

**ASIAN DEVELOPMENT BANK
Independent Evaluation Department**

SPECIAL EVALUATION STUDY

ON

**ADB TECHNICAL ASSISTANCE FOR JUSTICE REFORM IN
DEVELOPING MEMBER COUNTRIES**

In this electronic file, the report is followed by Management's response, and the Board of Directors' Development Effectiveness Committee (DEC) Chair's summary of a discussion of the report by DEC.



Evaluation Study

Reference Number: SES: REG 2009-06
Special Evaluation Study
August 2009

ADB Technical Assistance for Justice Reform in Developing Member Countries

Independent Evaluation Department
Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
DMC	–	developing member country
DMF		design and monitoring framework
IED	–	Independent Evaluation Department
OGC	–	Office of the General Counsel
RSDD	–	Regional and Sustainable Development Department
SARD	–	South Asia Department
SERD	–	Southeast Asia Department
SES	–	special evaluation study
TA	–	technical assistance

NOTE

In this report, "\$" refers to US dollars.

Keywords

access to justice, adb, ajp, empowerment, justice reform, legal identity

Director General	H. S. Rao, Independent Evaluation Department (IED)
Director	R. B. Adhikari, Independent Evaluation Division 1
Team Leader	E. L. P. Araneta, Principal Evaluation Specialist, Independent Evaluation Division 1, IED
Team Members	A. Anabo, Senior Evaluation Officer, Independent Evaluation Division 1, IED O. Nuestro, Evaluation Officer, Independent Evaluation Division 1, IED I. Garganta, Senior Operations Evaluation Assistant, Independent Evaluation Division 1, IED B. Cafirma, Operations Evaluation Assistant, Independent Evaluation Division 1, IED

Independent Evaluation Department, SS-100

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

CONTENTS

	Page
EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
A. Introduction	1
B. Scope, Method, and Data	1
C. Organization of Report	1
II. JUSTICE REFORM: THE CONTEXT	2
A. Summary of Literature Review	2
B. ADB's Technical Assistance for Justice Reform	4
III. PERFORMANCE EVALUATION	16
A. Overall Assessment	16
B. Relevance	17
C. Effectiveness	19
D. Efficiency	19
E. Sustainability	22
IV. FINDINGS, LESSONS, ISSUES AND RECOMMENDATIONS	23
A. Key Findings	23
B. Key Issues	24
C. Lessons Identified	25
D. Conclusions and Recommendations	26
APPENDIXES	
1. ADB Technical Assistance Supporting Justice Reform 1991–2008	28
2. Review of Justice Reform Literature	33

Attachments: Management Response DEC Chair Summry
--

The guidelines formally adopted by the Independent Evaluation Department (IED) on avoiding conflict of interest in its independent evaluations were observed in the preparation of this report. Two international consultants and two local consultants were engaged. Lloyd Livingston Armytage and Musharraf Rasool Cyan conducted a review of legal training and law and justice reform literature, and John Noah Red undertook an analysis of projects and policies. Sergio Villena is the research associate. Then IED Evaluation Specialist, Peter Robertson, was responsible for initiating the work for this SES, undertaking the foundation ground work and initial analysis, as well as the supervision of consultants. Although he was a consultant on ADB's Access to Justice Program to Pakistan, he was not involved in the review of that Program. IED Principal Evaluation Specialist, Elsie Araneta, finalized the SES bringing into focus the limited scope of the study on justice reform. Although she was team leader and task manager for the ADB technical assistance to the Philippines for Strengthening the Independence and Accountability of the Judiciary, she was not involved in the review of that technical assistance for this SES. To the knowledge of the management of IED, there were no conflicts of interest of the persons preparing, reviewing, or approving this report.

EXECUTIVE SUMMARY

Introduction

This is the first special evaluation study (SES) on the Asian Development Bank's (ADB) technical assistance (TA) for justice reform in its developing member countries (DMCs). Justice reform is a small but important part of ADB's operations in law and policy reform. The latter is evaluated mostly as part of ADB's project, program, sectoral, thematic, and country assistance performance evaluations, but justice reform assistance has not received the attention it merits. ADB's justice reform assistance has mainly been through TAs and more recently, also in the form of loans or part of a loan to a few DMCs such as Bangladesh, Pakistan, and the Philippines. The program completion report for the loan to Pakistan is underway, while the other loans are still being implemented. The SES focuses therefore on only justice reform TAs, with the limited objective of evaluating their performance and informing future operations in this area. The SES is intended to highlight to the Board and Management the usefulness of ADB's continuing support for justice reform in implementing Strategy 2020.

ADB's work in justice reform began in the early 1990s, and in the period between 1991–2008, ADB undertook 44 justice reform TAs. Of these, 22 have had their completion reports circulated, and were thus assessed and rated following the four evaluation criteria of relevance, effectiveness, efficiency, and sustainability. The TAs for the SES were selected primarily from ADB's database of TAs that were classified as "law and judiciary" TAs within the law, economic management, and public policy sector. All of the TAs selected focused on the justice sector. Several of these TAs covered the financing, administration, and governance of the executive and judicial agencies in the justice sector; support for judicial independence and accountability; enhancing capacity development for judicial officers and executive justice agents; and improving the performance of agencies responsible for delivering justice services, protecting rights and obligations, and enforcing the rule of law predictably, affordably, and accountably. Other TAs aimed to improve the ability of people and their representatives to demand better delivery of justice services and focused on dissemination of legal information, legal literacy, empowerment and social accountability. There were also regional TAs that looked at conceptual or normative aspects of some of these areas, including the process of justice reform.

Overall Assessment and Rating

Data for the SES were collected from ADB's TA files, country strategy documents, discussions with ADB staff, executing agencies, and key stakeholders of selected justice reform TAs, and relevant evaluation study reports.

The SES gives ADB's justice reform TAs an overall rating of *successful* but with some areas for improvement, for being *relevant*, *effective*, *less efficient*, and *likely sustainable*. On the criterion of *relevance*, the evaluation recognized that most of the TAs were relevant to the development programs of the recipient DMCs. In particular, some regional TAs had positive impacts on ADB's operations and the international body of knowledge on the subject; TAs were generally consistent with ADB's early policies and strategies, and with international thinking on justice reform; and in two cases, country-level TAs led to large program loans, mainly to Pakistan and the Philippines. On the criterion of *effectiveness* in achieving purpose (outputs and outcomes), the SES found that most of the TAs delivered the envisioned outputs including reports and reform recommendations, program designs, training sessions, studies, and conferences. However, there is little evidence on the longer term impacts. On *efficiency* in resource use, the SES gives substantial negative weight to the prolonged implementation time

and financial and administrative inefficiencies that characterized most TAs. On the matter of *sustainability* of TA outcomes, the SES notes that several of the TAs led to lending operations and that the influence of earlier TAs on legal literacy and empowerment has been significant and long lasting.

Findings

At the DMC level, ADB TAs for justice reform have helped increase awareness of the need to improve legal empowerment and access to justice, strengthen judicial independence, accountability, and administration and undertake capacity building for justice sector agencies. It provided training opportunities and good practices for government officials working in judicial areas. Some TAs have also led to DMCs borrowing for the implementation of justice reform.

Within ADB, justice reform lacked strategic recognition as a development issue and there was no systematic approach to justice reform or operational plan. ADB's country strategy documents (for DMCs with justice reform TAs) made only cursory reference to the needs of the sector. Also, as compared with the number of advisory and regional justice reform TAs, the number of justice reform loans is few and far between.

Some TAs were innovative and successful in bringing out new ideas for justice reform in DMCs. The regional and advisory TAs on judicial independence and accountability broke new ground for large programs in Pakistan and the Philippines. The regional TAs on legal empowerment and access to justice are contributing to the process of mainstreaming the concept of inclusiveness into project designs. Some pioneering techniques used in a few of the TAs have also proven useful and could be replicated in other projects. The use of qualified national consultants to develop the advisory work (and not just to gather and process data) proved to be an efficient use of TA funds. Where there was real demand from the DMCs or the beneficiary agencies, the TAs provided the framework for long-term dialogue as well as the basis for policy reform loans.

Some of the justice reform TAs were perceived by DMCs as supply-driven. Some TAs eventually revealed low-level ownership from within the recipient DMCs or the recipient agencies, despite the fact that these TAs were relevant to the DMCs' overall development.

The quality at entry of justice reform TAs and their amenability to evaluation were in many cases weak. TA monitoring, and amenability to evaluation of outcomes and impacts, were weak. Design and monitoring frameworks consistently focused on outputs and were of negligible evaluative value beyond monitoring the performance of consultants. TA objectives were sometimes conflated, development logic at times confused, and efforts often fragmented from higher-level or longer-term goals and strategies. As a result there is difficulty in demonstrating impact in terms of improvements in justice or judicial services.

Most of the TAs assessed by this SES required more time to complete than was originally allotted, and they also had administrative inefficiencies, thus raising administration costs and delaying benefits to the intended beneficiaries. In many cases this was because the work itself needed more time. In other cases, there were delays in fielding consultants and in liquidating costs. Part of the delays in TAs that closed 30 to 35 months after completion appeared to have been quite simply the result of insufficient administration. In general, the administration of the justice reform TAs did not get adequate attention nor the required staff resources.

Justice reform TAs compete poorly with other economic, sector, and thematic work for resources and priority setting at ADB. Justice reform TAs remain small and peripheral. Measurable evidence of development impact is important to further activities in the sector.

Lessons

The following key lessons have been identified: (i) strong participation and ownership by DMC governments in TA formulation and implementation contribute to the success of the TA in achieving its objectives; (ii) justice reform TAs when they are linked to country strategy can provide a systematic and long-term engagement in justice reforms; (iii) justice reform is an important subset of law and policy reform supporting good governance in DMCs, but requires greater attention to play a more important role in inclusive development; (iv) a clearer definition of ADB's justice reform strategy and operational responsibilities would be useful for more efficient justice reform operations; and (v) addressing the low priority for justice reform will need a demonstration of tangible development impacts that can be evaluated.

Justice reform TAs must be designed, such that results are relevant and measurable; causal links between points in the TA design are explained with clear logic; and, provision is made for the gathering of data during execution so results may be documented. Staff members working on TAs need to improve their design skills with a view to ensuring the TAs are more amenable to evaluation. Finally, departments and divisions with justice reform TAs need to commit sufficient staff time to allow for staff engagement in the substance of the reform work, not just the administration of TA implementation.

Conclusions and Recommendations

Justice reform is important in that it contributes to empowering people, particularly the poor, and enables them thereby to participate in making the decisions that shape their lives. It also strengthens institutions for improving the delivery of justice services. Yet, justice reform has not received strategic recognition in ADB apart from passing references in ADB's key policies or strategies. In 1991, the Asian Development Fund (ADF) donors indicated that ADF resources should be used to improve the governance of institutions, including the legal system and regulatory agencies. In 1995, ADB adopted a Governance Policy acknowledging that society should have practical recourse to courts of justice. In 1998, ADB's Anticorruption Policy noted that legal and judicial reform has positive externalities in the fight against corruption. In 1999, ADB's Poverty Reduction Strategy defined poverty as "a deprivation of essential assets and opportunities to which every human is entitled." ADB's first Long Term-Strategy, 2001–2015 recognized that failures in legal and judicial systems discriminate against the poor and rob them of the opportunity to participate in the making of decisions that affect them. Its first Medium-Term Strategy, 2001–2005 identified ineffective institutions and policies as the biggest constraints to growth and development in the region. The most recent of these, Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008–2020, specifies inclusive growth as a strategic agenda, and good governance as a driver of change.

Notwithstanding that good governance is ever increasingly important for ADB to achieve greater development effectiveness of its assistance and justice reform is an important part of it, ADB's assistance to justice reform remains small. This may be attributed to (i) crowding out by other priorities in ADB's strategic agenda, (ii) lack of closely defined organizational responsibilities for justice reform operations, (iii) lack of critical mass of dedicated specialized

skills needed to scale-up justice reform, and (iv) reluctance of DMCs to borrow for justice reforms.

The SES shows that justice reform TAs have been successful. The question then is whether such assistance should continue as before, or is it now time for ADB to scale up assistance for justice reform. This SES puts forward the following recommendations for consideration by Management:

- (i) Since the justice reform loans are not evaluated yet, it would be useful for Management to study the outcomes of the loan assistance and based thereon, take an informed view in the broader strategic context whether or not justice reform assistance should continue as before or be pro-actively scaled up.
- (ii) Meanwhile, Management may continue providing technical assistance in response to demand and where opportunities arise for further justice reforms which would contribute to assisting DMC governments in their pursuit of empowering their people, strengthening their institutions for more efficient delivery of justice services and eventually improving inclusiveness in their development operations.
- (iii) To make the assistance more effective and efficient, clearly define responsibilities, provide resources and improve quality at entry.

H. Satish Rao
Director General
Independent Evaluation Department

I. INTRODUCTION

A. Introduction

1. This is the first special evaluation study (SES) on the Asian Development Bank's (ADB) technical assistance (TA)¹ for justice reform in its developing member countries (DMCs). Justice reform is a small but important part of ADB's operations in law and policy reform. The latter is evaluated mostly as part of ADB's project, program, sectoral, thematic, and country assistance performance evaluations, but justice reform assistance has not received the attention it merits. ADB's justice reform assistance has mainly been through TAs and more recently, also in the form of loans or part of a loan to a few DMCs such as Bangladesh, Pakistan, and the Philippines. The program completion report for the loan to Pakistan is underway, while the other loans are still being implemented. The SES focuses therefore on only justice reform TAs, with the limited objective of evaluating their performance and informing future operations in this area. The SES is intended to highlight to the Board and Management the usefulness of ADB's continuing support for justice reform in implementing Strategy 2020.

B. Scope, Method, and Data

2. ADB's work in justice reform began in the early 1990s, and in the period between 1991-2008, ADB undertook 44 justice reform TAs. Of these, 22 have had their completion reports circulated, and were thus assessed and rated following the four evaluation criteria of relevance, effectiveness, efficiency, and sustainability. The TAs for the SES were selected primarily from ADB's database of TAs that were classified as "law and judiciary" TAs within the law, economic management, and public policy sector. All of the TAs selected focused on the justice sector. Several of these TAs covered the financing, administration, and governance of the executive and judicial agencies in the justice sector; support for judicial independence and accountability; enhancing capacity development for judicial officers and executive justice agents; and improving the performance of agencies responsible for delivering justice services, protecting rights and obligations, and enforcing the rule of law predictably, affordably, and accountably. Other TAs aimed to improve the ability of people and their representatives to demand better delivery of justice services and focused on dissemination of legal information, legal literacy, empowerment and social accountability. There were also regional TAs that looked at conceptual or normative aspects of some of these areas, including the process of justice reform.

