



Legal Vice Presidency
The World Bank

25078

Legal and Judicial Reform Observations, Experiences, and Approach of the Legal Vice Presidency



July 2002

© 2002 The International Bank for Reconstruction
and Development / The World Bank
1818 H Street, N W
Washington, DC 20433, USA

All rights reserved
Manufactured in the United States of America
First printing July 2002

A free publication

This report has been prepared by the staff of the World Bank. The judgements expressed do not necessarily reflect the views of the Board of Executive Directors or of the governments they represent.

The material in this publication is copyrighted. The World Bank encourages dissemination of its work and will normally grant permission promptly.

Permission to photocopy items for internal or personal use, for the internal or personal use of specific clients, or for educational classroom use, is granted by the World Bank, provided that the appropriate fee is paid directly to the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, U S A, telephone 978-750-8400, fax 978-750-4470. Please contact the Copyright Clearance Center before photocopying items.

For permission to reprint individual articles or chapters, please fax your request with complete information to the Reproduction Department, Copyright Clearance Center, fax 978-750-4470.

All other queries on rights and licenses should be addressed to the World Bank at the address above or faxed to 202-522-2422.

Legal and Judicial Reform

Observations, Experiences, and Approach of the Legal Vice Presidency

Issues on Legal and Judicial Reform
Legal Vice Presidency

July 2002

Contents

ACKNOWLEDGEMENTS	v
PART I: Summary of the Legal Vice Presidency's Approach to Legal and Judicial Reform	1
Law and Justice for Economic Growth and Poverty Reduction	3
Legal and Judicial Reform Activities	5
Methodology	8
Summary	11
PART II: Law and Justice for Economic Growth and Poverty Reduction	13
The relationship between an effective legal and judicial system and market-oriented poverty reduction...	16
Policy implications flowing from the relationship between the rule of law and economic development	21
Implementation strategies – beyond law reform toward the rule of law	23

PART III: Legal and Judicial Reform Activities	27
Issues and Elements	27
Legal Reform	28
Judicial Reform	33
Access to Justice	43
Law and Social Change	47
Law and Sustainable Development	51
Law and Private Sector Development	53
PART IV: Methodology	57
Key issues and choices	57
The Law and Justice Group's role	58
A multidisciplinary focus	61
Challenges and risks	61
Knowledge management and the use of new technologies	63
Enhancing quality and measuring results	64
Conclusion	67
ANNEX	
Law and Justice Sector	69

Acknowledgements

THIS note 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 (LEGLR), Maria Gonzalez de Asis (WBI), and Linn Hammergren and Waleed Haider Malik (LCSPS). 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), Akhtar Hamid, Hadi Abushakra, Dominique Bichara, Ferid Belhaj and Ghada Youness (LEGMS), John Bruce and Mohammed Bekhecki (LEGEN), and Beth Dabak, Robert Buergenthal and Jean-Marc Baissus, Minneh Kane (LEGLR). This note benefited from the review and comments from the World Bank's International Advisory Council on Law and Justice.

PART I

Summary of the Legal Vice Presidency's Approach to Legal and Judicial Reform

1. 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 (i) the government itself is bound by the law, (ii) every person in society is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by law, and (iv) justice is accessible to all.

2. The rule of law promotes economic growth and reduces poverty by providing opportunity, empowerment and security through laws and legal institutions, including:

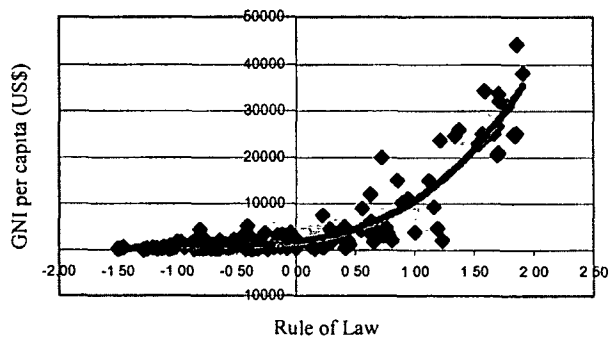
- *Meaningful and enforceable laws:* Laws must provide transparent and equitable rules by which society will be governed and provide legal empowerment to and security in one's rights.

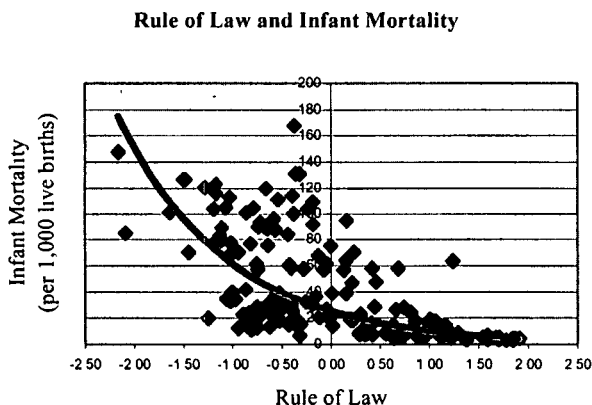
- *Enforceable contracts*: Contracts are private means of empowering oneself, to gain rights, take opportunities in business, commerce and other activities, and gain security in being able to enforce them.
- *Basic security*: Safety in one's person and property allow one to participate fully in society and the economy.
- *Access to Justice*: Laws and rights are meaningless if people cannot realize, enforce and enjoy them through actual access to justice.

