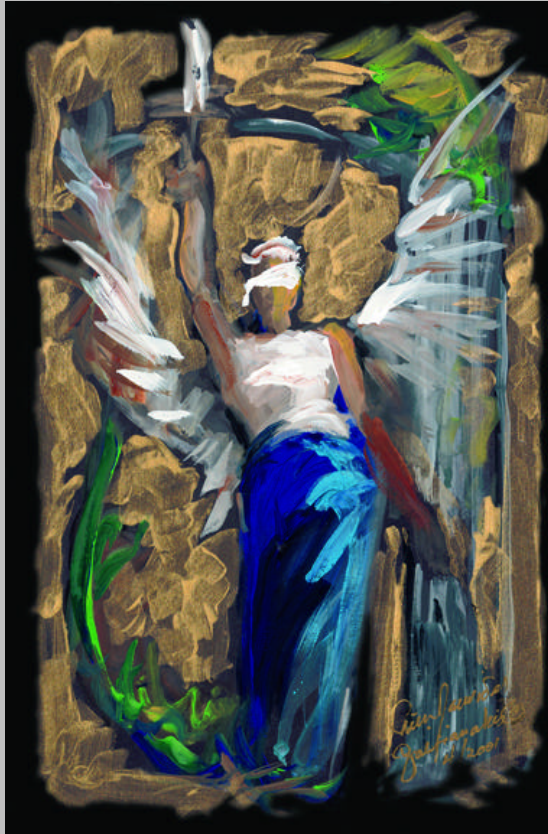




Legal Vice Presidency
The World Bank

26916 □
January 2003

Legal and Judicial Reform: Strategic Directions



Legal and Judicial Reform: Strategic Directions

Contents

Acknowledgements	III
Part I: Approach to Legal and Judicial Reform: A Summary	1
The Rule of Law	1
Judicial Reform	2
Legal Reform	5
Access To Justice	7
Part II: Learning from the Past	9
Law and Justice for Economic Growth and Poverty Reduction	9
Relationship To Market-Oriented Poverty Reduction	11
The Impact of Legal and Judicial Reform Programs	16
Measuring Results	16
Enhancing Quality through Research and Knowledge	20
Part III: Legal and Judicial Reform Activities	25
Judicial Reform	26
Independence	26
Judicial Training	27
Court Administration and Case Management	29
Corruption	31
Appointment of Judges	32
Criminal Justice	33
Accountability of Government	35
Legal Reform	36
Law Reform	38
Legal Training	40
Bar Associations	41
Access to Justice	42

Law and Social Change	46
Human Rights	46
Gender	47
Child Labor	48
Indigenous Peoples	49
Law and Sustainable Development	49
Environment	49
Land Law	51
Law and Private Sector Development	51
Part IV: Strategic Framework and Methodology	55
Key Goals	55
Strategic Framework	55
Methodology	57
Part V: Implementation Strategies and Coordination	65
The Law and Justice Group's Role	65
A Multidisciplinary Focus	68
Challenges and Risks	68
Conclusion	73
ANNEX: Law and Justice Sector C Legal and Judicial Sector Institutions	77

Acknowledgements

THIS note is an update of the note published in July 2002 entitled *Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency*, and was prepared by the Legal Vice Presidency's Law and Justice Group (Maria Dakolias, Legal and Judicial Reform Practice Group; David Freestone, Environment and International Law Practice Group; and Peter Kyle, Private Sector, Infrastructure, and Finance Practice Group.) Contributions were provided by T. Mpoy-Kamulayi (LEGAF), Eric Haythorne (LEGPS), Lubomira Zimanova Beardsley and Minneh Kane (LEGLR), María González de Asis (WBI), Linn Hammergren and Walleed Malik (LCSPS), Galina Mikhlin-Oliver (LEGPI), Alessandra Iorio (LEGFI), Bryant Garth (ABA Foundation) and Bruce Owen (Stanford Institute for Economic Policy Research, SIEPR.) This note incorporates comments from Hans Jurgen Gruss and Friedrich Peloschek (LEGEC), Rudolf V. Van Puymbroeck (LEGVPU), Karen Hudes and Raj Soopramanien (LEGAF), Cally Jordan (LEGCF), Hadi Abushakra, Ferid Bellhaj, Dominique Bichara, Akhtar Hamid, and Ghada Youness (LEGMS), Mohammed Bekhecki and John Bruce (LEGEN), Jean-March Baïssus, Robert Buergenthal, and Beth Dabak (LEGLR), and James Heckman (Professor of Economics and of Social Sciences at the University of Chicago, and ABA Foundation.) This note benefited from the review and comments from the World Bank's International Advisory Council on Law and Justice.

Part I: Approach to Legal and Judicial Reform: A Summary

The Rule of Law

The World Bank's mission is to promote economic growth and reduce poverty in its member states. One of the critical lessons from the East Asian financial crisis and the collapse of some of the Eastern European transition economies in the 1990s was that, without the rule of law, economic growth and poverty reduction can be neither sustainable nor equitable. While defined in various ways, the rule of law prevails where:

- | The government itself is bound by the law;
- | Every person in society is treated equally under the law;
- | The human dignity of each individual is recognized and protected by law; and
- | Justice is accessible to all.

The rule of law promotes economic growth and reduces poverty by providing opportunity, empowerment, and security through laws and legal institutions. To accomplish these goals, the rule of law, as defined above, is said to be in effect when a society possesses:

- ┆ ***Meaningful and enforceable laws:*** Laws must provide transparent and equitable rules by which society will be governed and provide legal empowerment and security in one's rights.
- ┆ ***Enforceable contracts:*** Contracts are private means of empowering oneself to gain rights, to take opportunities in business, commerce and other activities, and to gain security in being able to enforce them.
- ┆ ***Basic security:*** Safety in one's person and property allows one to participate fully in society and the economy.
- ┆ ***Access to Justice:*** Laws and rights are meaningless if people cannot realize, enforce, and enjoy them through actual access to justice.

These elements of a well-functioning legal and judicial system allow the state to regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments, and other transactions. This in turn fosters domestic and foreign investment, the creation of jobs, and the reduction of poverty.

To engender investment and jobs, laws and legal institutions must provide an environment conducive to economic activity. This requires the entire legal sector to function effectively, transparently, and with due process. First and foremost, the judiciary must be independent, impartial, and effective. This is particularly challenging in countries where the executive branch views the judiciary as its instrument for political goals. Second, an appropriate legal framework must provide enforceable rights to all. Third, there must be access to justice, without which all laws and legal institutions are meaningless. These are the three pillars on which the World Bank's legal and judicial reform (LJR) strategy is based.

Judicial Reform

The rule of law is built on the cornerstone of an independent, efficient, and effective judicial system. With a well-functioning judiciary, the rule of law becomes a more realistic goal, and citizens develop a greater expectation of, and confidence in, the legal

protections and predictability that the system can provide. The impact of these protections and predictability on economic development is profound.

Improving the effectiveness of judiciaries is essential to promoting sustainable economic development. It is thus a central component of the World Bank's legal and judicial reform strategy. Many factors affect judicial effectiveness, the most important of which are listed below, and all of which are critical elements in programs supported by the World Bank in client countries.

1 ***Independence*** Judicial independence has two functions: one is to limit government power and the other is to protect the rights of individuals. A truly independent judiciary is one that issues decisions and makes judgments that are respected and enforced by the legislative and executive branches; that receives an adequate appropriation from the legislature; and that is not compromised by political attempts to undermine its impartiality. The principle of judicial independence is a central feature of the programs undertaken by the World Bank. Independence is balanced by a need for judicial accountability.

1 ***Judicial Training*** Judicial independence presupposes a judiciary that is well trained and educated in the law. Judicial training has the objective of not only improving knowledge, but also changing attitudes towards impartiality (intellectual and institutional), integrity, and potential bias.

1 ***Court Administration and Case Management*** Many courts are faced with backlogs, poorly trained staff, and lack of basic office and administrative technology. The result is often crippling inefficiencies in record management, caseflow and case management, and maintaining case statistics and archives, which in turn make the law less accessible, independent, and effective. For example, the availability of decisions in writing, often online, enhances the quality, predictability, consistency, and growth of jurisprudence. This is a very practical, day-to-day administrative issue that is an essential condition for success in many countries, and thus it too occupies a central role in the Bank's legal and judicial reform strategy.

1 ***Fighting Corruption*** The judicial system plays an important role in the fight against corruption. If corruption is to be addressed, the society needs, among other things, independent prosecutors and an independent judiciary. Judicial corruption is particularly detrimental to judicial independence, and adversely affects public trust. Adequate funding by the state to reduce the incidence of corruption is one of the first issues to consider. Judicial corruption, however, should not be addressed in isolation of judicial independence.

1 ***Appointment of Judges*** Procedures for appointing, disciplining and removing judges and prosecutors in a manner that insulates them, as much as possible, from political influence are a condition *sine qua non* for ensuring the impartiality, professionalism, and quality of the judicial system. Other critical conditions include: wide judicial consultation to articulate required standards of behavior on and off the bench; the preparation by the judges of an annotated code of ethics and conduct linked to an accessible and transparent judicial discipline and complaint process; and intensive education programming to ensure judges are familiar with the Code of Conduct standards and sanctions. Attention to the appointment process is another critical component of the legal and judicial reform strategy in many countries.

1 ***Criminal Justice*** Improvements in criminal justice, because they are more visible to the lay public, may enhance public interest in the importance of legal and judicial reforms more generally. It is also a clear complement to any effort to address the broad issue of corruption. In addition, addressing issues of family violence, and the related adverse effects on both women and their children, is a prerequisite to any efforts to enable these women to enter the work force, provide proper care for their children, and in general, improve their economic status.

1 ***Accountability of Government*** Holding government entities accountable for misuses, abuses, and misapplications of their powers is critical for the rule of law. The primary

accountability mechanism has traditionally been the judiciary, through its review of the legality of government actions. In addition, the use of ombudspersons has seen a recent surge in popularity. As civil society becomes a critical participant in development in general and legal and judicial reform in particular, the demand for the use of independent citizen groups as control mechanisms against abuse of government power has increased.

1 ***Alternative Dispute Resolution*** Formal courts often cannot adequately provide the services needed by society for dispute resolution. Alternatives to formal courts C arbitration, mediation, and conciliation (whether private or court-annexed), as well as indigenous and customary fora C are often less expensive and time-consuming (and therefore more accessible), while at the same time relieving congestion in the courts and providing, in some cases, healthy competition.

An effective legal and judicial reform strategy in most countries requires a comprehensive approach that includes a program on training and education, improvements to appointment and promotion processes, better disciplining mechanisms, transparency in procedures and decision-making, and the participation of civil society.

Legal Reform

The legal sector, both public and private, plays an important role in cultivating and maintaining a positive and supportive climate for the rule of law. One of the main goals of legal and judicial reform is to support the processes by which laws and regulations are initiated, prepared, produced, enacted, and effectively publicized. In addition, the process of law reform is done in concert with legal training. The expected outcome is that people see the law not as a tool of domination imposed from the outside or from the top, but as providing valuable tools with which to live their everyday lives.

The legal reform component of the legal and judicial reform strategy involves several distinct issues, the most important of which are discussed below. The significance of each as part of a

comprehensive legal and judicial reform strategy varies from country to country.

┆ **Law Reform** The process of law reform seeks to ensure that laws are drafted by a group of experts, taking into account best practice principles and international standards, and in consultation with interested groups and individuals. Public participation in the law-making process strengthens the rule of law. The passage of laws that are transplanted from abroad may be appealing in a crisis environment; however, they may not be sustainable if they are not grounded in the local context. Laws that are not understood and that are inconsistent with the existing legal culture are likely not to be respected or enforced. Fostering public understanding and ownership of the proposed laws ensures that they are suitable for the economic, social, and legal climate, and thereby facilitates subsequent compliance by the public at large. These are the basic principles that are followed in any legal and judicial reform program with a law reform component.

┆ **Legal Training** Legal education programs (going beyond judicial training) need to be anchored to the rule of law and to the country's values. Legal training is designed to ensure that legal and judicial reforms result in substantial attitudinal and behavioral changes in individuals, particularly state officials, lawyers, and citizens. In many countries, the legal profession is often a more conservative element in the community, strongly resistant to change. Legal reform is often aimed at changing the habits and behavior of individuals in a manner that may be contrary to their vested interests. However, legal training should not be provided in a vacuum; it is an integral part of an overall strategy for legal and judicial reform, and must be considered within the context of all the other elements of such a strategy.

┆ **Bar Associations** The legal profession is a main actor in the legal and judicial system, and therefore is critical to any reform. The main role of bar associations is to regulate the

profession through entrance requirements, promote ethical standards of conduct, maintain a disciplinary system and conduct training for its members, and provide legal services to the community. The conduct of lawyers affects the quality, transparency, and independence of the legal profession. In addition, the bar is a critical interest group that has a responsibility to promote the rule of law. This is an important element of the legal and judicial reform strategy in many countries.

Access to Justice

Without access to justice, laws and legal institutions become meaningless. Barriers to access take many forms: psychological, informational, economic, linguistic, and physical. Generally, access to justice can be discussed in three parts: (1) improving access to existing services; (2) expanding access to facilitate or encourage the use of dispute resolution mechanisms by non-traditional users (marginalized groups); and (3) creating new legal standing to advance the interests of classes of individuals. In short, it is the ability to obtain justice through the legal system.

This paper will proceed in four parts. The first part will examine the basic theoretical relationship between legal systems and market-oriented poverty reduction. The second part will examine various elements of legal and judicial reform and current activities. The third part will describe a strategy framework and methodology for designing and preparing legal and judicial activities. Lastly, the fourth part will examine the role of the World Bank and the organizational mechanisms available to the Bank to ensure that its theoretical and policy approaches are constantly refined for new circumstances and in light of new interdisciplinary research.

Part II: Learning from the Past

Law and Justice for Economic Growth and Poverty Reduction

A consensus in the development community and in the academic disciplines that study development — law, economics, political science, and sociology in particular — advocates increased attention to efforts to build and strengthen the rule of law. It is generally recognized that there are strong links between the rule of law, economic development, and poverty reduction, and that therefore the World Bank and organizations with comparable mandates should make promoting the rule of law a priority. In fact, empirical studies undertaken by the World Bank show a strong correlation between rule of law and such development indicators as gross national income and infant mortality.