3. The evaluation ratings were then aggregated to arrive at an overall performance evaluation rating for ADB's TAs for justice reform. Lessons from these TAs were identified, and recommendations are made as to what issues require further reflection and consideration by ADB's Management. Information for the SES was collected from ADB's TA files; country strategy documents; discussions with ADB staff, executing agencies, key stakeholders of selected justice reform TAs; and evaluation study reports. A literature review covering the global evolution of rule of law assistance and justice reform was conducted.²

C. Organization of Report

4. Section II of this report provides the context for the study. It begins with a summary of relevant literature reviews, followed by an outline of ADB's policy underpinnings for justice reform, then a discussion and analysis of ADB's TAs for justice reform. Section III assesses

¹ Details of these TAs can be found in Appendix 1. They are not footnoted when they are referenced in the text.

² Appendix 2.

whether ADB's TAs in this area have broadly been relevant, effective, efficient, and sustainable. Section IV summarizes findings, discusses issues, and provides recommendations for consideration by ADB Management.

II. JUSTICE REFORM: THE CONTEXT

A. Summary of Literature Review

5. International development partners have made considerable efforts to build and enhance access to justice and reduce legal inequality in DMCs. The success of these efforts seems to depend largely on the extent of understanding of (i) the interdependence of policies, laws, and justice systems, (ii) the cultural contexts in which all three are embedded, (iii) the political processes by which they acquire their institutional form and legitimacy, and thus (iv) the complexities associated with undertaking judicial reform initiatives.³

6. Over the past 40 years, there has been substantial growth in global assistance for justice sector reform programs. There are official development partner reports that assert the primary importance and success of such work. There are also academic critiques that argue that the programs still lack a well-grounded rationale, clear understanding of the essential problems, a proven analytical method, and an understanding of the results achieved (see Appendix 2 for a broader discussion). Jensen, for example, in describing the larger field of law and development says it is a series of modest successes and frequent failures, with significant gaps between the theoretical understanding of legal systems and the design and implementation of projects.⁴ He noted that measuring outputs is not easy and ascertaining causality is extremely difficult, time-consuming, and expensive. Consequently, monitoring efforts have focused on indicators of efficiency, e.g., reductions in case delays and backlogs, clearance rates and cost per unit case. Further, the monitoring and evaluation of these projects are underinvested by the development community. While many believe in the importance of law, access to justice, and judicial reform for development, not much is known about the impact of the judicial system on economic performance. However, a study by Luc Laeven and Giovanni Majnoni of the World Bank⁵ indicates that, after controlling for a number of other country characteristics, judicial efficiency and inflation are the main drivers of interest rate spreads across 32 countries. This finding suggests that judicial reforms that improve enforcement of legal contracts may have a bearing on the cost of financial intermediation for households and firms.

7. The United Nations Development Program (UNDP) published a handbook in 2005,⁶ to guide UNDP staff responsible for access to justice programs. It is premised on the belief that everyone is born free and equal in dignity and rights, and should have equal access to justice when their dignity or their rights are violated. In response to the basic question "What is access to justice?" the guidance given was that "People need remedies to protect themselves from possible harm caused by others when involved in disputes or conflicts of interests. Remedies

³ Caroline Sage and Michael Woolcock. 2005. *Breaking the Legal Inequality Traps: New Approaches to Building Justice Systems for the Poor in Developing Countries*. BWPI Working paper. Manchester, UK: University of Manchester.

⁴ E. Jensen. 2003. *The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses*. In E. Jensen and T. Heller, *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, Stanford, CA: Stanford University Press.

⁵ Luc Laeven and Giovanni Majnoni. 2003. *Does Judicial Efficiency Lower the Cost of Credit?*. World Bank. Washington, DC. Available: <http://www.econ.worldbank.org/view.php?type=5&id=30481>.

⁶ UNDP. 2005. *Programming for Justice: Access for All*. A Practitioner's Guide for a Human Rights-Based Approach to Access Justice. Bangkok.

are measures that redress this harm, for instance through restitution or compensation. When remedies are guaranteed by law or by customary norms, they are called legal remedies. Justice remedies are legal remedies that typically involve a third party (the justice institution or mechanism)...Justice systems serve to recognize people's entitlement to remedies when these are in dispute. For this reason, they are particularly important in the context of power inequalities, when people's inability to claim remedies through other means may put their well-being at risk."

8. This broader view was echoed in 2005 at ADB: "Poverty and deprivation must be seen in all their bareness: lack of education, health care, nutrition, clean water, safe sanitation, and income; and the passage of premature death...Alongside these deprivations, one must also become aware of citizens' rights that are denied, opportunities that are bypassed, entitlements that are wasted, public services that are not rendered, liberties that are seized, public resources that are plundered, the terror of vulnerability that is inflicted, and the sense of dignity that is devoured. If there is no rule of law, the void is generally filled with rule of some other type whose arbitrariness and capriciousness will erode any sense of justice. Rule of law paves the way for not only social and economic well-being but, ultimately, it also stands as a protector of human freedom. The judiciary is a central element in the administration of justice...When a case stubbornly sticks to a court's docket for 10–15 years, as was reportedly common in many of our developing member countries there is a gigantic failure in administration of justice."⁷

9. Then in 2008, the Commission on Legal Empowerment of the Poor published its two-volume report in which it stated: "Poverty manifests itself in multiple ways. One of the staggering facts about poverty is that the vast majority of the world's economy lives their daily lives in what is often referred to as the *informal* or *extralegal* sector. At all levels (individual, family, community and national) the lack of access to effective legal protection and formal policy and welfare systems, as well as a lack of recognition of economic assets/activities, worsens existing vulnerabilities and further constrains the economic and social development opportunities of the poor."⁸ In the preface to the report, co-chairs Madeleine K. Albright and Hernando de Soto wrote about a visit in 2006 to a teeming open air market in Kenya with about, 5,000 stalls and explained how the sellers had built it up over a decade through daily contributions of fifteen cents, and how after the flawed 2007 presidential elections fights broke out leaving hundreds of people dead and the market completely destroyed. Albright and Hernando de Soto wrote that: "When democratic rules are ignored and there is no law capable of providing shelter, the people who suffer most are those who can least afford to lose. Creating an infrastructure of laws, rights, enforcement, and adjudication is not an academic project, of interest to political scientists and social engineers. The establishment of such institutions can spell the difference between vulnerability and security, desperation and dignity for hundreds of millions of our fellow human beings."

10. In his foreword to the Commission's *Making the Law Work for Everyone*, former Commission Member and current Prime Minister of the United Kingdom, Gordon Brown, wrote that "by expanding and deepening universal legal protection, poor people will be better able to free themselves from poverty... The sources of legal exclusion are numerous and very often country-specific. However, four common threads stand out. First, legal empowerment is impossible when poor people are denied access to a well functioning justice system. Second, most of the world's poor lack effective property rights and the intrinsic economic power of their

⁷ Mitchell, A. 2005. The Quest for Justice. *ADB Review*. Available:http://www.adb.org/Documents/Periodicals/ADB_Review/2005/vol37-2/overview.asp.

⁸ Commission on Legal Empowerment of the Poor. 2008. *Making the Law Work for Everyone*, Volume II. New York.

property remains untapped. Third, poor people, in particular women and children, suffer unsafe working conditions because their employers often operate outside the formal legal system. Fourth, poor people are denied economic opportunities as their property and business are not legally recognized. They cannot access credit, investment nor global and local markets.⁹

11. The justice reform process itself has also been receiving attention from the institutions undergoing reform. In 2005, the first Asia Pacific Judicial Reform Forum was hosted by the Philippine Supreme Court, and attended by delegates from 45 countries. This conference was then established as an annual event, with the third held in January 2009 in Singapore. Justices, judges, and judicial officers from 22 countries in the region, and international delegates and representatives from multilateral and bilateral agencies shared their reform experiences, specifically lessons they had learned that would improve the chances of future success. A collection of essays was also launched at the conference¹⁰ describing the experiences of seven countries in introducing and sustaining reforms. The key lessons shared at the conference addressed both institutional and participatory approaches to reform. In the case of the institutional approaches, the quality of leadership was identified as a significant factor in the reform process. In addition, the role of senior court administrators was recognized, as was the need to convince them to support reforms despite any consequent changes to their power patterns. It was also noted that justices and judges must become more comfortable with the idea of engaging in reform, in addition to acting purely as judges of fact and law. From the participatory perspective of reforms, the vital role of civil society as the beneficiary of justice services was highlighted. With regard to the media, some countries found that the media had contributed to transparency and accountability, while for others they had simply engendered "trials by media" and thus may have undermined some aspects of due process in celebrated cases. Finally, several delegates were concerned about how much of the global reform agenda was development-partner-driven, while others noted a convergence of views between their country's reform agenda and that of the development partners. Armutage wrote in the introduction to the report on the conference *Searching for Success*, that for reforms to gain and maintain support, judiciaries need to integrate their judicial reform plans with the broader national change agendas, and that they need to engage more closely with all reform partners.

B. ADB's Technical Assistance for Justice Reform

1. Policy Underpinnings for Justice Reform

12. ADB has a series of policies, strategies, and studies which recognize the importance of a working justice sector for sustainable growth and development. These policies and strategies are described below.

13. **Asian Development Fund (ADF) VI (1991).** The publication of a report by the ADF development partners in 1991 brought into focus the vital connection between sound public administration and an effective and equitable economy.¹¹ The report indicated that ADF resources should be used to improve the governance of government institutions, including the legal system and regulatory agencies. In response, and recognizing that governance is important for sustainable development, ADB adopted a Governance Policy in August 1995.¹²

⁹ Footnote 8.

¹⁰ L. Armutage. 2009. *Searching for Success in Judicial Reform: Voices from the Asia-Pacific Experience*. Delhi: Oxford University Press.

¹¹ ADB. 1991. *ADF VI: Report of the Donors*. Manila.

¹² ADB. 1995. *Governance: Sound Development Management*. Manila.

14. **Governance: Sound Development Management (1995).** It was founded on the belief that sustainable development requires those who govern to act with accountability. Stakeholders must be allowed to and should actually participate in decision making, rules must be implemented and exercised with an acceptable level of predictability, and information should generally be equally available to those who are affected by it. The Governance Policy identified the importance of good governance for sound development management and promoted four elements for ADB operations: accountability, participation, predictability, and transparency. Two approaches were proposed for strengthening governance in ADB's DMCs: integrating policy measures and project components into the design of ADB operations, and providing TAs for specific governance-oriented policy studies, seminars and training. The policy also recognized that the importance of predictability "cannot be overstated... without it, the orderly existence of citizens and institutions would be impossible. The rule of law encompasses well defined rights and duties, as well as mechanisms for enforcing them...It requires the state and its subsidiary agencies to be as much bound by, and answerable to, the legal system as are private individuals and enterprises ... It also implies that all segments of society should have recourse to courts of justice, and be protected from both the power of the state and that of dominant social groups (e.g., ethnic majorities, economic elites, etc.)." In a footnote to this statement, the policy says "Such recourse should be available not only in theory, but also in practice. It matters little to citizens that they have access to the courts, if the high cost of legal proceedings effectively puts them out of their reach."¹³ These sentiments notwithstanding, the Governance Policy clarified that predictability would be given operational relevance through ADB's work on law and development, specifically the legal frameworks for private sector development. In this context, the governance policy appeared to be mirroring views that matched Jensen's "fourth wave" of rule of law assistance, which called for the rule of law to underpin economic growth and sustainability.

15. **Review of Governance (1998).** Acting on its mandate under the Governance Policy to monitor ADB's governance efforts on legal frameworks, the Office of the General Counsel (OGC) submitted an information paper to the ADB Board of Directors in February 1998.¹⁴ It drew the following lessons from law and development work of the early 1990s: (i) legal reform must be demand-driven, consistent with prevailing economic policies, and have a high degree of ownership; (ii) greater emphasis on legal institutions, education, and training is required to address the overall institutional framework; (iii) capacity development for counterparts may be needed prior to major TAs; and (iv) law and development activities cannot be expected to produce immediate quantifiable economic growth. The review included a proposal to prioritize legal frameworks to help economies move toward a market system, with greater deregulation, and that support should move from legalistic considerations of rules towards institutional capacity building of the judiciary, executive regulators, and secondary justice institutions. The recommendations, however, were not adopted.

16. **Anticorruption Policy (1998).** The ADB Anticorruption Policy was adopted in July 1998, to complement the Governance Policy. It noted that, "measures for legal and judicial reform, such as efforts to reduce judicial backlogs through alternate dispute resolution techniques, or to improve courtroom management to ensure cases can be tried in a timely fashion, or to enhance the independence and professionalism of the judiciary, will all have positive externalities in the struggle against corruption. ADB may also be called upon to assist its DMCs in pursuing explicit anticorruption programs. Such assistance could include efforts to develop a national anticorruption strategy; improve the ability of the courts to try corruption cases; respond to

¹³ Footnote 12.

¹⁴ ADB. 1998. *Review of the Law and Development Activities of the Asian Development Bank*. Manila.

requests from legislators and government officials for legal or technical assistance in drafting anticorruption statutes or professional codes of conduct; strengthen the legal mechanisms for review of administrative action, e.g., the creation of an ombudsman or provision for judicial review; or improve the capacity of anticorruption agencies to detect or prosecute illicit behavior."¹⁵ To carry this out, the Anticorruption Policy called for greater emphasis on strengthening institutions that would advance transparency and accountability in DMCs (such as supreme audit agencies, procurement agencies, regulatory agencies, and ombudsman offices).