3. These elements of a well-functioning law and justice 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 and the creation of jobs and reduction of poverty.

4. 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





5. This paper will describe (I) the role of law and justice in economic growth and poverty reduction, (II) the areas of legal and judicial reform in which the Bank is engaged; (III) the Bank's methodology in approaching legal and judicial reform; and (IV) the coordination of law and justice sector activities within the Bank.

Law and Justice for Economic Growth and Poverty Reduction

6. To engender investment and jobs, laws and legal institutions must provide an environment conducive to economic activities. 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 sees the judiciary as its instrument for political goals. Second, an appropriate legal framework must provide enforceable rights to all. In developing countries, small and medium size enterprises employ the vast majority of workers and produce most domestic goods and services. Many poor people lack legally recognized rights to their properties, denying them security and opportunity to leverage and use them. Thus, the Bank assists countries in enacting laws that recognize personal and property rights, protect workers' rights, promote open competition, cut redtape and reduce corruption.

7. Economic activities lead 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 inequity, 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.

8. 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.

9. Without access to justice, all laws and legal institutions are meaningless. Barriers to access take many forms—psychological, informational, economic, language and physical. Access can be enhanced through the availability of collective action mechanisms and class actions. Qualified legal representation can also be a significant barrier. The Bank assists in the establishment of legal aid clinics and training of public defenders who are often limited in numbers but are crucial for those who cannot otherwise afford a lawyer. Finally we emphasize the need to reduce delays as inefficiency is one of the main impediments of the public's access to the courts.

Legal and Judicial Reform Activities

10. The law and justice sector encompasses a broad spectrum of institutions, actors and activities in the public and private sectors. To be successful, legal and judicial reform needs to be holistic, comprehensive and sustained. As all components of legal and judicial reform are interrelated, they need to be coherently integrated and logically sequenced. Reform activities can be divided into three areas: the judicial institutions and actors; non-judicial legal institutions and actors; and law reform.

Judicial Reform

11. 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, the Bank's activities concentrate on judicial training; judicial codes of conduct; evaluation and discipline; qualification, 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, Georgia's judicial reform requires judges to take law competency exams and training in case management.

12. For judges to be able to perform their duties properly, the courts must be effectively and efficiently managed. The Bank assists in training judicial staff in court administration and case management, and provides financing to modernize their facilities. Simple architectural designs to segregate the judges from the parties and availability of docket documents on the computer reduce opportunities and incentives for corruption, as well as reduce court congestion. Bank supported model court projects in Ecuador, Venezuela, Sri Lanka, and elsewhere have shown measurable benefits.

13. Transparency of court proceedings and decisions promotes professionalism and reduces irregularities. Availability of decisions in writing, often on-line, enhances quality, predictability, consistency, and growth of case law. The Bank-sponsored Iudicis links all the Supreme Courts of Latin America, where they can review each other's decisions, and engage in on-line discussions on issues of common interest.

14. Judicial Councils, often with representation from the judicial, legislative and executive branches of government and participation of the private legal bar and concerned citizens, often play an important role in ensuring that the judiciary is accountable, reflective of the democratic norms of the community, and proactive in initiating reforms in an evolving society.

15. Formal courts are often inadequate to deliver the needs of the society for dispute resolution. The Bank promotes various alternatives to formal courts: arbitration, mediation, conciliation, as well as indigenous and customary fora. Not only do they often provide less expensive and time-consuming means, 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.

16. Executive Branch institutions, including the Ministry of Justice and the Procurator'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 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 the prosecutors to effectively carry out their duties.

Legal Reform

17. The non-judicial 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 to law-enacting bodies, in legislative drafting and consultative processes; law commissions, in playing a catalytic role in legal reforms; bar associations in improving the competence, ethics and legal assistance of lawyers; legal education institutions, including law schools, professional development of law professors; critical academic input into public debate, upgrading curricula to meet the evolving needs of the economy and society; civic entities, including not-for-profit and non-governmental organizations, in disseminating legal information, providing legal aid services to the poor

and other vulnerable segments of society; media and other public information sources, as the “fourth branch” of government. In Russia, television programs were produced to give basic and general information to the public about the role of judges, explaining rights and other public services.

18. Our goal is to support processes by which laws and regulations are initiated, prepared, produced, enacted and effectively brought to the public’s knowledge. In addition, the process of law reform will be 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.

