are released late to those who are to use them. Financial planning is therefore unpredictable and utilization is adversely affected. Program loan investments are analyzed in detail in Appendix 1.

45. **Donor Support.** PRM is actively engaged in policy dialogue on governance and justice sector issues in Pakistan, under the leadership of the Government and with the support of donors. Programmatic exchanges on governance issues and opportunities to cofinance PRM operations have resulted. The Department for International Development of the United Kingdom

has recently financed an \$11.5 million TA cluster⁹ supporting governance reforms in Pakistan. Considerable interest in working with ADB and, in some cases cofinancing future investments in the justice sector, has also been shown by the European Commission, the Government of the Netherlands, and the United States Agency for International Development (USAID).

46. **Access to Justice Development Fund.** The \$24 million endowment AJDF was established in 2002 and is managed by the LJCP. An additional \$1 million was provided for initial disbursement. The investment proceeds are to be used under seven windows within the fixed ceiling for specified activities.¹⁰ The AJDF became operational in 2005 after the rules were issued. Four windows are now operating. A key challenge is the LJCP's lack of funds and project management expertise to invest, disburse, and manage the projects funded through the AJDF. Restricting investments to government treasury bills also excludes many other more profitable investment opportunities. The \$24 million endowment has been converted to Pakistan rupees; a depreciation in the rupee will diminish the real value of the endowment against the US dollar. AJDF investments are analyzed in detail in Appendix 2.

V. CONCLUSION

47. As is evident from its remarkable progress in a challenging environment, the Government, at a strategic level, has kept its commitment not only to pursue compliance with policy actions but also to promote effective and meaningful policy dialogue on justice reforms. AJP has been highly successful in (i) introducing professionalization in the judiciary; (ii) establishing independent prosecution services; (iii) passing pro-citizen legislative reforms related to freedom of information, family laws, administrative justice, and the devolution of jurisdiction for the writ of habeas corpus; (iv) strengthening consumer protection; (v) establishing a \$25 million endowment fund for the judiciary and providing a sustainable platform for national judicial policy making; (vi) introducing wide-ranging public safety reforms and functional specialization in the police force; and (vii) implementing gender-affirmative and civil society–inspired interventions across the justice sector. AJP resources have also financed substantial infrastructure investments in the justice sector. While it may take a decade or so for the reforms to have their full impact, there is wider ownership among political and civil society stakeholders. Among the most outstanding of the AJP's successes has been making policy makers cognizant of the importance of governance deficit in the justice sector in Pakistan.

48. As such, the Access to Justice reform agenda is now embedded in public debate on policy resulting in demand for locally conceived second-generation justice reforms. Future programs are expected to play a key role in addressing the huge governance and resource deficit in the justice sector and creating an investor-friendly climate to achieve the high GDP growth target of 7.6%.¹¹ Sector issues and the demand for investment have been so strongly demonstrated that bilateral organizations including the European Commission, the Government of the Netherlands, and USAID have also recently expressed interest in working and cofinancing investments in the justice sector in Pakistan.

⁹ ADB. 2007. *Supporting Governance Reforms in Pakistan*, Manila (TA 4922-PAK).

¹⁰ AJDF investment proceeds are to be allocated to the seven windows as follows: 60.3% to the subordinate courts through the Provincial Judicial Development Fund; 13.5%, Legal Empowerment Fund; 4.5%, Innovations in Legal Education Fund; 4.5%, Federal Judicial Academy; 4.5%, Legal & Judicial Research Fund; 10%, Under-developed Areas Fund; and 2.7%, Fund Management. For more details see Appendix 2.

¹¹ The annual average growth target set in Pakistan's Medium Term Development Framework 2005–2010.

VI. THE PRESIDENT'S RECOMMENDATION

49. In view of the substantial progress made by the Government in implementing the overall program as evidenced by the full compliance with one deferred second-tranche condition and eight third-tranche conditions; and the substantial compliance with two deferred second-tranche conditions and three third-tranche conditions, the President recommends that the Board approve, on a no-objection basis: (i) the waiver of the third-tranche policy action requiring establishment of the CPLCs in substantially all districts for the reasons set out in paragraph 25; and (ii) the immediate release of the third-tranche in the amount of ¥9,467,958,000.

