

# **PART 1: AN OVERVIEW OF ADB'S LAW AND POLICY REFORM ACTIVITIES IN 2000**

## **Introduction**

1. A legal environment conducive to development is essential for all of the Asian Development Bank's developing member countries (DMCs). ADB's activities play an important role in promoting the rule of law through a pro-poor legal and institutional framework for economic development activities and is a vital tool in supporting the legal and institutional framework for predictability, transparency, accountability, and participation. Over the years, ADB has provided substantial assistance through loans and technical assistance projects with significant Law and Policy Reform (LPR) components. Stand-alone legal technical assistance (TA) has focused on LPR for private sector development, particularly for finance, banking, and corporate governance; judicial reform; legal training; dissemination of legal information; and environmental protection.

## **Governance and Poverty Reduction**

2. LPR is a key dimension of ADB's governance strategy.<sup>1</sup> In a broader sense, good governance programming supports equitable and inclusive growth and the spread of economic freedoms and rights. The role of LPR in the enhancement of region-wide governance cuts across ADB's overarching goal of poverty reduction and all of the core strategic areas identified in ADB's Long-term Strategic Framework: sustainable economic growth, inclusive social development, and governance for effective policies and institutions.

3. In tandem with these strategic areas are three strategic themes, they are: promoting the role of the private sector, supporting regional cooperation and integration, and addressing environmental sustainability. LPR plays a critical role in ensuring that these themes are mainstreamed in ADB operations. The myriad of tasks for LPR is manifold; yet the integration of these various areas into a systemic approach is challenging. The activities of LPR in 2000 sought to respond to this challenge through strategic interventions to support ADB operations and DMC priorities.

## **Deepening LPR**

4. Legal reform as part of the development process means a great deal more than simply the drafting of "modern" laws that are accessible, comprehensible, and usable. The legal system cannot operate without institutions that make these rules come to life through their dynamic interpretation and enforcement. Accordingly, LPR has expanded far beyond simply the drafting and enactment of legislation. Rather, the overall substantive goal of LPR is to improve the efficiency and effectiveness of the legal and judicial system, resulting in the twin goals of greater responsiveness to a market economy and increasing the social access of the poor to public goods and services. This involves not only improving the functions of existing institutions but their reform is also inclusive of new institutions and laws that are more responsive to citizen's legal needs; and also involves empowering citizens to assert their rights (see Part 2).

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<sup>1</sup> ADB's 1995 Governance Paper states that "...law and order is necessary for economic development to take place."

## Enhancing the Capacity of the Judiciary and Government Lawyers

5. Legal education and training of the judiciary and government lawyers in DMCs has been prominent in ADB's LPR activities. In 2000 such activities continued under ongoing projects in Vietnam,<sup>2</sup> Mongolia,<sup>3</sup> and the South Pacific.<sup>4</sup> Implementation of a TA in the Maldives<sup>5</sup> saw the establishment of the first legal and judicial education and training institute in the Maldives. A number of training sessions for judges were held and work began on finalizing the curriculum for courses in legal and judicial education. The approval of the corporate and financial governance loan package for Nepal includes support for the establishment of a National Judicial Academy that will cater to the needs of not only the judiciary but also government and private lawyers.<sup>6</sup> ADB will support not only curriculum development and the training of faculty but also construction of the Academy's building under the loan.

## Judicial Independence

6. The key point in justice sector reform involves the actual structure of legal institutions and the rules that govern the exercise of the different branches of government. Consequently, the cornerstone of successful reform is the effective independence of the judiciary. That is a prerequisite for an impartial, efficient, and reliable judicial system. Without judicial independence, there can be no rule of law, and without rule of law the conditions are not in place for the efficient operation of an open economy, so as to ensure conditions of legal security and foreseeability. This often presupposes working in the broad institutional context, and ADB has conceived of it in these terms in a number of its most recent projects.

### **Box 1: Institutional Strengthening for Judicial Independence in the Philippines**

In 2000, ADB began work on a TA to strengthen the independence of the Philippine judiciary. The Philippine Supreme Court, led by Chief Justice Hilario Davide, requested this TA and the executive branch of Government, led by the Department of Finance and the National Economic and Development Authority, strongly supports and has endorsed it.

The TA focuses on a number of reforms identified by the Supreme Court in its comprehensive Action Plan for Judicial Reform. It will (a) design and set up financial, budgetary, and administrative frameworks that will allow the judiciary to act autonomously in relation to its fiscal and administrative matters, (b) improve the appointment and nomination process of the judiciary to make it more transparent and performance-based, and formulate performance-based incentives to improve the competence and impartiality of the judiciary, and (c) improve the delivery of sustained, focused, and responsive training to the members of the bench.

This grant will be the largest provided by ADB to the Government of the Republic of the Philippines for legal or judicial reform. It lays the basis for long-term efforts that will help achieve the judiciary's goal of being able to dispense impartial and independent justice, efficiently and effectively, thus obtaining civil society's trust and confidence. The TA will begin implementation later this year.

<sup>2</sup> TA 2853-VIE: *Retraining of Government Legal Officers* (\$1,200,000), approved on 26 August 1997.