19. Laws reflect the order, the values and even the aspirations of society. Laws must be enacted in a truly participatory manner, be transparent, equitable and predictable. Often the participatory process in debating, drafting and enacting legislation is indispensable in promoting the respect for the rule of law by the public at large.

20. Within the rule of law, laws are the articulation of the rules by which society will live by, 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), 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.

21. 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 OHADA. Many of our member countries have acceded to treaties that provide protection for minorities and other vulnerable groups, including women and children such as the universal declaration on human rights, the international covenant on civil and political rights, as well as specialized conventions such as the anti-slavery convention or the convention on the rights of children. The Bank works with these countries to bring their national laws and customary practices in line with their treaty obligations. As Eastern European countries prepare for accession to the European Union, their laws and practices must conform to the Council of Europe standards of human rights.

Methodology

22. 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.

23. Law and justice activities supported by the World Bank have historically been done in an ad hoc manner. Due to their ad hoc nature, the Bank's activities were often disjointed and inconsistent. 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. This approach entails the following sequence:

- Legal and Judicial Sector Assessments;
- Development of a comprehensive plan;

- Identification of priorities and sequencing based on available capacity and in coordination with other active donors; and
- Dialogue with the stakeholders throughout each stage.

24. 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. 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.

25. 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.

26. 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).

27. This comprehensive plan also serves as the basis for the identification and preparation of legal and judicial reform projects financed by the Bank. For example, based on the comprehensive plan, a Judicial Reform Project was prepared for Ecuador. This project included the following activities to address the priorities: Court Reform to improve the management of cases filed so that they are disposed of in a just and efficient manner, including standardized legal forms, establishment of trial court performance standards, and development of training programs for judges and court personnel; Infrastructure to improve the condition of the courts in Ecuador to promote efficient and transparent administration of justice; Alternative Dispute Resolution to establish court-annexed pilot mediation programs, provide alternative dispute resolution training, and disseminate information to the public and professionals; and a Program for Law & Justice to increase participation by all sectors of society through grants related to access to justice, legal education and information, law reform and research, and court reform. In addition, activities related to legal services for poor women, dispute resolution mechanisms for indigenous groups, and a professional development program for law professors are also included. The Ecuador project was the Bank's first pilot based on a comprehensive approach.

28. 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 the government and stakeholders. Their objectives and goals should reflect this reality as a Bank financed project will only contribute to the longer term legal and judicial reforms and will not complete the program. These realistic goals necessarily mean that 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.

29. The promotion of Rule of Law is distinct from other reform efforts including that of public sector reform and is done through law and justice activities. Thus the law and justice sector encompasses a broad spectrum of institutions 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; its various elements should not be compartmentalized.

Summary

30. This is an ambitious agenda, made more so by the often entrenched political and economic power structures in much of the developing world, and by 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.

31. 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 in order to combine significant economic growth with 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 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.

PART II

Law and Justice for Economic Growth and Poverty Reduction

32. This section of the paper explores the role of law in economic development and poverty reduction both in theory and in practice. A general 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 therefore the World Bank and organizations with comparable mandates should be involved in promoting it.

33. The purpose of this section is to recognize the open issues, develop some preliminary theoretical explanations for the role of law in economic development, and set forth an approach which will allow the Bank to extend that theoretical knowledge.

34. 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 develop-

ment 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 a traditional elite that had ruled the state and controlled the economy in the interests especially 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 – promoted especially by organizations from the United States and the United Kingdom – to reform legal education to make it better technically and 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 – at least in the short term — but it brought the issue of the relevance of law to development into the open.

35. Over the past ten years, law has again come to play a major role in discussions about economic development and poverty reduction. For example, the World Bank has now had a ten-year experience with law and justice. At present, there have been well over 330 Bank financed projects that deal with, or include components for, legal and judicial reform in over 100 countries. There are 17 free standing legal and judicial reform projects, 9 more are under preparation in four regions, and 4 have been completed. In addition to the free standing projects, there are numerous Bank financed projects which deal with, or include components for, legal and judicial reform. In the area of private sector development, the Legal Vice Presidency’s Law and Justice Group¹ has assisted 87 countries to reform laws in 44 main subjects areas. Legal and judicial reforms have been stipulated as conditions in structural adjustment programs supported by Bank financing.

¹ The Law and Justice Group is composed of the Legal and Judicial Reform Practice Group, the Environment and International Law Practice Group and the Private Sector Development, Finance & Infrastructure Practice Group.

36. The mounting momentum behind these efforts overwhelms the efforts of the earlier era of law and development. While some of the difficulties of reform remain, however, the context for the current investment in legal reform is otherwise very different from the 1960s and 1970s. As suggested in this paper, 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 in law and development.

37. 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 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 in computers, information technology, and biotechnology” have resulted in greater integration of the world economy. A third distinction from the earlier efforts is that there is better understanding today of the importance of distinct national traditions. It is no longer a matter of finding a simple recipe that will work everywhere. Finally, the sensitivity to local cultural and societal situations can be linked to an approach consistent with recent work in economics and sociology, which emphasizes the importance of understanding how local settings structure and shape the incentives that will ultimately determine whether actors invest in particular economies.