Law has had a complex historical relationship with development-oriented institutions. The first law and development movement, which took place in the 1960s and early 1970s, was sparked mainly by groups of lawyers who sought to convince the development community that law could make a positive contribution to development. At that time, most of the economists in the field of development tended to favor policies promoting strong state roles in the economy, and lawyers and legal institutions were perceived

mainly as a source of obstacles to state-led development. Legal institutions and lawyers were considered at best irrelevant to development, and more likely identified with traditional elites that had ruled the state and controlled the economy in the interests of a very conservative landed oligarchy.

Law and lawyers seemed cut off from the new expertise of development, especially economics. Nevertheless, there was some effort C promoted especially by organizations from the United States and the United Kingdom C to reform legal education to improve the ability of lawyers to work for businesses and for economic development. The effort, which focused on Africa, parts of Asia, and Latin America, was not considered very successful in bringing law into alignment with development C at least in the short term C but it increased the visibility the relevance of law to development.

Over the past ten years, law has again come to play a major role in discussions about economic development and poverty reduction. While some of the difficulties of reform remain, the context for the current investment in legal reform is very different from the 1960s and 1970s. Discussions of the role of law in poverty reduction and economic development must be framed very differently than was the case for the first efforts years ago in law and development.

In the first place, economic processes underway in most of the world have transformed the national settings and the potential role of law. Economies are more open, foreign investment has become more welcome, and the state is no longer expected to be the dominant actor in economic development and poverty reduction. Second, partly as a result of the transformations in the economy and partly as a result of technological changes, the world economy is generally much more turbulent than before. The entry of many countries into freer world trade, the creation of new financial markets, and the explosion in technology, especially information technology and biotechnology have resulted in greater integration of the world economy. A third distinction from the earlier efforts is that there is a better understanding today of the importance of distinct national traditions. Improving the rule of law is no longer seen as a matter of finding a simple recipe that will work everywhere. The sensitivity to

local cultural and societal situations is being linked to an approach consistent with recent work in economics and sociology, which emphasizes the importance of understanding how local settings will structure and shape the incentives that ultimately determine whether actors invest in particular economies. This new dynamic requires that the theoretical rationale and practical approaches for law and development be reconsidered. The theories and practices that today define the World Bank and other developmental institutions are very different from those of the 1960s.

RELATIONSHIP TO MARKET-ORIENTED POVERTY REDUCTION

Generally accepted economic theory today C and dating at least from the late 1970s C suggests that economic development and poverty reduction are most likely to result from policies that promote economic liberalization, reduce the role of the state, and encourage foreign investment. These policies are almost axiomatic in the World Bank and in the development community more generally.

In order to understand the role of law in these policies, it is useful to look more carefully at the general setting for the development of these axioms. To simplify a complex story, the starting point for the development of this generation of liberal economic policies was the recognition that the relatively heavy state governments, designed ostensibly to be independent engines of economic growth, confronted basic structural problems. The move towards liberalization necessitated a transition from a rules and legal institutions-based environment to one defined by a less direct role for government. This transition created problems which differed greatly between, for example, Korea and Brazil, but in each case, the eras of growth depicted as economic miracles came to an end.

In many countries, including a number in Latin America, these developmental states, which tended to pay relatively little attention to legal systems, operated in ways that channeled benefits to the relatively small groups of individuals and families who controlled the state, and the many entities dependent on the state. Another problem evident in Latin America, both in states controlled by a relatively small elite and in others with a more open political structure, was that those who sought power found it to be in their

interests to gain votes through policies ostensibly favoring redistribution C which in practice tended to generate high and uncontrolled rates of inflation.¹ Finally, even when state-led or state-supported policies worked well for a long time, as they did among the “Asian Tigers,” they were not well suited for the requirements of today's more turbulent economy.

The economic policies of liberalization and openness to foreign competition gained adherents as a reaction to problems with the heavy states, their systems of patronage, and their corresponding inflation. The new policies sought to facilitate economic growth by breaking up or weakening the dominance of the “rent-seeking” elites in the economy, and especially in the state. The first generation of neo-liberal programs followed these general guidelines, and they also helped move the global economy to the much more open and dynamic stage we see today.

Subsequent practical experience suggested that reform efforts could not stop with policies designed to shrink the state and liberalize and privatize the economies, even if the formal laws became more open to private investment. The initial theoretical approach was understandably aimed mainly at showing the problems associated with state institutions, but practice showed that it was not simply a matter of dismantling the state in favor of deregulation and privatization. The problems with the first generation of reforms varied in different places, but there were some patterns of similarity. In some countries, new economic policies had the effect of allowing elites in power to use the new policies mainly on behalf of themselves.² The juxtaposition of enhanced private power and a weakened state therefore put in jeopardy the property rights C and the potential economic opportunities C of less powerful individuals and groups. In other countries the reforms did not provide sufficient incentive for local or foreign investors to invest and take advantage of new economic opportunities available in a more open economy.

¹ The literature in response to this relationship has tended to posit that there is a negative relationship between power elite and economic growth which was no doubt true for particular states in the 1960s and 1970s.

² This problem is especially associated with transition countries, but it can be found in varying degrees in many other places as well.

Rules for transition economies had to be established first and institutions capable of enforcing regulations also needed to be established. It turned out that a lack of attention to institutions generally, especially legal ones, placed substantial limits on the reforms as a means to promote economic development and poverty reduction.

The destruction of the older institutions of patronage linked to the states may also have led to the loss of some of the social safeguards that had been in place for relatively weak social groups. Even if the safeguards existing in the earlier era were inflationary or otherwise provided disincentives for investment, they did help to sustain certain groups at the margin of the economy. The problem then is not only the lack of social support. The legitimacy of the new regime could be challenged if liberalization policies were publicly perceived as offering only a reduction of the standard of living of certain groups.

The initial wave of liberalization encountered a further problem: limited reforms often failed to induce the investment essential to stimulate economic growth. Some foreign investors, for example, found themselves in an awkward position after the initial wave of liberalization policies. Businesses which had long invested in particular places had tended to rely on personal relations and even joint ventures, as in Indonesia with ruling elites that were relatively stable. The connections to power in the economy and the state helped provide some security for investments and even some monopoly profits. The trust that came through family connections and stable relationships provided a key guarantee for those who could take advantage of economic opportunities. When these informal relationships worked well, they helped the economy to prosper, as in much of Asia, but contributed to maintaining power among the elite. After deregulation, however, the established relations were often disrupted, even characterized as corruption. The traditional investors worried about the security (and legitimacy) of their relationships while potential new investors were unsure whether new safeguards would take their place.

Moreover, in a number of settings informal relationships did not behave so productively, as they were not transparent or competitive. They translated into the need for bribes and pay-offs to

groups in control of strategic regulatory positions and institutions. Indeed, the opening of the economy and disruption of some of the stable patterns of behavior may make it easier for individuals in positions of power to pursue agendas for their own private benefit.

A key goal of deregulation and privatization was to open up the economies to new investors and combinations of investors to promote increased competition and an environment based on rules. The assumption is that economic growth depends on bringing new actors who may have been deterred either by the insularity of the elite in power, by regulations that made it difficult for outsiders to open a business that might threaten established interests, or by entry requirements that involved pay-offs and bribes.

There are particular features of the new global economy, that make it especially important to provide incentives for new and non-traditional entrepreneurs to enter and invest. Features of the new economy include diversity, heterogeneity of opportunities, and value of local knowledge. Potential trading and production partners seek each other out in the face of uncertainty about the suitability of any particular trading or production arrangement. The key then is to promote institutional arrangements that in particular settings will encourage and protect those alliances.

Given the kind of evolution described here, it is relatively easy to see that law facilitates economic activity in large part because the law is general and neutral.³ It is also not enough to have state-of-the-art legal rules or other norms on paper. For an effective market-based economy in particular, there must be legal systems and processes that protect property rights and economic opportunities on behalf of individuals who lack traditional political and economic power. A key principle is to provide equality and predictability under the law. While a more traditionally organized economy may depend mainly on family connections, political parties, or the state, a more open and liberal economy relies on the authority of the law. That is

³ This is a starting point, which does not mean to preclude study and discussion about whether there are exceptions to a model developed largely in a western context. The Bank went through similar debates with respect to so-called East Asian Miracle.

not to say that the formal law replaces informal relationships and the trust that accompanies them. The point is that legal systems provide background rules and processes that give new entrants the means to build legitimate business relationships and take economic risks.

Economic theory has moved toward a position consistent with a generalized account of the impact of liberalization. Explicit attention to the operation of the legal system is essential to development and poverty reduction through liberalization and the market economy. Economic literature increasingly recognizes the importance of the rule of law and legal systems in the promotion of market-based economic growth and poverty reduction.

Emerging economic literature distinguishes stages of liberalization and particular governments. A number of countries, as suggested above, still have the basic problem of divorcing legal institutions from the control of local elites and building structures to promote legal autonomy, while others have the different problem of protecting their relatively autonomous legal processes from state intervention on particular issues. The first problem is far more important, since it requires the construction of incentives that promote legal autonomy from within the courts and supporting institutions.

Consistent with this literature is work that focuses on the way that businesses tend to interact with the state in transition economies. Oligarchs have been able to capture the state in the absence of improvements in the rule of law. Established elites keep control of the state and economy after the economy is formally liberalized, and new entrants must in essence pay cash to gain the support of the state.

Once the impact of the introduction of market logic into societies that have operated largely through strong states and relatively entrenched elites is recognized, we can be relatively specific about the place of law and legal systems in economic development and poverty reduction. Weak states also require legal systems to protect the states and individuals from strong corporations. Law can play a central role in World Bank policies, including the emphasis on the values of empowerment, opportunity and security, especially for the poor.

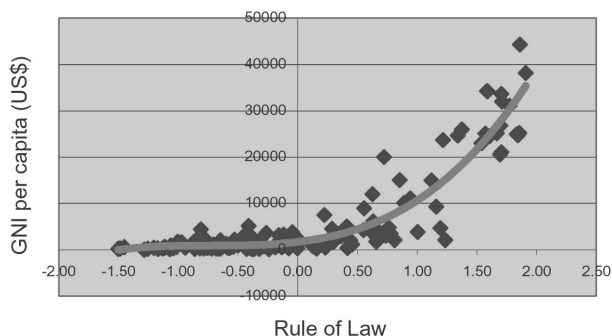
The Impact of Legal and Judicial Reform Programs

MEASURING RESULTS

Evaluation has become even more important with the establishment of the Millennium Development Goals (MDGs),⁴ specific targets that the World Bank and the development community have agreed to work towards for sustainable poverty reduction. Impact evaluations can help determine whether and how legal and judicial reforms lead to outcomes such as those articulated in the MDGs. That is, they can provide concrete and statistically relevant evidence that legal and judicial reform projects have a favorable impact on the economic decisions of individuals and firms, which in turn, can lead to increased investment, wealth creation, and more equitable distribution of resources.

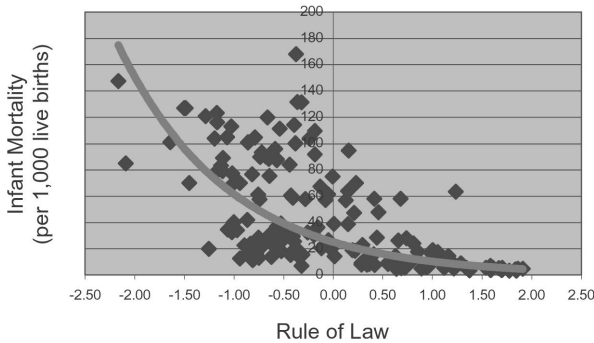
Empirical studies undertaken by the World Bank show a strong correlation between rule of law and such development indicators as gross national income and infant mortality.

Rule of Law and GNI per Capita



⁴ In September 2000 the member states of the United Nations unanimously adopted the Millennium Declaration. Following consultations among international agencies, the General Assembly recognized the Millennium Development Goals as part of the roadmap for implementing the Millennium Declaration. The eight Millennium Development Goals are to: 1) eradicate extreme poverty and hunger; 2) achieve universal primary education; 3) promote gender equality and empower women; 4) reduce child mortality; 5) improve maternal health; 6) combat HIV/AIDS, malaria and other diseases; 7) ensure environmental sustainability; 8) develop global partnership for development

Rule of Law and Infant Mortality



When assessing the impact of legal and judicial reforms, it is important to recognize that the influence of the legal and judicial systems extends far beyond the litigants themselves. Whenever an economic decision is made, it rests in part on an individual assessment of the various possible future consequences of that decision, together with the likelihood of each consequence. Actual judicial cases involve only a tiny fraction of all microeconomic decisions and transactions, and even those are chiefly implicated *ex post*. So it is those cases and the behavior of the judicial system in those contexts that forms the basis for *ex ante* expectations and therefore decisions by virtually every actor in the economy. For example, if a woman sees that the law or the courts will not protect her right to own property or to keep earned income, she may rationally decline to make costly investments in her own education, or the education of her daughters. This woman's decision not to invest in her own human capital will take place even though she never enters any courtroom. Indeed, this single example has demonstrated a linkage between the legal systems (and its substantive or procedural reform) and three separate Millennium Development Goals: reduction of poverty, empowerment of women, and increased investment in education.

Therefore, reform that changes what courts actually *do* has its most significant impact, not on the few cases brought before the courts, but on the thousands or millions of decisions by individuals whose *expectations* of what courts will do have been changed by the

reform. Effective measurement and evaluation of LJR projects should focus on this most powerful leveraging effect of the legal and judicial system. By the same token, it is precisely this leveraging effect that gives legal and judicial reform projects a potentially crucial role in meeting the Millennium Development Goals and achieving sustainable economic development and poverty reduction.

Efforts to evaluate the economic impact of reforms should identify economic activity that is both identifiable and likely to be directly affected by the reform. The preliminary approach to classifying projects for the purposes impact measurement divides legal and judicial reform activities into three broad categories: legal reform, supply-side judicial reform, and demand-side judicial reform.