UTILIZATION OF PROGRAM LOAN PROCEEDS

A. Utilization of Program Loan Funds: An Overview

1. The Asian Development Bank (ADB) has released \$250 million to the Government of Pakistan in two tranches plus an incentive tranche. Of this amount, the Government has allocated \$199.51 million and released \$175.77 million to the federal Implementing Agencies (IAs) and provincial finance departments (Table A1.1 below). The overall utilization of the released program loan proceeds in 2002–2007 was 73.11% (as of 31 March 2007)—93.49% for the federal Government (the increase mainly due to full investment of the AJDF funds) (Figure A1.1) and 68.20% for the provincial governments (an improvement over the 56.50% in December 2004) (Figure A1.2).

Table A1.1: Loan Entitlements, Allocations, Releases, and Utilizations, 2002–2007
(\$ million)

| Level of Government | | Entitlement ^a | Amount Allocated by Gov't to IAs | Amount Released to Federal IAs and Provincial Gov'ts ^b | Amount Utilized | Utilization as % of Releases |
|-------------------------|---------|--------------------------|----------------------------------|---|-----------------|------------------------------|
| Federal (40 %) | IAs | 75.00 | 24.51 | 9.10 | 6.88 | 75.60 |
| | AJDF | 25.00 | 25.00 | 25.00 | 25.00 | 100.00 |
| Federal Total | | 100.00 | 49.51 | 34.10 | 31.88 | 93.49 |
| Provincial (60%) | Punjab | 77.43 | 77.43 | 73.13 | 54.83 | 74.98 |
| | Sindh | 32.01 | 32.01 | 30.23 | 16.31 | 53.95 |
| | NWFP | 26.16 | 26.16 | 24.71 | 15.17 | 61.39 |
| | Baloch. | 14.40 | 14.40 | 13.60 | 10.31 | 75.82 |
| Provincial Total | | 150.00 | 150.00 | 141.67 | 96.62 | 68.20 |
| Grand Total | | 250.00 | 199.51 | 175.77 | 128.50 | 73.11 |
| Released by ADB | | 250.00 | | | | |

ADB = Asian Development Bank, AJDF = Access to Justice Development Fund, Baloch. = Balochistan, Gov't = Government, IA = implementing agency, NWFP = North-West Frontier Province.

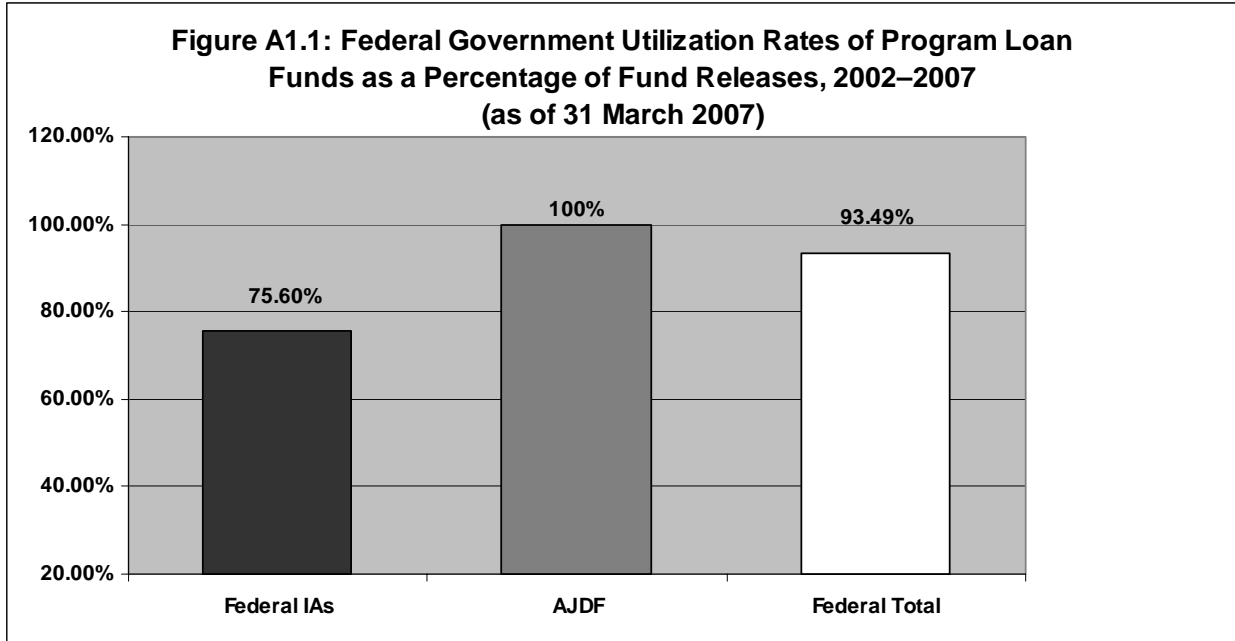
a. According to the National Economic Council formula, the federal Government is entitled to 40% and the provincial governments to 60% (51.62% for the Punjab, 21.34% Sindh, 17.44% NWFP, and 9.60% Balochistan).