<sup>3</sup> TA 2967-MON: *Retraining of Legal Professionals in a Market Economy* (\$1,000,000), approved on 23 December 1997.

<sup>4</sup> RETA-5895: *Pacific Judicial Training* (\$350,000), approved on 28 December 1999.

<sup>5</sup> TA 3389-MLD: *Strengthening Legal Education and Judicial Training* (\$995,000), approved on 23 December 1999.

<sup>6</sup> TA 3580-NEP: *Corporate and Financial Governance Institutional Support* (\$3,300,000), approved on 14 December 2000 and Loan 1811: *Corporate and Financial Governance* (\$7.3 million), approved on 14 December 2000.

## Systemic Issues in Legal and Judicial Reform

7. Systemic issues and an approach which appropriately and comprehensively deals with those issues has as its focus the institutional capabilities of the legal system, including the judiciary as well as government administrative and regulatory agencies. It calls for a greater attention and training of the judiciary and government officials staffing legal and regulatory institutions and the incentive systems in which they function. A systemic approach implies focusing on the resources made available to the courts and regulatory agencies; the efficiency and transparency with which these resources are utilized; and the accountability of these agencies to the public. These were the conclusions reached as a part of a 1999 study conducted under the auspices of technical assistance to the Government of Pakistan for legal and judicial reform.<sup>7</sup> As part of its support for systemic reforms in Pakistan in 2000, ADB approved a TA for building capacity for reform and pilot testing some of the reform proposals.<sup>8</sup>

### Box 2: Legal and Judicial Reform in Pakistan

Building on two previous TA's in the country, ADB approved a \$2.7 million grant to develop the capacity of the judiciary to institute substantive long-term reforms. As Pakistan moves towards a market economy, the legal system must be able to respond to the needs of people for justice including administrative justice to ensure citizens benefit from legal entitlements. Transaction costs need to be reduced such that the private sector can power Pakistan's macroeconomic growth. The development of a judiciary that is aware of its larger role in development, technically competent, well resourced and accountable will provide the predictable justice that an economy such as Pakistan's requires.

Concomitantly, the creation of new methods of alternative dispute resolution, improved legal information, strengthening systems of administrative justice, and the use of local language will allow the poor to open the door to legal remedies, which has long been closed to them. Through work with various stakeholders: the federal and provincial bench, civil society groups, and various government agencies, ADB has set the groundwork for a comprehensive reform program which in addition to the above will deal with issues as diverse as: legal education, judicial training, case management, and long-term financial sustainability of key institutions in the sector.

## Legal Information

8. One of the overriding objectives of ADB's strategy for DMCs is to facilitate the transition to a market economy. For such transitions to be successful, it is essential to increase the transparency and knowledge of the legal and regulatory framework. Legal information is vital to the success of market-based reforms – particularly, the promulgation of new legislation. In 2000, ADB implemented a TA to Tajikistan<sup>9</sup> building on the experience and knowledge of the area gained during the implementation of previous legal information work in the People's Republic of China.<sup>10</sup> Since the introduction of economic reforms in both countries, a large number of laws and regulations have been passed. The pace of adopting new legislation continues to intensify with the enactment of many new laws and regulations covering areas such as foreign trade,

<sup>7</sup> TA 3015-PAK: *Legal and Judicial Reform Project* (\$995,000), approved on 7 May 1998.

<sup>8</sup> TA 3433-PAK: *Strengthening of Institutional Capacity for Judicial and Legal Reform* (\$2,900,000), approved on 27 April 2000.

<sup>9</sup> TA 3238-TAJ: *Dissemination of Laws and Strengthening of the Legal Information System* (\$380,000), approved on 9 August 1999.

<sup>10</sup> TA 3000-PRC: *Strengthening of the Legal Information System* (\$630,000), approved on 23 March 1998.

customs duties, taxation, foreign exchange controls, banking, capital market, and foreign direct investment in infrastructure sectors.

9. In Tajikistan, the result of scanty information on new laws has been two-fold: corruption and the absence of foreign direct investment. ADB worked with the Law Reform Commission, which had been previously established with ADB assistance,<sup>11</sup> to establish a database of laws and legal acts and to publish a collection of laws in both the Tajik and Russian languages, thereby improving the state of legal predictability and transparency.

### **Combating Money Laundering**

10. The private sector and markets play a central role in the development process by responding to the challenges of mobilizing resources to address Asia's increasingly complex development agenda. One of the largest threats to the operation and the stability of a nation's financial system, as well as the ability of the private sector to act purposefully in the development process, is money laundering. In addition to the effects on the financial sector, it increases the vulnerability of countries to other types of crime such as drug trafficking, fraud, and corruption. This vulnerability leads to poor governance and undermines state institutions and their legitimacy.

11. In order to combat this serious threat to economic development, ADB began work in 2000 on a regional technical assistance to assist the Financial Action Task Force and the Asia/Pacific Group on Money Laundering (APG) in combating money laundering, and will focus on DMCs which have not yet met international standards. The RETA has an expansive purview, working with governments in the South Pacific as well as those in Southeast Asia.

