

## MULTILATERAL DEVELOPMENT BANKS AND LAW AND DEVELOPMENT PROJECTS IN ASIA: EXPERIENCES AND DIRECTIONS

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### ABSTRACT

Beyond their traditional lending in sovereign and non-sovereign operations in sectors such as infrastructure, agriculture, and social services, multilateral development banks (MDBs) have included law and development projects in line with their mandates on economic development and poverty reduction. The spectrum of law and development activities has been broad-ranging from strengthening legal education to enhancing debate on judicial independence to promoting judicial reform projects and supporting initiatives on environmental justice. This article examines the roles played by MDBs in promoting law and development, and analyses four case studies of law and development projects (two from the World Bank and two from the Asian Development Bank). The article summarises the experiences learned by these institutions over the years and discusses the directions taken. The article concludes with recommendations on the measures that can be taken by these institutions, as well as other organisations, in continuing to engage with law and development projects.

**Keywords:** Multilateral development banks, World Bank, Asian Development Bank, law and development, legal and judicial reform, stakeholders

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## **BANK PEMBANGUNAN MULTILATERAL DAN UNDANG-UNDANG DAN PROJEK PEMBANGUNAN DI ASIA: PENGALAMAN DAN HALATUJU**

### **ABSTRAK**

Merentasi sempadan aktiviti peminjaman tradisional dalam operasinya di sesebuah negara, misalnya di dalam sektor infrastruktur, pertanian dan sosial, bank-bank pembangunan multilateral (BPM) telah memasukkan undang-undang dan projek-projek pembangunan sehaluan dengan mandat kuasa usaha mereka bagi membangunkan ekonomi dan membasmi kemiskinan. Ruang lingkungan undang-undang dan aktiviti-aktiviti pembangunan semakin meluas yang merangkumi pemeraksanaan pendidikan undang-undang, merangsang perdebatan mengenai kebebasan kehakiman dan mendorong kepada mengusahakan projek-projek reformasi kehakiman dan inisiatif-inisiatif sokongan ke atas keadilan persekitaran. Makalah ini meneliti peranan-peranan yang dimainkan oleh BPM dalam mempromosi undang-undang dan pembangunan, dan menganalisis empat kajian kes undang-undang dan projek pembangunan (dua daripada Bank Dunia dan dua daripada Bank Pembangunan Asia). Makalah ini merumus pengalaman-pengalaman yang dapat dipelajari dari kedua-dua institusi ini dan membincangkan halatuju-halatuju yang telah diambil. Makalah ini diakhiri dengan syor-syor mengenai langkah-langkah yang boleh diambil oleh institusi-institusi ini, serta organisasi-organisasi lain, dalam meneruskan penglibatan dalam undang-undang dan projek-projek pembangunan.

**Kata Kunci:** Bank-bank pembangunan multilateral, Bank Dunia, Bank Pembangunan Asia, undang-undang dan pembangunan, reformasi perundangan dan kehakiman, pihak-pihak berkepentingan

## INTRODUCTION

Multilateral development banks (MDBs)<sup>1</sup> with their mandate on economic development and poverty reduction provide assistance to borrowing countries through public (sovereign) and private (non-sovereign) operations in various sectors such as infrastructure, transport, agriculture, and social services. These projects include legal interventions, for example, an irrigation project providing that the water user associations (WUAs) established by the farmers manage and maintain the project facilities in the project area and require that these WUAs be legally established under the local laws of the borrowing country. An example is the Second Integrated Irrigation Sector Project in Indonesia financed by the Asian Development Bank (ADB) and approved in 1994. Under this project the necessary legal framework for the establishment of WUAs was required to be created by the government authorities. The main objective of the irrigation project was to construct a canal and an irrigation network to increase the arable land for economic growth of the area. This legal intervention was one matter that had to be addressed in project execution.

It was only in the 1980s that MDBs, starting with the World Bank, played an active role in engaging in “stand-alone” law and development projects through grants or loans. A “stand-alone” law and development project means a project that is specific on law and development such as judicial reform, legal education, or access to justice, in contrast to a typical project on infrastructure or other sectors that may contain a legal component such as in a transport project, there may be in addition to the physical infrastructure construction and project management, a component providing for enactment or revision of road safety legislation related to the project. The other MDBs followed suit, each with its own phase and coverage of law and development projects, using the literature produced by the

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<sup>1</sup> These are the World Bank, that is, the International Bank for Reconstruction and Development (IBRD) and the concessional lending window, the International Development Association (IDA), and the four major regional development banks for Africa, Asia and the Pacific, Europe, and Latin America: the African Development Bank (AfDB); the Asian Development Bank (ADB); the European Bank for Reconstruction and Development (EBRD); and the Inter-American Development Bank (IADB). IBRD was the first international development organization established in 1944, followed by IADB (in 1959), IDA (in 1960), AfDB (in 1964), ADB (in 1966), and EBRD (in 1991).

World Bank on discussions relating to the link between institutions and economic growth (the mandate of the MDBs), the concept of legal empowerment, the development of legal and regulatory frameworks that support private sector development.<sup>2</sup>

There has been considerable discussion, by academics, practitioners, and institutions, on the link between legal reform and economic development. MDBs have based their legal interventions in economic development in line with their charter mandate, and over the years, have justified their activities through various policies and initiatives such as anti-corruption, poverty reduction, governance, and environment. Trubek highlights that the academic discipline to study the relationship between law and development began in the 1960s, when governments and international organisations concerned with development began to organise systematic legal reform projects.<sup>3</sup> He notes that law and development today are faced with four roles – law should facilitate experimentation and innovation; law is increasingly affected by global forces; law itself is part of development; and law and development policy should be evidence-based – and that there has to be a systematic body of knowledge to serve as reliable guide to reform efforts.<sup>4</sup>

Studies have been carried out by MDBs on the role of law and development, for example, ADB's research study on law making an important contribution to economic development based on six Asian economies over a 35-year period between 1960 and 1995.<sup>5</sup> Various initiatives on the “law and development movement” starting from the 1960s to the present have been advocated with nuances.<sup>6</sup>

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<sup>2</sup> See, for example, ADB's first policy paper on its approach to law and development and its strategy for law and development programming in “A Review of the Law and Development Activities of the Asian Development Bank” published in February 1998.

<sup>3</sup> David M. Trubek, “Law and development in the twenty-first century”, Introduction, *Law and Development in Asia*, ed. Gerald Paul McAlinn and Caslav Pejovic (United Kingdom: Routledge, 2012), p.1.

<sup>4</sup> Ibid., pp. 2-3.

<sup>5</sup> *The Role of Law and Legal Institutions in Asian Economic Development (1960-1995)* prepared for the Asian Development Bank by Katharina Pistor and Phillip A. Wellons (Oxford University Press, 1999).

<sup>6</sup> See, for example, the references made to the relationship between the rule of law and development by Michael Trebilcock in “The Rule of Law and Development - In Search of the Holy Grail” in *The World Bank Legal Review, Volume 3 on International Financial Institutions and Global Legal Governance*, edited by Hassane Cisse, Daniel D. Bradlow, and Benedict Kingsbury (The World Bank,

Nanwani classifies the movement into two: the failed law and development movement of the 1960s and 1970s which was primarily led by the United States government and private foundations and which fizzled in the 1970s with the drying up of assistance; and the resurgence of law and development in the 1980s with MDBs and other agencies, including bilateral donors, playing a strong role in supporting law and development projects, including stand-alone projects.<sup>7</sup> Newton's classification of this movement through "moments" – inaugural (1965-1974); critical (1974-1989); revivalist (1989-1998); and post (1998-present) – is relevant in that under this movement, the discourse of law and development is open to a fuller spectrum of ideas, approaches, schools of thought, and lines of research.<sup>8</sup> The positions above are subject to some critique in the literature, rather than being a given and single approach to this complex topic.

MDBs have contributed to law and development over a broad spectrum of activities ranging from, on the one hand, strengthening legal education and enhancing debate on judicial independence to, on the other hand, promoting judicial reform projects on access to justice and supporting conferences on environmental justice and the establishment of green courts. The purpose of this article is to describe and analyse the roles played by MDBs in their contributions to law and development projects, and to discover, from a critique of the case studies, the experiences gained, the lessons learnt, and the directions that may lie ahead in carrying out these projects. Apart from developing a clearer understanding of the roles that are and can be played by MDBs in this area, a review of such projects can enhance the literature on law and development and, more importantly, lead to improvements in project preparation and efficacy as MDBs continue and increase their law and development activities.

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2012); and the references to the evolvement of judicial reform by Livingston Armytage, *Reforming Justice: a journey to fairness in Asia*, (Cambridge University Press, 2012).

<sup>7</sup> Suresh Nanwani and A. Mohaimin Ayus, "Strengthening Legal Education and Judicial Training in the Maldives: A Case Study," *International Islamic University Malaysia Law Journal*, 15 (2007): 171-196.