38. 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. This paper will therefore proceed in five parts. First will be an examination of the basic theoretical relationship between legal systems and market-oriented poverty reduction. Second will be an examination of the policies that follow from the theoretical understanding. The third section will examine the importance of attention to law and justice rather than simply the reform of law or court

improvement. The fourth part will raise some of the open questions, and, finally, the fifth will specifically examine the role of the World Bank and organizational mechanisms for the Bank to ensure that its theoretical and policy approaches are constantly refined for new circumstances and in light of new interdisciplinary research.

The relationship between an effective legal and judicial system and market-oriented poverty reduction

39. Generally accepted economic theory today — and dating at least from the late 1970s — suggests that economic development and poverty reduction will best come 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.

40. 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 those axioms. To simplify a complex story, we can suggest that 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 a less indirect 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.

41. 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 — which in practice tended to generate high and uncontrolled rates

of inflation.² Finally, even when state-led or promoted policies apparently 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.

42. The economic policies of liberalization and openness to foreign competition gained adherents as a reaction to problems with the heavy states, the systems of patronage, and the 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 recipes, and they also helped move the global economy to the much more open and dynamic stage we see today.

43. 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 similar patterns. In some countries, new economic policies had the effect of allowing elites in power to use the new policies mainly on behalf of themselves.³ The juxtaposition of enhanced private power and a weakened state therefore put in jeopardy the property rights — and the potential economic opportunities — 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. Rules for transition economies had to be established first and institutions

² The literature in response to this relationship has tended to posit that there is a negative relationship between “power elite” and economic growth (Barro 1997), which was no doubt true for particular states in the 1960s and 1970s.

³ This problem is especially associated with transition countries, but it can be found in varying degrees in many other places as well.

capable of 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.

44. 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 were seen to offer only a reduction of the standard of living of certain groups.

45. 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.

46. Moreover, in a number of settings informal relationships did not behave so productively, as they were not transparent nor 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.

47. 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.

48. 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 those alliances.

49. 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.⁴ 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 not to say that the formal law replaces informal relations and the trust that goes with those relationships. The point is that legal systems provide background rules and processes that give new en-

⁴ 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."

trants the means to build legitimate business relationships and take economic risks.

50. 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.

51. There is also an emerging literature on general differences between the economic growth of countries from the common law tradition, emanating from England, as opposed to the civil law tradition, emanating from France. Studies suggest that the countries from the civil law tradition may have more difficulties conforming to the market based models and standards for economic development. Common law systems historically put more faith in the autonomy of the judiciary and the law, while civil law states invested more in state control and circumscription of the courts and judiciary. It has been argued that it was more difficult to create entrepreneurial businesses in civil law countries where the state was so involved in the economy. In many countries to which civil law was exported, the relatively strong model of the state led to a government (and judiciary) dominated by leading families who could translate their elite status into control of both the state and economy. The greater autonomy and role of legal systems in common law countries helped produce rules that fostered new entry and investment.

52. 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.

53. Consistent with this literature is work that focuses on the way that businesses tend to interact with the state in "transition econo-

mies”. “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.

54. 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.

Policy implications flowing from the relationship between the rule of law and economic development

55. The themes that have been developed above support the enumeration of the following policies.

- Substitution of a more autonomous law for the authority of the state or traditional elites in and around the state. 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, and this 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.
- Implementation of legal rules that open up markets and create opportunities to advance socially and eco-

nomically. 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 keep in line monopolies, including those created by new economic openings, and anti-corruption laws and policing policies that combat the efforts of individuals and groups to take advantage of their positions to illegitimately tax new entrants into the markets.

- Bolstering the legitimacy of the law in response to the disruption that comes with new economic approaches. 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.

56. First, as traditional investors can no longer count solely on the support of traditional state elites and political actors – and courts they control — 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.

57. 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, which did not afford whatever social benefits they obtained. They tended to buy into the existing social structures more because of the par-

ticular benefits that they provided. As these underprivileged individuals are brought more into a market-oriented social setting, they must learn to rely more on relatively abstract rights and relatively impersonal means to enforce them. They typically lose their tolerance of the “impunity” identified with corrupt or rent-seeking activities of elite groups.

58. 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.

59. Third, partly in response to issues associated with globalization, there has been an increase in transnational rules relating to development and poverty reduction – 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.

Implementation strategies – beyond law reform toward the rule of law

60. 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.

61. 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.

62. From a development-oriented perspective, the independence of the judiciary or its efficiency are important. The “rule of law” depends on the availability of institutions that are insulated from dominant political and economic power and are capable of — and held accountable for — producing decisions based on legal norms. The “rule of law” requires giving rights and establishing institutional places for resolving disputes and enforcing rights that are grounded in law and legal principles. The institutions must be held accountable through mechanisms that effectively put pressure on them to maintain a commitment to neutral legal principles.