17. **Poverty Reduction Strategy (1999).** ADB's support for empowerment and people's rights crystallized in 1999 with the adoption of the Poverty Reduction Strategy.¹⁶ It defined poverty as "a deprivation of essential assets and opportunities to which every human is entitled...Beyond income and basic services, individuals and societies are also poor—and tend to remain so—if they are not empowered to participate in making the decisions that shape their lives". Its three pillars were—pro-poor sustainable economic growth, social development, and good governance. It proposed that developing human and social capital would empower citizens to participate in making the decisions that shape their lives, increase political stability, raise productivity and enhance international competitiveness, and lead to faster economic growth. It recognized that good governance is a necessary means to achieve poverty reduction.

18. **Long-Term Strategic Framework, 2001–2015 and Medium-Term Strategy, 2001–2005.** The three pillars of the Poverty Reduction Strategy eventually became the three core areas of intervention of ADB's first long-term strategic framework. With respect to governance, it recognized that inaccessible, unpredictable, inefficient, nonaccountable, and nontransparent legal and judicial systems discriminate against the poor and rob them of the opportunity to participate in the making of decisions that affect them. This focus on governance and legal and judicial reform was reiterated in the medium-term strategy, which identified ineffective institutions and policies as the biggest constraints to growth and development in the region. The medium-term strategy called on ADB to place the strengthening of institutions and policies at the center of its work, so as to enhance the development impact of interventions, and support sustainable and broad-based growth.

19. **First Governance and Anticorruption Policy Review (2005).** When ADB reviewed its implementation of the Governance and Anticorruption Policies,¹⁷ it found that the profile of governance had been raised in the region, but implementation of the policies in the mainstream of ADB operations still had a long way to go. Too many small TAs had been undertaken, for short durations, with thinly spread staff resources. To improve impact and resource efficiency, the review called for a greater commitment against corruption, with more focused governance activities.

20. **Medium-Term Strategy II, 2006–2008 and Second Governance and Anticorruption Policy Review (2006).** Following the 2005 Review, ADB's Medium-Term Strategy II says that: "ADB's governance interventions would prioritize public sector management, including procurement, public expenditure management, as well as the legal and regulatory framework and capacity development in sectors/sub-sectors where ADB is active."¹⁸ It then proceeded to classify these same governance and anticorruption priorities, together with agriculture and

¹⁵ ADB. 1998. *Anticorruption*. Manila.

¹⁶ ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy*. Manila. (Available: http://www.adb.org/Documents/Policies/Poverty_Reduction/Poverty_Policy.pdf)

¹⁷ ADB. 2006. *Improving Governance and Fighting Corruption: Implementing the Governance and Anticorruption Policies of the Asian Development Bank*. Manila.

¹⁸ ADB. 2006. *Medium-Term Strategy II (2006–2008)*. Manila.

natural resources, railways, health, and trade related to regional cooperation and integration activities, as group II sectors. As such they were non-core operational sectors. However, they were still viewed as important for enabling ADB to meet diverse DMC demands: “partnerships will play a particularly important role for leveraging the impact of ADB operations in these sectors.” In July 2006, ADB approved a second governance and anticorruption policy review and directed governance and anticorruption efforts toward improving public financial management, strengthening procurement systems, and combating corruption using preventive enforcement and investigative measures. With the Medium-Term Strategy II and the second governance and anticorruption policy review, the strategic choice had clearly been made in favor of anticorruption efforts and improved fiduciary mechanisms.

21. **Strategy 2020 (2008).** Strategy 2020 focuses on inclusive and environmentally sustainable growth, and regional integration.¹⁹ ADB will work to ensure that the poor in the region can participate meaningfully in decision-making processes that affect the management of resources on which they depend for subsistence. In support of this agenda, ADB will engage in those activities that are recognized as its core specializations: infrastructure, environment, regional cooperation and integration, financial sector development, and education. This strategy is expected to drive private sector development and private sector operations, good governance and capacity development, gender equity, knowledge solutions, and partnerships. The inclusion of good governance as one of the drivers of change effectively changes its "non-core sector classification" under the Medium-Term Strategy II and moves it back to the center of ADB's strategy.

2. Financing Modalities for Justice Reform

22. In general, there is low appetite for borrowing in DMCs for justice reform activities. The financing usually goes to a separate branch or independent agency of government instead of the executive department, which would be responsible for repayment if financing were in the form of loans. In addition, the activities are generally not revenue generating and therefore not funding priorities for a DMC, regardless of what may appear to some to be the obvious public good of improving the justice system.

23. Because many DMCs do not borrow for justice reform, there is reticence about supporting justice reform, even with the use of TA grant funds. ADB TA grant funds are limited, and access is highly competitive. Consequently, TAs more likely to result in loans are more likely to be given TA funding priority. Assuming a justice reform project progresses beyond the first round of competition, it must then compete for an amount. With the number of TA proposals, amounts are often less than \$1 million, and follow-on funding is not the rule. Interestingly, most of the DMCs covered in this study each received advisory TAs for the same general reform area. Four out of five TAs to PRC and both TAs to Cambodia were access to information TAs; all three to Mongolia were for capacity building in the justice sector; and the two to the Philippines were for judicial independence and accountability, with a view to expanding assistance generally to the justice sector. This could indicate that justice reform assistance in particular DMCs was focused, with a degree of continuity.

¹⁹ ADB. 2008. *Long Term Strategic Framework (2008-2020)*. Manila.

24. More recently, some DMCs have borrowed for justice reform although this is more an exception than the rule.²⁰ This has been in the form of program loans that also help supplement the national budget, and reduce the fiscal pressure on the government's executive department. In 2001, ADB extended the largest loan financed assistance for justice reform to date, the program loan for Pakistan's Access to Justice Program (AJP),²¹ In the recommendation to the Board, ADB explained that it supports the program because in the fight against poverty, limiting the poor's vulnerability to unpredictable administrative, political, civil, and criminal justice systems is at least as important as macroeconomic performance. ADB's rationale focused on the concepts of vulnerability, access to justice, entitlements, and assets, where vulnerability was understood as a function of insecure access to key assets, which exposes individuals, households and communities to an increased or disproportionate risk of impoverishment. Justice was defined as a function of the relationship between institutions responsible for delivering entitlements (public goods and services) predictably, affordably, and accountably, and the ability of the poor to secure and sustain their access to key sets of assets. However, the program rationale also balanced the pro-poor rationale with the expected benefits the program would have on the economy, foreign direct investment, and particularly small and medium-sized enterprises.²²

3. Technical Assistance for Justice Reform

25. The 44 TAs covered by this SES provided a total approved amount of \$19 million for advisory assistance to individual DMCs and \$6.6 million for regional studies, conferences, and training programs. Of these, 11 TAs were small-scale of \$150,000 or less; 33 TAs provided more than \$150,000, five of which provided more than \$1 million. Of the 44 TAs, 33 were processed and administered by OGC and 11 by the relevant operations department or the Regional and Sustainable Development Department (RSDD). Six advisory TAs, totaling \$6.8 million, were closely linked to Pakistan's AJP. They either supported work preparatory to the loan or supported loan implementation. The other two larger advisory TAs, which in aggregate amounted to \$2 million, built up to the preparation of the Governance in Justice Sector Reform Program Loan in the Philippines.²³ Consultants' reports for only 17 of the 44 TAs were available from either ADB's electronic database or a departmental file. Six TAs are still active as of March 2009. Of the 38 financially completed TAs, 22 have published TA completion reports (Table 1).

²⁰ ADB has extended three program loans that specifically support justice sector reform. The first and the largest was the Access to Justice Program to Pakistan, the key development objective of which was to assist the Government improve access to justice for its citizens, the poor in particular, and addresses reforms relating to judicial processes and institutions, police and public safety, prosecution, administrative justice and alternative dispute resolution. Another program loan supports Bangladesh's Good Governance Program, which has as one of its main components the separation of the judiciary from the executive department in support of judicial independence. The most recent program loan supports the first part of the Philippines' Governance in Justice Sector Reform Program. It focuses on increasing resources to the justice sector and supporting the efficient delivery of justice service. The second subprogram will focus on institutional capacity building to deliver justice services to communities and implement measures to address key justice sector priorities. An earlier program loan was extended in 1997 to the Kyrgyz Republic for Corporate Governance and Enterprise Reform. Although this loan did not primarily support justice reform, it did include a program condition requiring improved facilities for the judiciary and additional justices, to support the implementation of the main program.

²¹ ADB. 2001. *Proposed Loans and Technical Assistance Grant for the Access to Justice Program (Pakistan)*. Manila.

²² "Further the present legal framework and the performance of the judicial institutions responsible significantly constrain market-based economic growth and, in particular, hinder foreign direct investment as well as the growth of small and medium-sized enterprises." Footnote 21.

²³ ADB. 2008. *Proposed Program Cluster Loan for Subprogram 1, and Technical Assistance Grant for Governance in Justice Sector Reform Program in the Philippines*. Manila.

Table 1: Status of ADB Justice Reform Technical Assistance (March 2009)

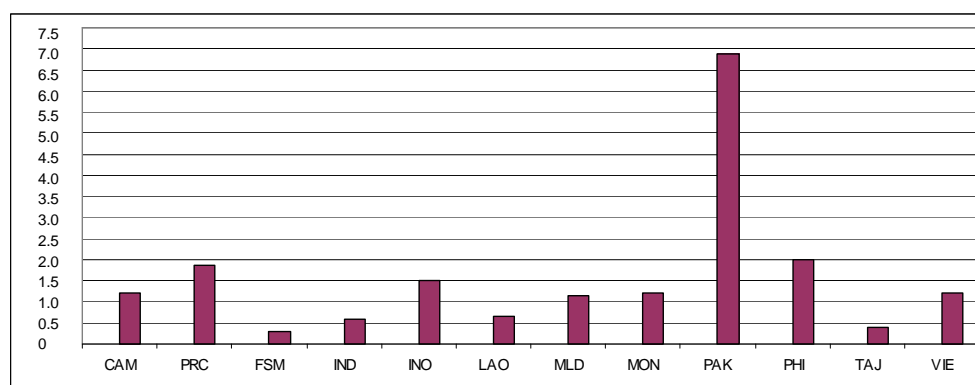
	Total	Active	Closed	w/ TCRs	w/o TCRs
Small-Scale TAs	11	0	11	0	11
Advisory	21	4	17	15	2
Regional	12	2	10	7	3
Total	44	6	38	22	16

TCR = technical assistance completion report.

Source: Asian Development Bank database.

26. Twelve DMCs benefited directly from country-dedicated TAs, with Pakistan being the recipient of the largest amount (Figure 1). Many more DMCs participated in regional studies and conferences. All these TAs assisted DMCs remove obstacles to their people's ability to claim and obtain justice remedies. Although the obstacles can be easily classified as weak institutional capacity to deliver justice remedies, lack of capacity to seek justice remedies, and barriers preventing specific groups of people from accessing justice, the TAs were often designed to address more than one obstacle. To facilitate the discussion, the TAs that were designed mainly to address the lack of capacity to seek justice remedies and obstacles affecting specific groups are discussed together as TAs that support empowerment. The TAs that seek mainly to address the capacity to deliver justice remedies were divided into two main groups, the first addresses the capacity of the judiciary itself to deliver justice services and the second addresses the capacity of other justice sector agencies to do the same.

Figure 1: Advisory TAs for Justice Reform by Country
(\$ million)



CAM = Cambodia, PRC = People's Republic of China, FSM = Federated States of Micronesia, IND = India, INO = Indonesia, LAO = Lao People's Democratic Republic, MLD = Maldives, MON = Mongolia, PAK = Pakistan, PHI = Philippines, TAJ = Tajikistan, VIE = Viet Nam.

Source: Asian Development Bank database.

27. **Technical Assistance Supporting Empowerment.** These TAs have supported the activities that contribute to strengthening the capacity of persons to seek, demand, and access justice remedies. These have typically consisted of TAs to compile, classify, translate, and disseminate laws, rules of procedure, and court decisions. Some TAs were designed to develop procedures and mechanisms for better dispute resolution; and several looked into empowering people either by creating frameworks that protect their safety and human rights, or by facilitating the process of building personal and community-based confidence to claim and enforce rights and obligations. Most of the TAs were designed to assist institutions deliver better justice services, but a few of the later TAs endeavored to create in the beneficiaries an awareness of rights and a demand for justice services.

28. Two advisory TAs were provided to implement the land laws of Cambodia.²⁴ A manual was developed and widely distributed to the judiciary and development workers, providing guidance on the implementation and use of the land law. Professional actors were engaged to produce two videos with accompanying cartoon books explaining the land law in simple terms. Several hundred copies of the videos and several thousand copies of the two cartoon books were produced and disseminated. Stories from the two picture books were converted into a series of photo strips (similar to a comic strip) for publication in Khmer language newspapers along with articles about the land law, along with two posters summarizing peoples' rights under the land law and rights to conciliation of their disputes. These proved effective. In addition, staff from international and local nongovernment organizations (NGOs) were trained to assist parties present their cases. This work influenced the World Bank to provide a \$24 million land administration and management project loan, and German development assistance through GTZ to provide complementary technical assistance.²⁵

29. Two regional TAs developed an internet-based free legal resource center for DMC policymakers, legislative draftspersons, and others engaged in the law-reform process. The system was eventually incorporated into the World Legal Information Institute's existing internet search facility, which includes databases of the decisions of international courts and tribunals and material from other national or regional legal information institutes. This supports the sustainability of the regional TA initiatives.

30. Some TAs worked on formal and alternative dispute resolution mechanisms. A TA on Access to Justice for the Urban Poor in the Philippines was particularly innovative as it recognized the urban poor's need for a special grievance process. It is currently identifying dispute resolution mechanisms that could be further developed, operated with strong community participation, and replicated. A regional TA on Legal Literacy for Good Governance proved to be ground breaking for ADB. It examined legal empowerment as a process and a goal, and the role of legal literacy in the process of empowerment. It also considered the constraints on access to justice and governance resulting from a lack of empowerment and the connection between legal empowerment and poverty reduction. The study yielded preliminary evidence that legal empowerment contributes to good governance and poverty reduction. The findings under another regional TA on the sociolegal status of women in selected DMCs recommended that TAs be monitored for indicators such as special courts for women and family-related cases, committees on women in the legislative branches of government, and number of women in the judiciary and police force. Building on these recommendations, a regional TA on Legal Empowerment for Women and Disadvantaged Groups focused on identifying and testing strategies and methods to increase access of women and other disadvantaged people to basic social services and productive resources. The recommendations of this project were in line with those of a report by the UN Commission on Legal Empowerment of the Poor in 2008, *Making the Law Work for Everyone*,²⁶ which called for greater evidence-based research and more direct interventions to address the underlying causes of legal exclusion and their bearing on the achievement of the Millennium Development Goals.