<sup>8</sup> S. Newton, "Law and development, law and economics and the fate of legal technical assistance," *Lawmaking for Development: Explorations into the theory and practice of international legislative projects*, ed. J. Arnscheidt, B. van Rooij and J.M. Otto (Leiden: Leiden University Press, 2008), pp. 26-30.

The next section gives an account of the role played by MDBs in law and development projects and the positions taken by MDBs in financing such projects over the years. The article focuses on World Bank and ADB with emphasis on law and development projects in Asia but references will also be made to other MDBs in their support of law and development projects. Specific case studies of four MDB projects (two from the World Bank and two from ADB) and analysis of the experiences and lessons learnt will be discussed. The article summarises the experiences learnt by MDBs over the years, discusses the directions in law and development by these institutions, and recommends measures that can be taken by these institutions, as well as other organisations, in continuing to engage with law and development projects.

## **ROLE PLAYED BY MDBs IN LAW AND DEVELOPMENT PROJECTS**

The study of the outcomes on the law and development projects carried out at the World Bank, ADB, and the European Bank for Reconstruction and Development (EBRD) echo the reality expressed by academics such as Faundez that legal reform is a complex and slow enterprise and that the “interplay between law, the state and markets is complex and far from predictable”.<sup>9</sup> When initiating investment in law and development projects, MDBs generally had to grapple with two concerns:<sup>10</sup> whether there was a link between legal reform and economic development, and whether the institution should intervene in an area that is regarded as highly political in view of the

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<sup>9</sup> Julio Faundez, “Legal Reform in Developing and Transition Countries - Making Haste Slowly” in 2000 (1) *Law, Social Justice & Global Development Journal* (LGD). Accessed April 29, 2016, [https://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2000\\_1/faundez](https://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2000_1/faundez).

<sup>10</sup> Julio Faundez, “Rule of law or Washington Consensus: the evolution of the World Bank’s approach to legal and judicial reform” in *Law in the Pursuit of Development: Principles into Practice?*, ed. Amanda Perry-Kessaris (United Kingdom: Routledge, 2010), 182.

prohibition of political activity in the charters of the MDBs,<sup>11</sup> except for EBRD which has an openly political mandate.

MDBs continue to rationalise their involvement in law and development projects through policy papers, strategies, publications, grants, investment loan projects, and policy loans programs. In the 1990s, the World Bank, ADB, AfDB, and IADB used the concept of “good governance” in reinforcing the role of law in the development agenda and in articulating that law and development activities are an integral part of meeting the following four elements of good governance: accountability (making public officials answerable); participation (access to and representation of the people in institutions that promote development); predictability (the need for laws to regulate society and for the fair and consistent application of these laws); and transparency (availability of information to the general public).<sup>12</sup>

The role played by MDBs in law and development projects has been enhanced in many ways including further support and engagement in these projects, publications, research, studies, evaluations, symposiums, and international conferences. The financing modalities vary through grants, loans, and/or policy dialogues. The initial point of reference in the institution working on law and development components or projects was with the legal

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<sup>11</sup> See, for example, the express provision on prohibition of political activity in IBRD (Article IV, section 10 of the IBRD charter) and in ADB (Section 36 of the ADB charter). EBRD is different from the other MDBs in this respect as it has an “openly political mandate”. See Emmanuel Maurice, General Counsel, European Bank for Reconstruction and Development (EBRD) in “EBRD's role in judicial reform and training” in “Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms” (ADB, 2005), p. 23. EBRD also has a legal and judicial reform program though its “transition” mandate of fostering the transition of its borrowing countries from command economies to open market economies and to promote private and entrepreneurial initiatives.

<sup>12</sup> Julio Faundez, “Rule of law or Washington Consensus: the evolution of the World Bank's approach to legal and judicial reform,” p. 190; “Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms” (ADB, 2005), chapter 3: International collaborations in judicial reform; “A Review of the Law and Development Activities of the Asian Development Bank” dated February 1998, pp. 1-2; and “Bank Group Strategy Paper on Law for Development” (AfDB, June 2001, para. 1.2).

department,<sup>13</sup> and over the years, specific units or teams were set up in the legal department tasked to handle such activities or collaborations made with operational and other relevant departments who would handle these projects with governance or other relevant thematic classification.

At the World Bank, it is the Legal Vice Presidency Unit (LEGVP) which has a justice reform team and a Justice for the Poor (J4P) program which engages justice reform as a cross-cutting issue in the practice of development. This unit collaborates with the Poverty Reduction and Economic Management Vice Presidency (PREM) to oversee the development of the paper “New Directions in Justice Reform” in articulating the World Bank's strategy for justice reform and establishing priorities for the World Bank's justice reform work. At ADB, the Office of the General Counsel (OGC) established a group of lawyers with expertise on law and development and this group was strengthened in 1999 with the creation of a Law and Policy Reform Special Practice Group in OGC in 1999.<sup>14</sup> This was changed to a Law and Policy Unit before 2005, and presently the OGC has a team of lawyers working on law and development projects including providing support to regional departments handling project operations, including legal and judicial reform projects. At EBRD, the OGC has a Legal Transition Programme (LTP) team (created in 1995) that manages the EBRD's legal reform work and related legal technical assistance projects. EBRD conducts four types of activities through the LTP: standard-setting, measuring laws, assisting governments and sharing experiences with the bank developing and implementing technical cooperation projects in its countries of operations, which are designed to support local authorities in establishing investor-friendly legal systems.

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<sup>14</sup> Suresh Nanwani and A. Mohaimin Ayus, “Strengthening Legal Education and Judicial Training in the Maldives: A Case Study,” pp. 171-196, p. 174.



AfDB's approach in pursuing its agenda on law for development<sup>15</sup> is that it will not have "exclusively stand-alone projects" but will integrate its law for development program with other institutional support and capacity building projects, requiring close collaboration between its legal department and its operational departments to ensure a "comprehensive approach to redressing the structural legal and judicial impediments that hamper economic development" in its borrowing countries. At IADB, its legal department works with operational departments in supporting legal and judicial reforms geared towards the modernisation of the state (that is, state reform for the consolidation of democratic governance), in accordance with the Modernization of the State strategy approved by IADB's Board of Directors in 2003. Under this strategy, rule of law and justice reform has been identified as one of the four areas for action, as it is difficult to have an efficient market economy without a solid rule of law, and a justice system needs to be "independent, efficient, reliable, agile and accessible".<sup>16</sup>

The role played by each MDB has been varied, responsive and dynamic with the World Bank at the forefront in terms of leading and collaborating through active exchanges among lawyers and other colleagues from development banks, government officials, academics, civil society organisations (CSOs), and other experts in the field of law and development. The World Bank organised legal and judicial international conferences in 2000 and 2001 to gather MDBs and other partner organisations, CSOs, academics at the same table and discuss law and development issues, including challenges for MDBs and for MDBs and other donor agencies such as the United Kingdom's Department for International Development (DFID) and the Japan International Cooperation Agency to coordinate their activities, both structured and informal.<sup>17</sup> The 2001 conference was a milestone event as it paved the way for the first global conference to formulate the

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<sup>15</sup> African Development Bank, "Bank Group Strategy Paper on Law for Development" (June 2001), para. 2.1.

<sup>16</sup> Inter-American Development Bank, *Modernization of the State Strategy Document* (July 2003), p. iii.

<sup>17</sup> The first international and judicial conference was held in Washington, D.C. with the theme "Comprehensive Legal and Judicial Development: Towards an Agenda for a Just and Equitable Society in the 21<sup>st</sup> Century" (June 2000) and the second international and judicial conference was held in St. Petersburg, Russia with the theme "Empowerment, Security and Opportunity through Law and Justice" (July 2001).

agenda for the 21<sup>st</sup> century and explore innovative ideas to promote legal and judicial reform. Eminent speakers included Amartya Sen who underscored that legal development must be seen as important on its own as a part of the development process, and not merely as a means to the end of other kinds of development such as economic development.<sup>18</sup> The global conferences ended with the second conference, but MDBs continued to work together on an informal basis on common areas of interest such as discussing and sharing notes on project evaluation in legal and judicial reform.

About 10 years later, the World Bank initiated the Global Forum on Law, Justice and Development (GFLJD). Its concept note of 23 February 2012<sup>19</sup> stated that GFLJD aims at facilitating the identification, discussion, production and/or sharing of innovative and customised legal and institutional tools to address global, regional or national development challenges. The GFLJD seeks to: (i) promote a better understanding of the role of law and justice in the development process; (ii) strengthen and better integrate legal and judicial institutions in the development process; and (iii) provide access to an open repository of knowledge. This forum has three participant groups involved in legal aspects of international development: the World Bank Group as promoter, interim secretariat, facilitator and convener, with a group of international and regional organizations, including MDBs (AfDB, ADB, EBRD, and IADB are partners); and a group of national stakeholders, such as government authorities, academia, think-tanks, and CSOs.