b. Including PRs500 million for the third quarter of FY2007, which was released late in the first week of March 2007 to the provincial governments. The funds were then released to the provincial IAs by the provincial governments in late March or early April 2007, leaving insufficient time for the funds to be used.

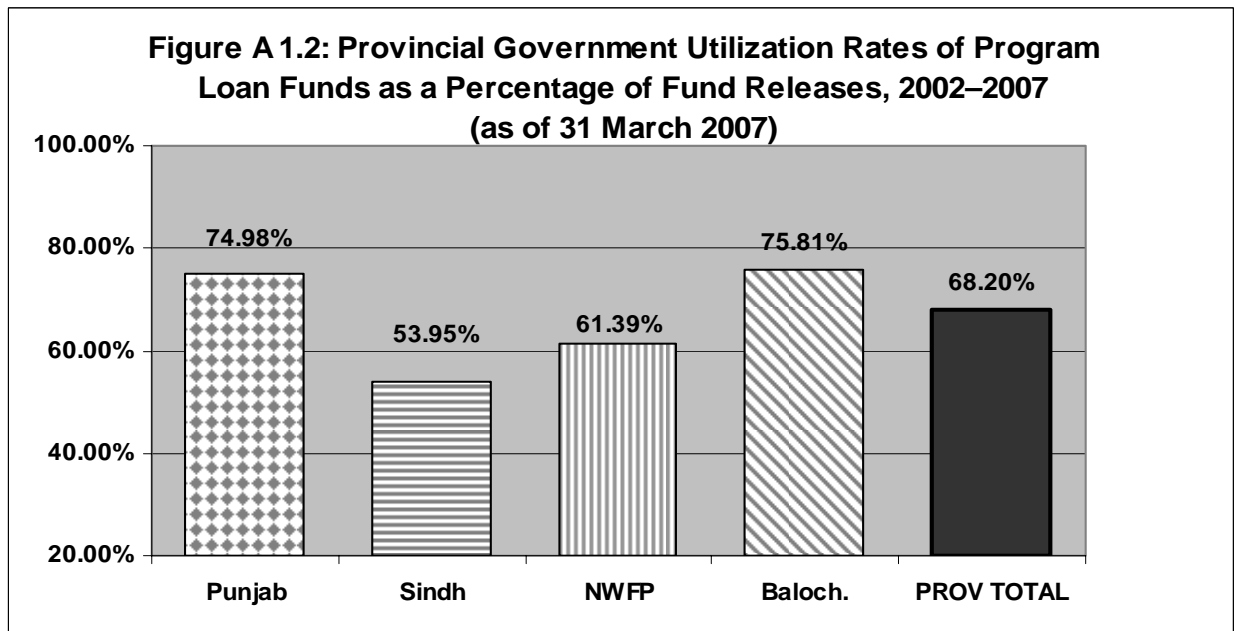
Source: AJP, PMU Planning Cell.