²⁴ In 1996, ADB approved a program loan to support agriculture sector reforms in Cambodia: ADB. 1996. *Agriculture Sector Program* (Loan 1445-CAM[SF]). The reform agenda included the passage of a Land Law. To support the preparation and dissemination of the implementing regulations, ADB approved a TA in 2000 for the Implementation of Land Legislations, followed by another land legislation TA (Phase 2) in 2003.

²⁵ World Bank. 2001. *Land Management and Administration Project*. Washington DC.

²⁶ 2008. *Making the Law Work for Everyone*. Report of the Commission on Legal Empowerment of the Poor. Volumes I and II. New York.

31. An earlier regional TA, on establishing legal identity for social inclusion, researched the nexus between birth registration and legal identity on the one hand, and poverty on the other. It had a practical and empirical focus and looked at how legal identity can actually promote inclusiveness. The regional TA findings have been referred to by other international organizations and in academic studies.²⁷ Again in its report, *Making the Law Work for Everyone*, the UN Commission on Legal Empowerment of the Poor identified legal identity as a cornerstone of legal empowerment²⁸ and specifically recognized that the "excellent recent reports prepared by ADB (2004, 2005, 2007), UNICEF (2002, 2005), and the Inter-American Development Bank (IADB) (2006)" formed the basis of much of the material on legal identity and access to justice. The report noted that these organizations performed an important leadership role in bringing this problem to the attention of the international community, gathering vital information on the nature and scope of the problem, and developing possible strategies for reform.

32. **Technical Assistance Supporting Judicial Reform.** Several TAs supported work that focused specifically on strengthening the capacity of the judiciary to deliver justice services. They looked at strengthening judicial independence and accountability, and improving the administration of the judiciary. The common justification for these TAs is that independent, accountable, impartial, and competent judiciaries serve as a defense against corruption, reduce political interference in the dispensation of justice, enhance transparency, and help reduce waste of public funds. In 2001, a regional TA on Judicial Independence undertook to study the challenges to judicial independence in Bangladesh, Cambodia, Indonesia, the Lao People's Democratic Republic, Nepal, Pakistan, the Philippines, Thailand, and Viet Nam. The overview report²⁹ recommended that judicial independence programs first find out what a specific legal system actually does, increase judicial information in the public domain—including budgetary and organizational information, encourage freedom of information within the judiciary and the other branches of government, and reduce the scope of contempt laws. In 2002, a small-scale regional TA for Public Opinion Surveys on Judicial Independence and Accountability undertook surveys of the public's awareness and impression of the independence of judiciaries. An advisory TA to India was described in its TA completion report as a "sector opening project." Among other things, it was designed to initiate ADB's engagement with India in the justice sector, provide advice on how to "reduce Delhi court congestion and develop sustainable improvements in delivery of and access to speedy justice," and undertake a sector and diagnostic study of the legal and judicial sector. The final report, submitted in May 2004 focused on how further ADB assistance could assist in modernizing the court's budget systems, human resource systems, and infrastructure and statistical management systems, as well as measures to build the capacity of the legal profession and improve public access to justice. A preparatory

²⁷ For example, the United Nations Development Programme (UNDP), the United Nations Children's Programme (UNICEF), the Commission on Legal Empowerment, United Nations High Commissioner for Refugees, Inter-American Development Bank, Kennedy School of Government, Harvard; School of Social Sciences and Law, Oxford University, UK; Lancet Health series.

²⁸ "One important basis of legal empowerment is 'legal identity': the formal, legal recognition by the state that a person exists. In developed countries, citizens take this for granted. Whether through a birth certificate, national ID card, or other means, they are empowered to own property, legally work, contract to buy and sell goods, receive government benefits, vote, initiate a complaint through the channels of public administration, bring suit in a court of law, or avail themselves of other legal protections. But the situation in many developing countries is much different... a person without legal identity is denied a whole range of benefits essential for overcoming poverty. She may be unable to attend school, obtain medical services, vote in elections, get a driver's license, or open a bank account. Moreover, those who lack a formal legal identity are often unable to take advantage of anti-poverty programs specifically designed for them. Those who lack a formal identity may also be especially vulnerable to exploitative practices, including child labor and human trafficking." Footnote 8.

²⁹ Available: <http://www.asianlii.org/asia/other/ADBLPRes/2004/3.pdf>

TA was then provided in 2004 to design the loan for an administration of justice project.³⁰ Three attempts were made to negotiate a loan for the project. It appears the Delhi High Court, as implementing agency, was not convinced with the proposal and the loan was never negotiated. Currently there are no plans to take up the program with the Government. Although the TA delivered the expected outputs, which consisted of reform plans and road maps, the TA completion report recognized that the design and monitoring framework (DMF) needed clearer causal links between impact, outcomes, and outputs.

33. The first justice reform assistance to Pakistan was a small-scale TA in 1997 for Strengthening Government Legal Services and Subordinate Judiciary. It was followed six months later by a larger advisory TA for a Legal and Judicial Reform Project that conducted diagnostic studies of the judiciary, administrative justice and redress of grievance, prosecution, and judicial policy making. The diagnostic studies revealed important areas for reform including recognition that (i) most cases in both the civil and criminal courts emanated from disputes over land complicated by the poor quality of land records, (ii) people's confidence in the judiciary was low, (iii) there were long delays in court proceedings, (iv) there was weak court management, (v) there was low quality training of judges in the lower judiciary, (vi) there was lack of client focus, (vii) there were decades of under resourcing, (viii) there was inadequate infrastructure, (ix) there was legal disempowerment and gender imbalance, and (x) there was no judicial policy making body. The analysis of issues facing the police was, to a large extent, informed by the Government and showed that the police lacked professionalism, modern equipment and infrastructure, political interference was frequent, and corruption was too common. When the military government announced in 1999 that access to justice and decentralization were two of its seven policy priorities, a window of opportunity opened for ADB to build on results of its earlier TAs and develop a comprehensive reform program. To support the design and implementation of a proposed program loan, another advisory TA was approved in late 2000, providing specialists for Strengthening of Institutional Capacity for Judicial and Legal Reform.

34. The first justice reform activity in the Philippines was provided when the Supreme Court requested assistance from the development partners in the implementation of its Action Program for Judicial Reform. A syndicate of consultants engaged for the TA was led by a national team leader. Three foreign consultants worked closely with the local team to develop the concept, scope, and philosophical arguments for judicial independence in the Philippines, and its counterweight of judicial accountability. The TA recommended steps to improve the judiciary's budget and to reduce executive control over the execution of that budget, rationalize the budget process and accounting processes of the judiciary, decentralize court administration, improve the selection and nomination of judges and justices, and strengthen the judicial education and training academy. In 2006, a second TA provided, among other things, technical support for the Supreme Court's efforts to establish a pilot decentralized unit. The pilot decentralized unit was launched in mid-2008 under the second TA. This second TA also recommended that "the next phase of justice reform in the Philippines should be system-wide and holistic." Taking off from this recommendation, the recently approved \$300 million Governance in Justice Sector Reform program loan supports judicial fiscal autonomy and justice sector accountability; integrity of justice sector personnel; governance and efficiency of justice sector agencies; access to justice by the poor and vulnerable groups; and alternative dispute resolution. Two of the program's key conditions address judicial fiscal autonomy, initially tackled in the first TA, through an increase in the judiciary's budget and an agreement with the executive that the budget will be released in full, without conditions, in accordance with a cash program annually agreed between the executive and the judiciary. The program loan will also

³⁰ ADB. 2004. *Technical Assistance to Preparing the Administration of Justice Project*. Manila.

support governance improvements in executive justice agencies such as the offices of the public prosecutors and defenders and the Bureau of Jails and Penology.

35. Technical Assistance Supporting Capacity Building in Other Justice Sector Agencies. These TAs followed the approach proposed in OGC's 1998 Board information paper to strengthen secondary institutions such as law schools and professional associations. The premise for covering the broader range of justice officers is that all agencies in the sector need to perform equally at an appropriate level for there to be proper delivery of justice services. These TAs supported the training of justice sector officers, including judges, privately practicing lawyers, public prosecutors and defenders, the police and public investigators, and even jail and penitentiary officers.

36. ADB included Mongolia in several regional and advisory TAs, including one that assessed the state and needs of Mongolia's legal sector, and provided some context for ADB's subsequent justice sector involvement in the country.³¹ Of significance for ADB's justice reform activities in Mongolia was the recommendation to train their legal professionals. The first TA to address this recommendation was a \$1 million advisory TA to assist the Government in establishing the Legal Retraining Center (LRC), and creating at LRC the Retraining Program for continuing the legal education of legal professionals in commercial laws and regulations. It was followed five years later by a small-scale TA to assist the Legal Retraining Center trainers strengthen its curriculum and improve materials and teaching skills. The courses introduced students to the concepts and application of commercial crime; commercial law, including specific instruction on company law; comparative law; contracts; intellectual property law; international trade law; adjudicative processes; negotiation; and advocacy skills. The use of a participatory learning approach was innovative and reportedly well received by the trainees. Although records of the training courses were maintained, the TA did not evaluate the impact of the graduates' competence to apply the law. Unfortunately, the question of the proprietary rights that instructors might claim over the training materials had not been considered. When these instructors left the center, they took their materials with them. Two of the eight instructors left the program on returning to Mongolia after training in Australia. By 2008, the Center had neither full-time instructors trained in conducting commercial law courses, nor materials available for a new instructor to use. The initiative was quickly picked up by the World Bank and US Agency for International Development (USAID), which jointly continued funding the Center that now provides continuing legal education to various members of the legal profession.

37. The Mongolia and Viet Nam training TAs had similar designs, with the same consultants engaged to train instructors to formulate and conduct courses in commercial law; train legal professionals, including lawyers, judges and prosecutors; and strengthen each country's national legal education training institution. In Viet Nam, the Legal Professional Training School became a respected continuing legal education institution.³² About 1,000 lawyers were trained during the TA, and the course materials have been expanded and compiled into a comprehensive law book published by Vietnamese legal scholars, in Vietnamese, for use of advanced law students and legal practitioners in Viet Nam. However, performance measurement was limited to pre- and post-testing, and interviews of supervisors and employers. It did not extend into a more systematic exercise of comparative measurement of impacts. Consequently, it is difficult to determine the effectiveness of training on the competence of government lawyers, or on the improvement of legal services delivery.

³¹ ADB. 1993. *Developing Mongolia's Legal Framework*. Manila.

³² ADB. 1997. *Technical Assistance the Government of Viet Nam for Retraining Government Legal Officers*. Manila.

38. A small-scale TA was provided to the Maldives to strengthen basic legal education and initiate continuing education for legal and judicial officers. However, at \$150,000, it was too small and had too short a time to develop the administration, management and educational capacities expected. The second TA to the Maldives was structured to develop the capacity of legal professionals and judicial officers by focusing on curriculum development, training trainers, producing high-quality materials and training delivery. Inputs were provided by respected national consultants, supported by one international advisor. As with previously discussed TAs, there was no system to monitor impacts. Sustainability was also undermined by insufficient resources to establish strong institutional foundations, and ensure the continued delivery of high-quality education. As was confirmed in the Maldives country strategy and program completion report, there is no follow through on this TA.³³

39. An advisory TA in Pakistan worked on the formal frameworks to develop a safer and more secure environment for the poor and vulnerable in four pilot districts of Punjab. It delivered a manual of investigation for the Punjab Police; training courses on investigations, preservation of the crime scene, evidence collection, and interrogation skills; human resource plans for the pilot districts; and protocols and governance arrangements for the provincial forensic science facilities; citizen–police liaison frameworks in the pilot districts; the appointment of human rights officers; training in all pilot districts to sensitize police officers in the area of human rights; establishment of women help desks in selected police stations; and crime surveys in the pilot districts.

4. Monitoring and Evaluation of Justice Reform TAs

40. The deficits in monitoring and evaluating justice reform TAs include a preoccupation with the delivery of TA outputs; technical weaknesses in the strategic logic of project design such that total achievement does not guarantee attainment of stated objectives and inability to demonstrate the impact or contribution of assistance to performance and situational change. As noted by the Independent Evaluation Department (IED) in its SES of the performance of technical assistance across ADB,³⁴ monitoring of TA achievements and impacts is generally weak as a result of weak DMFs, and a lack of monitoring systems. This SES found a similar lack of rigor in the DMFs of the justice reform TAs, and in the monitoring of those TAs.

41. These observations echo concerns raised by the literature review³⁵ regarding ambitious designs, inadequate diagnostic tools, and deficient monitoring and evaluation systems. A number of studies refer to the lack of resources, insufficient monitoring and evaluation capacity, and the difficulty of defining appropriate indicators. Since it is important to be able to measure the improvements or deteriorations in the justice sector, there is a need to transition from monitoring the implementation of activities to monitoring the impact of these activities on sector performance. The challenge is to measure the effect of change, rather than determine whether the change management event occurred.

³³ ADB. 2005. *Country Strategy and Program (2006-2008): Maldives*. Manila; ADB. 2004. *Technical Assistance Completion Report on Strengthening Legal Education and Judicial Training in Maldives*. Manila; Suresh. Nanwami and A. Moheinium Ayur. 2007. *Strengthening Legal Education and Judicial Training in the Maldives: A Case Study*. *Law Journal* (Volume 15 Number 2). Malaysia: Institutional Islamic University.

³⁴ ADB. 2007. *Special Evaluation Study on Performance of Technical Assistance*. Manila.

³⁵ Appendix 2.