The GFLJD was officially launched in the World Bank's Law, Justice and Development (LJD) Week in November 2011 and as of 31 December 2015, 173 partners, including MDBs, regional and international organisations, governments, courts, private sector, universities, mediation centres, and CSOs, have signed letters of endorsement supporting the forum.<sup>20</sup> The World Bank had its 5<sup>th</sup> annual LJD Week in November 2013 involving participants from international organisations, government, judiciary, academia, and civil society, with the theme on how law and justice concepts, tools

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<sup>18</sup> Amartya Sen, paper on "What is the role of legal and judicial reform in the development process?" presented on 5 June 2000 at the June 2000 legal and judicial conference organized by the World Bank in Washington, D.C.

<sup>19</sup> Accessed April 29, 2016, [http://www.isc-sic.org/web/images/stories/conceptnote\\_english.pdf](http://www.isc-sic.org/web/images/stories/conceptnote_english.pdf).

<sup>20</sup> Accessed April 29, 2016, <http://globalforumljd.org/partners/index.htm>.

and knowledge can be harnessed to improve development delivery. In the 5<sup>th</sup> annual LJD Week, the GFLJD updated its achievements with 22 work programs developed by Thematic Working Groups and Communities of Practice, and 36 knowledge sharing events since February 2012, with the proposed next steps of adoption of a charter and establishing a permanent steering committee.<sup>21</sup> This forum will promote law and justice in the development process, operating through a global platform for the exchange and cogeneration of innovative and customized solutions to law and justice-related development challenges involving the World Bank, member country institutions, universities, think tanks, and CSOs.

## **CASE STUDIES OF TWO WORLD BANK PROJECTS**

In this section, two World Bank law and development projects will be discussed and the experiences and lessons learnt will be analysed: the Legal and Judicial Reform Project (LJR project) in Sri Lanka approved by the bank's Board of Directors in 2000, followed by the Enhanced Justice Sector Services Project in Mongolia (EJSS project) approved by the bank's Board of Directors in 2008. These two projects have been selected as they share many common aspects in addressing project design and implementation, and lessons learnt that can be incorporated in follow-on or new projects.

### **Legal and Judicial Reforms Project in Sri Lanka**

The main objective of the LJR project was to improve the existing legal and judicial framework to make it more efficient, transparent and responsive to the needs of the public and private sector. The specific project objectives were to (i) modernize the legislative framework impacting on private sector activities; (ii) improve the administration, monitoring and regulatory functions of the Company Registry; and (iii) build the capacity of the judiciary and other institutions providing dispute resolution services. Project components for the three parts of the project included: (i) for the legal reform, commercial law development by providing support in enacting a modern legislative and regulatory framework and procedural change;

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<sup>21</sup> Accessed April 29, 2016, [http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/GFLJD\\_Luncheon\\_Session\\_Presentation.pdf](http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/GFLJD_Luncheon_Session_Presentation.pdf).

and professional development by providing training to lawyers, law lecturers, judges and court personnel, by revamping law curricula and by carrying out a public awareness and communication campaign; and development of a computerized internet-based LAWNET; (ii) for the Company Registry reform, by restructuring the Office of the Registrar of Companies; and (iii) for the judicial reform, by judicial training of judges and court personnel, assisting the Judicial Service Commission (JSC) to undertake a reorganization of its structure and the administrative structure of the court system; introducing administrative reforms developed through the JSC at 27 model courts, and new construction of two court houses; and developing a formal mediation system for commercial disputes. The project was completed in 2007, 3 years after its scheduled completion. The project implementing agencies were the Ministry of Justice and the JSC.

This project highlights issues and lessons in designing and administering law and development projects. The project was restructured in 2004 as only US\$6.4 million of the US\$18.2 million (about one-third) had been disbursed after 4 years of project implementation. It was acknowledged in the report<sup>22</sup> sent to the Board of Directors for approval of the proposed restructuring that the project design was “overly ambitious”; “did not take into account the capacity of most of the implementing agencies”; there was “little ownership” from the government; the government “failed to recruit a competent Project Director for two years who could have provided leadership and coordinated the work of various implementing agencies”.

The project amendment highlights the reality check on project design and implementation, and the best way in moving forward in ensuring that the proposed restructuring would result in achieving the development objectives of the project. The main changes were: (i) removal of drafting of laws as drafting of laws was taking place outside the Ministry of Justice and this ministry could not take leadership in legal reforms as policy formulation was within the purview of the line ministries; (ii) scaling down the judicial training program to suit the low absorptive capacity of the judiciary; and (iii) adding provision of computer equipment that was needed by the

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<sup>22</sup> World Bank, Sri Lanka: Legal and Judicial Reforms Project (Credit 3384-CE): Board report on Proposed Amendment of the Development Credit Agreement, August 26, 2004.

government for the labour tribunals to facilitate the resolution of labor disputes.

It was also acknowledged that in the project design, there were many issues to be tackled in the legal and judicial reform area in Sri Lanka, and the focus of this first project was on areas within the government's long term plan. Initial project implementation was already problematic, with issues arising from both the government and the World Bank. There was lack of commitment by the government counterparts. Also, the relationship between the World Bank team and the government counterparts became strained, further affecting project implementation. There was no effective project director from 2002 to 2004 and the project was at risk in 2004, but with a change in the government, a revival of the Steering Committee which played a major decision making role in the project, and the World Bank's proposed restructuring, project implementation was accelerated, this time with "constant interaction between the Bank team and the [government] counterparts"<sup>23</sup> to quickly resolve any issue that arose.

The lessons learnt for the project, which was rated "moderately unsatisfactory" after its completion, are the following.<sup>24</sup> First, the project design needs to be realistic and simple to ensure effective implementation, with due attention to be given to institutional and implementation arrangements, including the absorptive capacity of the government counterparts. Monitoring indicators are needed to provide an objective assessment of the project. Second, there needs to be sustained project ownership by the government counterparts, through the actions of the Steering Committee to provide policy guidance and move the reform process forward, and support from the Ministry of Finance. Third, the need to adapt to changes and make sequenced changes during project implementation arising from change of focus such as the need for computer equipment for labor tribunals to expedite and resolve employment disputes, and the capacities of local counterparts in hiring suitable project directors and in not losing qualified staff with technical and implementation capacity. Fourth, the institution should have appropriate expertise in its team, both when preparing the project and in its implementation. The project had four team leaders from the identification stage

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<sup>23</sup> World Bank, Implementation Completion and Results Report (Cr. 3384-CE) dated 1 October 2007, p. 16.

<sup>24</sup> Ibid., p. 19.

through appraisal, and continuity of staff is an important factor in the successful design and implementation of a project especially when the project is complex and involves the sensitive area of legal and judicial reform.

The interventions in the Sri Lanka project has been commented by Newton<sup>25</sup> on resting in part “on conclusory assertions lacking empirical justification” and as “unimaginative and constraining, by force of both ideology and resource limitations” as they foreclose other opportunities and there “might be other sorts of approaches to legal-institutional support which would be more interesting and more beneficial from the standpoint of one or another goal of development”. This observation is interesting seen from an academic angle of thinking outside the box but from a development perspective, there has to be rationalisation with criteria such as the country's needs and priorities, the funding allocation by the institution for the country's various sectors, and in integrating with the MDB's approaches to law and development projects. These approaches cover new areas<sup>26</sup> of engagement (such as criminal justice reform activities, which was unclear at the World Bank until 2012 with the issuance of a legal note by the General Counsel), developing a problem-solving and empirically based approach to justice reform, and carrying out studies for justice system agencies world-wide on finding adequate methods to estimate staffing needs.

Following the LJR project, a proposed project was prepared but the Project Information Document (PID) Appraisal Stage<sup>27</sup> approved by the World Bank's Board of Directors in May 2008 was dropped.<sup>28</sup> This document however spells out the five components of the project

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<sup>25</sup> S. Newton, “Law and development, law and economics and the fate of legal technical assistance”, p. 45.

<sup>26</sup> See 2012 Criminal Justice Legal Note issued by the General Counsel, World Bank in Legal Vice Presidency Annual Report FY 2013, p. 93; The World Bank: New Directions in Justice Reform (May 2012), p. 8; and Dr. Heike Gramckow, “Estimating Staffing Needs in the Justice Sector” (Justice and Development Working Paper Series, 19/2012, World Bank).

<sup>27</sup> World Bank, Project Information Document (PID) Appraisal Stage for the Legal and Judicial Infrastructure and Development Project (LJIP), prepared March 01, 2008.

<sup>28</sup> Legal and Judicial Infrastructure and Development Project (2008) in Sri Lanka with project cost of US\$48.60 million. Accessed April 29, 2016, <http://www.worldbank.org/projects/P104792/legal-judicial-infrastructure-development-project?lang=en&tab=overview>.