2. The rates of utilization were highest in Balochistan (75.81%) and the Punjab (74.98%) and lower in the North-West Frontier Province (NWFP) and Sindh (Figure A1.2). By period, the rate of aggregate utilization by the provinces was 57.36% in 2006–2007 (the Punjab at 62.20% and Balochistan at 61.25% had the highest rates), lower than the previous year's 59.43% (Table A1.2 and Figure A1.3). At the federal level, utilization rates have picked up over the years, with

an aggregate utilization rate of 93.49% for 2002–2007, increasing from 28.30% in 2003–2004 to 90.17% in 2006–2007 (Table A1.2).



AJDF = Access to Justice Development Fund, IA = implementing agency.
Source: AJP, PMU Planning Cell.



Baloch. = Balochistan, NWFP = North-West Frontier Province.
Source: AJP, PMU Planning Cell.

Table A1.2: Overall and Accumulated Yearly Allocations, Releases, and Utilization of Program Loan Funds by the Federal and Provincial Governments, 2002–2007 (\$ million)

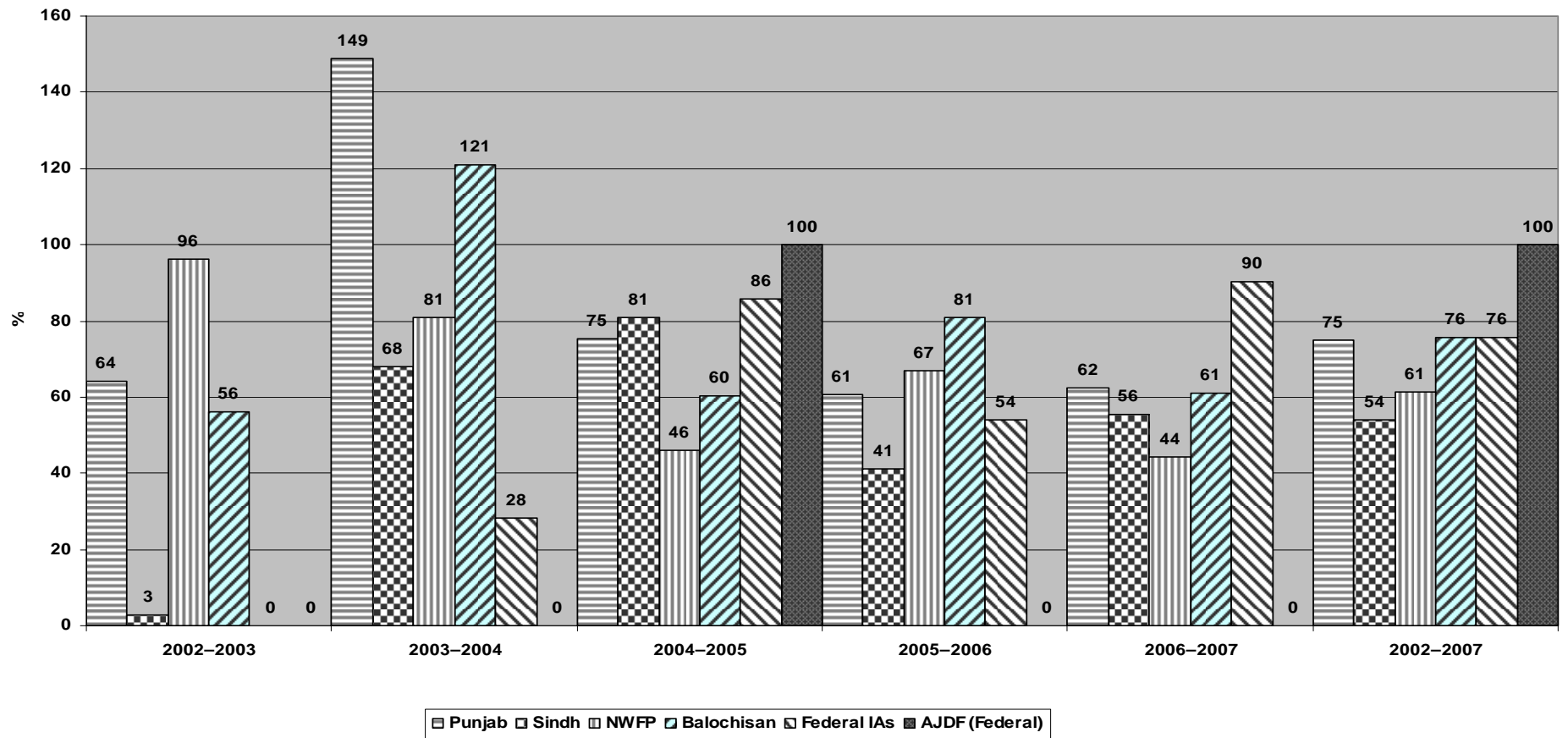
| Level of Government | 2002–2003 | | 2003–2004 | | 2004–2005 | | 2005–2006 | | 2006–2007 | | | Total 2002–2007 | | |
|-------------------------------|--------------|--------------------------------|--------------|----------------------------------|--------------|---------------------------------|--------------|---------------------------------|--------------|--------------|---------------------------------|-----------------|---------------|----------------------------------|
| | Alloc./ Rel. | Utilization | Alloc./ Rel. | Utilization | Alloc./ Rel. | Utilization | Alloc./ Rel. | Utilization | Alloc. | Rel. | Utilization | Alloc. | Rel. | Utilization |