63. 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 systematically.

64. 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.

65. The same can happen when supreme courts write opinions knowing that bar associations and academics – and informed journalists – will scrutinize opinions according to current legal thinking.⁵ Unfortunately, that kind of scrutiny from legal academics and the bar is still relatively more rare than that on central banks. (Though in Venezuela, for example, the Supreme Court decisions are placed on the website for immediate viewing and comment.)

66. 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 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.

67. 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 arbitra-

⁵ 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 – which provide protection for those who have legal rights but lack political or economic power in the particular local setting

tion. 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 Lankan 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.

68. Support of organizations that are designed to promote legal rights — such as rights designed to prevent gender or racial discrimination — 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 established a Law and Justice Fund that included financing for NGOs working on children's rights, and the Russia Legal Reform Project has established a 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 is being successfully carried out 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.

PART III

Legal and Judicial Reform Activities

Issues and Elements

69. This next section discusses some critical issues in formulating and implementing law and justice reform. Recognizing that such 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.

Legal Reform

70. 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 brought to public knowledge are of crucial and fundamental importance in any country which purports to be subjected to, or to be operating under the rule of law. 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.

Law Reform

71. The process of law reform is critical. 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 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.

72. 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 should 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 should also be considered. China is one example of a project which shares comparative law experience .

*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).

73. Public participation in the law-making process strengthens 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 the academia. This active public involve-

ment 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

74. Legal training ensures that legal and judicial reforms impact 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. This is exacerbated by the fact that legal reform to a great extent 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 considered with all the other elements of such a strategy.

75. Legal education programs should be anchored on the rule of law and on values of the country's society. 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 end-product 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 should be designed to enhance performance of the main actors of the legal system (Legislatures, Judiciary, Executive, the 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.

76. Training activities can be designed around cost-recovery principles that minimize the impact on the budget of the institu-

tions; donor support should be channeled only as “seed capital” for entities committed to sustainable training programs. In this way, donor dependence should be phased out in the medium and long term; financing by the international community is not a substitute for internal revenue-generating programs. One example is the distance learning programs on legal and judicial reform which are being conducted by the Law and Justice Group in coordination with WBI and PREM to defray costs and share course material with clients. Education and training can now take advantage of the technological revolution to reach large numbers all over the world. However, the risk exists that the “digital divide” will aggravate, rather than alleviate, inequalities in access to quality training in developing countries.

JUDICIAL REFORM

Improving Performance and Accountability in Asia

A distance learning course for Bangladesh, Indonesia, Sri Lanka, the Philippines, and Thailand

April 24th – June 5th, 2001

- Appointment and Promotion of Judges
- Discipline and Removal
- Case Management & Other Procedural Reforms
- Independence and Accountability
- Empirical Research for Judicial Reform
- Controlling Corruption

77. In the design of legal training programs, a key choice is the selection of the implementing organization. Existing organizations (law schools, continuing education and research centers, advocacy groups) are usually in a better position to develop tailor-made programs; however, these organizations may lack the appropriate structure or resources to instill the attitudinal and behavioral change that is the main objective of legal training.

Bar Associations

78. The main role of the bar associations is to regulate the profession through entrance requirements, maintain a disciplinary system and conduct training for its members, and provide legal services to the community. In addition, the bar is a critical interest group which has a responsibility to promote the rule of law. The quality of legal services has an impact on the protection of citizen rights (especially vis-à-vis the government), on effectiveness and efficiency of the judiciary (good legal service can reduce time and costs of deposition, increase the quality of court outcomes, avoid unnecessary litigation and reduce corruption which increases access to the courts), and reduces transaction costs for business (well written contracts, for instance, can reduce transaction costs). It is for this reason that the bar must be independent.

79. 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 poor quality services. Regulation of fees should provide certainty to lawyers and clients while at the same time, provide a basis for the courts to determine necessary costs of litigation.

80. 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. In addition, a research is being undertaken on options for regulation based on a study of legal services in Slovakia.

Judicial Reform (including other related legal institutions)

81. 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

82. 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 which 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 the sense 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.

83. 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 the 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 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.

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

84. Judicial independence presupposes a judiciary that is well trained and educated in the law. The judiciary has had to address delicate issues such as those concerning liberty, property, access to public services and an increase resort to the courts for the defense or assertion of those rights; therefore, it is imperative that judges are 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 done so on a

systematic basis. Continuing education is now becoming, however, a judicial responsibility.

85. Judicial training is a common element of legal and judicial reform. 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. The creation and support of an impartial mind has different focuses. In some countries, the focus is on changing the judiciary from a bureaucracy which 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.

86. This kind of training requires sensitivity making it difficult to combine legal and judicial education. Regardless of the kinds of courses, 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 the 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 work has been substantially completed, culminating in discussions with the stakeholders, including the Executive, the Judiciary, the Bar, the Chambers of Commerce and NGOs at a series of workshops held in 1999.