– judicial sector development strategy; judicial human resource development; modern court administration/case management; legislative reforms for reducing transaction costs; and project management, with the Ministry of Justice as the implementing agency. The proposed project had a phased approach in judicial reform with a sequenced approach through its various components and emphasised broad-based ownership, institutional change and consultative processes.

### **Enhanced Justice Sector Services Project in Mongolia**

The Enhanced Justice Sector Services (EJSS) project scales up the main activities of the previous Legal and Judicial Reform Project in Mongolia to enhance the pilot activities and to introduce complementary activities reflecting lessons learnt concerning the entire justice sector. The project objective was to support Mongolia's justice sector institutions by enhancing their efficiency, transparency and accountability through capacity improvements. There were four project components: (i) enhancing public legal education in the justice sector; (ii) increasing transparency through improved access to legal information; (iii) enhancing judicial operations, enforcement and monitoring of court decisions, including construction of a new Supreme Court facility and construction of 11 Court Decision Enforcement Agency (CDEA) buildings; and (iv) project management. The project had a special investment credit and grant from IDA for US\$5 million, with a proposed grant of US\$0.95 million from the government of Japan, with implementation scheduled in October 2008 and closing date by December 2012. The Ministry of Justice and Home Affairs was the implementing agency.

Under project component (i), there was the implementation of a national public information strategy on the provision of legal information to poor and vulnerable rural and urban population (including women and children) regarding the country's legal system and ways to access justice, citizen rights, and legal standards and responsibilities. This project is illustrative as it deals directly with the justice needs of poor people.<sup>29</sup> Public dissemination campaigns was a

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<sup>29</sup> In contrast, the LJR project in Sri Lanka had an “indirect effect on the poor” by way of boosting private sector investment. Vivek Maru, *Access to Justice and Legal Empowerment: A review of World Bank Practice* (9/2009). World Bank. p. 4.

central project component and this was based on lesson learnt that “robust public information campaigns in both urban and rural Mongolia are crucial to achieving all project goals and also improving public knowledge, perception and increasing public utilization of Mongolia's justice sector.”<sup>30</sup> Another aspect was working with a Mongolian cross-ministry advisory group in the Project Steering Committee (PSC) to provide policy guidance and project oversight, including enhanced membership, regular meetings and distribution of formal meeting minutes. The World Bank adopted a collaborative approach in the project design by incorporating discussions with other donor agencies such as the German International Cooperation (GIZ) and United States Agency for International Development (USAID) working in the design of IT networking and software in the justice sector and with CSOs such as those providing legal education programs. The World Bank agreed to host an international donors and civil society meeting annually during the project implementation period “to determine the development of mutually reinforcing activities for the Mongolian justice sector”.<sup>31</sup>

The EJSS project in Mongolia is an illustrative example of a project that has taken on board the lessons learnt from the previous Legal and Judicial Reform Project in Mongolia and also from the LJR project in Sri Lanka. The salient lessons learnt in the previous project were that (i) projects “must offer flexibility while not being overly-ambitious”; and (ii) there was a need for a “robust monitoring and evaluation system and its dependent baseline data” as this would deprive otherwise good projects of the possibility of being systematically reviewed and its performance judged.<sup>32</sup>

The EJSS project spelt out clear institutional arrangements on the Project Steering Committee in the legal agreement between Mongolia and IDA. The Financing Agreement provided that Mongolia (as the recipient country) had to establish “no later than January 31, 2009 and *thereafter maintain throughout the period of implementation of the Project*, a steering committee (Steering Committee) with representation from [various agencies including the Ministry of

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<sup>30</sup> World Bank, Project Appraisal Document (Enhanced Justice Sector Services Project in Mongolia) dated 6 June 2008, p. 11.

<sup>31</sup> Ibid., p. 13.

<sup>32</sup> World Bank, Implementation Completion and Results Report (IDA-35950) on a Learning and Innovation Credit to Mongolia for a Justice Sector Reform Project dated 18 June 2008, pp. 21-22.



Finance and the Supreme Court], and *assigned with such functions and responsibilities satisfactory to the [IDA]*, as shall be required for the overall guidance, support and oversight of Project implementation, including, but not limited to, the approval of the Annual Implementation Plans”.<sup>33</sup> (italics added) Further, there would be regular meetings (at least twice a year) and minutes prepared and distributed for effective project implementation through overall guidance, support and coordination provided by the Steering Committee. In contrast, the LJR project in Sri Lanka and the legal agreement under the project had no reference to any steering committee with key members identified which would have been very useful to provide overall management of projects with important policy reform objectives and to provide high-level policy guidance. The legal agreement under the LJR project in Sri Lanka did provide, but in very general terms, that the borrowing country Sri Lanka had to “maintain and operate a Project Implementation and Coordination Unit with staff, powers and responsibilities satisfactory to the [IDA].”<sup>34</sup>

In contrast, the EJSS project provided that Mongolia had to establish within MOJHA and maintain, “throughout the period of implementation of the Project, a project implementation unit (PIU) headed by a qualified and experienced Project coordinator (who shall also serve as the Secretary to the Steering Committee), and provided with sufficient resources and competent staff in adequate numbers, under terms of reference satisfactory to the [IDA], comprising *inter alia* a procurement officer, a financial management officer and three additional technical officers...”<sup>35</sup> The World Bank took additional measures on the engagement of the financial management officer by requiring that as condition of effectiveness of the financing agreement that the PIU be established and the financial management officer be engaged, under terms of reference satisfactory to IDA, as well as that the financial management officer have completed to IDA's satisfaction, a training course on financial management.<sup>36</sup> The reason

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<sup>33</sup> World Bank, Financing Agreement (Enhanced Justice Sector Services Project) between Mongolia and IDA dated 7 October 2008, Schedule 2, para. 1 (a).

<sup>34</sup> World Bank, Development Credit Agreement (Legal and Judicial Reforms Project) between Democratic Socialist Republic of Sri Lanka and IDA dated 22 June 2000, Schedule 4, para. 1.

<sup>35</sup> Financing Agreement (Enhanced Justice Sector Services Project) between Mongolia and IDA dated 7 October 2008, Schedule 2, para. 1 (b).

<sup>36</sup> Ibid., Section 5.01.

for this guarded measure was to redress the finding from the previous project and to minimise project financial management risk.

The project also provided that monitoring and evaluation be overseen by the PSC with the PIU monitoring and compiling key monitoring and evaluation information and data throughout project implementation, and reporting on all project indicators in its annual reports to the World Bank. Through this, monitoring and evaluation would be fully incorporated into project design rather than be viewed as a process limited to implementation of this particular project. This approach was adopted to address the lack of a robust monitoring and evaluation approach identified by the lessons learnt under the previous project.

The project “had significant impact, despite its modest size”<sup>37</sup> (of about \$5 million) as more than 1,000 community paralegals had been trained to provide legal information and assistance to the poor in the capital and rural areas, including some of the most remote locations and the assistance provided to two legal aid centres in the western most province of the country with minority populations (Kazakhs) where 2,210 individuals were directly assisted through various forms of legal advice, over half of which were poor women.

The project had start-up delays but the government's commitment to the project was clear and evidenced by implementing a project designed for 5 years within a 3-year period, with a 6-month extension (to end June 2013 from end December 2012). In April 2012, the project was restructured to reflect the need to change planned construction due to environmental safeguard issues, continuing increase in construction cost, and a US\$1 million shortfall of funds as the proposed grant did not materialise. This resulted in the deletion of the construction of the new Supreme Court building and co-related central judicial archives, the downscaling of construction of CDEAs from 10 to 3, construction of 4 new court buildings and refurbishment of an additional court. In June 2013, the project went through a minor restructuring, this time a reallocation of funds to address a funding shortfall due to exchange rate fluctuations and minor variances in civil works, and to ensure that all activities could be fully funded at project closing.

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World Bank, Legal Vice Presidency Annual Report FY 2012, p. 42.

In June 2013, when the Implementation Status and Results report was issued, 2 of the 4 project development objective (PDO) indicators were met with the remaining 2 being unmet by end of June 2013 largely due to delay in procurement: (i) data and statistics on enforcement of court decisions being shared regularly between the General Council of Courts (GCC), an administrative body chaired by the president of the Supreme Court that establishes the location of courts, personnel and budget management, and selection of judges, and the CDEA, an agency of MOJHA tasked with the enforcement of both civil and criminal judgments; and (ii) unifying court decision enforcement processes and monitoring for effective enforcement. The overall implementation progress rating in this project was “moderately unsatisfactory” and if at the time of the Implementation Completion and Results Report, the government could demonstrate that these 2 PDO outputs have materialized, the PDO rating would be revised.<sup>38</sup>

In December 2013, the Implementation Completion and Results Report (ICR) gave the overall outcome rating for the project as “moderately satisfactory” and noted that all the PDO indicators, except one – data and statistics on enforcement of court decisions being shared regularly between the GCC and CEA – had been met and that while the remaining indicator was partially met, it would be “fully met”<sup>39</sup> by the year end as exchange of information would be regular with a new law in place in November 2013.