| Federal Government | | | | | | | | | | | | | | |
| IAS | 0 | 0.00 (0.00 %) | 1.06 | 0.3 (28.30%) | 0.85 | 0.73 (85.88%) | 1.81 | 0.98 (54.14%) | 20.80 | 5.39 | 4.86 (90.17%) | 24.51 | 9.10 | 6.88 (75.60%) |
| AJDF | 0 | 0.00 (0.00%) | 0.00 | 0.00 (0.00%) | 25.00 | 25.00 (100%) | 0.00 | 0.00 (0.00%) | 0.00 | 0.00 | 0.00 (0.00%) | 25.00 | 25.00 | 25.00 (100%) |
| Federal Total | 0 | 0.00 (0.00 %) | 1.06 | 0.3 (28.30%) | 25.85 | 25.73 (99.54%) | 1.81 | 0.98 (54.14%) | 20.80 | 5.39 | 4.86 (90.17%) | 49.51 | 34.10 | 31.88 (93.49%) |
| Provincial Governments | | | | | | | | | | | | | | |
| Punjab | 4.30 | 2.76 (64.19%) | 8.60 | 12.83 (149.19%)* | 17.21 | 12.97 (75.36%) | 30.11 | 18.24 (60.58%) | 17.21 | 12.91 | 8.03 (62.20%) | 77.43 | 73.13 | 54.83 (74.98%) |
| Sindh | 1.78 | 0.05 (2.81 %) | 3.56 | 2.43 (68.26%) | 7.11 | 5.75 (80.87%) | 12.45 | 5.12 (41.12%) | 7.11 | 5.34 | 2.90 (54.31%) | 32.01 | 30.23 | 16.31 (53.95%) |
| NWFP | 1.45 | 1.40 (96.55%) | 2.91 | 2.36 (81.10%) | 5.81 | 2.68 (46.13%) | 10.17 | 6.79 (66.76%) | 5.81 | 4.36 | 1.94 (44.50%) | 26.16 | 24.71 | 15.17 (61.39%) |
| Balochistan | 0.80 | 0.45 (56.25 %) | 1.60 | 1.94 (121.25%)* | 3.20 | 1.93 (60.31%) | 5.60 | 4.52 (80.71%) | 3.20 | 2.40 | 1.47 (61.25%) | 14.40 | 13.60 | 10.31 (75.81%) |
| Provincial Total | 8.33 | 4.66 (55.94%) | 16.67 | 19.56 (117.34%) | 33.33 | 23.33 (70.00%) | 58.33 | 34.67 (59.44%) | 33.33 | 25.01 | 14.34 (57.34%) | 150.0 | 141.67 | 96.62 (68.20%) |
| Grand Total | 8.33 | 4.66 (55.94%) | 17.73 | 19.86 (112.01%) | 59.18 | 49.06 (82.90%) | 60.14 | 35.65 (59.28%) | 54.13 | 30.40 | 19.20 (63.16%) | 199.51 | 175.77 | 128.50 (73.11%) |

