

**LAW AND POLICY REFORM
AT THE ASIAN DEVELOPMENT BANK**

Report from the ADB Symposium on

Challenges in Implementing Access to Justice Reforms

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Landscapes, an art historian once noted, are often deceptive: they can hide more than they actually show. So it is with attempts to define poverty just as a function of income. True, without income, there is no escape from poverty. But to understand the predicament of the poor and their prospects for overcoming poverty, one must go beyond the metric of “dollar-a-day” existence. Poverty and its deprivations must be seen in all their bareness: lack of education, health care, nutrition, clean water, safe sanitation, income, and—ultimately—the passage of premature death. Alongside these deprivations, one must also take cognizance of citizens’ rights that are denied, the opportunities that are bypassed, the entitlements that are wasted, the public services that are not rendered, the liberties that are seized, the public resources that are plundered, the terror of vulnerability that is inflicted, and the sense of dignity that is devoured. Indeed, in articulating its 1999 Poverty Reduction Strategy, ADB acknowledged a move away from income as the sole measure of poverty and recognized these intangibles stemming from powerlessness and despair as a part of the accounting of the perniciousness of poverty.

—from *Law & Policy Reform in Asia and the Pacific: Ensuring Voice, Opportunity & Justice*

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Foreword

Law and Policy Reform as Poverty Reduction: Beyond Good Governance and Economic Development

The Asian Development Bank has a long-standing commitment to law and policy reform in our developing member countries (DMCs). In the past decade, we have engaged in more than 400 law and policy reform-related technical assistance and loan projects spanning virtually all of ADB's DMCs. We have focused on a range of fundamental issues such as reforming the judiciary, creating a more enabling environment for the private sector to effectively compete and prosper, enhancing bureaucratic responsiveness to public demands, promoting greater transparency in public institutions through access to information, curbing corruption, extending legal protection against exploitative practices such as bonded labor, and introducing land registration laws that permit use of the land for collateral financing.

Similar efforts have been criticized for their alleged failure to achieve their goal to mainstream good governance. Critics claim that good governance efforts remain fragmented because multilateral development banks (MDBs) that pursue economic and social development through good governance measures are unwilling to address the political roots of government failure. They claim MDBs are too preoccupied with ensuring the stability and predictability of the legal framework and focus on private law to secure property rights and enforce contracts, but fail to achieve significant success because they do not address crucial issues such as independence of the judiciary, criminal justice reforms, or reforms that have been deemed too political by MDBs.

What is lost in this debate between MDBs and their critics is that legal and judicial reforms do not merely facilitate economic growth and development by improving institutions. Legal and judicial reforms do have a direct link to poverty reduction. Studies undertaken by MDBs have found strong correlations between measures of development and measures of institutional quality.¹ Other studies have yielded considerable evidence of a negative correlation between citizens' perceptions of judicial unpredictability and economic growth, and between corruption and investment.² One recent study has concluded that the independence of a country's supreme court is positively correlated with economic growth.³

ADB's Reform Initiatives

Since it identified governance as a primary concern in 1995, ADB has pursued law and policy reform activities aimed at addressing institutional and structural impediments to fight poverty. It has conducted a regional study qualitatively measuring the judicial independence of a number of its DMCs, tackling issues relating to budget autonomy and the place and role of the Supreme Court in the judicial system—issues that have previously been considered as too political for MDB involvement. ADB's largest judicial reform endeavor, its Access to Justice Program in Pakistan, has involved ADB in the process of assisting the separation of subordinate courts from the executive's control, thereby promoting judicial independence. ADB is also involved in the Philippines' Action Program for Judicial Reform, providing support to strengthen the judiciary's independence. These efforts are informed by the conviction that, without addressing judicial independence issues, other reforms undertaken in the judicial sector will yield marginal results.



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¹ Daniel Kaufmann et al., *Governance Matters* (1999), available at www.worldbank.org/wbi/governance/pubs/govmatters.pdf.

² Paolo Mauro, Corruption and Growth, Q. J. ECON. 681-712 (1995); Paolo Mauro et al., *The Effects of Corruption on Growth, Investment & Government Expenditure: A Cross Country Analysis: in Corruption and the Global Economy* (Sept. 1996) (On file with the Joint Bank-Fund Library); J. Edgardo Campos et al., *The Impact of Corruption on Investment: Predictability Matters*, 27 World Development 1059-1067 (1999); Shang-Jin Wei, Address at the Brookings Institution (Mar. 12, 2003).

³ Lars Feld and Stefan Voigt, *Economic Growth & Judicial Independence: Cross Country Evidence Using a New Set of Indicators*, EUR. J. POL. ECON. 497-527 (2003).

ADB is also embarking on reforms in criminal justice and police reforms. While reforms in these sectors are not usually viewed as developments that directly contribute to improving economic governance, these reforms are critical to ensuring the success of present legal, judicial, and access to justice reform efforts. Without supporting reforms in these sectors, the benefits of existing judicial reform efforts will likewise remain marginal.

Apart from its judicial reform efforts, ADB has been engaged in a variety of activities that seek to reduce poverty by addressing intangibles stemming from powerlessness and despair—human rights denied, opportunities bypassed, entitlements wasted, public services left unrendered, public resources plundered, and the terror of vulnerability inflicted—all of which are part of poverty’s perniciousness. After all, poverty should not be defined just as a function of income.

As an attempt to mainstream the concerns of vulnerable groups, ADB is supporting a region-wide project that explores the relationship between the existence of proof of legal identity, such as a birth record, and access to resources, services, and opportunities. Such lack of registration has significant economic, social, and political consequences, since unregistered persons are unable to access services available to registered citizens—education, immunization, formal employment, financial services, social security, access to justice, property rights, suffrage, marriage rights, citizens rights, and inheritance rights.

In 2000, ADB commissioned a study of how legal empowerment contributes to good governance, poverty reduction, and other development goals. The results of the Philippine component supported the conclusion that agrarian reform efforts were more successful in villages that had legal empowerment activities, as compared to villages that had none. The survey also showed that areas with legal empowerment activities enjoyed higher productivity, higher and more disposable income, and farm investments. Informed by these findings, ADB has focused on a number of law and justice reform efforts on legal empowerment—the use of the law to increase the control that disadvantaged populations exercise over their lives. For example, ADB has provided support in Cambodia not only for enacting a new land law, but also for raising public awareness of land law and increasing the people’s access to mechanisms that would help them realize their rights under the new law. A video that was widely shown and a cartoon book that was widely distributed around the country have increased public awareness of the new law, especially among the illiterate.

Conclusion

The lessons learned in ADB’s decade-long involvement with law and justice reform are, in summary: First, law and justice reforms do have a positive correlation to poverty reduction. Legal and judicial reforms do result in benefits contributing to economic growth and development. The results of recent studies showing this positive relation between legal reforms and poverty reduction invite people to rethink their reluctance to address issues that are presently deemed as political constraints to governance, particularly judicial governance. After all, legal and judicial reforms that are implemented in a piecemeal fashion are bound to fail if the broader political context of governance remains unaddressed. Second, poverty reduction means more than simply economic development. Legal and judicial reforms that promote social development and expand human capability—interventions that seek to protect the vulnerable and empower the poor—are both crucial and complementary to interventions that promote pro-poor sustainable economic growth and those that promote good governance.

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