The lessons from this project are different in contrast to the situation in the LJR project in Sri Lanka. Despite delays such as project ratification due to elections, the government's commitment was unflagging thereby demonstrating project ownership. Procurement issues impeded what could otherwise have been successful implementation of the project. More project preparatory activities in expected construction sites, instead of having a project covenant that the government undertook to use publicly-owned land for the construction or refurbishing of courts and court enforcement agency facilities, would have resulted in less project delay. For example, it took a year for discussions with the government to drop its request to finance the new Supreme Court as the site chosen was in

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<sup>38</sup> World Bank, Implementation Status and Results Report (Enhanced Justice Sector Services Project) dated 25 June 2013, p. 1.

<sup>39</sup> World Bank, Implementation Completion and Results Report (Enhanced Justice Sector Services Project) dated 26 December 2013, p. iii.

a country's "special protected area" and a UNESCO biosphere reserve, and construction on that site would have violated the World Bank's safeguard policy on natural habitats. It would have been better if site suitability and compliance with the World Bank's applicable safeguard policies had been studied earlier in planning rather than having these matters raised in implementation. The ICR highlights that "actual change in agency operations and justice outcomes are largely dependent in institutional culture which often take longer than the typical lending project cycle".<sup>40</sup> Changes in government agencies and justice outcomes are common threads running through many law and development projects.

Also, engagement of a broad range of stakeholders takes time but this helps in better design and delivery of project components, and in developing ownership and capacities, for example, in the development of legal education syllabi and textbooks with stakeholders including the Law School Association, representatives and teachers from public and private law schools, the Ministry of Justice, and the Ministry of Education. This coordinated approach has been adopted by the government as best practice model for enhancing other education programs in the country. The creation of a fiber optic cable network to the courts and court enforcement agencies resulted in efficient and accountable operations of these entities, the targeted assistance to the Kazakh minority groups, especially poor women and disadvantaged groups addressed access to justice, and the development and wide distribution of laws and other important legal information such as international conventions regarding their rights in braille also addressed access to justice needs for people with disabilities.

## **CASE STUDIES OF TWO ASIAN DEVELOPMENT BANK PROJECTS**

In this section, two ADB law and development projects will be discussed and the experiences and lessons learnt will be analysed: the Establishing Legal Identity for Social Inclusion project, a regional technical assistance (RETA) project, approved by ADB in September 2004; and the Access to Justice Program (AJP) in Pakistan, approved

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<sup>40</sup> Ibid., p. 21.

by ADB in December 2001. The first project is a RETA grant focused on researching the nexus between birth registration and legal identity on the one hand, and poverty on the other hand in three countries: Bangladesh, Cambodia, and Nepal. The second is a package of two policy loans, a TA loan and a TA grant to assist the Pakistan government in improving access to justice. The AJP is ADB's first law and judicial reform project undertaken by loan financing and had the benefit of evaluation from ADB's independent evaluation department which, in addition to project team's experience, also contributed lessons learnt that can be incorporated in follow-on projects.

### **Establishing Legal Identity for Social Inclusion project**

This project was approved by ADB for US\$575,000 and the project objective was to increase the understanding and awareness of the nexus between legal identity and poverty and to increase the capacity of borrowing countries and ADB to identify key barriers to establishing legal identity and carry out effective measures to eliminate such barriers. The research under the RETA project was carried out in three countries. These were Bangladesh, Cambodia, and Nepal, each with a low level of birth registration with Bangladesh registering between 7%-10% of the population, Cambodia less than 5%, and Nepal less than 10%. Non-registration of birth has economic, social and political consequences as unregistered persons are unable to access resources and services including education, immunization, suffrage and citizen rights. The key question guiding the research was whether legal identity matters in people's day-to-day lives.

The RETA project had positive outputs. First, a knowledge product<sup>41</sup> was published which, based on the studies conducted in the three countries, identified obstacles to registration and provided insights on how programs on establishing legal identity through birth registration or other means such as training midwives and traditional birth attendants (in the case of Cambodia) and health workers and CSOs (in the case of Bangladesh) to collect information on birth registration and raising awareness on birth registration. The publication presented insights based on the extensive research and field work, including the following findings in the countries covered

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<sup>41</sup> Asian Development Bank, *Legal Identity for Inclusive Development*, 2007.

by the project, conducted by the consultants with ADB staff supervision: (1) Each of the three countries had an alternative markets where legitimate substitutes and documents on legal identity can be obtained through alternative or black markets which challenge the implementation of legal identity programs. (2) Legal identity, referring to identity documents that prove one's status as a person who can exercise rights and demand protection under the law, is a multifaceted issue with potentially far-reaching implications ranging from accessing benefits and opportunities, to human rights protection, to the distribution of public resources.<sup>42</sup> (3) Distribution of birth certificates does not necessarily lead to human rights protection and better distribution of resources. (4) Development agencies should be aware of registration requirements when designing development interventions but at the same time ensure that such requirements do not lead to unintended consequences, for example, registration laws that aim to create demand for registrations by making benefits and opportunities contingent on birth certificates could lead to increased social and economic exclusion among vulnerable groups that face obstacles to registering.

Second, the project and the publication generated awareness raising to many stakeholders ranging from government officials, United Nations agencies (such as the United Nations Children's Emergency Fund and the United Nations Commission on Legal Empowerment), development agencies (such as the World Bank, IADB and DFID), and CSOs (such as Refugees International), and universities (such Kennedy School of Government, Harvard University). This sharing of information and discussion by, and with, other stakeholders underscores the advantage of knowledge sharing in this area.

Third, it resulted in inclusion of covenants in financing agreements to mitigate the absence of birth records for intended project beneficiaries. Fourth, at the country level, the RETA project had specific impacts. In Bangladesh, the original design for the Good Governance and Anti-corruption program included a component on birth registration, which was later taken out of the project for funding by the European Union. The research also contributed to the pace of implementation of the country's 2004 Birth and Death Registration Act. In Cambodia, the Commune Council Development Project

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<sup>42</sup> Ibid., p. 73.

(Phase II) which provided the second phase of support to local administration in the country had a component on civil registration system development, to consolidate the country's achievement in collecting hard-copy civil registration records over 2003-2006 through creating a modern, computerised national civil registration system. In Nepal, the research contributed to amendments in the country's Citizenship Act, allowing citizenship to be conferred through the mother and making the acquisition of citizenship easier for the majority of people born in the country.

On the other hand, the RETA project also encountered problems such as the delay in the project implementation (1 year and 9 months) from December 2005 to September 2007 due to the long-time taken by the governments concerned in clearing the country reports produced under the study and the "heavy workload and mission schedule of OGC staff".<sup>43</sup> The quality of the three country researchers varied and the time-management aspect of some parts of the work carried out by the consultants were highlighted in the delivery of inputs in TA completion report. It is salient that the OGC staff's work is highlighted as it demonstrates that the legal staff in addition to carrying out their legal work to support operations departments, also assume tasks through distinct legal activities that are not originally covered in their work and, correspondingly, add to the staff's existing workload as they find "the TA work personally and professionally fulfilling, and they [are] willing to find time even after working hours to process and administer these TAs".<sup>44</sup>

The impacts under the RETA in addressing legal identity and awareness are also seen in other forms of law and development projects. For example, the World Bank also provided a grant in 2000 to the Egyptian Center for Women's Rights to raise awareness of millions of poor Egyptian women who were not registered as citizens and to highlight the procedural difficulties of obtaining identity cards and birth certificates, with the outcome that the centre would train

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<sup>43</sup> Asian Development Bank, Technical Assistance Completion Report for Regional Technical Assistance 6188: Establishing Legal Identity for Social Inclusion.

<sup>44</sup> Response of the General Counsel to ADB's Board of Directors Development Effectiveness Committee, Special Evaluation Study on ADB Technical Assistance for Justice Reform in Developing Member Countries (2009), Development Effectiveness Committee, Chair's Summary of the Committee Discussion on 23 September 2009, para. 2.

NGOs to assist these women to register.<sup>45</sup> Also, the EJSS Project in Mongolia supported two legal aid centres in the remote province of Bayan-Ulgii Aimag which has Kazakh ethnic minorities (about 100,000 in Mongolia's population of about 2.6 million people), who speak primarily Kazakh and not Mongolian, and many of whom do not have an identity card. They can now get assistance in obtaining an identity card by calling for assistance (such as by mobile) of a lawyer from information materials made available through a variety of means (such as print materials, radio, and television) in Kazakh by these legal aid centres. It is important to note that that intervention to widen access to legal identity in integrating into work on early childhood, education and census taking can raise possible danger and political consequences for people being registered, for example, for persecuted minorities. The general thrust is to afford ways for registration to be made available and create awareness for people to know that they have a right to be registered.