AJDF = Access to Justice Development Fund, alloc. = allocated, NWFP = North-West Frontier Province, rel. = released.

* Utilization was more than 100% in Balochistan and Punjab, because they resorted to bridge financing.

Source: PMU Planning Cell.

Figure A1.3: Comparison of Annual Utilization of Program Loan Funds by the Federal and Provincial Governments: Annual Federal and Provincial Governments , 2002-2007 (%)



AJDF = Access to Justice Development Fund, IA = implementing agency, NWFP = North-West Frontier Province.
 Source: PMU Planning Cell

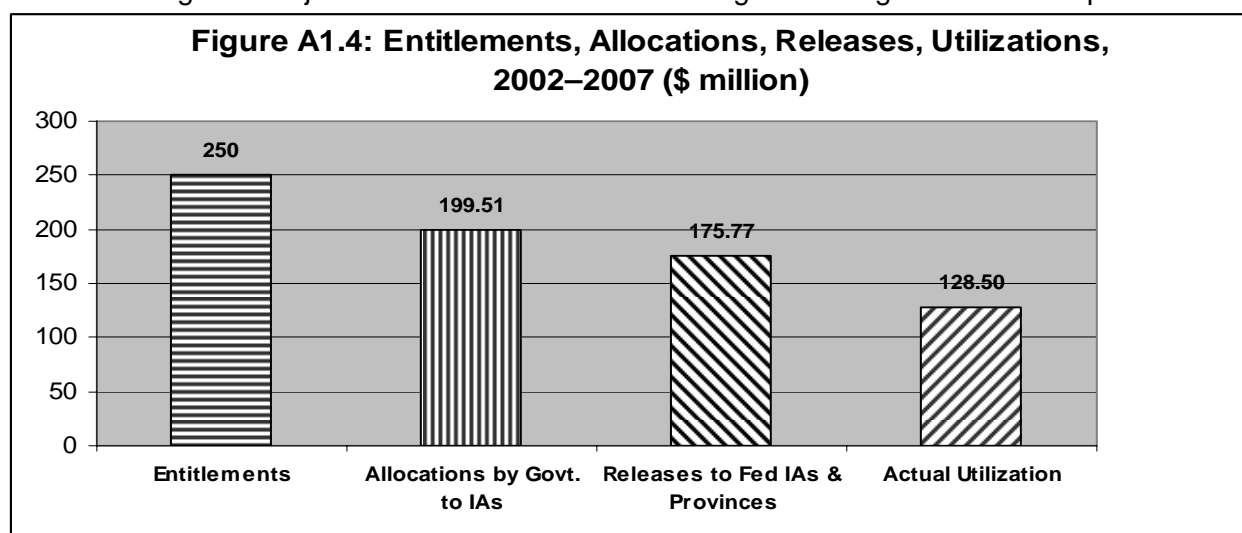
B. Program Loan Schemes

3. **Categories/Types of Program Loan Schemes.** Schemes undertaken under the program loan address basic infrastructure shortages in the justice sector. These include the construction of courtroom buildings and residences for judges; the renovation and expansion of judicial facilities and facilities for litigants on court premises; the construction and expansion of barracks and jails; the augmentation of reformatory facilities on prison premises; the purchase of prison vans and ambulances; the construction and renovation of police stations, police lines, and offices and residences for police officers; the upgrading of police training colleges; the purchase of essential equipment for the police (vehicles and wireless equipment); and institutional capacity-building projects and the strengthening of prosecution services.