Legal reforms, which may address the law-making process, legal education, and bar associations, as well as substantive law reform, may be best measured by their effects on production and investment. For example, property law reforms that enhance security of tenure would increase incentives to invest in property improvements as well as establish collateral that can be used to access capital, both of which would result in increased investment, land productivity, and output. Reforms to bankruptcy codes may clarify the rights of investors, reducing their risks, while limiting the liability of debtors and thus increasing the demand for credit, thereby resulting in a greater flow of credit and reduced risk premia. In contrast, enhancement of anti-discrimination laws would reduce the exclusion of persons from economic activities and thus, reduce poverty in affected groups while increasing productivity in affected sectors.

Judicial reform tends to have both a demand side and a supply side. Supply-side reforms would be those that address issues such as judicial independence, transparency and other anti-corruption measures, judicial training, judicial administration, procedures for enforcement of judgments, or equipment and facilities. These types of activities will largely impact the expectations and incentives of the public by changing transaction costs involved in economic or criminal activity. For instance, the expected costs of committing a crime could be computed as the probability of being apprehended times the probability of being prosecuted times the probability of

being convicted times the economic equivalent of the penalty, if convicted, times the probability that the sentence will be enforced, all discounted to present value. Effective supply-side judicial reforms will increase one or more of these probabilities, thus raising the cost of the crime to the perpetrator.

Judicial reforms will affect the judiciary's own costs as well, as greater operational efficiency will enable it to reduce operating costs, increase effectiveness, and thus maximize deterrence. There are two optimization problems that arise: maximizing deterrence with given resources, and finding the level of total resources necessary so that the marginal cost of deterrence equals the marginal cost of the crime. Judicial reform projects will generally seek to direct resources to the aspects of the system where they have the highest marginal productivity.

Similar reasoning regarding expectations of the judicial system can also be applied to commercial transactions. If investors or parties involved in a transaction do not have confidence that judicial institutions will be able to resolve disputes effectively, efficiently, and fairly, they will not be able to expect their interests to be protected. The perceived costs and risks associated with entering a contractual agreement will increase, and the transactions will be less likely to occur.

Demand-side judicial reforms typically involve access to justice issues, which can be further broken down into the cost of access and availability of legal information and public education. The impact of even the most efficient judicial system will be limited by the extent to which its services are understood by and available to the public. What is required is that economic decision-makers in all sectors (including ordinary citizens) understand the role of courts in protecting rights and resolving disputes, respect the process and therefore its outcomes, and anticipate that these fair, impartial and efficient services would be readily available in the event of need. The legal sector can, by these means, profoundly affect economic decisions that it does not touch directly.

The impact of access to justice activities will be seen in an increased willingness and ability of the public to use the justice system or alternative mechanisms to resolve disputes, and will also

enhance the direct effects of substantive law reform and supply-side improvements in the judicial process. These effects are similar to those reforms that improve the public image of lawyers, such as legal education and bar associations. First, aggrieved persons will be more willing to use the legal sector to resolve disputes. Second, circumstances in which a legitimate grievance arises will be less numerous because of the deterrent effect on potential defendants.

Development of practical and meaningful measures of the impact of legal and judicial reform projects is still in its preliminary stages. The Legal and Judicial Reform Practice Group has been working with the World Bank's development partners, including the African Development Bank (AfDP), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB), the United Nations Development Program (UNDP) and the United States Agency for International Development (USAID), to establish practical and relevant measures of effectiveness for legal and judicial reform projects. The goal is to come to a common understanding of the available options for measuring and evaluating the impact of reform projects and to develop an economic and legal framework from which to base legal and judicial reform evaluation in general, and with respect to specific projects. Furthermore, the Law and Justice Group strives to avoid duplication of effort in the development of different methodologies and principles. Through coordination and collaboration, measurement efforts can thus contribute towards a more comprehensive understanding of the vital correlation between legal and judicial reform, economic development, and poverty reduction.

Enhancing Quality through Research and Knowledge

The Law and Justice Group is encouraging the consolidation of existing information, the generation of new knowledge in critical areas, and the means to ensure the widest access to these products. Several of the exercises intended to advance this task are already underway, for example, the discussion fora, the production of manuals and similar tools, the introduction of a systematic evaluation program, the development of comparative evaluations and

assessments, and efforts to incorporate law and justice experts in the appraisal and supervision process for projects they themselves do not manage. The Law and Justice Group is also expanding this knowledge consolidation process to include country participants, other donors, and outside experts.

The Law and Justice Group has established an agenda of prioritized themes, sponsored research in some areas, and backed proposals by staff on topics of particular interest. In collaboration with the IFC and MIGA, we launched the World Bank Legal Yearbook, a new publication of seminal articles, case studies, and legal materials. Products of all these activities, and of research, are reviewed, distributed, and discussed as a means of advancing the research agenda and ensuring that the law and justice project work is based on the most up-to-date understandings of the operations and impacts of legal and judicial systems.

The Law and Justice Group increasingly relies on modern information technologies to enhance dissemination of its knowledge base. It will continue to upgrade its law and justice websites to make them more responsive to client needs and more dynamic and interactive. We have developed and are managing the law and justice website on the Development Gateway with several external advisors (<http://www.developmentgateway.org>). The Law and Justice Website contains data on legal and judicial reform activities, information on donors involved in law and justice activities, laws of various countries and international agreements. The Bank's external website has a page devoted to legal and judicial reform, managed by the Legal and Judicial Reform Practice Group (<http://www.worldbank.org/ljr>). Clients can now download publications, participate in on-line discussions, search for events and training activities, and view conferences on the Internet. Future advances will ensure that these resources help clients benefit from our knowledge, learn about the latest law and justice sector developments and provide a one-stop-shop for information on law and justice issues. Coordination with the World Bank Institute (WBI) has ensured greater access and participation in events as well as online discussions groups (<http://www.worldbank.org/legal/leglr/E-Forum.html>).

Other recent developments in knowledge sharing and dissemination include two international conferences on law and justice and regional workshops in Latin America, Eastern Europe and Central Asia, Middle East and North Africa, and the Africa region.⁵ Another example of knowledge sharing is the Global Insolvency Law Database which offers the international community a forum for comparative research and dialogue on questions of corporate insolvency and debtor/creditor systems, primarily as regards legislative and regulatory reform, relevant public institutional capacity-building and related policy issues. A pilot distance learning program provided judicial reform training by video to leaders of five Asian countries, and was replicated in Latin America and plans are underway for Africa. In addition, the Law and Justice Group has contributed to several Networks including IUDICIS with the Supreme Courts in Latin America and the Judicial Reform Network of NGOs in the Americas to share information and experiences through the internet.⁶

To enhance the quality of legal and judicial reform activities and to measure its results, the Group will:

- 1 Review components embedded in non-law and justice loans, to make sure that they are consistent with the strategy on law and justice;
- 1 Review law and justice loans, and ensure the quality of non-lending services; and

⁵ *Empowerment, Security, and Opportunity through Law and Justice* (St. Petersburg, Russia, 2001) and *Comprehensive Legal and Judicial Development: Towards an Agenda for a Just and Equitable Society in the 21st Century* (Washington, DC, 2000). The regional conferences include: *All-Africa Conference on Law, Justice, and Development* (Abuja, Nigeria, 2003), *Strategies for Modernizing the Judicial Sector in the Arab Countries* (Marrakech, Morocco, 2002), *New Approaches for Meeting the Demand for Justice* (Mexico City, Mexico, 2001), *Legal and Judicial ECA Forum* (St Petersburg, Russia, 2001), and *Africa Regional Workshop* (Washington, DC, 2000). For more information visit <http://www.worldbank.org/ljr>.

⁶ The phenomenon of globalization and technological innovation has also produced a "digital divide", whereby the benefits have not trickled down to all sectors of the population in some countries, posing unique challenges to development.

- 1 Ensure that the law and justice sector is adequately covered, when appropriate, in the Country Assistance Strategies (CASs).

Unfortunately, in the absence of thematic or sector codes, the substantive work that the Law and Justice Group has done in this area was not captured by figures generated within the Bank. Until recently, the Bank was unable to measure or monitor the work in the area of Law and Justice. In order to rectify this problem of lack of accurate data, the Law and Justice Group has developed sector and thematic codes for law and justice and rule of law. As a result, 500 projects that included activities in this sector were identified in 100 countries. The information generated by the codes will enable the Law and Justice Group to scale up delivery of critical Law and Justice products, by monitoring its work in this area, measuring the impact of such work, and, with this information, making intelligent decisions about which work to scale-up.

Monitoring the impact of the Law and Justice Group's work with clients is difficult. Direct measures of the law and justice sector performance are deficient in most countries, either not available or available only with a serious lag. In addition, the sector poses certain special measurement problems, not the least of which are the lack of any consensus on what constitutes a well-functioning system, the extent of its impact on extra-sectoral goals, and the fact that a large part of its success ultimately comes down to what it deters (conflict, illegal behavior).⁷ Still, the situation would be aided by a good set of comparable, quantitative data which could be used to profile the characteristics of individual systems, identify significant variations among them, and link these variations to differences in operations or impact. The Law and Justice Group has developed a database (see Legal and Judicial Sector at a Glance, <http://www.worldbank.org/ljr>) to assist in the process of comparative analysis. While most of the

⁷ In this sense it is not unlike health or defense, two other areas where prevention or deterrence are what is sought. Just as the real success of a health system is not the number of sick treated but the sicknesses prevented (or in a positive sense, the level of wellness), so a judicial system cannot really be evaluated in terms of the number of cases decided or criminals convicted, but rather its effectiveness in discouraging conflicts or crimes in the first place.

data included do not tell us much in isolation (e.g., no one knows whether 8 or 22 judges per 100,000 population is the best ratio, what the average time or rate of case disposition should be, or how much a judge should earn), they may help a country determine where changes are most necessary and put to rest the very expensive, but extremely common assumption that problems will only be resolved by adding more of everything. They will also be a start toward defining real performance measures on a country specific and more universal basis.

The measurement of legal and judicial performance requires attention to both quantitative and qualitative elements. To date most emphasis has been placed on the quantitative side (i.e., efficiency) because of data availability and because a lack of efficiency reduces access as well as fairness and public trust. However, greater effort will be made to addressing some of the more qualitative issues, since the question of improving law and justice is ultimately a qualitative one. Pending further advances here, the legal and judicial sector assessments provide perhaps the best vehicle for measuring progress over time in a comprehensive, systematic way. Since 1994, the Bank has completed twenty-five legal and judicial sector assessments, and more are underway. In order to assist our borrowing members to better undertake this process, the Law and Justice Group has developed a legal and judicial sector assessment template and a diagnostic manual.

Part III: Legal and Judicial Reform Activities

Recognizing that legal and judicial reform is complex and of a long-term nature, following a disciplined conceptual and programmatic approach is critical. A necessary first step is to assess and diagnose the legal and judicial system. Such an assessment and diagnosis not only provides baseline knowledge of the country's laws and legal systems and institutions, but just as valuable provides for a constructive dialogue with stakeholders in that country for their input and buy-in. From this, a comprehensive plan to reform the law and justice sector can be developed with identification of specific priorities for implementation factoring in the country's legal, economic, social, and political environment as well as resource constraints and other donor participation. As not all elements of reform can be included in any one project or stage, the sequencing of the reforms is key. Planning the sequencing of reforms should consider an integrated approach that takes into account the interrelated elements of law and justice.

Judicial Reform

Legal reform cannot succeed if there is no judicial system that is independent and where courts can interpret and apply the laws and regulations in an impartial, predictable, efficient, and transparent manner. Consistent enforcement in turn provides for a stable institutional environment where the long-term consequences of economic decisions can be assessed. Judicial reform is aimed at enhancing independence and increasing efficiency and equity in resolving disputes by improving access to justice that is not rationed, and by promoting private sector development.

INDEPENDENCE

What is the concept of judicial independence? Judicial independence has two functions: one is to limit government power and the other is to protect the rights of individuals. A truly independent judiciary is one that issues decisions and makes judgments that are respected and enforced by the legislative and executive branches; that receives an adequate appropriation from the legislature; and that is not compromised by political attempts to undermine its impartiality. Individual independence (decisional independence) is both substantive, in that it allows judges to perform the judicial function subject to no authority but the law, and personal, in that it guarantees judges job tenure, adequate compensation and security. Institutional independence affects the operation of the judiciary and adequate resources are an important aspect of this. The essence of an independent and impartial judge lies in his or her personal integrity.

Judicial independence can operate properly only when judges are trained in the law and make decisions with integrity and impartiality as guardians of public trust. Externally, public confidence is essential to maintain an independent judiciary that enforces the law. In addition, public trust is necessary to enforce judgments even against the Executive Branch and to prosecute and punish attempted or actual judicial corruption. While independence should be respected and protected, this is not to say that the judiciary should be free from public accountability. Judicial accountability can

be maintained through enforcing judicial codes of conduct. In addition, egregious judicial behavior such as corruption may be dealt with through the criminal process.

Specific programs and projects have been financed by the World Bank to foster these outcomes include:

WEST BANK & GAZA

Legal Development Project

World Bank Trust Fund No. 26063-GZ, approved June 24, 1997
for US\$5.5 million

The project represents a first step in the Palestinian Authority's quest to establish the rule of law in the parts of the West Bank and Gaza under its control. The project objectives are to put in place a legal framework adequate to support a modern market economy and the growth of the private sector, and to increase the efficiency, predictability and transparency of the judicial process. To attain these objectives, the project supports the Palestinian Authority's efforts to:

- | Unify and develop the existing legal framework;
- | Improve the judiciary's administrative and case management procedures (court administration);
- | Introduce selected training programs for judges;
- | Expand the use of alternative dispute resolution (ADR) mechanisms within the judiciary; and
- | Disseminate legislation and court precedents to the legal, judicial, academic and business communities, and the public at large.

JUDICIAL TRAINING

The rule of law is built on the cornerstone of an efficient and effective judicial system. As judges are the key to an effective and efficient legal system, many of the Bank's activities concentrate on judicial training; judicial codes of conduct; evaluation and discipline; and the qualifications, appointment and promotion of judges. Professional competence and personal integrity are requisites for an impartial and respected judiciary. As part of a program undertaken with Bank assistance, for example, the Republic of Georgia's judicial reform requires judges to take law competency exams and training in case management.