5. Management and Dissemination of Justice Reform Knowledge Products

42. Since the early 1990s, OGC has disseminated information on this work through a website.³⁶ Annual reports and special purpose studies were published in the 1990s, and regional and international symposia on law and development issues were held. A series of *Law and Policy Reform Bulletins* were prepared from 1995 to 2000, including an extensive inventory of law and policy-related TAs by ADB and other development partners. An influential publication in the 1990s was on a study of Mongolia's legal framework.³⁷ The analysis was drawn on by the Japan International Cooperation Agency, GTZ, USAID, the World Bank, and the Government of Mongolia in designing their support for justice reform in Mongolia. The TAs to Cambodia undertook mass dissemination, through several media, of land laws and regulations. The TA in the Philippines published and disseminated project reports through CD-ROMs and the publication of a book on Philippine judicial reform entitled *On Balance*.³⁸ They were distributed to various levels of the judiciary and at international conferences participated in by the Philippines. The May 2005 issue of *ADB Review* focused on justice and law reform, and had a wealth of information on the connections between economic growth, poverty reduction, legal reforms, and the rule of law; better policing and legal protection, and law and gender.

6. Managing Technical Assistance Activities for Justice Reform

43. **ADB's institutional arrangements.** Of the 44 TAs, 33 were processed and administered by OGC in collaboration with the operations departments, including resident missions.³⁹ The other 11 were processed and administered by operations departments, with the Central and West Asia Department being responsible for four TAs; the Southeast Asia Department (SERD) being responsible for four TAs; the South Asia Department (SARD) being responsible for one TA; and the Pacific Department and RSDD, being responsible for one TA each.

44. ADB's justice reform programs in Bangladesh, Pakistan, and the Philippines show how the operations departments and OGC have worked closely in justice reform. In Pakistan and the Philippines, the first advisory TAs were appraised, designed, and administered by OGC. In Pakistan, although the program loan was reflected in the regional department's portfolio, the policy dialogue that eventually designed the program, the delineation of program scope, and the formulation of the reform agenda were guided by counsel. In the case of Bangladesh, the regional department had commissioned the design of a good governance program. Although judicial reform was not part of the original design, the Bangladesh Government requested the assistance. SARD took the lead in developing and incorporating the requested component and

³⁶ Available: <http://www.adb.org/Law/default.asp>.

³⁷ ADB. 1995. *Mongolia's Legal Framework: A Needs Assessment*. Manila.

³⁸ Asian Institute of Journalism and Communication. 2005. *On Balance: Judicial Reforms in the Philippines*. Manila.

³⁹ OGC's contributions began at the initiative of the OGC General Counsel in the early 1990s, when OGC managed a series of ad hoc regional TAs, and an advisory TA attached to the Industrial Sector Program Loan to Mongolia (Loan 1244). In those early years, few resources, if any, were provided for OGC's work in the area. In part, this explains why the OGC project files, particularly of TAs implemented in the 1990s, were incomplete and unsystematic. OGC has subsequently designated senior to management level counsels to oversee OGC's TA work; selected counsels to manage OGC's knowledge products; and engaged administrative assistants to specifically coordinate administrative matters. In March 2007, the administrative order specifying the functions of each ADB department was amended. Among other matters, it indicated that a principal responsibility of OGC is "to provide assistance and advice, at the request of operational departments or RSDD, in the processing and implementation of technical assistance, loans and other forms of assistance concerning law and policy reform." (Administrative Order No. 1.02. Office of General Counsel, para. 7). This confirms and recognizes OGC expertise in the area of law and policy reform. However, it also means OGC's TA work needs to be done in collaboration with operations departments or RSDD.

drew on OGC's assistance for substantial contributions to its design. In the Philippines, the first TA was processed and administered by a counsel in OGC who worked very closely with SERD. This ensured the counsel always had the support and guidance of a mentor from operations. In the middle of TA implementation, counsel moved to SERD and continued to administer the OGC TA. As a result, the TA benefited from the full operations support and strategic input of SERD, as well as the technical supervision and guidance of OGC. This administrative link between OGC and the operations department contributed in part to the sustained management of ADB's involvement in the Philippine justice sector. It also supported ADB's broader governance dialogue with the Philippines and the development of the governance program in the 2005–2007 Philippine country strategy and program. This program envisioned that ADB's engagement would expand to include the entire justice system and not just the judiciary. The program loan for Good Governance in Justice Sector Reform recently processed by SERD, and approved by the Board, follows through on this.

45. **Arrangements in comparator agencies.** Within the World Bank Legal Vice-Presidency, there are three units that provide technical advice and manage TAs supporting various aspects of legal and judicial reform in client countries. The Environmentally, and Socially Sustainable Development and International Law Unit provides advice on all environmental, social, and international legal and policy issues related to World Bank-financed, implemented and supported projects, and was staffed by nine lawyers and two consultants. The Justice Reform Practice Group comprises a team of justice reform practitioners supporting World Bank staff and countries with expertise in making justice systems more efficient, fair, and accessible. This team has been implementing the World Bank's justice for the poor program, which links with relevant loan programs managed by operational departments. The team was composed of seven lawyers, operations analysts and two legal associates with consultants in Washington and in field offices. The Private Sector Development, Finance and Infrastructure unit provides legal advice on legal, regulatory and institutional reforms for private enterprise, trade and finance sectors, and basic infrastructure services to support sustainable economic growth in a modern market economy. This unit had nine senior lawyers, three extended term consultants, four resident short-term consultants and one paralegal. The European Bank for Reconstruction and Development (EBRD), building on a 1992 secured transactions project, created a Legal Transition Team within the Office of the General Counsel in 1995, which by 2008 had a staff of five specialized lawyers under a team leader. The Team's focus was on supporting regional standards in secured transactions and insolvency, although more recently, this focus has broadened to include support in selected countries to mortgage securities markets, corporate governance, concessions, infrastructure regulation and judicial capacity. In the Inter-American Development Bank (IADB) the focus of the Legal Department attorneys is on the Department's core functions. Attorneys only provide advice and technical input to judicial administration, reform and other "modernization of the state" projects on an ad hoc basis. These TAs are managed within IADB's Institutional Capacity of the State division, where technical advice is provided by staff and consultants as required.

III. PERFORMANCE EVALUATION

A. Overall Assessment

46. The SES evaluated the justice reform TAs using the criteria of relevance, effectiveness, efficiency, and sustainability. The individual ratings were aggregated, and added up to 1.7 weighted average.⁴⁰ The overall assessment of ADB's support to justice reform is rated

⁴⁰ A program with an overall weighted average between 1.6 and 2.7 is rated *successful*.

successful (but with some areas for improvement), for being *relevant, effective, less efficient, and likely sustainable* (See Table 2 below).

Table 2: Overall Assessment and Rating

	Weight	Rating Value	Weighted Rating
Relevance	0.20	2	0.40
Effectiveness	0.30	2	0.60
Efficiency	0.30	1	0.30
Sustainability	0.20	2	0.40
Total			1.70

Source: ADB Independent Evaluation Department.

B. Relevance

47. Relevance refers to the extent to which ADB assistance is suited to the pursuit of recipients' and partners' priorities and policies. In evaluating relevance, this study considered the extent to which the objectives of the TAs were valid within and designed to contribute to the development programs of the recipient DMCs, whether their designs were consistent with their intended impacts, and whether they were consistent with the policies and strategies of ADB. In this connection, despite the opportunity to program justice reform activities strategically in country strategy documents, the selection of TAs has tended to be ad hoc and opportunistic, rather than systematic and sustained. ADB's positioning in the sector and development partner coordination efforts are also considered.

1. Validity, Contribution, and Design of TAs

48. Most of the documents recommending justice reform advisory TAs confirmed the DMCs' requests for the assistance. However, only in the following instances was there actual reference to a government program requiring the assistance: the Pakistan TAs supporting the Access to Justice Program, the Philippine judicial independence TAs, and the Indonesia TA to support case management and dissemination of decisions in Indonesia. A few indicated that TA support would contribute to ongoing efforts of the Government. In several cases, there was no analysis of the merits of the recommendations relative to ADB's country strategies. Most of the TA inputs were generally designed for purpose, and were often consistent with the intended outcome or objective. However, some TAs failed to establish the links between the TA-financed activities and their outputs on one hand, and the goals, outcomes, and impacts on the other. One of the earlier examples was a TA to retrain government legal officers in Viet Nam. Whereas the sector goal was to improve government capacity to design and implement market economy reforms, the TA was provided to develop institutional capacity to retrain government lawyers.

49. In the case of regional TAs, they sponsored research studies, conferences, and round table discussions precisely to open up areas of study for wider discussion. These TAs served as forums for intellectual discussion of issues that may otherwise have been difficult for individual DMCs to tackle on their own. The areas of study were mostly selected by OGC. The earlier TAs in particular had a strong bias for politically nonsensitive issues such as legal training, dissemination of information, legal literacy, and experiences relating to justice reform work. Only a regional TA on the status of women sponsored by a regional department, and another on legal literacy sponsored by OGC, studied potentially sensitive issues. After 2000, justice reform regional TAs began to focus on more difficult areas such as judicial independence, public opinion, access to justice, legal identity, and legal empowerment. Completed work under this

subset of activities consisted of studies that informed ongoing and future work. The regional TA to institutionalize legal training in PRC, Cambodia, Mongolia, and Viet Nam informed advisory TA in those countries. The final summary report on the judicial independence regional TA was published by OGC and informed the policy dialogue in connection with the Philippine TA. The reports and findings from the legal empowerment and legal identity TAs have significantly contributed to the international body of knowledge on the subject, and are being tested in some ADB loan financed TAs.

50. The SES on ADB TA performance⁴¹ confirms the general trend that TAs are often weak in defining impacts, outcomes, and indicators, and their causal links. This is particularly true in the case of justice reform TAs where there is a general lack of baseline data against which to monitor achievements and progress. Clearer and more realistic impact statements are necessary, a clear picture of sector status and sector targets is important, and there must be greater clarity in the monitoring and evaluation mechanisms.

2. Project Consistency with ADB Policies and Strategies

51. Support to justice reform has been an ad hoc and a peripheral activity, despite its importance and usefulness in improving governance and contributing to poverty reduction and the economic growth process of DMCs. As it stands now, ADB does not have a clearly defined operational strategy that actively advocates or pursues justice reform activities. There is no corporate guidance on how to assess the justice sector, how to develop justice sector road maps, how to design justice reform TAs and programs, and what indicators to assess and how. ADB's Country Program and Strategy process does not particularly ask for special attention to be paid to a DMC's justice sector. A review of the country strategy documents of the 12 DMCs that received justice reform TAs shows that in very few cases is there anything approaching a strategy for justice reform. In most cases, there is little analysis of the justice sector on which to base any strategy. This is a weakness that has resulted in many small justice reform TAs with few mechanisms to select indicators, monitor developments, and assess outcomes and impacts.

52. ADB's policies and strategies between 1996 and 2006 recognized the importance of the justice sector to sustainable development and growth, and allowed for TAs to be undertaken specifically to reform this sector. Although the first and second governance and anticorruption policy reviews, the Medium-Term Strategy II, and Strategy 2020 continue to recognize the value of justice, they have clearly shifted the focus of activities toward strengthening anticorruption measures and fiduciary mechanisms. ADB's justice reform TAs and loans now reflect the periphery of ADB's strategies and policies.

3. ADB Positioning

53. Notwithstanding the above, in the period covered, there was already a growing regional wave of judicial independence and justice reform awareness. Many well-attended international conferences were being held throughout Asia and the Pacific. Networks were being set up, general principles adopted, and experiences and lessons shared and tested. Some of these international conferences were successfully hosted by ADB under the regional TAs managed by OGC. Two others were hosted by the Philippine Supreme Court in Manila and sponsored, to a large extent, by ADB and the World Bank. ADB's work in this area was clearly aligned with the earlier policies and strategies of ADB, and the DMCs' own justice reform programs. It was also in line with the international wave of justice reform work.

⁴¹ Footnote 34.

4. Partner Coordination

54. There is evidence of coordination among development partners with respect to most of ADB's justice reform TAs, which helped to avoid duplication and lack of synergy in development assistance. In a few DMCs, specifically Indonesia, Mongolia, and the Philippines, assessments of the justice sectors were commissioned by one or two other development partners and used by the development community as basis for their law, policy, and justice reform programs in those countries. In the case of the Philippines, the Supreme Court as program executing agency eventually took charge of coordinating partners' assistance and activities.

5. Overall Rating of Relevance

55. Based on the foregoing discussion (paras. 47-54), the SES gives ADB's justice reform TAs a general rating of *relevant*. The rating recognizes that (i) most of the justice reform TAs were generally relevant to the recipient DMCs; (ii) they were generally consistent with ADB's early policies and strategies, and with international thinking on justice reform; and (iii) in at least two cases, TAs led to large program loans. However, the widespread absence of justice sector assessments and updates in DMCs has limited ADB's ability to identify opportunities, develop strategic approaches with more DMC governments, and provide the long-term support required for justice reform.

C. Effectiveness

56. Effectiveness is a measure of the extent to which an activity attains its objectives, as well as an assessment of major factors influencing the achievement or nonachievement of objectives. The SES rates ADB's overall TA support to justice reform as *effective*. This rating takes into consideration the fact that the TAs generally delivered the envisioned outputs, e.g., the reports, studies, recommendations, training sessions, studies, and conferences that they were designed to deliver. Further, several of the regional TAs had far-reaching outcomes, as earlier discussed (paras. 29-32 and 49). On the negative side, the DMFs of some of the TAs indicated goals (or impacts) that had insufficient linkage to the outputs, and none of the TAs had an effective mechanism for monitoring and evaluating impacts. For example, one TA was provided to improve the efficiency and responsiveness of the legal system of the Federated States of Micronesia. To achieve the goal, the TA was designed to create a legal information system that would improve access to laws. A publicly accessible legal information system does not necessarily lead to a responsive legal system. Quite apart from this, the TA was not able to achieve the purpose stated in its logical framework: "to improve access to laws." Relevant risks had not been identified and addressed. Although the information system was established, transparency and accessibility of legal information was not substantially improved because certain legal materials were withheld by the relevant government agencies, and others were too voluminous or difficult to access and convert into electronic form within the implementation period.