12. It will help to improve transparency within regional financial institutions and establish strong accountability mechanisms. Among the anticipated outputs are: the identification of the necessary institutional and regulatory reforms; the publication of a comprehensive manual on combating money laundering; and the development of a regional action plan to promote regional cooperation to counter money laundering.

### **Insolvency and Secured Transactions**

13. In the wake of the financial crisis, ADB lead regional initiatives in insolvency and secured transactions law reform. Following on from its initiative<sup>12</sup> in carrying out a comprehensive analysis of insolvency laws in the region in 2000, ADB has implemented technical assistance to Thailand to train members of the bar and the judiciary in business reorganization and insolvency law. Effective national insolvency regimes contribute strongly to crisis prevention by providing the predictable legal framework needed to address the financial difficulties of troubled firms before the accumulated financial difficulties of the corporate sector spill over into an economy-wide crisis. Similar training was provided to the Judiciary in the Philippines following the transfer of jurisdiction over insolvency cases from the Securities and Exchange Commission to the courts. To support regional cooperation in cross-border insolvency issues and to enhance capacity to deal with insolvency generally, ADB approved a regional TA for Insolvency Training and Capacity Building.<sup>13</sup>

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<sup>11</sup> The Law Reform Commission was created through an agreement with the ADB during the inception mission for TA 3238-TAJ: *Dissemination of Laws and Strengthening of the Legal Information System*.

<sup>12</sup> See *LPR at ADB 2000*, Volume I.

<sup>13</sup> RETA-5795: *Insolvency Law Reforms* (\$550,000), approved on 13 July 1998.

14. Regional work on secured transactions and insolvency culminated in 2000 with the publication of two substantial texts on the matter, *The Need for an Integrated Approach to Secured Transactions and Insolvency Law Reforms*, as well as *Secured Transactions Law Reform in Asia: Unleashing the Potential of Collateral*.<sup>14</sup> These works go a long way in providing a deliberative and thorough analysis of the elements that will form the foundation of a secured transactions regime that can effectively promote the economic benefits of secured transactions law reform.

15. In 2000, ADB initiated dialogue with several DMCs to the reform of their respective secured transactions laws. In Nepal, under an ongoing TA,<sup>15</sup> ADB is supporting an integrated approach to reform of insolvency and secured transactions laws in the context of a larger initiative for improving governance corporate and financial governance (CFG).<sup>16</sup> Under ADB's support for CFG, a secured transaction registry will also be established.

### Land Law

16. Specific governance issues have also been addressed through a series of smaller TAs to ADB DMCs. In Cambodia, the LPR program began implementation of land legislation, one of the first significant steps that country has taken in the development of market-oriented rule of law. The benefits of which range from a more secure environment for foreign direct investment to an end to the legal vulnerability of subsistence farmers who make up a large portion of the Cambodian population.

#### Box 3: Implementation of the Land Law in Cambodia

In 2000, ADB approved technical assistance to the government of Cambodia to assist in the implementation of the country's newly drafted land law; the first piece of legislation covering such a purview since the 1975. In Cambodia, as elsewhere, land ownership is identified with poverty alleviation. Thus, enactment and implementation of a land law that enables the poor to secure good title is an issue of the first magnitude. This is particularly important for the poor who have occupied plots of land for many years. In a recent survey, provincial governors confirmed the importance of the new legislation; rating the usefulness of it in resolving land disputes in their respective provinces on a scale of 1 (not helpful) to 10 (most helpful), the average response was 9.3. Nationwide implementation of this law will do a great deal to reduce the vulnerability of the rural poor and facilitate their access to justice either through the courts or a system of alternative dispute resolution. ADB TA includes a component to assist the poor to assert their rights under the new law through non-governmental organizations specializing in advocacy of the rights of the poor.

### Pro-Poor Judicial Reform

17. As referenced in the 2000 annual report, the LPR program began work on regional TA to strengthen pro-poor judicial reform efforts across Asia. Though, the term "pro-poor" is often utilized; however, a concrete definition of pro-poor law and development work, particularly in the context of Asia is not readily available. A number of components of pro-poor work: legal aid, alternative dispute resolution, decentralization, and legal information have already been

<sup>14</sup> See Volumes 1 and 2 of *LPR at ADB 2000*.

<sup>15</sup> TA 3461-NEP: *Company, Insolvency, and Secured Transactions Law Reform* (\$250,000), approved on 27 June 2000.

<sup>16</sup> See footnote 6.

incorporated into existing LPR work. However, there is a need to go farther in developing a pro-poor approach which is sufficiently broad.

18. This study, to be implemented in 2001, will look at questions of access to justice across Asia and identify existing impediments and solutions to the provision of justice to the region's most vulnerable individuals. The results of this RETA, along with similar work in the implementation of the TA to Pakistan, will provide the theoretical and practical base of knowledge to mainstream pro-poor legal and institutional frameworks in development projects.

19. In 2000, work continued on a RETA surveying legal literacy<sup>17</sup> in selected DMCs and the its relevance to development projects. The results of that RETA are published in Part 2 of this report.

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<sup>17</sup> RETA-5856: *Legal Literacy for Supporting Governance* (\$500,000), approved in 24 August 1999.