Judicial independence presupposes a judiciary that is well-trained and educated in the law. The judiciary often has to address delicate issues such as liberty, property, access to public services, and increasing the demands on the courts to defend or assert those rights. Therefore, it is imperative that judges be well-prepared. In many countries judges are personally responsible for further development of their knowledge and skills. Although some seminars are offered, they may not be provided on a systematic basis. Continuing education is increasingly becoming a judicial responsibility.

Judicial training is thus a common element of legal and judicial reform, and many countries request World Bank assistance in this area as part of an overall legal and judicial reform strategy. Such training includes a variety of subjects with the objective of not only improving knowledge, but also changing attitudes. Attitudinal and behavioral change is the most difficult area of education in any field. However, it is the essence of reform. Country context will determine the focus for the training program. In some countries, the focus is on changing the judiciary from a bureaucracy that mechanically applies the law and acts as a conduit for the delivery of political decisions to an impartial independent dispute resolution mechanism. In other countries, judicial education places emphasis on attitudinal change to improve judicial integrity or to eliminate hidden bias from the judicial mind in fact finding, particularly in relation to gender and ethnic issues.

The issue of how the training is managed is critical. Most Commonwealth countries have adopted as a first precept that the overall control and direction of judicial training must be in the hands of the judiciary. In other countries, however, training is provided by a separate entity, a law school for example, or by a judicial training institute managed by the Ministry of Justice.

BANGLADESH

Judicial and Legal Capacity Building Project

Credit No. 3845-BD approved March 19, 2001,
for US\$30.60 million (equivalent)

Project preparation included discussions with the Executive, the Judiciary, the Bar, the Chambers of Commerce and NGOs at a series of workshops held in 1999. The project objectives are to enhance the efficiency of the judicial and legal system through:

- 1 Improving the legal framework;
- 1 Streamlining the system of courts and strengthening judicial capacity; and
- 1 Providing improved access to justice, all of which are critical factors to society in general and a well-functioning private sector, in particular.

The project will revise and/or reform economic laws; strengthen the Law Commission and the Law Ministry's Drafting Wing; modernize court administration; introduce case management including management information systems (MIS) and automation; improve the terms and conditions of service of judges and provide them training; upgrade court infrastructure; and promote traditional structures of dispute resolution, as well as legal literacy and public awareness.

COURT ADMINISTRATION AND CASE MANAGEMENT

For judges to be able to perform their duties properly, the courts must be effectively and efficiently managed. The Bank strategy supports programs and projects that train judicial staff in court administration and case management. The World Bank also provides financing to modernize their facilities, such as simple architectural designs to separate the judges from the parties and the availability of docket documents on computers, reduce the opportunities and incentives for corruption, as well as reduce court congestion. Bank-supported model court projects in Argentina, Ecuador, Sri Lanka, Venezuela and elsewhere have shown measurable benefits.

Independence also relates to the operations of the courts. Many courts are faced with backlogs, poorly trained staff, and lack of technology, all of which affect the manner in which the judicial system functions. The administrative functions including personnel,

budget, information systems, statistics, planning, and physical facilities of the courts, as well as case management are critical. Improving these administrative procedures requires revising existing ones with respect to inefficiency in record management, caseload and case management, caseload management, and maintaining case statistics and archives. Enabling this kind of basic administrative work is often a critical element to the success of a legal and judicial reform effort.

GEORGIA

Judicial Reform Project

Credit No. 3263-GE approved June 29, 1999
for US\$13.4 million (equivalent)

With the enactment of the 1995 Constitution, Georgia embarked on a judicial reform program. The Georgian government requested that the World Bank assist in the definition of measures to promote the reform and in donor coordination. Under a technical assistance operation (SATIC II), the preparation of a master-plan for the development of a new court administration structure, new case management procedures, and the introduction of computer technology was financed. Furthermore, new design standards for court infrastructure rehabilitation were developed.

The project components include:

- | Court administration, encompassing case management and court administration procedures and their implementation, computerization of two Appellate Courts, audio equipment for all courts, and equipment for the Supreme Court;
- | Infrastructure rehabilitation of court facilities;
- | Enforcement of court judgments;
- | Legislative drafting/harmonization by the Ministry of Justice;
- | Training and study tours; and
- | A public information/education campaign.

In many countries, court budgets have not been adequate to maintain independence. Historically court budgets consisted primarily of personnel costs; capital expenses (construction/maintenance) have consistently been under-funded. Court facilities

in particular have not been a priority in the allocation of the national budgets, and as a result, many countries lack modern court facilities. If projects address physical infrastructure, it is important to develop minimum standards for square footage, model layouts, necessary security for personnel and records, appropriate privacy for judicial employees, and requirements to ensure access for the public who may have business at the court (including access for the physically challenged as well as plans for infrastructure maintenance). Court facilities have received increased attention in legal and judicial reform strategies because they affect the overall perception and image of, and the ability to deliver, the administration of justice. However, it is clear that the issue of court facilities must be considered as part of an overall strategy and integrated reform program, and not in isolation.

Efficiency and transparency are essential in the fight against corruption and in the ability to gain the respect for the courts, prosecutors, public defenders, and lawyers. The transparency of court proceedings and decisions promotes professionalism and reduces irregularities. The availability of decisions in writing, often online, enhances quality, predictability, consistency, and the growth of jurisprudence. Again, this basic administrative capacity-building is often a critical component of a larger legal and judicial reform strategy in a country. On a regional level, the Bank-sponsored IUDICIS links all the Supreme Courts of Latin America, where they can review each other's decisions, and engage in online discussions on issues of common interest.

CORRUPTION

The judicial system plays an important role in the fight against corruption.⁸ Corruption undermines political legitimacy and makes citizens distrust government. If corruption is to be addressed, it needs, among other things, independent prosecutors and an independent judiciary. If the judiciary cannot perform this function,

⁸ See Dakolias, Maria and Kim Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, Wisconsin International Law Journal, Vol. 18, No. 2, Spring 2000.

it will lead to impunity of corrupt activities and, if not addressed, will lead to unaccountability of the government. Judicial corruption is particularly detrimental to judicial independence. When corruption is within the judiciary, anti-corruption campaigns must be multi-pronged, with focus on judges, court staff, and prosecutors including: (1) training and education; (2) appointment, promotion and salaries; (3) evaluation and discipline; (4) transparency in procedures and decision-making; and (5) participation of civil society. These categories are not meant to be exclusive or exhaustive; however, they are all considered when developing a phased approach to address corruption as part of a comprehensive legal and judicial reform strategy.

In countries where corruption is a problem, the judicial system requires adequate funding for salaries and operations by the state to reduce the incidence of corruption. Such funding must be determined following consultation with the judiciary and the prosecutor's office and be a matter of budget priority. Funding and remuneration are important issues for controlling corruption in the judiciary and other related legal institutions. Salaries that are too low do not allow a standard of living proportionate to the office. However, an adequate salary alone is not sufficient to avert the danger of decision-makers engaging in corruption, so again, anti-corruption efforts must be tied to a broader strategy of legal and judicial reform nor does it ensure a competent judiciary.

APPOINTMENT OF JUDGES

External pressure and controls help to ensure that the internal institutional control mechanisms are in place. Civil society is increasingly seen as an integral part of the process to fight corruption within the judiciary (as elsewhere in society); civil society should be engaged to promote public awareness of the legal system, thereby providing a common framework to monitor judicial performance. Ombudsperson offices, anti-corruption agencies, think tanks, universities, and civil society organizations (CSOs) can be effective resources in avoiding one of the main incentives for corruption: immunity in the judicial system. Encouraging international, national, and local organizations, including bar associations, to assist

in preventing and eliminating corruption of the judicial system is also important for judicial independence. The media plays a key role in increasing public awareness in the process of exposing, preventing, and eliminating corruption in the judicial system, and can create a culture of intolerance by the public. The World Bank works with client countries to incorporate civil society into the legal and judicial reform strategy in a manner most effective for the local circumstances.

Corruption in the judiciary is a sensitive area because an attempt to address corruption alone may adversely affect independence. It is for this reason that an integrated anti-corruption program must be developed as part of a comprehensive legal and judicial reform strategy.

CRIMINAL JUSTICE

Closely connected with anti-corruption is the area of criminal law. Although it is central to protect individual rights, criminal justice reform has not been an area of Bank activity, even though other multilateral and many bilateral institutions have given it a high priority. An increase in the level of violent crime in many countries has spurred increased interest, with citizens themselves demanding improvements in the criminal justice system as the most logical means of protecting the public, dealing with the perpetrators, and possibly deterring would-be offenders. High levels of crime are a disincentive to investment and, some have argued, possibly more of a drag on economic growth than a flawed civil justice system. Observations that crime disproportionately affects the poor, and that an anti-corruption strategy requires effective legal prosecution of violators have made it clear that the Bank has to consider how best to address issues of crime and criminal law.

New forms of crime, antiquated laws and procedures, perceived conflicts between due process and law and order goals, backlogs in the trial courts, and insufficient coordination among the various legal institutions and actors are not problems unique to developing countries. Aside from the need to consider national idiosyncrasies, the most important factors may be issues of timing and sequencing. New technologies and methods (e.g., computer-

assisted mapping, sophisticated crime labs, and community policing) may substantially improve the performance of an already professional police force, but are likely to do little for one staffed by ill-prepared, underpaid, and/or politically dependent appointees.

Criminal justice, because it is more visible to the lay public, may assist in generating public interest on the importance of legal and judicial reforms more generally. In addition, it is a clear complement to any effort to address the broad issue of corruption. However, a system that is dysfunctional generally requires systemic change, which proceeds with a set of focused activities in criminal justice. Experience by other donors reveals that a reform effort focused on criminal justice cannot ignore the multiple organizational actors involved. If only the courts, or only the police, are improved, the result is likely to be a counterproductive imbalance, which in the end may encourage new problems on the part of the reformed entity. Not only is it important to work with all the actors in the criminal justice chain, it is also important to encourage coordination among them.

Executive Branch institutions, including the Ministry of Justice and the Prosecutor's Office, often play important roles in the reform process. As the Ministry of Justice sometimes is responsible for administration of the courts and law reform, the Bank works closely with this institution in many countries. In the fight against corruption, the Prosecutor's Office must itself be impartial and free from corruption. The Bank is currently evaluating ways in which it can assist prosecutors to effectively carry out their duties.

The Bank's limited experience in criminal law is found in its dealings of domestic violence through legal services for poor women. The experience thus far clearly demonstrates that attending to the issues of family violence and the related adverse effects on both women and their children is an indispensable prerequisite to any efforts to enable these women to enter the work force, provide proper care for their children, and in general, improve their economic status. It is also vital for both the mental and physical health of the children and for the provision of a stable environment enabling them to continue their education. In addition, activities are being planned to build capacity of public defenders to ensure that indigents have qualified legal representation in the judicial process.

This experience also highlights the interdependence of the criminal justice system, and the need for the strategy to address the problem in a comprehensive fashion.

ACCOUNTABILITY OF GOVERNMENT

Government accountability is critical for the rule of law. The issue of accountability C holding government entities responsible for possible misuses, abuses and misapplications of their powers C has become increasingly important. Calls for deregulation and cutbacks in direct state employment certainly have not reduced the state's ability to affect the lives of its citizens or the distribution and redistribution of society's wealth. In addition, citizen attitudes toward governmental authority have changed in many parts of the world, with people demanding better services and treatment. In more complex societies, there are simply more areas of public-private or public-public interaction that raise the potential for conflict and a demand for redress.

In most countries, the primary accountability mechanism has traditionally been the judiciary, through its review of the legality of government actions. Although limited powers of enforcement, a necessary selectivity in cases received, and an ultimate recourse by the government to change the law (or amend the constitution) may undercut the courts' role in making a government abide by its own rules, there is a visible impact. Additional mechanisms to hold government accountable include an expanded use of quasi-judicial bodies to review administrative cases. Once again, a comprehensive legal and judicial reform strategy must consider how to address the unique features of the client country.

The ombudsperson has seen a recent surge in popularity, and can be a valuable component of a comprehensive legal and judicial reform strategy. A successful ombudsperson must have independence and impartiality as well as credibility and confidentiality. The ombudsperson is typically independent from the executive and the judiciary, funded directly by the legislative body, and may take a variety of forms: a general-purpose or specialized agency to receive and investigate citizen complaints against bureaucratic actions, an agency charged with protecting citizens with

regard to their human rights, or an agency responsible for protecting certain diffuse rights and interests (e.g., environmental protections). The powers of the ombudsperson also vary. Usually they can receive complaints and conduct some initial investigation; often they can only mediate or recommend solutions, although some also have standing as complainants related to judicial actions. Some (ethics offices in particular) also have a responsibility for promoting probity or for developing policies encouraging transparency and responsiveness. Regardless of the model, the ombudsperson can play an important role in legal and judicial reform, especially since, in some cases, it is one of the few institutions trusted by the public. The Law and Justice Group has managed a grant for institution building to the ombudsperson's office in Peru, which has been successful and provides a model for application elsewhere.

The recent focus on civil society as a critical participant in development C and legal and judicial reform, in particular C has brought a demand for the use of independent citizen groups as control mechanisms in their own right. However, it seems unlikely that citizen monitors, voluntary or paid, can be more than a complement to more traditional accountability mechanisms. Because there is no ideal accountability mechanism, the use of multiple methods is bound to continue and needs to be considered under a holistic strategy.

Legal Reform

In a society which is predicated on the rule of law, the government and citizens alike are all required to conduct themselves in accordance with the requirements of established laws. As a result, the processes by which laws and regulations are initiated, prepared, produced, enacted, and effectively publicized are of crucial and fundamental importance. Mechanisms are needed which not only allow the public to be adequately informed of laws and regulations once they have been enacted but also to actively partake in the process of law-making by informing law makers of the public's views and expectations on any draft laws or regulations. Public participation augments the likelihood of support for the draft law which contributes to greater respect and compliance of the law.

The legal sector, both public and private, plays an important role in cultivating and maintaining a positive and supportive climate for the rule of law. Thus, the Bank supports assistance for legislative drafting and consultative processes; law commissions, which can play a catalytic role in legal reforms; bar associations for their role in improving the competence, ethics, and legal assistance of lawyers; legal education institutions, including law schools and the professional development of law professors; critical academic input into public debate, including upgrading curricula to meet the evolving needs of the economy and society; civic entities, including not-for-profit and non-governmental organizations, to disseminate legal information, provide legal aid services to the poor and other vulnerable segments of society; and media and other public information sources, which can serve as the “fourth branch” of government. Every legal and judicial reform strategy with a legal reform component employs some or many of these efforts.