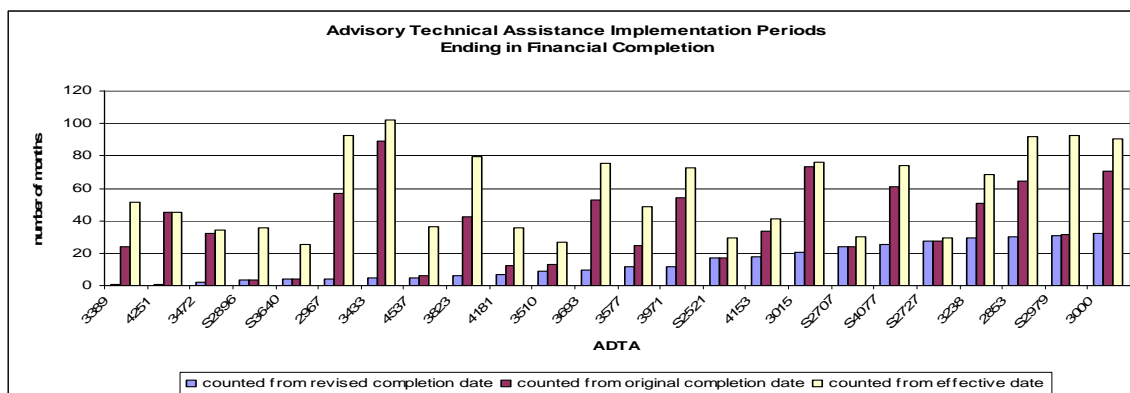
D. Efficiency

57. Efficiency is a measure of how well the TAs used resources in achieving intended outputs and outcomes. It considers whether the activities are cost-efficient (i.e., it measures the outputs or benefits in relation to the inputs or costs) and time-efficient (i.e., completed on time). The SES rates ADB's overall TA support to justice reform as *less efficient*. Two areas where most of the justice reform TAs failed this criterion are in the time allocated for implementation,

and in the time taken to close the TA account after actual completion of the activities. The inputs were delivered but later than anticipated, delaying delivery of benefits to intended beneficiaries, and increasing administration costs to ADB and recipient governments. At the corporate level, the attention and resources devoted to the administration of justice reform TAs were inadequate.

58. On average, the TA designs assumed completion within 18 months. In fact, 32 of them finally closed more than 10 months after the target closing date, with 19 of them closing more than 30 months after target closing date. As the second and third bars for each TA in Figures 2 and 3 indicate, the implementation time for practically all of the TAs far exceeded design expectations. The second bars indicate the additional time needed to complete the project, and the periods they indicate are counted from the original target completion date up to the closing of the TA account. The third bar indicates the total amount of time it took to implement and close the TA. The periods indicated by these third bars are counted from effectiveness of the TAs up to the closing of the TA accounts. These bars show that, except for one TA project, all the rest took more than 20 months to implement, of which 24 TAs took more than 40 months to implement, and seven took more than 80 months to implement. The fact that project implementation time takes longer than expected is, in itself, not unusual for TAs. These TAs had run into consultant engagement and mobilization issues that were common at the time and are addressed in the new procurement guidelines. For most of the justice reform TAs, however, the time seems unusually long, possibly because of an underestimation of the time and personnel resources required to implement a justice reform project properly.

Figure 2: Advisory TA Implementation Periods, Ending in Financial Completion

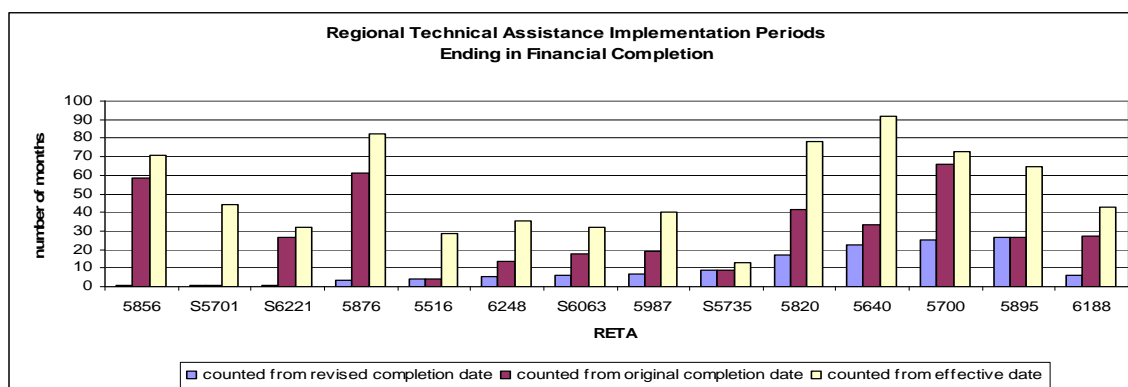


ADTA = advisory technical assistance.

Note: The X axis shows the ADTA numbers. An "S" before an ADTA number indicates a small-scale ADTA (Table A1.1).

Source: Asian Development Bank database.

Figure 3: Regional TA Implementation Periods, Ending in Financial Completion



RETA = regional technical assistance

Note: The X axis shows the RETA numbers. An "S" before a RETA number indicates a small-scale RETA (Table A1.1).

Source: Asian Development Bank database.

59. In most cases, the TAs needed more time to complete an activity. For some TAs, more time was required for consensus building. There were also cases where unutilized TA amounts were reallocated for additional activities, under approved minor changes in scope or implementation arrangements, and this required an extension of time. The additional activities often consisted of information dissemination and consensus building (e.g., additional workshops, publications, and conferences).

60. In addition, there were administrative inefficiencies. Several TAs closed with savings ranging from 20% to 30% (Table A1.1 in Appendix 1). On the one hand, it could be argued that the large savings meant the resources were so efficiently used that the outputs were delivered with less financial cost to ADB or the costs were over-estimated. On the other hand, it also means the financial resources were tied up for a considerable time without being used. Too many of the TAs were closed months after the activities were completed. The first bars for each TA in Figures 2 and 3 show how many months had elapsed between the date of actual completion and the date the TA account was fully liquidated and closed. In 14 cases, the accounts were closed between 15 and 30 months (Figures 2 and 3 above) after the final revised project completion date. Many of these were delayed because of incomplete documentation for the liquidation of accounts. This is a matter that affected TAs across all sectors and has been addressed by Management. Another area of administrative inefficiency is in record keeping and management. Several of the TA consultants' reports are unavailable or inaccessible. In addition, in the year that information for this SES was being gathered, IED was advised that project records on OGC's TAs were neither with archives nor with OGC. They were eventually located in January 2009. These matters point to a need for improved management of the financial, contractual, and project records. These difficulties were largely because many of the justice reform TAs were administered with significantly less resources than would normally be expected.

61. As for the outputs in relation to the inputs, the consultant reports and recommendations that could be accessed were generally of good quality. In some cases they were accepted by the relevant government, and a few of those were used as basis for further reform work. Several of the TAs used a combination of international and local consultants. In the later TAs, the national consultants contributed more time at lower cost, while generally still delivering good quality work. The TA to Strengthen the Independence of the Judiciary in the Philippines, for example, was specifically designed to put national consultants in the lead. Their contributions

were sensitive to local conditions. They gained a wider, more global perspective, from the desk and peer reviews of the international consultants, and full engagement and discussions with the latter and other resource persons.

62. The use of regional or small-scale TA as a precursor to a larger advisory TA was an efficient use of ADB's resources. However, there were instances when ADB did not sustain its engagement over a sufficient period of time to embed change management practices in organizations. The overly ambitious design of justice reform projects combined with insufficient time and resources resulted in a need to extend all projects to achieve outputs. Finally, the lack of a communication and dissemination strategy for the studies and research conducted under the TAs has limited their ability to influence internal and external stakeholders.

E. Sustainability

63. Sustainability is concerned with whether the benefits (outputs and outcomes) of an activity are likely to continue after ADB assistance is over. The evaluation of a project against this criterion usually considers the likelihood that the human, institutional, financial, and other resources that have been provided or established are sufficient to maintain project outcomes over the project's economic life. In the case of the regional TAs assessed by this SES, it was a question of whether the products were useful in subsequent work, or opened up new areas and ways of approaching TAs. It was the use to which the studies, conferences, and knowledge products had been put that was used as the indicator of sustainability. In the case of advisory TAs, the SES considers the likelihood that the reform outputs would be maintained, expanded, or further developed. The assessments showed that the TAs ranged widely across the spectrum from *unlikely to be sustainable* to *less likely sustainable*, *likely sustainable*, and *most likely sustainable*. Overall, the TAs were rated in the low- to mid-range of *likely sustainable*.

64. The influence of an early legal literacy regional TA on subsequent ADB work is worth highlighting. The project on Legal Literacy for Good Governance opened the way to further TA activities covering the empowerment of women, the urban poor, and the marginalized. It recommended that features to support the empowerment of marginalized groups, and the project beneficiaries be built into the design of every ADB project. The regional TA for Legal Empowerment for Women and Disadvantaged Groups took up this recommendation and conducted a 2-year pilot of legal empowerment strategies in three ADB lending operations: the Second Small-Scale Water Resources Development Sector Project⁴² of Bangladesh, the Neighborhood Upgrading and Shelter Sector Project⁴³ of Indonesia, and the Sindh Devolved Social Services Program⁴⁴ of Pakistan. In Bangladesh, one of the objectives was to increase the confidence of women so they could participate in the water resource management systems. During the pilot period, more women were observed to attend and participate in the meetings of the water management cooperative associations. In Pakistan, the project beneficiaries were observed to have gained an understanding of how to access basic health care; there was also an improvement in the interactions among doctors, elected representatives, health committees,

⁴² ADB. 2001. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to the People's Republic of Bangladesh for the Second Small-Scale Water Resources Development Sector Project*. Manila. (Loan 1831[SF] approved on 12 July 2001, for \$34 million).

⁴³ ADB. 2003. *Report and Recommendation of the President to the Board of Directors on Proposed Loans to the Republic of Indonesia for the Neighborhood Upgrading and Shelter Sector Project*. Manila (Loans 2072/2073[SF] approved on 19 December 2003, for \$68.6 million and \$20 million, respectively).

⁴⁴ ADB. 2003. *Report and Recommendation of the President to the Board of Directors on Proposed Program and Technical Assistance Loans to the Islamic Republic of Pakistan for the Sindh Devolved Social Services Program*. Manila. (Loans 2047/2048[SF]/2049[SF] approved on 12 December 2003, for \$110 million, \$100 million, and \$10 million, respectively).

and citizens, and in the service delivery of basic health units. It is hoped that the lessons learned and experience gained under this project will encourage the incorporation of further legal empowerment components within ADB lending operations, particularly since this is an approach that is aligned with at least one of the drivers of growth in ADB's Strategy 2020. Several of the advisory TAs have also had some amount of success in achieving the expected outcomes. The knowledge products from the TAs in Cambodia continue to be sold in the markets. The TAs in Pakistan have contributed to a large program for which the Government has borrowed, the Access to Justice Program. The same may be said of the TAs in the Philippines.

65. Having said that, several of the TAs, particularly the earlier ones, and several of the small-scale TAs were one-off TAs with no follow up or follow through, either from the recipient governments or from ADB. The TAs for Administration of Justice in India and Governance Audit of the Public Prosecution Service in Indonesia were provided to assist the DMCs to develop reform programs for their respective justice sector agencies. In neither case did the government pursue the recommendations. There was no follow through on the TAs Disseminating Laws and Strengthening the Legal Information System in Tajikistan, Promoting Governance in Financial Transactions in the Lao People's Democratic Republic, and Improving Access to Laws in the Federated States of Micronesia, which did not receive the support required from the respective governments, even during implementation. As for many of the seven small-scale advisory TAs, there is no further information.

IV. FINDINGS, LESSONS, ISSUES AND RECOMMENDATIONS

A. Key Findings

66. **At the DMC level, ADB TAs for justice reform have helped increase awareness of the need to improve legal empowerment and access to justice, strengthen judicial independence, accountability, and administration and undertake capacity building for justice sector agencies.** It provided training opportunities and good practices for government officials working in judicial areas. Some TAs have also led to DMCs borrowing for the implementation of justice reform.

67. **Within ADB, justice reform lacked strategic recognition as a development issue and there was no systematic approach to justice reform or operational plan.** ADB's country strategy documents (for DMCs with justice reform TAs) made only cursory reference to the needs of the sector. Also, as compared with the number of advisory and regional justice reform TAs, the number of justice reform loans is few and far between.

68. **Some TAs were innovative and successful in bringing out new ideas for justice reform in DMCs.** The regional and advisory TAs on judicial independence and accountability broke new ground for large programs in Pakistan and the Philippines. The regional TAs on legal empowerment and access to justice are contributing to the process of mainstreaming the concept of inclusiveness into project designs. Some pioneering techniques used in a few of the TAs have also proven useful and could be replicated in other projects. Low-tech comic strips and easily available printed material were used for disseminating critical information on an important law in Cambodia. This proved highly successful and enriched the public's knowledge of land rights. By reaching the public directly, it achieved more than a series of short but expensive training sessions for a small number of lawyers and judges. In the Philippines, the use of qualified national consultants to develop the advisory work (and not just to gather and process data) proven to be an efficient use of TA funds. Putting national consultants in charge of consensus building also reduced the points of unnecessary sensitivity, while partnering them

with international consultants and resource people brought a balance of views and global perspectives to the work.

69. **Some of the justice reform TAs were perceived by DMCs as supply-driven.** There are examples of TAs that eventually revealed low-level ownership from within the recipient DMCs or the recipient agencies, despite the fact that they ought to have been relevant to the DMCs' overall development. In India, attempts to initiate judicial reforms were not supported by the implementing agency and did not result in proposed loan financing of the project. Ownership is a condition for any program or project to work. Where there was real demand from the DMCs or the beneficiary agencies, advisory TAs provided the framework for long-term dialogue as well as the basis for policy reform loans. In the case of Pakistan and the Philippines, the ownership was clearly evidenced by several factors. Among these were (i) the fact that it was the clients that called on ADB to provide the assistance; (ii) in substance, it was the clients' reform programs that ADB financed, (iii) the engagement with ADB was championed by leaders in the sector, and (iv) in the case of the Philippines, a program and development partner coordinating project management office was established within the client's organization and was funded out of the client's own budget.

70. **The quality at entry of justice reform TAs and their amenability to evaluation were in many cases weak.** TA monitoring, and amenability to evaluation of outcomes and impacts, were weak. DMFs consistently focused on outputs and were of negligible evaluative value beyond monitoring the performance of consultants. TA objectives were sometimes conflated, development logic at times confused, and efforts often fragmented from higher-level or longer-term goals and strategies. As a result, there is difficulty in demonstrating impact in terms of improvements in justice or judicial services.