C. Program Loan Funding Issues

4. The 2007 APR noted an improvement in overall utilization rates from 55% to 73.11% since the December 2004 progress report. Despite these improvements, however, some issues affecting the ability of the provinces to make the best use of the funds (also noted in the 2005–2006 APR and the 2006 MOU) remain and must be addressed. These include:

- (i) **Gaps between entitlements, allocations, releases, and utilization.** Allocations by the federal Government to the federal IAs and the provincial finance departments are still less than entitlements, the releases less than the allocated amount, and utilization even lower (Figure A1.4).
- (ii) **Slow release of program loan funds and parking of funds.** The federal Government is still slow to release program loan funds to the provincial governments: funds are credited late each quarter to provincial accounts. Once the provincial finance departments of NWFP and Sindh receive the funds, they park them with the provincial departments of finance for some time, before releasing them to the provincial IAs.
- (iii) **Impact of late arrival of funds on provincial utilization.** Because of the late and unpredictable arrival of funds, provincial governments cannot systematically plan and ensure the timely utilization of the funds. Sindh and NWFP are affected to a greater degree. Punjab and Balochistan resort to bridge financing for the interim period.



Fed. = federal, govt. = government, IA = implementing agency.

Source: AJP, PMU Planning Cell.

THE ACCESS TO JUSTICE DEVELOPMENT FUND

1. The Access to Justice Development Fund (AJDF), a \$24 million endowment managed by the Law and Justice Commission of Pakistan (LJCP), provides supplementary resources to support activities defined under its seven sub-funds (see table below), in view of the chronic budgetary constraints facing the judicial and legal sectors. Pursuant to the policy action, the funds for the endowment were released in two tranches by the Government. Of the first \$12 million tranche, \$1 million was released by the Government for “the purposes of the AJDF” on 30 June 2003. The second \$12 million tranche was released on 31 December 2004. To operationalize the AJDF, The Access to Justice Development Fund Rules 2002 (AJDFR 2002) were issued on 31 December 2002 and the Accounting Procedures of the Access to Justice Development Fund 2005 on 4 April 2005 with retrospective effect from 11 December 2004.
2. Under AJDFR 2002, the Governing Body, headed by the chief justice of Pakistan and with the chief justices of the four high courts and the federal secretaries of finance, law, and the LJCP as members, manages and administers the AJDF. The Governing Body is specifically responsible for investing the fund, allocating investment profits to sub-funds, authorizing the drawing of fund monies, verifying accounts, approving the annual investment policy, nominating a director in a company where an investment is made, and filing a petition to wind up an indebted company invested in. In August 2005, the Governing Body formed a subcommittee, the Technical Evaluation Committee, to evaluate proposals submitted to the AJDF for funding. It has four members—a retired Supreme Court judge, a retired district sessions judge, a senior law academic, a practitioner, and the LJCP secretary.
3. Four windows are now operating. Provincial Judicial Development Fund (PJDF) resources have been variously used by the high courts to purchase computers, provide litigant facilities such as waiting sheds and drinking water points, and provide motorcycles for process servers, among other things. The Legal Empowerment Fund (LEF) funds have been used to support legal rights awareness campaigns and legal aid services.
4. To streamline AJDF operations, and operationalize all sub-funds (windows) the LJCP must formulate a long-term investment plan supported by a medium-term budgetary framework, and a work plan that sets targets and timelines for implementing of the AJDF operations. A key challenge for the effective operationalization of the AJDF is the provision of fund and project management expertise to invest, disburse, and manage the various projects funded through the AJDF. In line with AJDFR 2002, it has been suggested that the AJDF be outsourced to professional fund managers or that the LJCP hire the necessary experts, and that the investment portfolio be diversified beyond government treasury bills to improve profitability. Also, since the \$24 million endowment has been converted into rupees, there is concern that, with the likely depreciation of the rupee against the dollar, the real value of the endowment will diminish.
5. Given the LJCP’s expanded mandate promoted by the AJP to cover the entire justice sector, it has been variously argued that the ADJF endowment may also be expanded in terms of its beneficiaries and the value enhanced to enable the LJCP to engage and serve more stakeholders through the AJDF. Even within the judiciary, there has been concern that the amounts available for disbursement under the various windows are too small to make any meaningful impact. The Lahore High Court raised this concern with respect to the resources provided to it under the PJDF. Accordingly, it may be necessary to consider enhancing the value of the endowment so that a greater amount is generated to more significantly address demand.