Laws reflect the order, the values, and even the aspirations of society. Laws must be enacted in a truly participatory manner, be transparent, and be equitable and predictable. Often the participatory process in debating, drafting, and enacting legislation is indispensable in promoting respect for the rule of law by the public at large. The role of public participation is thus a critical element of any legal reform strategy.

Laws are the articulation of the rules by which society will live, empowering people with both rights and duties. The rule of law requires a set of basic laws that frame the governance of the state and its people. These basic laws normally include the constitution, civil code and procedures, and criminal code and procedures. To create a legal framework for investment climate, the following laws are essential: contract law, commercial laws, corporate law, administrative laws and procedures, environmental protection laws, property laws (both tangible and intangible), and labor and tort law. A comparative review of other jurisdictions, as well as model laws, ensures that countries benefit from the experiences of similarly situated nations. It is imperative, however, to use foreign laws as a resource and not as a blueprint for law reform, which should always be related to local conditions. Experience has shown that blind

transplantation of foreign laws fail; laws must reflect the economic, social, and cultural environment. These are critical elements of any law reform strategy undertaken by the World Bank.

In addition to national laws, it is often useful for member countries to take stock of the international laws and treaties that are binding on them. The Bank supports several international and regional instruments that promote equitable economic growth. For instance, the Bank is a principal partner in the initiative for developing a uniform commercial law in the francophone region of Africa through the Organization for the Harmonization of Business Law in Africa (OHADA). Many member countries have acceded to treaties that provide protection for minorities and other vulnerable groups, including women and children, such as the Universal Declaration of Human Rights,⁹ the International Covenant on Civil and Political Rights,¹⁰ as well as specialized conventions, such as the anti-Slavery Convention¹¹ or the Convention on the Rights of the Child.¹²

LAW REFORM

The process of law reform is critical, and thus a central component of any legal and judicial reform strategy that addresses legal reform. It ensures that laws are drafted by a group of experts taking into account best practice principles and in consultation with interested groups and individuals. This process includes working to study the local context and policy issues prior to undertaking any law

⁹ See <http://www.un.org/Overview/rights.html>.

¹⁰ See http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹¹ See Slavery Convention (<http://193.194.138.190/html/menu3/b/f2sc.htm>); Protocol Amending the Slavery Convention (<http://193.194.138.190/html/menu3/b/f2psc.htm>); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (<http://193.194.138.190/html/menu3/b/30.htm>).

¹² See <http://193.194.138.190/html/menu2/6/crc/treaties/crc.htm>. See also Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (<http://193.194.138.190/html/menu2/6/crc/treaties/opac.htm>) and on the Sale of Children, Child Prostitution, and Child Pornography (<http://193.194.138.190/html/menu2/6/crc/treaties/opsc.htm>).

reform so there is a clear understanding of what is expected to be achieved by the new or revised laws. In addition, coordination within the government is critical to reconcile conflicting interests of different ministries and ensure that it is consistent with an overall legal reform strategy. Often the coordination responsibility lies in a centralized law drafting unit.

The passage of laws that are transplanted may be appealing in a crisis environment and may be in fact justified; however, it may also mean that they are not sustainable if they are not grounded in the local context. Laws that are not understood and that are inconsistent with the existing legal culture are likely not to be respected or enforced. In addition to the process of legal drafting, law reform

CHINA

Economic Law Reform Project

Credit No. 2654-CN approved October 18, 1994
for US\$10.0 million (equivalent)

The Bank's first free-standing legal reform project, the IDA-financed Economic Law Reform Project, supports technical assistance in drafting key economic legislation, training in new economic laws and institutional strengthening of key agencies such as the National People's Congress (NPC) Commission on Legislative Affairs; the NPC Economic and Finance Committee; the State Council's Office on Legislative Affairs; and the Ministry of Justice.

The project is comprised of three components:

- | Legal drafting;
- | Training; and
- | Institutional support

The legal drafting component currently supports a wide range of subprojects, in such areas as enterprise reform, corporate restructuring, competition policy, tax, trade, legal profession, procurement, intellectual property, etc.; many of these also support Bank economic and sector work. The project also finances innovative training programs prepared by law faculties. The Office of Legislative Affairs has a program to establish a legal information system accessible to all national and regional government agencies (and eventually the public at large).

needs to be done in connection with legal training for legislative draftsperson lawyers, judges, and citizens in the reforms. The capacity of relevant institutions to implement these laws also needs to be considered. China is one example of a project which shares comparative law experience.

Public participation in the law-making process can strengthen the rule of law. In many countries, public participation in this process is achieved generally through various means including, *inter alia*, the solicitation of the public views on proposed legislation through parliamentary hearings, commentaries on draft legislation by those who will be affected and persons in the institutions likely to be involved in the implementation, as well as concerned interest groups, the media, and academia. This active public involvement, along with the legislative process, is highly beneficial; it fosters public understanding and ownership of the proposed laws, ensures that they are suitable for the economic, social and legal climate, and thereby facilitates subsequent compliance by the public at large.

LEGAL TRAINING

Legal training ensures that legal and judicial reforms have a substantial impact on the attitudes and behaviors of individuals, particularly state officials, lawyers, and citizens. In many countries, the legal profession is often a more conservative element in the community, strongly resistant to change. This is exacerbated by the fact that legal reform often aims at changing the habits and behavior of individuals in a manner that may be contrary to their vested interests. However, legal training should not be provided in a vacuum; it is an integral part of an overall strategy for legal and judicial reform and must be considered with all the other elements of such a strategy.

Legal education programs are most effective when they are anchored on the rule of law and on the country's values. As a consequence, legal training should aim to: (a) strengthen the skills of the professionals active in the legal system; (b) build public confidence in the legal institutions, as provided in the Constitution and the laws in force; and (c) create understanding to build consensus and momentum for further reforms. A critical objective of

legal education is to improve the quality and provision of legal services to the community, which are delivered by professionals whose performance gains the confidence and respect of the people they serve. Appropriate training programs are designed to enhance the performance of the main actors in the legal system (e.g., legislatures, the judiciary, the executive, prosecutors, public defenders, the media, the legal profession, and the public at-large) and instill the values of impartiality, professionalism, competency, efficiency, and value of public service. Education and training provided to only a portion of the legal system may not have significant impact in its overall performance, and may in fact impede reform. All of these factors enter into discussion with clients when preparing their legal and judicial reform programs.

BAR ASSOCIATIONS

The main role of the bar associations is to regulate the profession through entrance requirements, promote ethical standards of conduct, maintain a disciplinary system and conduct training for its members, and provide legal services to the community. It is necessary to regulate the conduct of lawyers to ensure quality, transparency, and independence of the legal profession. Rules of conduct affect professional competition, and ethical rules for the behavior of lawyers protect the interest of the clients and society as whole. Such rules address professional dignity in the relationships within the profession as well as consumer protection (issues of confidentiality and clients' rights). A critical element of this is the issue of conflict of interests. Lawyers have to be held liable for their professional misconduct by transparent disciplinary procedures and mechanisms which allow clients to bring claims for damages related to the poor quality of services. Regulation of fees should provide certainty to lawyers and clients while, at the same time, providing a basis for the courts to determine necessary costs of litigation. The bar is a critical interest group that has a responsibility to promote the rule of law. The quality of legal services has an impact on the protection of citizen rights, on effectiveness and efficiency of the judiciary, and reduces transaction costs for business. It is for these reasons that the bar must be independent.

The legal profession is a main actor in the legal and judicial system, and therefore critical to any reform. Although critical in the reform process, the bar has often been neglected by the donor community. More recently, however, the bar associations have been active participants in Bank-financed legal and judicial reforms projects, and have been the subject of research. In addition, research has been undertaken in this area. In Slovakia, Bank-financed research has revealed that although the country's economic transition resulted in a rapid increase in the demand for legal services, the supply has remained inadequate. Barriers to legal education and the legal profession have created a perpetual shortage of lawyers. A prohibition on legal practice by foreign lawyers has exacerbated the situation. The structure of the legal profession has also served to further decrease competition and keep costs high. The availability of qualified and affordable legal representation is critical to enforce individual and property rights.

Access to Justice

Access to justice is the ability to obtain justice through the legal system. Generally, access to justice can be discussed in three parts: improving access to existing services, expanding access to facilitate or encourage use of dispute resolution mechanisms by non-traditional users (marginalized groups), and creating new legal standing to advance the interests of classes of individuals. Access to justice has increased by changing laws perceived as detrimental to the interests of the poor or other groups. Changes that recognize indigenous, gender, or child rights have often been a target, and which provide a basis for demanding, and sometimes obtaining, social compliance. Such legal rights and the ability to assert those rights are critical to empower the poor and improve their quality of life. Thus, access to justice is seen by the World Bank as a central element of a comprehensive legal and judicial reform strategy.

The poor and marginalized groups are often faced with multiple obstacles to access legal and judicial services. As a basic public service, it is essential that citizens have access to some form of conflict resolution and rule enforcement. Perhaps the most common approach to increasing access is the introduction of subsidized legal

services, usually for defendants in criminal cases, but also for family, land or other civil matters. Good legal services have reduced the incidence of due process violations, have lowered the level of pretrial detention, reduced the time to resolve a case and often contributed to favorable judgments for marginalized clients, especially in cases of child support. Donors and some national governments have experimented with the introduction of alternative dispute resolution (private as well as court-annexed), developing citizen education programs, waiving normal fees and facilitating pro bono legal representation, or introducing legislation aimed at the special needs of excluded groups.

ECUADOR

Judicial Reform Project

Loan No. 4066-EC approved April 13, 1995
for US\$10.7 million (equivalent)

In the early 1990s, judicial reform was included in the agenda for the Modernization of the State. A judicial sector review was completed in 1994 and updated in 2003; it assessed the state of the legal and judicial system, and provided recommendations for reform, thereby laying the groundwork for the Judicial Reform Project and facilitating discussions among stakeholders. In addition, an overall judicial reform strategy was prepared in 1995 and updated in 2000 with the stakeholders, including the development agencies, to develop a long-term reform agenda and priorities, as well as to ensure donor coordination.

The Judicial Reform Project, which was completed in 2002, was part of the Government's overall strategy. It had four components:

- 1 Case administration and information support to be piloted at the first instance level courts in three main cities;
- 1 Court-annexed Alternative Dispute Resolution (ADR) mechanisms to be piloted and ADR training;
- 1 Program for law and justice, including, inter alia: a special fund for law and justice, a program for the modernization of property registration, a professional development program; a study on the state of legal education; research and evaluation of ADR pilot programs; and legal service pilots for poor women; and
- 1 Infrastructure remodeling and development of court infrastructure standards.

While most reform programs give access to justice a high priority, this is not always visible in the resources allocated towards this goal. Some argue that this is because such activities are not always the most expensive. Nevertheless, access is one of the main principles of a comprehensive legal and judicial reform. Part of an appropriate strategy is to understand the full range of obstacles to access, which vary by country. Such obstacles can include economic, psychological, informational, linguistic, and physical barriers, among others. Increasing access requires attention to external obstacles (those barriers that prevent groups from reaching the courts or other services) and internal ones (those which affect the quality of decisions C poor litigants may not get equal justice even when they have their day in court). The right of access does not refer to specific cases and individuals, but rather to participation in the individual and collective benefits accruing from society's provision of the best and most equitable justice service delivery it can render. That service also includes more than the courts and extends to other public and private mechanisms for performing the functions of conflict resolution and rule enforcement.

Courts are often inadequate to deliver the needs of the society for dispute resolution. The Bank promotes various alternatives to courts: arbitration, mediation, and conciliation (private as well as court-annexed), as well as indigenous and customary fora. Not only do they often provide less expensive and time-consuming mechanisms, but they also can relieve the congestion in the courts and provide healthy competition. In Guatemala, the Bank supports dispute resolution that reaches indigenous communities. In Sri Lanka, commercial mediation is being supported in the Chamber of Commerce.

ACCESS TO LAW AND JUSTICE

The Bank supports:

- | Legal awareness and legal education; publication and dissemination of laws, publicity campaigns, and counseling**
The West Bank and Gaza Legal Development Project supports the enhancement of law libraries in the Ministry of Justice and the Judiciary to serve as reference centers for judges, lawyers, academics, business people and the public at large.
- | Legal information and services in indigenous languages**
The Guatemala Judicial Reform Project supports the enhancement of multilingual communication capabilities in the Judicial Branch, including the publication of documents and reports.
- | Legal education in primary and secondary schools**
The Russia Legal Reform Project supports legal education in secondary schools.
- | Providing legal information via the Internet**
An online Legal Information Network (LAWNET) has been created under the Sri Lanka Legal and Judicial Reforms Project, which includes statutes, government regulations, case information, and court decisions.
- | Indigents, the vulnerable, and poor communities to use law to empower themselves in their everyday lives, including supporting affordable legal services; legal aid to individuals and community associations; social services counseling to enforce rights**
The Ecuador Judicial Reform Project finances five legal service centers for poor women, which provide legal consultations and representation, counseling, referrals, and alternative dispute resolution services.
- | Processes to enhance the effective participation of civil society in law reform**
The Legal Reform component of the Sri Lanka Legal and Judicial Reforms Project set up multidisciplinary teams, which include NGOs, to discuss and coordinate new commercial laws to be drafted.
- | Civil Society Organizations (CSO)**
A Special Fund for Law and Justice was set up under the Ecuador Judicial Reform Project which awards grants to NGOs and CSOs to support research and access to justice activities.
- | The media**
The Armenia Judicial Reform Project supports training for journalists on legal issues and the development of a public relations strategy for the judiciary.
- | Bar Associations**
The Morocco Legal and Judicial Development Project works with the Moroccan Bar Association to provide free basic legal advice to poorer segments of the population.
- | Developing creative methods for people in rural and remote areas to access judges and courts (e.g., by the use of video technology or traveling judges and courthouses)**
The Guatemala Judicial Reform Project supports the diversification of judicial services and reorganization of justice-of-the-peace-courts in rural areas. Activities include assessment of the socio-economic, geographic, and cultural characteristics (including customary practices) and judicial service needs of rural and urban communities, including communities of high geographic mobility such as indigenous, refugees, and internally displaced populations.