71. **Most of the TAs assessed by the SES required more time to complete than was originally allotted, and they also had administrative inefficiencies, thus raising administration costs and delaying benefits to the intended beneficiaries.** In many cases this was because the work itself needed more time. In other cases, there were delays in fielding consultants and in liquidating costs. Part of the delays in TAs that closed 30 to 35 months after completion appeared to have been quite simply the result of insufficient administration. In general, the administration of the justice reform TAs did not get adequate attention nor the required staff resources. Better project administration by staff and support from the relevant divisions is needed. Staff who are not operationally trained need to be trained in operations, and possibly mentored by senior professional staff, who will work closely and collaboratively with them in the course of TA implementation. The excessive delays in some TAs could be avoided if timely attention was given to them by ADB and executing agencies. In the future, it is important to design TAs that incorporate sufficient time for policy dialogue and consensus building, and which include discrete components for the development, publication, and dissemination of TA knowledge products.

72. **Justice reform TAs compete poorly with other economic, sector, and thematic work for resources and priority setting at ADB.** Justice reform TAs remain small and peripheral. Measurable evidence of development impact is important to further activities in the sector.

B. Key Issues

73. **Why is justice reform important in development?** Justice reform work is highly complex, but very important to enhance access to justice, reduce legal inequality, and improve

social and economic inclusiveness in the development process of DMCs. Justice reform typically requires specialized knowledge and skills in the legal and justice sector, as well as in economics, governance, administration and a number of other areas. It also needs a good understanding of the political, legal, cultural, and sociological context of the work, hands-on involvement and guidance in the management of the program and project, and sufficient financial, human, and time resources. It is important therefore to view justice reform assistance to a DMC as a long-term and intensive engagement. It needs to be based on solid sector assessments, and led from ADB's side by members of staff who are mindful of the social and political realities of the countries they work in. ADB staff must be seen to be fully involved, not leaving matters entirely to consultants. It is also important to coordinate with other development partners.

74. Should ADB have a systematic operational approach to support justice reform in DMCs? Justice reform is relevant under Strategy 2020 as it addresses binding constraints to inclusive growth and good governance. The failure of justice and the lack of a reform effort to improve its delivery are likely to continue to be major constraints on sustained and inclusive growth in DMCs. Despite this, most justice reform TAs were initiated and undertaken not by the regional departments but by OGC, which had counsels who were interested in the subject and who had the legal expertise in relevant areas. Some of the justice reform interventions, although originally outside the mainstream of ADB work, eventually contributed to larger programs. There is, however, much room to improve the efficiency of this work, to make it more amenable to evaluation, and to build on its effectiveness and relevance. A systematic approach to it would go a long way toward achieving justice reforms in DMCs. Among other things, such an approach should guide the development, design, processing, implementation, monitoring, and evaluation of justice reform TAs and make provision for necessary staff and financial resources.

75. How to improve quality at entry, implementation, and amenability to evaluation of justice reform work? Justice reform DMFs need to have appropriate targets, indicators, risks, and assumptions, all of which need to be clearly defined and logically linked together. Project designs should include a functional monitoring and evaluation mechanism that will gather information during implementation. Due consideration must be given to providing adequate time for the reform process to take place during implementation.

76. More knowledge management and dissemination? Over the past decade and a half, ADB has expended significant effort and resources on justice reform initiatives across the region. A systematic approach focused on communicating and disseminating the findings would greatly improve the overall impact of this body of work. Both ADB and the broader development community would benefit from better communication and dissemination efforts. It would also be useful to pull the existing knowledge base together, review it, and publish or republish it, if it is still relevant.

C. Lessons Identified

77. The following key lessons have been identified: (i) strong participation and ownership by DMC governments in TA formulation and implementation contribute to the success of the TA in achieving its objectives; (ii) justice reform TAs when they are linked to country strategy can provide a systematic and long-term engagement in justice reforms; (iii) justice reform is an important subset of law and policy reform supporting good governance in DMCs, but requires greater attention to play a more important role in inclusive development; (iv) a clearer definition of ADB's justice reform strategy and operational responsibilities would be useful for more

efficient justice reform operations; and (v) addressing the low priority for justice reform will need a demonstration of tangible development impacts that can be evaluated.

78. Justice reform TAs must be designed, such that results are relevant and measurable; causal links between points in the TA design are explained with clear logic; and, provision is made for the gathering of data during execution so results may be documented. Staff members working on TAs need to improve their design skills with a view to ensuring the TAs are more amenable to evaluation. Finally, departments and divisions with justice reform TAs need to commit sufficient staff time to allow for staff engagement in the substance of the reform work, not just the administration of TA implementation.

D. Conclusions and Recommendations

79. Justice reform is important in that it contributes to empowering people, particularly the poor, and enables them thereby to participate in making the decisions that shape their lives. It also strengthens institutions for improving the delivery of justice services. Yet, justice reform has not received strategic recognition in ADB apart from passing references in ADB's key policies or strategies. In 1991, the ADF donors indicated that ADF resources should be used to improve the governance of institutions, including the legal system and regulatory agencies. In 1995, ADB adopted a Governance Policy acknowledging that society should have practical recourse to courts of justice. In 1998, ADB's Anticorruption Policy noted that legal and judicial reform has positive externalities in the fight against corruption. In 1999, ADB's Poverty Reduction Strategy defined poverty as "a deprivation of essential assets and opportunities to which every human is entitled." ADB's first Long Term-Strategy, 2001–2015 recognized that failures in legal and judicial systems discriminate against the poor and rob them of the opportunity to participate in the making of decisions that affect them. Its first Medium-Term Strategy, 2001–2005 identified ineffective institutions and policies as the biggest constraints to growth and development in the region. The most recent of these, Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008–2020, specifies inclusive growth as a strategic agenda, and good governance as a driver of change.

80. Notwithstanding that good governance is ever increasingly important for ADB to achieve greater development effectiveness of its assistance and justice reform is an important part of it, ADB's assistance to justice reform remains small. This may be attributed to (i) crowding out by other priorities in ADB's strategic agenda, (ii) lack of closely defined organizational responsibilities for justice reform operations, (iii) lack of critical mass of dedicated specialized skills needed to scale-up justice reform, and (iv) reluctance of DMCs to borrow for justice reforms.

81. The SES shows that justice reform TAs have been successful. The question then is whether such assistance should continue as before, or is it now time for ADB to scale up assistance for justice reform. This SES puts forward the following recommendations for consideration by Management:

- (i) Since the justice reform loans are not evaluated yet, it would be useful for Management to study the outcomes of the loan assistance and based thereon, take an informed view in the broader strategic context whether or not justice reform assistance should continue as before or be pro-actively scaled up.
- (ii) Meanwhile, Management may continue providing technical assistance in response to demand and where opportunities arise for further justice reforms which would contribute to assisting DMC governments in their pursuit of

empowering their people, strengthening their institutions for more efficient delivery of justice services and eventually improving inclusiveness in their development operations.

- (iii) To make the assistance more effective and efficient, clearly define responsibilities, provide resources and improve quality at entry.

ADB TAs SUPPORTING THE JUSTICE SECTOR

Table A1.1: Justice Reform Advisory Technical Assistance, 1991–2008

TA No.	DMC	Dept.	Project Name	Approved Amount (\$)	Savings per TA (%)	Approval Date	Financial Completion Date	Actual Completion Date	Original Completion Date	TCR Rating	SES Rating	
A. Small-Scale Advisory Technical Assistance^a												
1	2727	MON	OGC	Restructuring and Capacity Building for the Ministry of Justice	56,000	41	23-Dec-96	31-May-99	22-Feb-99 ^b	22-Feb-97	NA	-
2	2521	IND	OGC	Training for Alternative Dispute Resolution	100,000	0	27-Dec-95	31-May-98	31-Dec-96 ^b	31-Dec-96	NA	-
3	2707	PRC	OGC	Study on PRC Legal Information System	100,000	2	12-Dec-96	31-May-99	31-May-97 ^b	31-May-97	NA	-
4	2896 ^c	MLD	OGC	Strengthening the Maldivian Legal System	150,000	12	17-Oct-97	30-Sep-00	30-Jun-00 ^b	30-Jun-00	NA	-
5	2979	PAK	OGC	Strengthening Government Legal Services and the Subordinate Judiciary	150,000	24	31-Dec-97	12-Aug-05	31-Jan-03 ^b	31-Dec-02	NA	-
6	3640	PAK	OGC	Supporting Access to Justice under the Local Government Plan	150,000	0	19-Mar-01	30-Apr-03	31-Dec-02 ^b	31-Dec-02	NA	-
7	4077	MON	OGC	Retraining of Legal Professionals in a Market Economy II	150,000		20-Dec-02	26-Jan-09	31-Dec-06	31-Jan-04	NA	-
				Subtotal	856,000							
B. Small-Scale Regional Technical Assistance^a												
8	5735		OGC	Roundtable Meeting of Chief Justices and Ministers of Justice	95,300	33	7-May-97	31-May-98	31-Aug-97 ^b	31-Aug-97	NA	-
9	5701		OGC	Feasibility Study for Creation of an Electronic Development Law Resource Center	100,000	18	3-Sep-96	30-Apr-00	31-Mar-00 ^b	31-Mar-00	NA	-
10	6063		OGC	Public Opinion Surveys on Judicial Independence and Accountability	100,000	5	7-Nov-02	23-Jun-05	31-Dec-04 ^b	31-Dec-03	NA	-
11	6221		OGC	Regional Assessment Study and Workshop for Strengthening the Judiciary and the Prosecutorial System (earlier	110,000	12	22-Dec-04	31-Jul-07	30-Jun-07	31-May-05	NA	-

TA No.	DMC	Dept.	Project Name	Approved Amount (\$)	Savings per TA (%)	Approval Date	Financial Completion Date	Actual Completion Date	Original Completion Date	TCR Rating	SES Rating	
			listed as "Symposium on Judicial Reform and Human Security"									
Subtotal				405,300								
C. Advisory Technical Assistance												
12	2853	VIE	OGC	Retraining Government Legal Officers	1,200,000	13	26-Aug-97	20-Jun-05	31-Dec-02	28-Feb-00	HS	S
13	2967	MON	OGC	Retraining of Legal Professionals in a Market Economy	1,000,000	6	23-Dec-97	28-Dec-05	31-Aug-05	30-Apr-01	S	PS
14	3000	PRC	OGC	Strengthening of the Legal Information System	630,000	12	23-Mar-98	22-Aug-05	31-Dec-02	31-Oct-99	S	S
15	3015	PAK	OGC	Legal and Judicial Reform	995,000	1	07-May-98	13-Oct-04	31-Jan-03	30-Sep-98	S	S
16	3238	TAJ	OGC	Disseminating Laws and Strengthening the Legal Information System	380,000	3	09-Aug-99	30-Jun-05	31-Jan-03 ^b	30-Apr-01	S	PS
17	3389	MLD	OGC	Strengthening Legal Education and Judicial Training	995,000	17	23-Dec-99	24-Apr-04	31-Mar-04	30-Apr-02	S	PS
18	3433	PAK	CWRD	Strengthening of Institutional Capacity for Judicial and Legal Reform	2,900,000	2	27-Apr-00	30-Nov-08	30-Jun-08 ^b	31-Jul-01	NA	-
19	3472	INO	OGC	Governance Audit of the Public Prosecution Service	1,000,000	30	21-Jul-00	31-Aug-03	30-Jun-03 ^b	31-Dec-00	PS	PS
20	3510	FSM	PARD	Improving Access to Laws	300,000	24	29-Sep-00	31-Dec-02	31-Mar-02	30-Nov-01	S	PS
21	3577	CAM	OGC	Implementation of Land Legislation	600,000	0	13-Dec-00	31-Dec-04	15-Jan-04	31-Dec-02	HS	S
22	3693	PHI	OGC	TA to Strengthen the Independence of the Judiciary	1,200,000	2	02-Aug-01	11-Oct-07	31-Dec-06	31-May-03	S	S
23	3823	PAK	CWRD	Supporting and Monitoring Progress under the Access to Justice Program	900,000	31	20-Dec-01	24-Jun-08	31-Dec-07	31-Dec-04	NA	-
	3823	PAK	CWRD	Supporting and Monitoring Progress under the Access to Justice Program (Supplementary)	440,000		13-Aug-03				-	-
	3823	PAK	CWRD	Supporting and Monitoring Progress under the Access to Justice Program (Supplementary)	400,000		13-Sep-05				-	-
24	3971	PRC	OGC	Enforcement of World Trade Organization Rules by the Judicial System	400,000	6	04-Nov-02	17-Dec-08	31-Dec-07 ^b	30-Jun-04	S	S
25	4153	IND	SARD	Administration of Justice	500,000	4	25-Jul-03	26-Dec-06	30-Jun-05	31-Mar-04	S	PS
26	4181	CAM	OGC	Implementation of Land Legislation Phase 2	600,000	0	23-Sep-03	13-Nov-06	15-Apr-06	31-Oct-05	HS	HS

	TA No.	DMC	Dept.	Project Name	Approved Amount (\$)	Savings per TA (%)	Approval Date	Financial Completion Date	Actual Completion Date	Original Completion Date	TCR Rating	SES Rating
27	4251	INO	SERD	Improvement of the Administration of the Supreme Court	500,000	33	13-Dec-03	30-Jun-08	31-May-08	30-Sep-04	S	PS
28	4537	PAK	CWRD	Implementing Public Safety Reforms in Four Districts of the Province of Punjab	950,000	28	23-Dec-04	26-Jun-08	26-Jan-08	31-Dec-07	S	S
29	4237	PRC	OGC	Support to the Review and Planning for Development of the Legal and Judicial System	350,000		04-Dec-03		31-Mar-08	30-Sep-04	Active	-
30	4770	LAO	SERD	Promoting Governance in Financial Transactions	650,000		10-Mar-06			31-Mar-07	Active	-
31	4832	PHI	SERD	Enhancing the Autonomy, Accountability, and Efficiency of the Judiciary, and Improving the Administration of Justice	800,000		30-Aug-06			31-Oct-07	Active	-
32	7115	PRC	OGC	Strengthening the Capacity of the Judiciary to Implement Economic Laws	400,000		15-Aug-08			31-Oct-07	Active	-
Subtotal					18,090,000							
D. Regional Technical Assistance												
33	5516		OGC	Legal Training in Development Law	600,000	0	16-Dec-92	31-May-95	31-Jan-95 ^b	31-Jan-95	NA	-
34	5640		OGC	Institutionalizing Legal Training in Cambodia, the People's Republic of China, Mongolia and Viet Nam	450,000	0	23-Aug-95	30-Apr-03	30-Jun-01 ^b	31-Jul-00	S	S
35	5700		SERD	Sociolegal Status of Women in Selected Developing Member Countries	450,000	1	30-Aug-96	31-Aug-02	31-Jul-00 ^b	31-Mar-97	GS	S
36	5820		OGC	Development of the Internet for Asian Law	600,000	11	17-Dec-98	23-May-05	31-Dec-03 ^b	31-Dec-01	S	S
37	5856		OGC	Legal Literacy for Supporting Governance	500,000	1	24-Aug-99	22-Jun-05	30-May-05 ^b	31-Aug-00	S	S
38	5876		OGC	Organization and Management of Government Legal Services	437,000	18	10-Dec-99	14-Sep-06	07-Jun-06 ^b	31-Aug-01	NA	-
39	5895		OGC	Pacific Judicial Training	350,000	0	28-Dec-99	31-May-05	31-Mar-03 ^b	31-Mar-03	NA	-

