

Chapter 3

International Collaborations in Judicial Reform

- EBRD's Role in Judicial Reform and Training
- IDB's Efforts in Legal and Judicial Reforms

EBRD's Role in Judicial Reform and Training

EMMANUEL MAURICE

General Counsel, European Bank for Reconstruction and Development (EBRD)

The European Bank for Reconstruction and Development (EBRD) and ADB have similarities and differences with respect to their structures, members, mandates, and projects. EBRD, like ADB, has supported legal and judicial reform.

EBRD is similar to ADB in so far as its charter was modeled largely after the ADB charter. Because EBRD services the countries of Central and Eastern Europe and the former Soviet Union, it shares a number of recipient countries with the ADB, specifically the Central Asian countries that were formerly part of the Soviet Union.

EBRD differs from the ADB in that EBRD is not directly involved in the alleviation of poverty. Instead, EBRD's mission is to foster the transition of central and eastern European countries from command economies (i.e. economies that are planned and controlled by a central administration) to open

market economies and to promote private and entrepreneurial initiative in the new economies. Thus, EBRD refers to itself as a transition bank, rather than a development bank.

Another difference between the two institutions is that EBRD has an openly political mandate. Article 1 of EBRD's charter¹ provides that it may only lend to countries that are committed to, and apply the principles of, multi-party democracy, pluralism and market economics. These guiding principles have led the EBRD to reduce its involvement in certain countries that have not fully recognized these principles, particularly Belarus and Turkmenistan.

Both EBRD and ADB are involved in financing and managing projects in the public and private sectors. However, the EBRD charter provides that at least 60 percent of its resources are allocated for the private sector. Private sector loans serve EBRD's mission to facilitate the transition of state-owned enterprises to private ownership and control, to help enterprises operating competitively in the market-oriented economy. EBRD exceeded its private sector funding target last year when it directed 80 percent of its financing to the private sector.

¹ Agreement Establishing the European Bank for Reconstruction and Development found at www.ebrd.com/about/basics

EBRD [European Bank for Reconstruction and Development] and ADB both have a legal reform program, and EBRD has a limited judicial reform program. Ten years ago, the EBRD started its legal reform program, called the Legal Transition Program, in keeping with the Bank's mandate.



Emmanuel Maurice
General Counsel
European Bank for
Reconstruction and
Development (EBRD)

“The EBRD law reform program focuses on remedying the implementation gaps by ensuring that authorities effectively understand, apply, and enforce the new laws.”

Mr. Emmanuel Maurice is the General Counsel of the European Bank for Reconstruction and Development (EBRD). Before joining the EBRD, he worked in the New York and Paris offices of a U.S. law firm and with the International Finance Corporation in Washington. He has Masters' degrees in law from the universities of Paris and Stanford and a degree from the Institut d'Etudes Politiques de Paris.

EBRD and ADB both have a legal reform program, and EBRD has a limited judicial reform program. Ten years ago, the EBRD started its legal reform program, called the Legal Transition Program, in keeping with the Bank's mandate. Due to EBRD's involvement in private sector activities, its transition program focuses on reform of commercial laws that are directly relevant to the activities of investors and financiers in Central Asia and Eastern Europe, including the laws of capital markets and corporate governance, concessions, insolvency and bankruptcy, secured transactions, and telecommunications regulatory reform.

For each sector, EBRD engages in the following methodology. First, it identifies the international standards or best practices for compliance. Second, it assesses the laws of the recipient countries against those international standards. Third, it develops and implements technical assistance projects to support local authorities to establish investor friendly laws and sound institutions. Finally, it advances legal reform through outreach activities including legal roundtable discussions, and the legal journal Law in Transition.

EBRD's assessment of laws focuses on two aspects: 1) the extensiveness of the laws, or the extent to which the law on the books comply with international standards; and 2) the effectiveness of the laws, or the extent to which the authorities in charge of enforcement effectively apply the laws. This dual analysis has led EBRD to identify what it calls the “implementation gap” which is essentially the measure of the effectiveness of the laws. EBRD has found that there is

usually an implementation gap in every sector of every country.

The EBRD law reform program focuses on remedying the implementation gaps by ensuring that authorities effectively understand, apply, and enforce the new laws. In certain cases, this can be accomplished by simply helping a country assemble a computerized registry of the laws. Remedying implementation gaps can also involve participation in training sessions to help judges understand the new laws and apply them in the most effective manner. EBRD has assisted with judicial training programs to implement the New Secured Transactions Law in the Slovak Republic and the new Insolvency Law in Poland.