Access to justice is a right often protected by the Constitution and by international human rights treaties signed by the Bank's member countries. Therefore, the state has a legal obligation to provide the institutional arrangements necessary to exercise this right, though the amount of access depends on the policy and the resources available in each country, which is taken into account when preparing the legal and judicial reform program.

Law and Social Change

HUMAN RIGHTS

The link between poverty reduction and human rights is based on the principle that freedom from poverty is an essential element of development rights. The holistic approach proposed by the Comprehensive Development Framework (CDF) acknowledges that the protection of economic, social, and cultural human rights is an essential element of sustainable and equitable development. The *Human Development Report 2000* issued by the United Nations Development Program (UNDP) stressed that “human rights and human development cannot be realized universally without stronger international action, especially to support disadvantaged people and countries to offset growing global inequalities and marginalization.”¹³

A growing number of member countries of the Bank have ratified the United Nations' core covenants and conventions, and have enacted domestic laws on civil, political, economic, social and cultural rights. As such, these member states have accepted those standards and obligations and, if they request, the Law and Justice Group may assist them in fulfilling their obligations on human rights issues within the Bank's mandate and policies. Legal and judicial reform is essential for the member countries to fulfill, and for their citizens to realize, their rights to education, health, etc. In addition, as Eastern European countries prepare for accession to the European Union, their laws and practices must conform to international standards of human rights.

¹³ The Report, the 11th of a series commissioned by UNDP, stresses the importance of the link between the economic and social rights with political and civil liberties, calling them two sides of the same coin.

Good government is essential to equitable delivery of basic social services and social protection assurance for the vulnerable, while still developing efficient markets. In addition to good national policies enacted by states, new actors are demanding an active role in society to promote the observance of the rule of law, the existence of accountable institutions, and the adoption of transparent and efficient processes. The objective is to improve conditions for the poor and ensure that their rights are recognized and enforced. Legal and judicial reform provides a natural mechanism to protect the rights of individuals, and particularly the poor, and thus advances their economic interests.

GENDER

There are significant legal implications in the design, implementation and supervision of Bank-assisted activities in the evolving field of social development. Gender bias, in particular, continues to be prevalent in many countries. A clear objective of the gender strategy, *Gender Mainstreaming Strategy Paper* of September 2001, is to mainstream gender issues into all aspects of development policies and objectives. Deliberate efforts to address women's needs can contribute to many elements of development including poverty alleviation and the improvement of child welfare. The economic and legal status of women, as well as the ability of women to invoke legal rights to remedy legal injustices, social inequities, and economic disadvantages from which they suffer, is central to the development process.

Gender inequality is a complex issue requiring inter-linked strategies within a comprehensive proactive policy framework. This includes changes to the legal framework and enforcement. The creation of a supportive legislative framework, for example, involves reflecting gender equality in labor, family and marriage, inheritance, contract, property, and ownership laws as well as in the national constitution and customary laws.

In addition to equal treatment of women in legislation, fair treatment of women before the judiciary is fundamental. Gender awareness programs for the judicial and legal community should be part of any legal and judicial reform program. Collaboration and

alliances with groups inside and outside the court system, especially encouraging women judges' associations, bar associations, and civic groups, can provide support for change. In addition, gender bias studies can form the basis for focused activities to be developed. The first such study by the Law and Justice Group was undertaken in Argentina. Data should be collected on gender bias in the courts so as to monitor and evaluate the implementation of activities to reduce gender bias in the courts and identify new problem areas. Such data may also assist with critical behavioral change. In addition, legal aid clinics for poor women have been piloted in Ecuador successfully and are now being established in Jordan and Sri Lanka to assist women assert their legal rights.

CHILD LABOR

The International Labor Organization (ILO) *Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor* (No. 182) of 1999 makes it a mandatory obligation for states party to it to prohibit the "worst forms of child labor."¹⁴ This includes: (i) slavery (including forced or compulsory recruitment of children for use in armed conflict); (ii) prostitution and pornography; (iii) illicit activities, in particular drug trafficking; and (iv) "work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children."¹⁵ Since 1997, the Bank has committed to: (a) give more focus to child labor issues in the policy dialogue with client countries; (b) improve partnerships with other relevant international organizations and NGOs; (c) raise Bank staff awareness and sensitivity to the issues involved; (d) give more emphasis to child labor issues in existing lending activities; and (e) require compliance with applicable child labor laws and regulations in specific projects or components of projects to target the most harmful forms of child labor. Complementary to this, legal and judicial reform projects managed by the Law and Justice Group have included activities to raise awareness of children's rights and juvenile justice.

¹⁴ See

<http://www.ilo.org/public/english/standards/ipecc/textonly/ratification/convention/text.htm>.

¹⁵ Id.

INDIGENOUS PEOPLES

Indigenous peoples have historically been the poorest and most excluded populations in many parts of the world. They have not only faced serious discrimination in terms of their basic rights to property, language, culture and citizenship but also in terms of access to basic services and essential material conditions for a satisfying life. Although fundamental changes have been taking place over the past decades, a major challenge is how to consolidate these advances in the defense of the rights of indigenous peoples and their inclusion as culturally distinct actors in the national development processes. Strengthening and improving the legal and institutional framework of indigenous peoples is one of the means to achieve this objective. One of the critical elements to reduce poverty is to expand access for the poor to health care, education, family planning and other social services. These social safety nets are critical and access to them in part depends on an accountable, transparent, and non-arbitrary administrative law process.

In addition to the Bank's several Indigenous Development Projects that actively promote the development and quality of life of indigenous peoples and other vulnerable ethnic groups, indigenous issues have increasingly been included in legal and judicial reform projects. For example, a project in Guatemala provides multilingual services in the judiciary for indigenous people. In addition, other projects have included studies on indigenous dispute resolution mechanisms and established mediation centers for indigenous villages. Including of indigenous people in legal and judicial reform projects ensures that their rights and needs are taken into account in legislation as well as in the formal and informal dispute resolution process.

Law and Sustainable Development

ENVIRONMENT

Since the 1970s, environmental law has experienced an unprecedented growth in many countries. This was made possible through the enactment of new statutes and regulations that provide for higher standards of environmental protection. Most countries

have created institutions to handle environmental matters and given them varying degrees of independence, power, and jurisdiction.

The objective of environmental standards is to prescribe specific quantitative and qualitative limits to be followed by the regulated community. They may take several different forms: health standards; ambient environmental standards which prescribe specific limits on designated pollutants that will be tolerated, for example, in the ambient air or water; emission and discharge standards used to combat air and water pollution by limiting the actual emissions or discharge by a specific source; and finally technology. Environmental law includes liability, which refers to the condition of being actually or potentially subject to a legal obligation. This can include both civil as well as criminal liability. Retroactive liability is still controversial and has raised some problems.

Among modern environmental statutes, environmental impact assessment (EIA) laws crystallize a preventive approach to environmental protection, because they integrate environmental considerations in decision-making processes. The environmental assessment may be required to identify appropriate mitigation measures, or alternatives to the proposed action, that minimize environmental impacts.

Enforcing environmental law is critical to ensure that the regulated community complies with the policies embodied in a statute. The goals of a good enforcement program are that a government: (a) achieve general environmental compliance through deterrence; (b) identify environmental violators efficiently; and (c) prosecute them diligently. Governments, through their administrative agencies, are normally responsible for prosecuting violations of environmental law. In some countries, individuals or civil society organizations can also sue violators and recover a share of the awarded penalty as a reward for their initiative, through procedures known as citizen suits or public interest actions. In addition, national constitutions or environmental statutes may protect the right of an individual to a clean environment. In India, for example, such provisions have allowed the courts to take a highly proactive role in environmental protection. Both the ability of the government to investigate and prosecute as well as the legislation that permits complaints should be considered in the reform process. In addition

to legal components being included in the environmental projects, the Bank's lawyers advise client countries on the environmental legal framework.

LAND LAW

Land law creates property rights in land and the ability to transfer those rights, but it also involves provisions of regulations that affect those rights, including environmental legislation. The total value of real estate held but not legally owned by the poor in developing countries is estimated at US\$9.3 trillion.¹⁶ Although the poor possess the assets, they lack the process to protect their property and create capital. The challenge, then, is to build a property system that is accessible to the poor. Laws creating public rights in land and the institutional structure that allocates and makes other decisions for public land, and laws enacted to facilitate the operation of property rights systems, such as land registration laws, are an increasing focus in the Law and Justice Group's work.

Land law directly affects development and conservation. The terms create or undermine incentives to invest and utilize land intensively, or to expand use into forests and or wetlands. The laws set the terms and conditions for transactions in land in ways that help determine efficiency of land use and influence emerging patterns of land distribution. This is an era of widespread land law reform. Most developing countries find themselves in the midst of profound transitions in this area, and some Bank projects are considering legal aid for land issues.

Law and Private Sector Development

Finance, private sector development, and infrastructure aim to strengthen legal institutions for a market economy, thereby helping: (a) to allow private sector firms to emerge and expand or, if irretrievably insolvent, to be reorganized or liquidated efficiently; (b) to improve financial sector capacity; and (c) to regulate the private provision of telecommunications, water and sanitation,

¹⁶ Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, 10 (Basic Books, 2000).

electric power and gas, and transportation services so that these are sustainable financially while safeguarding quality and the public interest. Well-functioning financial sectors are essential for private sector-led growth, without which poverty alleviation will not be possible. They also help prevent or mitigate financial crises which would otherwise burden countries with crippling costs and increased poverty.

In addition to adequate public sector regulatory authorities, the essential legal and institutional building blocks for credible and sustainable market economies with strong financial systems include:

- ┆ Effective rules of corporate governance which protect minority shareholder interests, require a substantial proportion of corporate directors to be independent of management and controlling shareholders, and mandate the public disclosure of reliable financial information.
- ┆ A secured lending regime that permits all categories of property to be used as collateral, establishes a simple, efficient and accurate mechanism for perfecting secured interests (e.g., adequately maintained and accessible public registries) and allows efficient procedures for creditors to obtain the market value of collateral in the event of default (e.g., through a fair and efficient process of judicial attachment, seizure and sale by auction).
- ┆ A bankruptcy system that balances the rights and obligations of debtors and creditors so that responsible management of assets is encouraged and the rehabilitation of businesses able to make a positive contribution to the economy is encouraged, while those that are irretrievably insolvent are liquidated efficiently.
- ┆ A supportive environment for private participation in the delivery of infrastructure services.
- ┆ Transparent and efficient judicial and other dispute resolution systems, and enforcement.

The Bank's infrastructure work emphasizes the establishment of regulatory frameworks which are pro-competition, pro-entry of small-scale and other non-conventional providers, and pro-efficient

markets. And, as is true of regimes for banking and corporate activity, a clear legal and regulatory framework needs to be in place to ensure the private sector an appropriate, transparent and predictable operating context. Developments in new technologies, especially information technology, offer the potential for developing countries to leapfrog intermediate stages of development and avoid the risk of exclusion from global markets. Telecommunications is thus the core of information infrastructure that poor countries need to compete in the global economy, as well as to assist in the delivery of educational, knowledge management, health, agricultural and even governmental services domestically. Increasingly, however, the internet-driven phenomenon known as the "digital divide" is posing developmental challenges.

Particularly in transition economies, privatization of state-owned enterprises resulted in many unemployed workers. Thus in Macedonia, the Bank assisted in providing a legal framework for labor restructuring and severance payments. Privatization without having in place a legal and regulatory framework beforehand resulted in the opaque transfer of ownership, corruption, and dissipation of assets. From these lessons, the Bank is heavily involved in assisting the formulation of laws regulating public utilities such as telecommunications, water, gas and electricity, as infrastructure is crucial to creating an attractive investment climate.

Although a reliable and supportive legal and judicial system is a *sine qua non* of investment and financial sector viability as well as private sector-led growth, most of our client countries continue to lack transparent legal frameworks that encourage appropriate market incentives, equitable and reasonably affordable access to the enforcement of legal remedies, and transparent, competent and efficient judicial and other dispute resolution mechanisms. In many countries, corruption in both the public and private sectors is endemic, making economies less transparent.

In addition to the free-standing legal and judicial reform projects, there are numerous Bank financed projects which deal with, or include legal components related to private sector development. In some cases, projects have focused on legal and judicial reform issues related to a specific area of law such as bankruptcy. This is the case in Croatia.

CROATIA

Court and Bankruptcy Administration Project

Loan No. 4613-HR approved June 15, 2001,
for US\$5.0 million

A 1998 report on "The State of the Judiciary" detailed problems and proposals for action, and included two detailed analyses of the judicial system prepared by ABA/CEELI and USAID, in 1994 and 1998, respectively. The Government is taking a phased approach, starting with a set of actions aimed at the commercial courts, specifically in the area of bankruptcy. Results of this focused reform can then be used for designing an overall judicial reform program.

The project's main components are:

- | Testing a replicable model of court administration and case management at three first instance and the second instance commercial courts;
- | Designing a more effective system of management for extra-court bankruptcy professionals;
- | Providing court and extra-court bankruptcy professionals with training;
- | Identifying the basic parameters of a legal information system for bankruptcy administration; and
- | Increasing the awareness of entrepreneurs, bankers, judges, other legal professionals and government officials of the area of bankruptcy.

In addition, the Bank's lawyers have assisted 85 countries to reform laws in more than 50 main subject areas. Law reform in these cases is often complementary to other reform efforts in private sector development. The Bank's experience to date has been that quick resource transfers, as occurs with adjustment lending, are unlikely to foster long-term financial, private sector or infrastructure reform. Rather, successful sector lending requires, besides appropriate enabling conditions and strong project supervision, the continuation of close dialogue with national authorities after the loan has been fully disbursed. As a result, sector lending needs to be combined with non-lending, and technical assistance services. The strategy of the Law and Justice Group is to provide both integrated lending as well as non-lending activities. Comparative knowledge and experience is critical in assisting in the design of practical solutions to promote the law and justice sector.