Continued

BANGLADESH
Judicial and Legal Capacity Building Project
(continued)

The proposed project objectives are: to enhance the efficiency of the judicial and legal system through:

- improvement of the legal framework;
- streamlining the system of courts and strengthening the judicial capacity; and
- 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

87. 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 administrative procedures requires revising existing procedures with respect to inefficiency in record management, caseload and case management, caseload management, and maintaining case statistics and archives. In many countries administration is overly centralized whether it is managed by the judiciary or the Ministry of Justice.

88. In many countries, court budgets have not been adequate to maintain independence. Historically court budgets consist of primarily personnel costs while 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 that 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 should be developed. In particular, access should be ensured for the physically challenged, and the public areas should be client needs oriented. Court facilities have received increased attention since they affect the overall perception and image of the administration of justice. However, it is clear that the issue of court facilities must be considered only as part of an overall 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.

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 (SATAC II) the preparation of a master-plan for the development of new a new court administration structure, new case-management procedures, and introduction of computer technology was financed. Furthermore, new design standards for court infrastructure to be rehabilitated were developed.

Continued

GEORGIA
Judicial Reform Project
(continued)

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, equipment for the Supreme Court;
 - infrastructure rehabilitation of court facilities;
 - enforcement of court judgments;
 - legislative drafting/harmonization for the Ministry of Justice;
 - training and study tours; and
 - a public information/education campaign.
-

Corruption

89. The judicial system plays an important role in the fight against corruption.⁶ 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. However, if the judiciary cannot perform this function, 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 should be considered when developing a phased approach to address corruption.

⁶ 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.

90. The judicial system requires adequate funding 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 for controlling corruption in the judiciary and other related legal institutions, to avoid salaries that are too low to allow a standard of living proportionate to the office. However, an adequate salary alone is not sufficient to avert the danger of decision makers falling into corruption.

Appointment of Judges

91. Procedures for appointing, disciplining and removing judges and prosecutors to insulate them from political influence is a condition sine-qua non for ensuring the impartiality, professionalism and quality of the judicial system. In addition, 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 are critical to any anti-corruption program.

92. External pressure and controls help to ensure that the internal institutional control mechanisms are in place. Civil society is becoming an integral part of the process to fight corruption within the judiciary; it 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 CSOs (civil society organizations) can be an effective resource to avoid 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 play 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.

93. 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 program must be developed to address issues related to legal and judicial reform. The Law and Justice Group has until now conducted preliminary research into the causes of corruption in the judiciary as well as some training and strategy development with the client countries on anti-corruption through WBI. The Bank's assistance in the area of corruption generally has been largely focused on preventive measures. Without effective legislation, investigation and prosecution, any anti-corruption strategy is potentially undermined. It is now necessary to concentrate on ways to detect, discipline and prosecute corrupt behavior.

Criminal Justice

94. Closely connected with anti-corruption is the area of criminal law. It is central to protect individual rights, however, criminal justice reform has not been an area of Bank activity though other multilateral and many bi-lateral institutions have given it a high priority. An increase in the level of violent crime in many countries has also spurred 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. It has been argued that high levels of crime are a disincentive to investment and 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.

95. 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 politically dependent appointees

96. Criminal justice, because it is more intelligible to the lay public, may assist in fact in training the public 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 which is dysfunctional generally requires systemic change which precedes focused activities in criminal justice. Experience by others reveals 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 chain," it is also important to encourage coordination among them.

97. The Bank's limited experience in criminal law is found in its dealings of domestic violence through legal services for poor women. The limited 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. It should be noted that the Law and Justice Group's work does promote generally the rule of law, judicial training, training for lawyers, anti-corruption activities, and the independence of the judiciary and related legal institutions. While these efforts may not be geared directly towards the criminal justice system, they do assist in improving it.

Accountability of Government

98. Government accountability is critical for the rule of law. The issue of accountability, or the means of holding government entities answerable for possible misuses, abuses and misapplications of their powers, has become increasingly important. Calls for deregulation and cutbacks in direct state employment have certainly 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 and they demand better services and treatment. In more complex societies, there are simply more areas of public-private or public-public interaction. This raises the potential for conflict and a demand for redress.

99. The primary accountability mechanism has traditionally been the judiciary, through its review of the legality of government actions where plaintiffs sue for relief. 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, but there is a visible impact. Additional mechanisms to hold government accountable include an expanded use of quasi-judicial bodies to review administrative cases.

100. The ombudsperson has seen a recent surge in popularity. It must have independence, impartiality as well as credibility and confidentiality. The ombudsperson is independent from the executive and the judiciary and is funded by the legislative body. It takes 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 re-

sponsiveness. 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.

101. The recent focus on civil society as a critical participant in development and legal and judicial reform, in particular, 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 should be considered under a holistic strategy.