In 2004, the EBRD decided to go beyond that limited approach and focus on judicial capacity building on a larger scale. In launching initiatives in this area, it applied the four-part legal reform methodology described above. It first determined that there were myriad international standards that defined the parameters of an efficient and independent judiciary. It identified the United Nations Basic Principles on Independence of the Judiciary, adopted in 1985, and the related United Nations Procedures, adopted in 1989, as most relevant international standards. The Council of Europe's Recommendations No. R(92)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, adopted in 1994, and the Council of Europe's European Charter on the Statute for Judges, adopted in 1998, were also considered. With respect to judicial behavior, EBRD relied on the Bangalore Principles of Judicial Conduct of 2002, which had recently been adopted by the United Nations.

To compare the judiciaries in recipient countries against these international principles, the EBRD relied on work done by the American Bar Association and Central European and Eurasian Law Initiative (CEELI). Those organizations designed a judicial reform index and surveyed fourteen of EBRD's twenty-seven countries of operation.² The surveys confirmed that the judiciary is

² EBRD's countries of operations are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, FYR Macedonia, Moldova, Poland, Romania, Russia, Serbia and Montenegro, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

quite weak in many of these countries. The weakest judiciaries were identified as those of Armenia, Bosnia, Kurdish Republic, Serbia, Montenegro, and Uzbekistan. The specific shortcomings identified were related to judicial efficiency, accountability, and transparency, and lack of structural safeguards and financial resources available to judiciaries.

Based on these assessments, EBRD decided to help countries launch an initiative to train their judges in commercial law matters. Fortunately, many countries in Central and Eastern Europe were independently beginning to establish judicial training centers to train new judges and provide judges with continuing education. EBRD has cooperated with these training centers, which are usually placed under the authority of the minister of justice. The first EBRD commercial law training project will take place in the Kyrgyz Republic with the cooperation of International Development Law Organization (IDLO) in Rome, an organization which has been involved in training initiatives for lawyers and judges around the globe.

In sum, the EBRD's mission to develop the private sector and market-based economies, while different from ADB's emphasis on public sector development, nevertheless requires legal and judicial reform to create a legal environment that is conducive to investment, entrepreneurship, and economic growth. To this end, EBRD has sponsored and will continue to sponsor legal and judicial reform programs.

IDB's Efforts in Legal and Judicial Reforms

JAMES SPINNER

General Counsel, Inter-American Development Bank (IDB)

The Inter-American Development Bank (IDB)¹ is an institution very similar to ADB. It is a regional development bank with forty-seven shareholders from the countries of the Americas, Europe, Ja-

pan, and Israel.² Similar to ADB, IDB's institutional goal is to further the economic and social development of its twenty-six borrowing member countries³ in Latin America and the Caribbean. Roughly 95 percent of the IDB's lending program goes to public sector borrowers, i.e., to national and local governments and government entities that enjoy the full faith and credit of the national government. It also has a mandate to lend to the private sector up to 10 percent of its resources. Private sector lending supports infrastructure projects, local capital market development, and trade finance. The Bank expects private sector lending to increase in the next few years.

IDB loans, whether public or private, are primarily for investment projects. It also provides policy-based loans, which entitle countries to disbursements for completion of specified changes to country policy. IDB also provides technical assistance.

Since 1994, one of IDB's main goals has been to support efforts by its borrowing member countries in the area of the modernization the state. A new model of governance is needed in order for the state to fulfill its new role. To support these necessary governance reforms, IDB supports executive, legislative, and judicial reforms geared towards the modernization of the state. IDB's efforts are strongly supported by civil society in its member countries, the free press, and the governments themselves. These efforts are reflected in IDB's Modernization of the State strategy, approved by its Board of Executive Directors.

In reforming the executive branch, IDB seeks to promote the responsiveness of governments' audit capacity and strengthen their controller capacity. IDB advocates transparency in the budget process and control mechanism. In legislative reform,

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¹ The Agreement establishing the Inter-American Development Bank is found at www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf

² IDB's non-borrowing member countries are: Austria, Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Israel, Italy, Japan, Korea, Netherlands, Norway, Portugal, Spain, Slovenia, Sweden, Switzerland, United Kingdom, and the United States.

³ IDB's borrowing member countries are, according to IDB's percentage of project financing for the country: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.