ADB's Independent Evaluation Department (IED) noted that the findings of this RETA project were referred to by many organisations (international and national) and highlighted the UN Commission for Legal Empowerment's report, *Making the Law Work for Everyone*, identifying legal identity as a cornerstone for legal empowerment and specifically recognizing the reports produced by ADB (as well as other organisations) in performing an important leadership role in bringing this problem to the attention of the international community, and developing possible strategies for reform.<sup>46</sup> The IED's study focused on evaluating ADB justice reform TAs and not on the ADB justice reform loans (of which there were 3, one to Pakistan where the AJP program completion report was under preparation and in the remaining 2, one to Bangladesh and one to the Philippines, the loans were still under implementation). The IED study evaluated 22 ADB justice reform TAs and gave an overall rating of "*successful* but with some areas for improvement, for being *relevant, less efficient, and likely sustainable*."<sup>47</sup> The IED study rated the RETA project "successful" though the TA completion report, prepared by the project staff, rated the project "highly successful". This independent

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<sup>45</sup> Vivek Maru, "Access to Justice and Legal Empowerment: A Review of World Bank Practice", (Justice & Development Working Paper, Series 9/2009), p. 14.

<sup>46</sup> Asian Development Bank, *Special Evaluation Study on ADB Technical Assistance for Justice Reform in Developing Member Countries*, 2009, p. 11.

<sup>47</sup> *Ibid.*, p. i.



evaluation provides an objective view taken by the evaluation department which reports to the ADB Board of Directors and not to Management. A toolkit was originally intended to be included in the 2007 publication but it was found that specific country circumstances on the issue of birth registration and legal identity were too diverse to be able to include a meaningful and useful toolkit. This lesson highlights that there is no one-size-fits-all approach in law and development projects, as each country has its own circumstances even on common areas such as establishing legal identity through birth registration.

### **Access to Justice Program in Pakistan**

ADB's justice reform loans have been modest covering three countries (in Pakistan through the AJP; in Bangladesh through the Good Governance Program, and in the Philippines through the Governance in Justice Sector Program). ADB's flagship program in justice reform loan in the AJP was followed after three TA projects in Pakistan (Strengthening Government Legal Services and the Subordinate Judiciary in TA 2979, Legal and Judicial Reform Project in TA 3015, and Strengthening of Institutional Capacity for Judicial and Legal Reform in TA 3433). The AJP's development objective was to assist the government of Pakistan in improving access to justice by (i) providing a legal basis for judicial, policy, and administrative reforms; (ii) improving the efficiency, timeliness, and effectiveness of judicial and police services; (iii) supporting greater equity and accessibility to justice services to the vulnerable and poor; (iv) improving predictability and consistency between fiscal and human resource allocations and the mandates of reformed judicial and police institutions at the federal, provincial, and local levels; and (v) ensuring greater transparency and accountability in the performance of the judiciary, the police, and administrative justice institutions.

The AJP financing involved two policy loans totalling US\$300 million, a TA loan of US\$20 million, and a TA grant of US\$900,000 which was increased to US\$1.74 million in TA 3823-PAK for Supporting and Monitoring Progress under the Access to Justice Program. The AJP focused on judicial and police reforms and had specific components including the following: (i) improving court efficiency through case flow management reforms; (ii) strengthening rights of citizens through a new freedom of information law; (iii)

increased transparency regarding the judiciary through publication of annual reports: (iv) separating subordinate courts from the executive's control thereby promoting judicial independence; and (v) construction of new court houses, court rooms, temporary jails in court facilities for prisoners on trial.

The AJP recorded some program achievements. First, there were some judicial and policy reforms in amendment of the Law Commission Ordinance of 1979 to expand the composition and mandate of the country's Law and Justice Commission, expansion of the mandate in the field of judicial administration to recommend improvements in legal education standards; and development of human resources for court administration and case management. Second, the National Judicial Policy Making Committee (consisting of the chief justice of Pakistan, chief justice of the Federal *Shari'ah* Court, and the four High Court justices) was created to promote a uniform judicial policy and provide leadership in the justice sector which resulted in the adoption of the National Judicial Policy (2009) by the committee focuses on promoting judicial independence, eradicating judicial corruption, and expeditiously disposing of cases. Third, a framework was institutionalised to ensure the judiciary's capacity to prepare and negotiate budgets with the Department of Finance. Fourth, courts were required to publish annual reports on judicial performance which were regularly published since 2001 and the amendment to the Law Report Act 2002 requiring judicial decisions to be published as prior to that, the superior courts – Supreme Court of Pakistan, the High Court in each province, and the Federal *Shari'ah* Court – could prohibit publication. Fifth, case-flow management reforms were carried out reducing the age of cases from 15 years to as low as 3 years for some district courts, and the Supreme Court cutting its backlog of cases from 80,000 to 19,055 between 2005 and 2008. Finally, legislation was adopted to introduce small causes court handling claims of up to Pakistan Rupees 100,000 (about US\$1,300) and minor criminal offences.

On the other hand, there were some programs under the judicial and police reforms that were inadequate. The Police Order of 2002 promulgated under the AJP, mandating the transformation of the police force into a more service-oriented and depoliticised organisation, was ineffective. This was due to the fact that under the constitution, the police force was a provincial function (and not a federal function) and resistance too many provisions of the law at the

provincial level was considerable. Also, only a few public safety and police complaint commissions were fully functional. Further, the creation of citizen-police liaison committees (CPLCs) to develop liaison and coordination mechanisms and provide relief where warranted was limited as they were only established in some capital cities and districts. There was a general lack of ownership by the government and civil society demand was limited, and ADB granted the government a waiver on the establishment of CPLCs in substantially all districts acknowledging that “civil initiatives cannot be legislated and are outside of [the] government's control.”<sup>48</sup>

The AJP was completed in 2009, with a 5-year delay. In the program completion report (PCR) for the AJP, the rating was as follows: for judicial reforms, successful; for police reforms, less/partly successful, and for the institutional capacity building through the TA loan, unsuccessful. On the last item, the reason given for the rating was that “less than 17% of the loan was utilized despite significant needs for capacity building and a 3-year extension”<sup>49</sup> of the TA loan. The lessons learnt from the AJP at ADB are similar to those learnt at the World Bank for the LJR project in Sri Lanka and the EJSS project in Mongolia, which demonstrate similar experiences by these two institutions in carrying out legal and judicial reform projects.

First, the AJP was “too centrally designed and managed, supply-driven, and too complex based on pervasive capacity constraints and ineffective coordination mechanisms”.<sup>50</sup> Secondly, there was lack of strong demand and support from key stakeholders, including provincial governments, and a number of critical police reforms could not be effectively implemented. Third, there were too many implementing agencies, and the coordination framework was ineffective in resolving conflicts between the Ministry of Law (the executing agency) at the federal level and the provinces. Fourth, there was tension between the judiciary and the executive branches, and executive control of the program undermined program implementation at the local and provincial government levels. Fifth, the AJP lacked an effective communication strategy that could have helped clarify program successes, manage expectations, and generate

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<sup>48</sup> Asian Development Bank, Completion Report for Pakistan: Access to Justice Program, December 2009, para. 33.

<sup>49</sup> Ibid., para. 59.

<sup>50</sup> Ibid., para. 61.

ownership and accountability. Sixth, the legal profession's stand-off with the government of Pakistan throughout the life of the AJP resulted in lawyers being critical of the AJP as a government program rather than as a country program, resulting in disengagement from the AJP as one of the key stakeholders.<sup>51</sup> The PCR recommended that “separate management of future programs and projects involving both branches of the government may be more appropriate”<sup>52</sup> in view of the inherent conflicts arising from the role of executive branch agencies in public administration and the judiciary's independent role in reviewing the legality of these executive actions.

In 2011, IED carried out a validation of the PCR and agreed that due to the complexity of dealing with the executive and judicial branches of the government at the same time, separate management of future programs and involving both branches may be more appropriate. The IED validation report rated the quality of the PCR “satisfactory” and agreed with the PCR's overall assessment rating of the AJP as “partly successful”; it disagreed with the PCR's rating of “effective” on the “effectiveness in achieving outcome” and rated this criteria “less effective” due to the poor performance in the area of police reforms, limited use of TA loan, and limited provision of evidence to support claims of effective performance.<sup>53</sup> The IED validation report agreed with the PCR rating of “partly satisfactory” for borrower and executing agency, and for ADB performance; but reviewed AJP's impact as “moderate” instead of “significant” as it found that significant impact could not be justified due to lack of supporting evidence in the PCR. The validation report recommended that a project performance evaluation report “be undertaken as soon as is convenient, to fill in the data gaps in the achievement of the outcomes, as outlined in the program framework”<sup>54</sup> but as of 1 March 2014, there is no report published. The validation report<sup>55</sup> highlighted the following assessments: (i) that the AJP addressed “two large, difficult, and structurally incompatible sectors, the judiciary and

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<sup>51</sup> Asian Development Bank, Technical Assistance Completion Report for Pakistan: Supporting and Monitoring Progress under the Access to Justice Program (TA 3823-PAK), June 2008, p. 2.