Part IV: Strategic Framework and Methodology

Key Goals

The goals of Legal and Judicial Reform are to promote:

- | Effective and accountable legal and judicial sectors;
- | Independent, impartial and competent judiciaries;
- | Equitable laws and effective enforcement; and
- | Access to justice.

Strategic Framework

The strategic framework for accomplishing these goals includes the following main elements:

1. *Perform comprehensive country strategies*

- | Start with a thorough front-end legal and judicial sector assessment; and
- | Design and get buy-in to priorities and sequencing of activities.

2. *Tailor projects to the country context*

- | Accurately gauge national ownership, capacity, commitment, and resources; and
- | Take into account incentives of stakeholders.

3. *Design a balanced set of projects and activities*

- | Improved legal and judicial sector capacity;
- | Combine reforms of law reform with improved enforcement (that is reforms in the courts as well as with legal education, lawmaking informed by international standards, and other aspects of legal reform; and
- | Include both the supply side (the courts, lawyers, etc.) with the demand side of legal and judicial reform (access to justice, legal awareness and education for the public).

4. *Advocate multi-tier approach*

- | Combined efforts needed between top down and bottom up approaches to reform, no one approach can succeed in isolation; and
- | High levels of support from the top are necessary for project success regardless of whether a top down or a bottom up approach is used.

5. *Define the roles of the judiciary, the executive, and the legislature*

- | Maintain the goal of judicial independence while recognizing political realities and institutional constraints; and
- | At the same time, address judicial accountability with independence.

6. *Assess realistically the potential for success and failure*

- | Do not underestimate project risks and long term nature; and
- | Incorporate the past lessons of experience in legal and judicial reform.

- 7. *Engage national and international stakeholders in all phases***
 - | Multilateral efforts in concert with other development organizations;
 - | Encourage participation by all potential stakeholders (judges, court staff, policy makers, legal practitioners, academics, and the “voiceless”); and
 - | Coordination among all concerned development institutions, multilateral and bilateral.

- 8. *Use of pilot activities as a way to promote initial capacity building to implement the reforms***
 - | Design a free-standing project or a component of a larger legal and judicial reform program;
 - | Make effective use of grant funds to build capacity with a vision to contribute to a comprehensive strategy; and
 - | Utilize pilots, especially for model courts and case management systems, to demonstrate results both positive and negative.

- 9. *Monitor and evaluate in order to assess innovative reforms before replication on a larger scale***
 - | Ongoing monitoring of reform as well as flexibility to reorient projects during implementation;
 - | Research using both quantitative as well as qualitative tools taking into account that efficiency must be balanced with quality of justice as an overarching goal; and
 - | Disseminate results and use as input to scale up legal and judicial activities.

Methodology

Law and justice sector activities must be approached strategically, bringing together all the elements that promote the rule of law through holistic and comprehensive sector reform programs. The methodology employed by the World Bank to implement this strategic framework consists of four main elements:

1. Legal and judicial sector assessments

- | Work closely with country and regional teams; and
- | Coordinate with Country Assistance Strategies (CASs) and Poverty Reduction Strategy Papers (PRSPs)

A critical first step in this approach is the carrying out of a thorough legal and judicial sector assessment, the diagnoses of which are used to design appropriate project components. These assessments are intended to identify strengths, challenges, and risks; ascertain the sector's development and assistance needs; assess observance and implementation of relevant international standards, codes, and good practices; and help design appropriate policy responses and assistance strategies. The first judicial sector assessment was completed for Ecuador in 1994, and involved reviewing different aspects of the administration of justice. These included, among other things, a review of court and case administration; selection, promotion, and disciplining of judges; training of judges, lawyers, and law students; access to justice issues, including gender issues; and alternative dispute resolution mechanisms. Legal and judicial sector assessments are regarded as a highly desirable prerequisite to ensure that the project meets the needs of the country. In a number of African countries, comprehensive diagnostic studies of the legal system have been conducted, often as input to the preparation of a legal reform component or project. Legal needs assessments conducted in Mongolia and Vietnam have facilitated a dialogue with the governments to identify future reforms. Experience to date indicates that legal and judicial sector assessments are technically viable and add substantial value. They provide the foundation for the formulation of legal and judicial reform development strategies.

2. The development of a comprehensive plan

- | LJR component formulated collaboratively;
- | Identification of priorities and sequencing based on available capacity and in coordination with other active donors;

- | Project teams include multi-disciplinary specialists from regions, sectors; and
- | Projects managed by appropriate Region, Sector, or Law and Justice Group.

Comprehensive reform plans are developed based on such assessments. The plan identifies priorities and sequencing. Since not everything can be done at once, staging is based on priorities, implementation capacity, and any political limitations. This is developed with the active participation of the key players (public, private and international) in the legal and judicial sector as it is important to strive for consensus; broad-based consensus has an effect on the success of these programs. The comprehensive plans can be used by the government, NGOs and other donors. The assessment in Ecuador, for example, provided the basis for the development of a five-year comprehensive plan by the Government in consultation with stakeholders, including the Bank and other donors.

The comprehensive plan will be incorporated into various Bank standard documents including the Country Assistance Strategy (CAS), Poverty Reduction Strategy Papers (PRSPs) and Social and Structural Reviews (SSRs) which are used to identify, develop and plan a development program addressing a country's specific needs to increase economic growth and reduce poverty. This approach is consistent with the Comprehensive Development Framework (CDF).

This comprehensive plan also serves as the basis for the identification and preparation of legal and judicial reform projects financed by the Bank. Such projects, which often range between two to five years, aim to lay the groundwork for further legal and judicial reform and to contribute to the consensus building needed for the long term commitment by governments and stakeholders.

Issues of priority and sequencing will depend on local conditions and the array of groups concerned with law and justice issues. Conditions vary even though some common themes exist. Legal institutions in many countries have long been established, which means that there are long-entrenched patterns of behavior that may not be consistent with optimal economic development in market

economies. There must be individuals and groups willing to invest in the rule of law in the countries targeted for reform. It is crucial also to ensure that those who gain power and stature through the reform process do not simply convert that power into more traditional patterns of elite behavior.

3. *Program execution and monitoring results*

- | Learn from experience and disseminate best practices; and
- | Scale up pilots and replicate.

A project's objectives and goals should reflect the reality that a Bank-financed project will only contribute to the longer term legal and judicial reforms and will not complete the program. Accordingly it is difficult to evaluate legal and judicial reform projects, particularly in the short term. While the project goals may or may not have been achieved, the project's impact may be quite different. The Bank and other donors are refining performance indicators and other methodologies for evaluating legal and judicial reform projects and measuring improved performance in accordance with the Monterrey Challenge.¹⁷ However, numeric and formulaic evaluations will only be applied with care and caution.

In addition, lessons of experience will be monitored and shared. Attention is given to compile, disseminate and analyze this experience. Such comparative information on legal and judicial reforms is one the critical roles for the Bank and one of the critical services it can provide to its client countries.

4. *Dialogue with the stakeholders throughout each stage*

- | Promote participation to ensure that the voices of various stakeholders are heard; and
- | Promote top down together with bottom up approaches.

¹⁷ See Robert Picciotto, Director-General, *Operations Evaluation, Development Cooperation and Performance Evaluation: The Monterrey Challenge* (The World Bank, 2002).

Rules must be neutral and fair. The process of making rules should be aligned with these objectives. The need for neutral rules that can be applied fairly requires that we examine the behavior of actors charged with resolving disputes and enforcing legal norms. The patterns of behavior depend on the incentives that the actors face, which should be examined as part of preparing a legal and judicial reform program.

The question of accountability can be understood by analogy to central banks, which are also independent and accountable to the world of economic expertise. Economists both locally and internationally routinely scrutinize decisions of central bankers to make sure that they are defensible according to the best available economic learning. Journalists close to the economics profession will help to convey the learned opinions and keep the pressure on the central banks.

The same can happen when supreme courts write opinions knowing that bar associations and academics C and informed journalists C will scrutinize opinions according to current legal thinking.¹⁸ Unfortunately, that kind of scrutiny from legal academics and the bar is still relatively more rare than that on central banks. However, in Venezuela, for example, the Supreme Court decisions are placed on the website for immediate viewing by the public.

Continuing the focus on the incentives, we suggest that individuals will choose which institutions they will favor to enforce their rights and resolve their disputes. We can expect that the market economy will produce new entrants with strong reasons to choose institutions with a reputation for neutrality, decision-making according to legal principles, and enforcement. Indeed, the problem noted above with legal institutions in many places has been that outsiders without power do not expect that their claims will be addressed neutrally if they are opposed by traditional holders of

¹⁸ This does not mean that the courts or other legal institutions (or in the other example, central banks) will never be influenced by other factors. It simply means that there will be strong pressures to stay within certain boundaries C which provide protection for those who have legal rights but lack political or economic power in the particular local setting.

power. The same problem in a different form occurs when outsiders are led to believe that the only way they can get attention for their claim is to participate in one or another form of corruption. If new legal institutions are developed or old ones strengthened, there can be a healthy competition that will work to encourage the legal autonomy required of market economies.

Sometimes, the courts may be the most difficult legal institution to transform in the short term, suggesting that attention must be paid to ombuds-type institutions, special courts or court-like institutions, or alternatives such as international commercial arbitration. For example, the Peruvian Ombudsman's Office received an Institutional Development Fund Grant for capacity building. However, it should be noted that *ad hoc* dispute resolution mechanisms do not benefit from established principles and do not provide precedent for future litigants. Similarly, this focus on investment in the autonomy of the law suggests attention must be paid to other players who can provide checks and balances as well as complementarity in legal systems such as academics, bar associations, and journalists. For example, the Albania Legal and Judicial Reform Project supports legal education, the Sri Lanka Legal and Judicial Reforms Project finances developing of continuing legal education for the bar associations, and the Armenia Judicial Reform Project includes training of journalists on legal issues.

Support of organizations that are designed to promote legal rights C such as rights designed to prevent gender or racial discrimination C can also keep some pressure on legal institutions while providing a means to enforce norms that also open up markets (and places to build up human capital) to historically excluded groups and allow those harmed by globalization to enforce rights set up for their protection. For example, the Ecuador Judicial Reform Project was the first to pilot a Law and Justice Fund that included financing for NGOs working on children's rights, and the Russia Legal Reform Project has piloted legal education in secondary schools. Particular attention to gender issues of equal opportunity has thus already become a feature of many of the rule of law initiatives. Legal services for poor women was successfully provided in Ecuador and is being replicated in Sri Lanka and Jordan. In Argentina, a social

assessment was carried out to better understand the impact of the reforms on stakeholders. The autonomy of particular prosecutorial agencies can also be encouraged, including those charged with prosecuting corruption. Depending on the local conditions, this idea of building the autonomy of legal institutions could be implemented in a variety of ways. What is clear, however, is that the focus cannot be limited to judiciaries and courts.

The promotion of Rule of Law is distinct from other reform efforts and is done through law and justice activities. Thus the law and justice sector encompasses a broad spectrum of institutions, actors and activities involving public and private players and stakeholders, in addition to the judiciary. Private sector stakeholders include lawyers, bar associations, NGOs, law schools, legal clinics, and alternative dispute resolution centers. Public sector stakeholders include parliamentarians, prosecutors and bailiffs as well as judges. However, law and justice is holistic, multifaceted and requires an integrated programmatic approach with logical sequencing; its various elements should not be compartmentalized.

Part V: Implementation Strategies and Coordination

The Law and Justice Group's Role

Using its comparative advantage, the Law and Justice Group is accumulating and developing knowledge and expertise in both practical and theoretical issues with respect to law and justice issues in poverty reduction. Given the central place of legal systems in the new approaches to economic development, it is vital for the Law and Justice Group to build the same kind of relationship with academic expertise in these interdisciplinary issues that it has with the interdisciplinary issues of economic development - especially, the community of economists.

The Bank's advantages in law and justice reform are similar to those in developing strategies for economic growth and poverty reduction more generally. They include its ability to call on worldwide expertise, not limited to any one specific legal tradition, and its status as a highly technical institution, which gives its recommendations a special kind of legitimacy. It is also important that the Bank's theories and strategies are not static and adjust according to new empirical and theoretical research.

The goal with respect to law and justice, therefore, is to build processes that will lead both to better theory and to appropriate tests consistent with, and potentially challenging, those theories. The theory and the measures must be constructed out of interdisciplinary and multinational materials, and this construction also requires the organized input of legal academics. The reforms cannot succeed without drawing on lawyers and legal scholars, both for their expertise and for their central role in implementing reforms. The Bank has long recognized the centrality of economic expertise to market-based development, and over time has developed very strong ties with the relevant academic communities. As the focus on institutions and governance has grown, other social sciences also have been gaining importance in the Bank, and here, too, the Bank has sought to build ties with the relevant academic communities. The recognition of the importance of law to market-based development has taken place relatively recently, and accordingly, the Bank has not yet progressed very far in building the key linkages. The construction of those linkages and the mobilization of an expertise that is still very young is a key priority.

It is worth emphasizing that virtually all the topics and processes central to the role of law in development can be refined by further research. There are questions both about what is sought ultimately and what might work in transitional situations. Thus, for example, it will be important to understand better what role law plays in countries in transition, and what the presence or absence of legal institutions means both for short-term economic growth and for the development of legitimate institutions of governance. It may be that foreign investment in the short-term thrives on an order that might be inconsistent with what is considered the rule of law.

With respect to legal systems, much remains to be learned about the different positions of courts in particular places, the mechanisms for encouraging legal autonomy, and the way in which courts adapt and promote or retard economic change. Similarly, it will be important to explore the ways in which private approaches to dispute resolution intersect and compete with public modes. The strategic framework and methodology on law and justice will continue to evolve to ensure its effective application to legal and judicial reform projects and activities in coordination with others.

While it must again be emphasized that the goal of the strategy is not to create a blueprint for reform, it will be useful to achieve greater specificity in terms of concrete objectives, priorities, approaches and the activities most likely to achieve them, and the indicators to be used in evaluating success. This requires a broad-based, continuing discussion, involving external partners, participants, and a wider community of academic experts and practitioners. It also requires systematic reviews of ongoing efforts and lessons learned, and the development of a research program.

The Law and Justice Group actively promotes internal and external discussions, drawing on global knowledge, empirical research, and practical experience. We solicit the cooperation of experienced judges, policy makers, academicians, and the voiceless to devise new ways to relate law to economic development and poverty reduction.