James Spinner
General Counsel
Inter-American
Development Bank

"IDB's mandate now goes beyond simply creating an enabling environment for investments. The IDB now counts poverty reduction, encouragement of social equity, and environmentally sustainable economic growth among its goals."

Mr. J. James Spinner is General Counsel of the Inter-American Development Bank (IDB). His career in IDB's Legal Department included assignments in the Operational Division, working with Central America; the Institutional Office, working on the Bank's procurement of goods and services, tax matters, and issues related to the Bank's privileges and immunities; the Financial Office, working on IDB's issuance of securities in capital markets around the world, its financial operations, and its periodic capital increases; and as Deputy General Counsel. Before joining IDB, Mr. Spinner practiced law in Washington, D.C. He holds a J.D. from the Georgetown University Law Center and a Bachelor of Arts degree, with highest honors, in History from Lehigh University.

IDB's activities frequently concentrate on ensuring transparency in the legislative process, encouraging the participation of civil society, and strengthening the links between federal and state legislative entities.

Legal and Judicial Reform at IDB

IDB's Modernization of the State mandate includes support of judicial reform and law reforms. IDB's programs identified different areas of the law where reform was needed and worked with international standards and methods to increase the competitiveness of its member countries in these areas. Most of the countries in Latin America have legal systems based on French or Spanish civil law systems. There is a move underway in many of these countries to move from their traditional systems to ones that include common-law-like characteristics. Examples include a move towards oral hearings and towards an accusatory system, rather than a system where judge is both prosecutor and adjudicator.

IDB's judicial reform agenda includes court reform. To ensure the efficiency of court systems, IDB has funded, among other things, the establishment of administrative systems to support existing judiciary institutions, speed up processes, and ensure that judges dedicate their time to their caseloads. Other programs have trained judges in international standards and provided education on the national law of other

states. Judicial reform projects have also provided courts with equipment, facilities, and administrative support for case load management and to support judicial independence.

In its initial efforts, IDB deliberately did not involve itself in any element of criminal law. Traditional thinking at the time was that criminal law reform did not directly support economic and social development. As IDB's funds were available exclusively for purposes of economic development, criminal law reform was deemed to fall outside IDB's mandate.

However, IDB policy on criminal law reform has changed over the last few years. IDB has acknowledged that in order to develop a modern society where there is economic and social equality for all, the criminal law system, criminal law procedures, the police, the prosecutors and the penal system must be reformed as well. Changing the criminal justice system, defining the role of the police, and providing individuals with access to courts are all reforms that are critical to achieving economic and social development. IDB has expanded its efforts to improve criminal justice even further to support a program to prevent community violence, specifically violence among teenagers and in the streets, as well as domestic violence. The program consists of establishing community centers, training programs, and community police organizations to bring communities together to prevent violence and crime. Criminal law reforms and community action programs are a necessary element in today's holistic view of the ways in which economic development can be supported.

It has also invested in improving public information about the law, ensuring access to the courts, and promoting public understanding of the function and financing of legal systems. IDB has provided support for alternative dispute resolution mechanisms and other methods for achieving resolution of disputes that do not depend on the courts.

Lessons Learned

IDB has learned several lessons from its experiences with legal reform. First, legal reform is never easy. Second, it is not always agreed that legal reform is a priority to be placed on the financing agenda by a borrowing member country. Third, in develop-

ing reform programs, one size does not fit all. Fourth, legal reform is insufficient by itself, and must be accompanied by other reforms that strengthen the state's role.

Legal and judicial reform is no longer merely aimed at providing a legal environment that could support foreign and domestic investments. Judicial reform is an integral part of IDB's modernization of the state, with poverty reduction, encouragement of social equity, and environmentally sustainable economic growth among its goals.

Capacity building and legal and judicial reform must go beyond simply providing judges with computers and other technical equipment. While computer systems are necessary to keep good records and manage case flow, the computers are useless without staff trained to use them. Judges

need administrative support and training to ensure their independence and to maintain the public's respect in the courts.

Meaningful legal and judicial reform does not come quickly. It is important to take a multi-lateral approach that involves chambers of commerce, governments, and for civil society to play an active role and provide an oversight for the government's tasks. ADR mechanisms should be developed to alleviate the congestion in the courts. It should be kept in mind that certain of these are quick fixes, less than ideal solutions implemented because the basic underlying structure is not working. In order to support conditions conducive for economic and social development our efforts must provide long-term sustainable reforms as well as immediate solutions.

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