**The Seven Windows of the Access to Justice Development Fund
(according to the AJDF Rules 2002 and the Accounting Procedures for the AJDF 2005)**

| Item | Provincial Judicial Development Fund (PJDF) | Legal Empowerment Fund (LEF) | Legal/Judicial Research Fund (LJRF) | Innovations in Legal Education Fund | Federal Judicial Academy Fund | Under-developed Regions Fund | Fund Management |
|--------------------------------------|--|--|---|--|---|--|--|
| Profit Allocations * | 60.3% | 13.5% | 4.5% | 4.5% | 4.5% | 10.0% | 2.7% |
| Division of Allocated Amount | Lahore High Court – 52.09% Sindh High Court – 20.95% Peshawar High Court – 17.19% Balochistan High Court – 9.77% | LJCP Legal Empowerment Committee – 70% District Legal Empowerment Committee (DEC) – 30% | | | | | |
| Objectives | 1. Automation of courts 2. Court infrastructure development 3. Information kiosks 4. Court-related conveniences and amenities for litigants 5. Performance rewards for the subordinate judiciary | 1. Clinical legal aid for persons suffering fundamental rights violations by the executive, especially in criminal matters 2. Representation in public-interest litigation 3. Public awareness and legal literacy campaigns 4. Public awareness of environmental laws | 1. Legal and judicial research aimed at improving the provision of legal and judicial services and the quality of judgments 2. Initiatives to reform laws and strengthen the quality of advocacy | 1. Innovations in teaching legal education, development of curricula and funding pilot projects 2. Improvements in the standard of legal education 3. Initiatives to improve professional standards of law professionals | 1. Training programs for the judiciary 2. Development of courses and materials 3. Training and education for non-judicial court personnel | Funds to go to the following funds: 1. PJDF 2. LEF 3. LJRF | 1. Salaries of auditors, investment advisers, and fund management staff 2. Purchase of equipment, vehicles, and stationery 3. Preparation of accounts and balance sheets 4. Payment of fees, salaries, traveling and daily allowances, and any other payment charged against the AJDF |
| Implementation Responsibility | High courts | LJCP and DEC | LJCP | LJCP | FJA | LJCP | LJCP |
| Status of Operationalization | Operationalized, high courts to use resources | Operationalized; NGOs awarded contracts by the LJCP; phase 2 proposals are being evaluated by TEC | Operationalized; proposals being evaluated | Operationalized; proposals being evaluated | Not operationalized; FJA to submit proposals for funding | Not operationalized; provincial governments are identifying underdeveloped areas | Operationalized for funding AJDF public awareness-raising workshops and materials, and the TEC meeting expenses |

FJA = Federal Judicial Academy, LJCP = Law and Justice Commission of Pakistan, NGO = nongovernment organization, TEC = Technical Evaluation Committee, PJDF = Provincial Judicial Development Fund, LEF = Legal Empowerment Fund, LJRF = Legal / Judicial Research Fund,

* The allocations for each window will be reviewed by the Governing Body every 3 years (R. 9[3], AJDFR 2002).

Source: Law and Justice Commission of Pakistan