The Law and Justice Group is supported by its International Advisory Council, composed of prominent and accomplished jurists throughout the world. The Council advises the President of the Bank and the General Counsel on law and justice issues.

WORLD BANK INTERNATIONAL ADVISORY COUNCIL ON LAW AND JUSTICE

- 1 The Honourable P. N. Bhagwati, Former Chief Justice of India and Vice Chairman UN Human Rights Committee
- 1 The Honorable Associate Justice Stephen Breyer, Supreme Court Justice - United States
- 1 Lloyd Culter, Esq., Senior Counsel, Wilmer, Culter and Pickering
- 1 The Honourable Daniel R. Fung, QC, SC, Former Solicitor General, Hong Kong, Senior Counsel, Des Voex Chambers
- 1 Advocate Bience Gawanas, Ombudswoman - Namibia
- 1 Professor Rogelio Pérez-Perdomo, Instituto de Estudios Superiores de Administración (IESA, Caracas, Venezuela), currently visiting professor, Stanford University Law School
- 1 Ko-Yung Tung, Partner, O'Melveny and Myers, Chairman of the World Bank International Advisory Council on Law and Justice
- 1 The Right Honourable The Lord Wolf, The Lord Chief Justice of England and Wales

At the January 2000 Strategic Forum, Bank President James Wolfensohn endorsed the proposal to form the new Law and Justice Network, anchored in LEG VPU under the leadership of the General Counsel. The establishment of the Network was announced in June 2000 and described in the President's note to the Development Committee at the September 2000 Annual Meetings to the Development Committee.

Law and justice sector reform is a long-term process, and for the process to be sustainable, it requires a corresponding long-term commitment from the countries and the Bank. For this reason, it is critical that any effort in this area is grounded in a long-term sector strategy that includes reforms targeted at the legal and judicial system as whole and all the relevant stakeholders.

A Multidisciplinary Focus

A mix of talents is required to address the problems facing legal and judicial systems. These include a variety of disciplinary areas C law, public administration, political science, sociology, management, information systems, and economics, among others C and of specific skills, ranging from the academic to the hands-on practical. The Law and Justice Group has already scaled-up its competence to include judges, experts in legal and legislative drafting, law-making, court and case management, regulation of legal services, legal aid, and enforcement of judgments, political scientists, and legal experts in specific laws, such as banking, insolvency, environment, and indigenous peoples, to name a few areas. Thus, the Group is able to respond professionally, effectively, and efficiently to new challenges in this field.

Challenges and Risks

This is an ambitious agenda, further complicated by the often entrenched political and economic power structures in much of the developing world, and by the lack of a rule of law culture among the governments and citizens of many nations. Although some of the reforms discussed here, such as lowering prohibitive court filing fees, might be accomplished nearly overnight, other changes, such as the enforcement of broad equality norms or a significant increase in

public interest legal representation in a country, may take decades to accomplish.

However, what binds these diverse programs together is the notion shared by many in the development community that promotion of the rule of law is a fundamental prerequisite to achieve both significant economic growth and a reduction in inequality. Rapid economic change and global transformation are realities of our time, whether or not the World Bank does anything. But what the Bank and its partners in the development community *can* do is strive to institute comprehensive rule of law reforms that are targeted at improving the investment climate and ensuring that the poor reap some of the benefits of increasing global wealth. The ability of the World Bank to accomplish this task in future years will significantly affect whether it meets its overall mission of alleviating poverty around the world and achieving the Millennium Development Goals.¹⁹

Law and justice is holistic, multifaceted and requires an integrated programmatic approach; its various elements should not be compartmentalized. However, legal and judicial reform activities are of a highly sensitive nature which present challenges. Making sure that these activities stay within the mandate of the institution, and within the authorization of the Board is essential, while at the same time, permitting the Law and Justice Group to pilot new areas under the supervision of the General Counsel. First, although the Bank's mandate directs it to take only economic considerations into account, and while the Bank does not involve itself in the politics of any member country, it must often be cognizant of the political situation in its client countries. The structural/institutional character of law reform, and the significant impact of reform on entrenched political and social interests in society, mean that political considerations are often an important part of law reform efforts, and those involved in Bank projects must take account of these factors while concurrently remaining faithful to the strictures of the Bank Charter.²⁰

¹⁹ Supra note 4.

²⁰ See I.F.I. Shihata, *Prohibition of Political Activities under the IRBRD Articles of Agreement and its Relevance to the Work of the Executive Directors*, (12/21/97).

Second, law and justice is a long-term process. For this reason, it is critical that any effort in this area is grounded in a long-term sector strategy. Such a strategy should include reforms targeted at the legal and judicial system as whole with all the relevant stakeholders. Often activities have been included as *ad hoc* responses to specific problems rather than part of a long-term program.

Another area that poses challenges is the field of criminal law. In fighting corruption, both the opportunities and incentives for corrupt behavior as well as the penalties for corrupt activities must be considered. Focusing on preventive measures in isolation, without assisting a country's efforts to criminalize corruption and step up capacity in criminal law enforcement, has left a gap in the Bank's anticorruption assistance strategy and potentially undermines the effectiveness of the Bank's activities in this area. The effectiveness of anti-corruption bodies depends on the availability of appropriate criminal legislation, including specific anti-corruption legislation, whistleblower protection statutes, applicable burden of proof, and criminal procedures. In addition, the quality and effectiveness of a country's prosecutors and investigators will have a direct bearing on its anti-corruption strategy.

The Law and Justice Group has had very limited involvement in the area of criminal justice, leaving this area to other donors. This reluctance is rooted in the concern that criminal justice may fall outside the scope of the Bank's mandate. Issues related to governance, legal and judicial reform, and corruption were at one time thought to be outside the Bank's mandate, but are now accepted to be within it. An effective and accountable criminal justice system is also a requisite for promoting good governance, a necessary component of legal and judicial systems, and essential for any strategy to curb corruption. The Bank's policy on criminal justice will be developed in the near future. Of course, there are limits on where the Bank should be involved. The Bank's Articles of Agreement prohibits it from interfering in the political affairs of its member states. Its comparative advantage may assist in defining this limitation; it is not feasible for the Law and Justice Group to be involved in every area of law and justice. For example, the prison system and perhaps the police are areas where the Bank engages in

partnerships with organizations with specific expertise in these areas. The Law and Justice Group must prioritize its efforts without compromising its comprehensive approach.

Conclusion

Economic activity leads to economic growth, but the benefits are sometimes not equitably enjoyed. Poverty reduction requires equity. To enable the poor and the vulnerable to have the opportunity to participate in economic growth, special attention must be paid to laws and legal institutions that are aimed at addressing inequality, such as anti-discrimination laws, consumer protection, labor laws, social security, and indigenous peoples' rights. In Cambodia, the Bank's Rule of Law Institutional Development Fund Grant supported training and materials on labor and employment-related issues, as well as a pilot program for dispute resolution for women and their employers.

In many countries, traditional elites have been able to rule by the law or keep the role of law highly constrained through family and political connections which in turn has limited the opportunity for new groups to advance in politics and in the economy. More generally, the requirements of the new and more turbulent global economy require particular attention on devising systems to empower and give rights that are enforceable. This provides redress if political or economic power seeks to discourage competition. The development of a rule of law leads to a focus on the supporting institutional environments for legal autonomy.

Economic participation by traditionally excluded groups, not only foreign investors, is critical for development. Anti-discrimination laws that provide rights for traditionally excluded groups, including women and ethnic minorities, reforms in corporate governance and in the policing of corporations, open up businesses to new national groups and to investors from abroad. Antitrust laws and enforcement institutions seek to regulate monopolies, including those created by new economic openings, and anti-corruption laws and policing policies combat the efforts of individuals and groups to take advantage of their positions to illegitimately tax new entrants into the markets.

Effective and impartial laws create a climate of legitimacy. They signal to economic actors that they will not be victims of arbitrary policies and that their property will be protected. A climate of legal legitimacy should also persuade those who are losers in the new global economy that the rules are legitimate and fair. This policy prescription is especially important in three contexts.

First, as traditional investors can no longer count solely on the support of traditional state elites and political actors and the courts they traditionally controlled to safeguard their investments, and as new investors seek to enter without the traditional ties, it is essential to bolster the legitimacy of law as a means to provide confidence in the security of investments.

Second, as traditional social supports based mainly on politics and patronage are eroded, those who find themselves worse off through globalization must be assured that the new rules which have undermined some of their social supports or safety nets are fair and neutrally administered. Typically, these underprivileged individuals have not historically had much respect for the law. They tended to buy into the existing social structures more because of the particular benefits that they provided. As these underprivileged individuals are brought more into a market-oriented social setting, they are forced to rely more on relatively abstract rights and relatively impersonal means to enforce them. By increasing access to information, these patterns can be broken. They typically lose their tolerance of the impunity identified with corrupt or rent-seeking activities of elite groups.

The typical pattern of legal change for countries opening up their markets is for rather large and powerful corporate legal sectors to emerge and to take advantage of the new laws applicable to business and even to provide effective ways to enforce rights neutrally outside the courts. One example of this is international commercial arbitration. Market incentives thus create a new generation of lawyers and even a legal system adapted to the new economic systems. At the same time, however, the legal sector available for ordinary people is typically slow to change. This imbalance in legal development further alienates common citizens from the law. The focus on access to justice aims to bolster the legitimacy of the legal system by redressing this imbalance.

Third, partly in response to issues associated with globalization, there has been an increase in transnational rules relating to development and poverty reduction C for example, international human rights, norms to prevent violence against women, laws for environmental protection, and anti-corruption rules. These rules are meant to regulate certain aspects of economic development and provide universal rules to help those who have not reaped the advantages of liberalized trade and investment. These transnational legal rules provide a regulatory structure and also legitimacy for the new global order.

To respond to this new global economy, the World Bank has brought increased attention in its work to legal and judicial reform. The appreciation of and investment in the rule of law in economic development and poverty reduction has grown dramatically over the past ten years. The early initiatives of the World Bank drew on a relatively narrow agenda, focused on improving the legal climate for commercial development. Its assistance efforts involved drafting and revising commercial codes, supporting courts and alternative mechanisms for resolving business disputes, and promoting law reform in the areas of intellectual property, contract, and investment regulation.

Many of the early efforts also drew largely on the judiciary to define the particular agendas, seeing the courts as key actors in facilitating economic investment and building the law. Judges understandably focused on questions of the infrastructure of the

courts, judicial salaries, alternative dispute resolution as a means to reduce court congestion, and the need to bolster the independence of the judiciary from other political branches. As projects and perspectives evolved, some of the more general questions of the legitimacy of the legal system, such as access to justice, have gained in importance. These approaches, and the evolutionary processes that produced them, remain quite important. For example, the Bank is financing legal aid focusing on small businesses in Kosovo, alternative dispute resolution mechanisms in Guatemala, and a public awareness campaign for legal and judicial reforms in Yemen.

Equitable laws and effective justice are *sine qua non* for sustainable development and lasting poverty alleviation. But the design of remedies are not easy. Solutions are long-term and complex, measures often encounter entrenched power, and the issues are elusive and intangible. Thus, law and justice activities must be approached comprehensively, assessed carefully, identified specifically, and implemented over a long period with the full commitment of the stakeholders in the countries. To accomplish this, the Law and Justice Group must bring together world-class knowledge, enjoy cooperation and collaboration of all development partners, and have adequate and effective instruments to accomplish its mission. The demand for activities aimed at improving the rule of law in our member countries is clearly immense. The Law and Justice Group intends to use innovative pilots to break new ground, identify successful activities, and then replicate them by working closely with other donors engaged in this field to ensure the efficiency of our activities.

ANNEX

Law and Justice Sector

LEGAL AND JUSICIAL SECTOR INSTITUTIONS

A. Judicial

- A1.** Formal Courts:
- (a) Judges:
 - (b) Judicial councils
 - (c) Infrastructure and equipment
 - (d) Administration, including staffing, procedures, case management
 - (e) Publication of court decisions
 - (f) Enforcement of judgment
 - (g) Improving Access:
- A2.** Specialized courts
- A3.** Alternative dispute resolution mechanisms including arbitration, mediation, conciliation
- A4.** Customary and traditional dispute settlement mechanisms.

B. Legal (non-judicial)

- B1.** Ministry of Justice
- B2.** Legislative Branch
- B3.** Attorney General/Solicitor General
- B4.** Ombudsperson
- B5.** Procuracy
- B6.** Law Reform Commissions and consultative bodies
- B7.** Law schools and universities
- B8.** Schools
- B9.** Bar Associations and other legal professional bodies
- B10.** Civil society, advocacy and Information NGOs
- B11.** Legal aid clinics
- B12.** Media
- B13.** Public defenders
- B14.** International stakeholders

C. Law Reform initiated/led by the Legal Vice Presidency

- C1. Basic Laws**
- (a) Constitution
 - (b) International Law and Treaties
 - (c) Criminal law, procedure
 - (d) Civil laws and procedure (incl. Contracts)
 - (e) Commercial laws and procedure
 - (f) Administrative law, procedure
 - (g) Property and expropriation law
 - (h) Land Tenure Law
 - (i) Environment protection Laws
 - (j) Anti-corruption, money-laundering and terrorism
 - (k) Comparative law
- C2. Empowering vulnerable people**
- (a) Customary Laws
 - (b) Family Laws
 - (c) Law and Gender
 - (d) Domestic violence
 - (e) Child labor laws
 - (f) Labor Laws
 - (g) Consumer protection laws
 - (h) Minorities law, anti-discrimination laws
 - (i) Indigenous people
 - (j) Public Health (esp. AIDS)
- C3. Investment Climate**
- (a) Companies laws and corporate governance
 - (b) Securities Laws
 - (c) Competition laws
 - (d) Licensing Laws
 - (e) Intellectual Property
 - (f) Bankruptcy and Insolvency laws
 - (g) Privatization laws
 - (h) Banking, insurance and other financial services, exchange control and capital markets
 - (i) Regulation of public utilities
-



THE WORLD BANK

1818 H Street, NW

Washington, DC 20433

Tel: (202) 477-1234

Fax: (202) 477-6391

E-mail: ljr@worldbank.org

World Wide Web: <http://www.worldbank.org/ljr>