Access to Justice

102. 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. In short, it is the ability to obtain justice through the legal system. Increases in access to justice have been achieved through changing laws seen to be detrimental to the interests of the poor or other groups – changes that recognize indigenous, gender, or child rights has 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.

103. 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, lowered the level of

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

The Judicial Reform Project for Ecuador is part of the Government's overall strategy. It has four components:

- case administration and information support to be piloted at the first instance level courts in three main cities;
 - court-annexed Alternative Dispute Resolution (ADR) mechanisms to be piloted and ADR training;
 - program for law and justice, including, inter alia: a special fund for law and justice, a program for 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
 - infrastructure remodeling and development of court infrastructure standards.
-

104. While most reform programs give access 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. Access is one of the main principles of legal and judicial reform. Part of an appropriate strategy is understanding the full range of obstacles to access which vary by country. Such obstacles can include economic, psychological, informational, language and physical barriers among others. Increasing access requires attention to external obstacles (those barriers that prevent groups to reach the courts or other services) and internal ones (those which affect the quality of decisions – 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 equitably 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.

ACCESS TO LAW AND JUSTICE

Activities aimed at:

- **Improving legal information and awareness and enhancing 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.

- **Availability of 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.

continued

ACCESS TO LAW AND JUSTICE*(continued)*

- **User-friendly 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, and case information and court decisions.
- **Assisting 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.
- **Developing processes to enhance the effective participation of civil society in the reform of laws**
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.
- **Supporting 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.
- **Supporting 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.

Continued

ACCESS TO LAW AND JUSTICE*(continued)*

- **Supporting 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 displaced populations.
-

105. 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 resources available in each country.

Law and Social Change

Human Rights

106. The link between poverty reduction —the fundamental objective of the Bank— 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. Recently, 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”⁷.

107. 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.

108. 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 issued 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. Projects managed by the Law and Justice Group aim to strengthen national institutions responsible for the promotion of the rule of law, including international and domestic human rights standards (e.g., office of the ombudsman, judiciaries, and legal professions).

⁷The 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”.

Gender

109. 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.

110. 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.

111. In addition to equal treatment of women in legislation, fair treatment of women before the judiciary is fundamental. Gender awareness programs with the judicial and legal community should be part of any legal and judicial reform program. Collaboration and alliance with groups inside and outside the court system, especially encouraging women judges associations, bar associations, 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 done recently in Argentina, and has been widely disseminated. 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 the behavioral change which is critical. 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 in asserting their legal rights.

Child Labor

112. The 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.” 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.” 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.

Indigenous Peoples

113. 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. One of the means to do this is by strengthening and improving the legal and institutional framework of indigenous peoples. 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 means to ensure access to them in part depends on an accountable, transparent, and non-arbitrary administrative law process.

114. In addition to the Bank's several Indigenous Development Projects to actively promote the development and quality of life of indigenous peoples and other vulnerable ethnic groups, there has been specific inclusion of indigenous issues 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. The inclusion of indigenous people in legal and judicial reform projects is critical in ensuring 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

115. 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.

116. 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 are also 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.

117. Among modern environmental statutes, environmental impact assessment (EIA) laws crystallize a preventive approach to en-

vironmental 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.

118. 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

119. 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 \$9.3 trillion.⁸ Although the poor possess the assets, they lack the process to represent 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

⁸ De Soto, Hernando, "The Mystery of Capital," at 35p. 10

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 have taken on increasing focus in the Law and Justice Group's work.

120. 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

121. 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 re-organized or liquidated efficiently; (b) to improve financial sector capacity; and (c) to regulate the private provision of telecommunications, water and sanitation, 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.

122. 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.

123. The 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.

124. 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.

125. 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 could 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;

continued

CROATIA
Court and Bankruptcy Administration Project
(continued)

- 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.
-

126. In addition, the Bank's lawyers have assisted 87 countries to reform laws in 44 main subjects 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

Methodology

Key issues and choices – priority and sequencing, integrating local expertise

127. 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 there are some common themes. 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.

128. The Law and Justice Group's focus has changed over the past decade, and it is important for the programs and approaches to reflect that change. Accordingly, while modernizing laws and improving the efficiency of the judiciary remain important, new programs will work to better develop the relationship with legal education, public interest law, criminal justice, and the construction of the international rule of law. These are all avenues for building

investment in the autonomy of law and for bringing important groups into the legal system. The Law and Justice Group will carefully evaluate the domains that remain relatively new, but the long term success depends on finding the mix of local initiatives and institutions that will generate the practical possibilities necessary to open up economies and states to new actors and investments.

The Law and Justice Group's role – the available tools and comparative advantage

129. Using its comparative advantage, the Law and Justice Group is accumulating and developing knowledge and expertise — both practical and theoretical — 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 — including especially the community of economists.

130. 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, and not one limited to any specific legal tradition, and its status as a highly technical institution gives its recommendations a special kind of legitimacy. What is also important is that the Bank's theories and strategies are not static. They adjust to take into account new empirical and theoretical research.