<sup>52</sup> Asian Development Bank, Completion Report for Pakistan: Access to Justice Program, December 2009, para. 65.

<sup>53</sup> Asian Development Bank, Technical Assistance, Validation Report for Pakistan: Access to Justice Program, December 2011, para. 24.

<sup>54</sup> Ibid., para. 30.

<sup>55</sup> Ibid., para. 24.

police”; (ii) that the understanding of the police sector was “especially deficient, as is clear from the fact that it was only during implementation that the AJP learned that policing was a provincial function”; and (iii) that the initial design of the AJP had a Program Management Unit (PMU) at the Ministry of Law, but did not provide for PMUs at the provincial level, and though these PMUs at the provincial level established later, there were no monitoring and implementation arrangements devised to track and report progress. The validation report noted that the AJP closed after nearly 8 years, instead 3 years as was initially planned. It recommended that (i) reform programs should be demand-driven; (ii) the time frame for implementation of loans should be more realistic and factor in capacity constraints; and (iii) to enable effective monitoring of reform interventions, outcomes should include clear benchmarks and effective statistical systems to enable timely and reliable data collection and effective reporting mechanisms.

The publication of documents on this project has provided research material for the general public including students in understanding law and development projects funded by MDBs. A student engaging in research has commented that lack of “vision and profound strategy to introduce reforms in the justice sector of Pakistan resulted in a failure of reforms under AJP”.<sup>56</sup> The author notes the PCR rating of the AJP as “partly successful” but questions the benchmarks set by ADB in counting the number of activities undertaken but not taking into account the results and effectiveness of AJP interventions.

## **EXPERIENCES LEARNT BY MDBS AND DIRECTIONS IN LAW AND DEVELOPMENT PROJECTS**

From the four projects discussed above, similar experiences and salient lessons have been learned. First, law and development projects should not be overly ambitious and should be as realistic as possible, with appropriate time line for implementation, so that the planned activities can be carried out during the project period. This

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<sup>56</sup> Mukhtar Paras Shah, “Why did Justice Plan fail; Story of an ADB intervention in Pakistan”, p. 25, paper written as part of a research assignment conducted at the National Graduate Institute of Policy Studies, Tokyo, Japan. Accessed April 29, 2016, <https://issuu.com/mukhtarparas/docs/ajp>.

includes the need to have studies carried out on local capacity assessment to implement projects. Second, government ownership is cardinal to ensure smooth implementation and sustainability of the project. Third, MDB's assistance of the project during the implementation should be unflagging and supportive of the government's needs in case changes are needed during implementation. Fourth, there should be empirically verifiable outcomes with a strong monitoring and evaluation (M&E) framework for a comprehensive evaluation of the project and also to serve as baseline data if there are follow-on projects.

Fifth, the design must address the client's needs and tailored to the local context without imposing an unworkable foreign legal system. Any transplant of a foreign legal system should be viewed with concern as the focus should be on the local context and what is workable in that context as viewed by the government and other stakeholders in the recipient country. Sixth, local expertise, where available, should be used to enhance ownership and local capacity. Finally, patience and adaptability are needed as there is no quick formula success in institutional reform which is a long-term goal.

MDBs have taken their own routes in providing assistance on law and development projects but there are similarities in thinking and direction. The World Bank is, by virtue of its resources and drive from its General Counsel in organization of the legal department, spearheading the direction of law and development activities among the MDBs and other organizations such as the International Development Law Organization (IDLO). The Legal Vice Presidency (LEGVP), in collaboration with the Poverty Reduction and Economic Management Vice Presidency (PREM), worked on developing new directions in justice reform which commits the bank in placing a revised approach to justice reform to which the bank is committed to under its Updated Governance and Anticorruption Strategy approved by the bank's board of directors in March 2012. Under the New Directions in Justice Reform paper,<sup>57</sup> the World Bank's work on justice reforms will focus on justice systems covering formal and informal institutions that address breaches of law and facilitate peace contests over rights and obligations, covering state institutions (judiciary, independent agencies such as anti-corruption commissions, executive, and legislative) and non-state institutions (civil society and

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<sup>57</sup> World Bank, *The World Bank: New Directions in Justice Reform*, May 2012, para.5.

private sector, and customary law institutions such as religious courts and local village systems). The paper reviewed the bank's work on justice reform over the period 1994-2011 and since 1994, the World Bank has invested in 36 stand-alone justice reform projects (20 closed and 16 active projects). In addition to stand-alone operations, a significant portion of the World Bank's work on justice reforms comprises components of other development projects, and over the past 2 decades, it has financed 388 investment lending projects having at least 10% of expenditure dedicated to law and justice or the rule of law. The paper notes that while the World Bank has not so far conducted a systematic evaluation of its work on justice reform, the "overall outcomes of the Bank's justice reform efforts have been uneven".<sup>58</sup>

It is notable that the paper expressly states an axiomatic rider – that the World Bank does not claim to have a blueprint for success in justice reform. This is understandable not only for the World Bank but for any other organization involved in law and development interventions, as there is no one-size-fits-all approach that can be adopted for law and development projects. The needs of the borrowing country have to be ascertained following its country assistance strategy (as used in the World Bank) or country partnership strategy (as used in ADB), and engagement with various stakeholders. The World Bank has a cadre of about 30 staff who specialise in justice reform, the majority of whom are in LEGVP with the rest in PREM network and in the Sustainable Development Network. One main feature of the paper is the establishment of the GFLJD to serve as a permanent forum for promoting law and justice in the development process. The paper also reinforces that criminal justice reform activities fall within the World Bank's mandate.

In 2012, the World Bank issued a legal note on criminal justice<sup>59</sup> which provides that World Bank activities in the criminal justice sector must be supported by an appropriate and objective economic rationale, and measures to assess and mitigate the risk of political interference. This 2012 legal note clarified the position taken until 2005 where engagement in criminal justice sector was outside the

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<sup>58</sup> Ibid., p. 6.

<sup>59</sup> World Bank. 2012 Legal Note on the Bank's Engagement in the Criminal Justice Sector and the Role of Lawyers in the "Solutions Bank": An Essay by Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel in Legal Vice Presidency Annual Report FY 2013, pp. 89-99.

bounds of the World Bank's mandate. Other MDBs had also grappled with the issue of supporting criminal law reform, such as the IADB where the traditional thinking was that criminal law reform did not directly support economic and social development, but IADB's policy on this changed in the early 2000s and the IADB acknowledged, at the same time when its Modernization of the State strategy was approved in 2003, 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 also be reformed.

In 2009, ADB carried out a special evaluation study on its technical assistance for justice reform in its member countries. The study concluded that justice reform is important in that it contributes to empowering people, especially the poor and thereby enabling them to participate in making decisions that shape their lives. The study noted that between 1998 and 2008, ADB carried out 44 justice reforms technical assistance projects and several justice reform loans in Pakistan, Bangladesh, and the Philippines. However, it noted that ADB's assistance to justice reform "remains small"<sup>60</sup> which could be attributed to crowding out by other priorities in ADB's strategic agenda; lack of closely defined organizational responsibilities for justice reform operations; lack of critical mass of dedicated specialised skills in scaling up justice reform; and reluctance of borrowing countries to borrow for justice reforms. The study identified the following lessons. First, justice reform TAs must be designed such that the results are measurable. Second, there has to be strong participation and ownership by governments in TA formulation and implementation in contributing to the success of the project. Third, there should be a clearer definition of ADB's justice reform strategy and operational responsibilities would be useful for more efficient justice reform operations.

EBRD's role in judicial reform is different from that of the World Bank, ADB, IADB and AfDB in that it is not directly involved in poverty alleviation but in aiding in the transition of its countries of operations, e.g., those in central and eastern Europe from command economies (that is, economies that are planned and controlled by a central administration) to market economies; and to promote private

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<sup>60</sup> Special Evaluation Study on ADB Technical Assistance for Justice Reform in Developing Member Countries, p. iii. (August 2009). Independent Evaluation Department. ADB.



and entrepreneurial initiatives in their economies. For this reason, EBRD views itself as a “transition bank, rather than a development bank”.<sup>61</sup> The Legal Transition Programme (LTP) is EBRD's vehicle in contributing to the improvement of the investment climate in its countries of operations by helping create an investor-friendly, transparent and predictable legal environment. This transition mandate has limited EBRD from engaging in other areas such as criminal justice law reform as such activities are not within the mandate's purview.

In 2012, EBRD carried out a special evaluation study of the implementation of the LTP from 2001 to 2010 and noted that the programme focuses on eight core legal areas: concessions/public-private partnerships (PPPs), corporate governance, infrastructure regulatory reform and competition, judicial capacity building, secured transactions, insolvency, public procurement, and securities markets.<sup>62</sup> The study was carried out by EBRD's evaluation department together with three external experts who were academics.<sup>63</sup>

The study found<sup>64</sup> that the LTP made an “important, although quite narrowly focused contribution to legal reforms in the Bank's countries of operations, as well as to the Bank's operational objectives” and rated LTP's performance as successful as through promoting legal reforms, the programme directly supported EBRD's operational objectives of assisting its countries of operations in the transition to open market economies and the establishment of entrepreneurial opportunities within a multiparty democratic system. The study also found that there is often a lack of clarity and measurability in project-level benchmarks (and in some of the LTP's activities, there was not enough hard evidence to properly assess their success and/or their impact); and that the LTP's three-year action

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<sup>61</sup> EBRD's Role in Judicial Reform and Training by Emmanuel Maurice, General Counsel, European Bank for Reconstruction and Development. Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms (January 2005), p. 24. ADB. Manila.

<sup>62</sup> Special Study. Legal Transition Programme Review (June 2012, EBRD Evaluation Department), p. vii-viii.

<sup>63</sup> The three external experts were Professor Douglas Arner (University of Hong Kong), Professor Charles Booth (University of Hawaii) and Professor Gordon R. Walker (La Trobe University).

<sup>64</sup> Special Study. Legal Transition Programme Review (June 2012, EBRD Evaluation Department), p. vii.

plans lack clear objectives, milestones and timetables. The study recommended that the LTP should (i) integrate a “project results” column to its “LTP legal reform projects” list to briefly summarize the concrete results of each project, for example listing the main outcomes and impacts; and (ii) better structure its collaboration with other organizations, setting specific objectives and plans for such a collaboration in its three-year action plans.<sup>65</sup>

The wide-ranging scope of activities undertaken by MDBs in the law and development projects illustrated above, and the evaluations done by the evaluations department (at ADB) or by external experts (at EBRD) indicate how ownership of the project by the country is important, how projects can be better designed to demonstrate development outcomes and impacts, and how the local capacities of the borrowing country and its executing agencies can be strengthened. Importantly, both MDBs highlighted the need for a clearer definition of the justice reform strategy as there was no systematic approach to justice reform (at ADB) and a 3-year action plan that would have clear objectives, milestones and timetables (at EBRD). The World Bank paper on “New Directions in Justice Reform” constituted the Bank's first institution-wide approach to justice reform, and noted the following finding: justice reform is challenging; reform agendas can be unrealistic; implementation capacity needs to be addressed; and there is a lack of rigorous and systematic evaluation.<sup>66</sup>

## **MEASURES IN CONTINUING TO ENGAGE WITH LAW AND DEVELOPMENT PROJECTS**

The article concludes on various measures where MDBs can work on, individually or collaboratively, in continuing to engage with law and development projects. The spectrum of law and development interventions is wide, ranging from a round table conference for judges on the topic of independence of the judiciary, to insolvency law reform, to assisting a country in accession to the World Trade Organization, to sector reform such as telecommunications, to legal

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<sup>65</sup> Ibid., p. xiii.

<sup>66</sup> World Bank, *The World Bank: New Directions in Justice Reform*, p. 6.

education, to judicial training, to judicial reform, to criminal justice reform, and more recently, to environmental justice.<sup>67</sup>

First, whether the studies are internal (such as the annual reports issued by the Legal Vice Presidency of the World Bank) or external (such as studies carried out by evaluation departments or knowledge product publications), they are useful in highlighting ways to MDBs in continuing to engage with law and development projects. Other publications such as the World Bank's Justice and Development Working Paper Series serve as a platform for new and innovative thinking on justice and development.

Second, GFLJD's establishment in 2011 provides a promising approach in enabling stakeholders involved in law and development projects to share and learn from each other. GFLJD's harnessing of new technologies in databases, research, documents and in providing easy and free access to policy makers, development practitioners, and the general public is a welcome opportunity for information on law and development projects and related discussion to be made available to a much wider audience. For example, GFLJD could consider incorporating on its website a database of law and development projects supported by MDBs and other organisations with links to these institutions for further reference.

Third, cooperation and collaborative efforts by international organisations, such as MDBs, with other stakeholders including justice sector agencies can result in positive outcomes for judicial reform. An example is the Asia Pacific Judicial Reform Forum (APJRF), a network of 49 superior courts and justice sector agencies in the Asia-Pacific region who have joined together to contribute to judicial reform in the region. It resulted from the Manila Declaration on Judicial Reforms in 2005, which called for a forum to learn from

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<sup>67</sup> In July 2010, ADB, in collaboration with the United Nations Environment Programme (UNEP), jointly held the first Asian Judges' Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice. The symposium gathered about 110 chief justices, senior judges, and ministry of environment officials. At the subregional level, ADB convened the First South Asian Conference on Environmental Justice with other organizations concluding with the Bhurban Declaration of 2012: A Common Vision on Environment for the South Asian Judiciaries, and the Second South Asia Judicial Roundtable on Environment resulting in the adoption of the Thimphu Declaration. An important outcome of the Bhurban Declaration was the establishment of Green Benches in Pakistan. See keynote address by Mr. Bruce Davis AM, Vice President, ADB at the 5<sup>th</sup> APJRF Meeting in Singapore. Accessed April 29, 2016, <http://www.apjrf.com/Keynote%20Address.pdf>.

judicial reform successes and failures. The APJRF aims to increase opportunities for judicial reform in the Asia-Pacific region, and develop collective solutions to meet challenges facing the judiciary by: sharing knowledge on judicial reforms; creating a common vision for judicial development; supporting partnerships with organizations and institutions supporting human rights-based justice reforms; developing practical tools for successful judicial reform; and supporting country level implementation. The 5<sup>th</sup> APJRF in Singapore held in October and November 2013 was supported by ADB and the World Bank together with other institutions such as IDLO.

Fourth, specific initiatives spearheaded by organisations, such as EBRD in espousing the need for women empowerment and recognising the challenge on the adoption of institutional and policy framework necessary to end inequalities in law, demonstrate the important role that can be played by MDBs in supporting change and in further engagement of supporting women empowerment.<sup>68</sup> The EBRD president stated that EBRD was successful in Turkey in supporting domestic banks in offering women-only credit lines to female entrepreneurs and was hopeful that EBRD could do the same in the Middle Eastern and North African countries in which it invests. The stance taken here is different, seen from an investment and from a wider lens of a transition mandate that a functioning market-economy based on democratic principles is not possible without equal rights and opportunities for women. IDLO provides another instance where its director-general in December 2013 highlighted the organization's commitment to gender equality and women's access to justice during the opening of its branch office in The Hague.<sup>69</sup>

Finally, with similar goals in mind by MDBs and other development partners in pursuing law and development projects in the delivery of justice, promotion of rule of law, and ensuring women empowerment and equality, it is crucial that these organisations continue to collaborate in furtherance of harmonisation of activities under the Paris Declaration 2008 and the Accra Agenda for Action

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<sup>68</sup> Speech by EBRD President Sir Suma Chakrabarti on the second annual Trust Women Conference at EBRD in London. Accessed April 29, 2016, <http://www.ebrd.com/news/2013/ebrd-president-speaks-at-trust-women-conference.html>. This conference was organized by Thomas Reuters Foundation and the International New York Times and co-sponsored by EBRD for the second year running.

<sup>69</sup> Accessed April 29, 2016, <http://www.idlo.int/news/events/idlo-signs-seat-agreement-branch-office-hague>.

2010, to avoid duplication of activities and to enhance development effectiveness. The EBRD evaluation special study on the Legal Transition Programme Review recommended collaboration of the LTP with other organisations; setting specific objectives; and plans for collaboration in its 3-year action plans. This timely reminder could serve as a valuable print for development organisations to also share their experiences and learn more from each other and recipient countries.

## **CONCLUSION**

This article focuses on the roles played by MDBs, primarily the World Bank and ADB, in their contributions to law and development, following a critique of case studies, the experiences gained, the lessons learnt in carrying out further projects, and their strategic approaches on this area. MDBs' contribution to the literature on law and development is of critical interest to various stakeholders including bilaterals and other multilaterals, governments and judicial agencies, civil society groups, and academe. The failed law and development movement of the 1960s and 1970s saw the resurgence of this movement in the 1980s. With the present renewed vigor in pursuing law and development, the path to best navigate law and development can be through global initiatives such as GFLJD, judicial networks, and continuing cooperation and collaborative efforts by bilaterals and international organisations in pursuing their directions on law and development.