131. 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 requires also 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 the Bank has been able to develop

very strong ties with the relevant academic communities. Other social sciences also have been gaining importance in the Bank as the focus on institutions and governance has grown, and here too the Bank has sought to build ties with the relevant academic producers of knowledge. 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.

132. 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.

133. 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 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.

134. 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. The Law and Justice Group will further develop its strategy on law and justice to ensure its application to all its projects while at the same time coordinating 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, the approaches

and activities most likely to achieve them, and the indicators to be used to evaluate success. This requires a broadly based, continuing discussion, involving external partners, participants, and a wider community of academic experts and practitioners. It also requires systematic reviews of on-going efforts and lessons learned and the development of a research program.

135. The Law and Justice Group will actively promote internal and external discussions, drawing on global knowledge, empirical research, and practical experience. We will 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.

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

*INTERNATIONAL ADVISORY COUNCIL
ON LAW AND JUSTICE (CURRENT MEMBERS)*

- The Right Honourable The Lord Woolf, The Lord Chief Justice of England and Wales – U.K.
 - The Honorable Associate Justice Stephen Breyer, Supreme Court Justice – United States
 - The Honourable P. N. Bhagwati, Former Chief Justice of India and Vice Chairman UN Human Rights Committee – India
 - Lloyd Cutler, Esq., Senior Counsel, Wilmer, Cutler and Pickering – United States
 - The Honourable Daniel R. Fung, QC, SC, Former Solicitor General, Senior Counsel, Des Voex Chambers - Hong Kong, SAR
 - Advocate Bience Gawanas, Ombudswoman – Namibia
 - Professor Rogelio Pérez-Perdomo, Instituto de Estudios Superiores de Administración (IEASA, Caracas), Currently, Visiting Professor, Stanford University Law School – Venezuela
-

A multidisciplinary focus

137. A mix of talents is required to address the problems facing legal and judicial systems. These include a variety of disciplinary areas – law, public administration, political science, sociology, management, information systems, and economics, among others – 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

138. Law and justice is holistic, multifaceted and requires an integrated programmatic approach; its various elements should not be compartmentalized. However, we must keep in mind that 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 in 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.

139. 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.

140. 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 anticorruption bodies depends on the availability of appropriate criminal legislation, including specific anticorruption 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 the anticorruption strategy.

141. The Law and Justice Group has had very limited involvement in the area of criminal justice, but rather has left 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 necessary 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 the comprehensive approach.

Knowledge management and the use of new technologies

142. 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 will also expand this knowledge consolidation process to include country participants, other donors, and outside experts.

143. The Law and Justice Group has established an agenda of prioritized themes, sponsored research in some areas, and backed proposals by staff to devote Bank research funds to 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, is 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.

144. 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 (www.developmentgateway.org). The Law and Justice Website contains data on legal and judicial reform activities, infor-

mation 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 (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 the on-line discussions groups (www.worldbank.org/legal/leglr/E-Forum.html).

145. Other recent developments in knowledge sharing and dissemination include 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. The Global Banking Law Database, searchable by jurisdiction and by standard topics based on the Basel Committee Core Principles of Effective Bank Supervision, provides the first electronically accessible collection of commercial banking, central bank, and deposit insurance laws of jurisdictions representative of all regions of the world. A new pilot distance learning program provided judicial reform training by video to leaders of five Asian countries. 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.

Enhancing quality and measuring results

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

- Review components embedded in non-law and justice loans, to make sure that they are consistent with the strategy on law and justice;

- Review the quality at entry of law and justice loans, and ensure the quality of non-lending services; and
- Ensure that the law and justice sector is adequately covered, when appropriate, in the Country Assistance Strategies (CASs).

147. 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 and Bank was, until recently, unable to measure or monitor the work being done in Law and Justice. Under the Bank's internal coding system, Law and Justice activities were assigned to other codes even when most of them were task managed by Law and Justice Group staff. 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. 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.

148 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 problems for measurement, not the least of which are the lack of any consensus on what a well-functioning system looks like, uncertainties as to 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) not what it does.⁹ Still, the situation would be aided by a good set of comparable, quantitative data which could be used to profile the characteristics

⁹ 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.

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 prototype for this database (see Legal and Judicial Sector at a Glance, www.worldbank.org/ljr). While most of the 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.

149. 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. The Bank has completed since 1994 nine legal and judicial sector assessments, seven assessments are underway and others are planned. 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.

Conclusion

150. Equitable laws and effective justice are sine qua non for sustainable development and lasting poverty alleviation. But 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 co-operation and collaboration of all development partners and have adequate and effective instruments. 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, and then identify successful activities and replicate them; and work closely with other donors engaged in this field so as to ensure that our activities are done in the most efficient way possible.

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, N.W.
Washington, DC 20433
Tel: (202) 477-1234
Fax: (202) 477-6391
E-mail: Legalhelpdesk@worldbank.org
World Wide Web: <http://www.worldbank.org/ljr>