	TA No.	DMC	Dept.	Project Name	Approved Amount (\$)	Savings per TA (%)	Approval Date	Financial Completion Date	Actual Completion Date	Original Completion Date	TCR Rating	SES Rating
40	5987		OGC	Judicial Independence	475,000	8	9-Jul-01	28-Oct-04	31-Mar-04	31-Mar-03	HS	S
41	6188		OGC	Establishing Legal Identity for Social Inclusion	575,000	16	30-Sep-04	31-Mar-08	30-Sep-07	31-Dec-05	HS	S
42	6248		RSDD	Legal Empowerment for Women and Disadvantaged Groups	550,000	2	19-Jul-05	10-Jun-08	31-Dec-07	30-Apr-07	HS	S
43	6366		OGC	Access to Justice for the Urban Poor	500,000		15-Dec-06	Active		28-Feb-07	NA	-
	6366		OGC	Access to Justice for the Urban Poor (Supplementary)	40,000		12-Dec-07	Active			NA	-
44	6465		CWRD	Strengthening the Asian Ombudsman Association	900,000		24-Jun-08	Active			NA	-
Subtotal					6,427,000							
TOTAL					25,778,300							

- = no rating, CAM = Cambodia, CWRD = Central and West Asia Department, Dept. = department, DMC = developing member country, FSM = Federated States of Micronesia, HS = highly successful, IND = India, INO, Indonesia, LAO = Lao People's Democratic Republic, MLD = Maldives, NA = not available, OGC = Office of the General Counsel, PAK = Pakistan, PHI = Philippines, PRC = People's Republic of China, PS = partly successful, S = successful, SARD = South Asia Department, SERD = Southeast Asia Department, SES = special evaluation study, TA = technical assistance, TAJ = Tajikistan, TCR = technical assistance completion report, VIE = Viet Nam.

^a This is a small-scale technical assistance with an approved amount of less than or equal to \$150,000. No completion report is required after closing.

^b The physical completion date reflected is the last revised expected completion date stored in the mainframe, other dates indicated are the actual physical completion dates indicated in the technical assistance completion report.

^c This small-scale project preparatory technical assistance under the Office of the General Counsel was reclassified as advisory technical assistance.

Source: Asian Development Bank.

Table A1.2: Justice Reform Loans, 2001–2008

Loan No.	DMC	Project Name	Approved Amount (\$ million)	Date Approved	Dept.	PCR Ratings
1897/ 1898/ 1899	PAK	Access to Justice Program	350	20-Dec-01	CWRD	NA
2362	BAN	Good Governance Program	150	30-Oct-04	SARD	Active
2489	PHI	Governance in Justice Sector Reform Program	300	16-Dec-08	SERD	Active

BAN = Bangladesh, CWRD = Central and West Asia Department, Dept. = department, DMC = developing member country, NA = not applicable, PAK = Pakistan, PCR = project completion report, PHI = Philippines, SARD = South Asia Department, SERD = Southeast Asia Department.

Source: Asian Development Bank database.

REVIEW OF JUSTICE REFORM LITERATURE

1. Development partners have made considerable efforts to build and/or enhance access to justice and rule of law systems in developing member countries. The success of these efforts seems to depend largely on the extent of understanding of (i) the interdependence of policies, laws, and justice systems, (ii) the cultural contexts in which all three are inherently embedded, (iii) the political processes by which they acquire their institutional form and legitimacy, and thus (iv) the complexities associated with undertaking judicial reform initiatives.¹ A background paper² has reviewed the recent evolution of justice reform approaches. Since World War II, much work has been grounded in Latin America, which has the longest and most diversified history in judicial reform programs, many of them funded by the United States Agency for International Development (USAID). According to Hammergren, this context has explained why USAID programs traditionally sought to advance democratic development by reducing human rights violations, increasing access to justice, strengthening justice sector institutions, and decreasing impunity.³

2. More broadly, this history has been described by Jensen as comprising five waves.⁴
 - (i) The first wave was after World War II in the immediate context of reconstruction. It aimed to make public institutions work more effectively, was motivated by modernization theory, and focused on building the capacity of centralized bureaucracies.
 - (ii) The second wave was the much-criticized "law and development" movement, which reached its peak in the late 1960s, exporting American legal institutions and legal curricula mainly to Latin America.⁵
 - (iii) The third wave rose during the 1980s when USAID programs promoted democracy through legal development, with more attention being paid to judicial independence, constitutionalism, respect for civil and political liberties and criminal law.
 - (iv) This was succeeded by a fourth wave in the early 1990s when the "rule of law" movement became the big tent for social, economic and political change, the perceived answer to competing pressures for democratization, globalization, privatization, urbanization and decentralization. The entry of multilateral development banks (MDBs), which were constrained by their charters to avoid political dimensions of development, rationalized their entrance in terms of the need to strengthen legal institutions for foreign investment by enforcing contracts and property rights. Bolstered by the "Washington Consensus" and its push for private sector development, MDB support emphasized company law, secured

¹ Caroline Sage and Michael Woolcock. 2005. *Breaking the Legal Inequality Traps: New Approaches to Building Justice Systems for the Poor in Developing Countries*, BWPI Working Paper. University of Manchester, UK.

² Livingston Armytage. 2007. *Review of the Asian Development Bank Law and Justice Reform Experience*, Background Paper. Manila.

³ Linn Hammergren. 2003. *International Assistance to Latin American Justice Programs: Towards an Agenda for Reforming the Reformers*. In Erik Jensen and Thomas Heller. *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*. CA: Stanford University Press.

⁴ Erik Jensen. 2003. *The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers Responses*. In Erik Jensen and Thomas Heller. Footnote 3.

⁵ This phase of education-led reform became heavily criticized as being "cut-and-paste" American legalism and soon waned. See David Trubeck and Marc Galanter. 1974. Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States. *Wisconsin Law Review*. 1062. In this paper, David Trubeck, a key participant in the movement, argued that the movement rested on four pillars, all of which crumbled. These pillars were a cultural reform and transplantation strategy; an ad hoc approach to reform based on simplistic theoretical assumptions; faith in spillovers from the economy to democracy and human rights; and a development strategy that stressed state-led import substitution.

transactions and bankruptcy law. However, USAID interpreted its mandate more broadly, focusing on criminal justice and criminal procedures to address problems of lawlessness and human rights, especially in Latin America.

- (v) There has been a fifth wave since the late 1990s that centers on poverty-focused judicial reform programs that include human rights agenda such as social and economic rights.

3. The development rationale for law and justice reform has been variously conceptualized across this period to include: (i) promoting economic growth by strengthening legal frameworks to secure market dealings; (ii) building governance and democracy through the rule of law and judicial independence; (iii) consolidating the capacity of state institutions to provide public goods, notably public order, safety and security; and (iv) reducing poverty by increasing empowerment, human rights, and access to justice. For these political, economic and social reasons, Carothers sees Western policy makers and commentators as having seized on the rule of law "as an elixir for countries in transition" because it promises to remove the chief obstacles on the path to democracy and market economics.⁶

4. The World Bank and the Inter-American Development Bank (IADB) followed USAID in becoming interested in law and justice reform during the 1980s—with increasing support directed at transitional economies in the former Soviet Union. Around the time, ADB began its activities in the early 1990s, bilateral agencies such as the Department for International Development (DFID) of the United Kingdom, German development assistance through GTZ, Danish International Development Agency (Danida), and the Australian Agency for International Development (AusAID) established projects in legal and judicial reform, including policing.

5. Jensen describes this movement of legal and judicial reform as comprising a "standard package" of three core elements: (i) changing substantive laws, (ii) focusing on law-related institutions, and (iii) addressing the deeper goals of governance compliance with the law, particularly in the area of judicial independence. Most development partners have focused on making formal judicial institutions more competent, efficient, and accountable. This has often involved projects that provide legal and judicial training. Because judiciaries usually have very little absorptive capacity, this has also led to capital-intensive reform activities, including building courthouses and supplying computers.⁷

6. Porter notes that this "standard package" of court-centric reforms remains heavily supply driven: training judges, building more courtrooms and providing new equipment, and supporting case management. He notes that the scope and dimension of today's legal and judicial projects have moved well beyond supporting the necessary infrastructure for markets. As a result of the new emphasis on the importance of institutions, building the capacity of the judiciary and the rest of the legal system features prominently in legal and judicial reform projects. More recent law and justice reform programs have ventured far beyond a court-centric approach, and also support the "demand side." It is common to find even small components supporting poor or

⁶ Thomas Carothers. 2006. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Carnegie: Washington DC. It would be an oversimplification to categorize major players, notably the World Bank, as traditionally promoting economic growth, USAID as promoting criminal justice and democracy, and UN agencies as promoting human rights, as these objectives are invariably conflated and, it may be argued, confused.

⁷ Footnote 4.

disadvantaged litigants in gaining access to justice through legal aid or other supportive activities.⁸

7. During the course of this period, and most markedly over the past decade, there has been substantial growth in both the volume and size of law and justice reform assistance around the world. Carothers describes assistance in this field as having mushroomed in recent years, becoming a major category of international aid.⁹ Certain indicators of this growth are useful.

- (i) The IADB approved 18 loans and 65 technical cooperation operations to promote some aspects of justice sector reform in 21 of its 26 borrowing member countries from 1993–2001. Including the country counterpart contribution, these projects amount to about \$461 million in investment.¹⁰
- (ii) The World Bank has increasingly come to recognize that the judicial system plays an important role in the development of market economies.¹¹ Sage notes that justice sector reform has emerged as a central concern of many development agencies, with strengthening the rule of law being explicitly identified as both a priority development goal in recent international declarations and as one of the four pillars of development in the World Bank's Comprehensive Development Framework.¹² Lending in this area is executed via the World Bank's Legal Vice-Presidency, which has financed more than 1,300 legal and judicial reform projects. Worldwide, there are 23 freestanding active and upcoming projects for the reform of a state's legal system. From 2001 to 2006, worldwide lending for law and justice and public administration, the World Bank's overarching classification for this work, increased from \$3.9 billion to \$5.9 billion. In the same period, worldwide thematic lending for "rule of law" projects also rose, from \$410 million to \$757 million.¹³

⁸ D. Porter. 2005. *Access to Justice Revisited*, Paper at International Conference on Peace Justice and Reconciliation in the Asia-Pacific Region, University of Queensland, 1–3 April. Lucia, Queensland. Porter argues that today's law and development consensus may be tracked to many events. These include the popularity of the new institutionalism which became doctrine in the mid-1990s, and the early begrudging then confident return of the idea that "capable states" were necessary for markets to flourish and send the right incentives for roaming global capital to invest in developing countries. While this movement gained strength after the events of 11 September 2001, early 1990s worries about the contagion effects of heavily indebted "failed" and "criminalized" states that emerged from the collapse of the Soviet Union and the new alliances in west and east Africa. Equally, in some accounts, it was the rise of populist social movements and the widespread criticism of the Washington Consensus. This can be tracked through to the present contest between adherents of 'rule of law' and the people-centered rendition of "legal empowerment" that he sees as adding considerable vitality to access to justice policy literature. See also: R. Ahmad and D. Porter. 2005. *Justice Sector Reforms and Policy Conditionality: Symbiosis, or Mutual Denial?* Unpublished.

⁹ Footnote 6.

¹⁰ Christina Biebesheimer. 2001. *Inter-American Development Bank Experience in Justice Reform*, IDB: Washington, DC.

¹¹ As outlined in its *Development Report*, the World Bank does so in many ways: by resolving disputes between private parties, by resolving disputes between private and public parties, by providing a backdrop for the way that individuals and organizations behave outside the formal system, and by affecting the evolution of society and its norms while being affected by them. These changes bring law and order and promote the development of markets, economic growth, and poverty reduction. Judicial systems need to balance the need to provide swift, affordable, and accessible resolution with fair resolution; these are the elements of judicial efficiency. World Bank. 2002. *Development Report*. Washington, DC.

¹² Footnote 1.

¹³ The World Bank has become increasingly involved in legal and judicial reform through its lending and nonlending activities since 1991. Legal and judicial reforms are now one of the six main themes of the World Bank's governance work, and a key ingredient of the new institutional economics paradigm of the post-Washington Consensus, which sees economic development as dependent on stable and predictable market transactions. See also: V. Harris. 2007. *Legal and Judicial Reform Programs at the World Bank, The Bretton-Woods Project*. London. Available: <http://www.brettonwoodsproject.org/doc/goodgov/legalreform.pdf>

- (iii) During the 1990s, it is estimated that nearly \$1 billion in financial support was provided by the World Bank, the ADB, the United Nations Development Program (UNDP), and nongovernment organizations in Latin America alone.¹⁴
- (iv) Development partner assistance to promote justice sector reform in subSaharan Africa increased nearly sevenfold from an estimated \$17.7 million in 1994 to over \$110 million in 2002.¹⁵
- (v) In the Asia Pacific region, seven current or imminent projects are worth almost \$1 billion.¹⁶

8. Evidently, law and justice reform is clearly both substantial and growing in importance for development agencies around the world. The total value of all development partners' law and justice reform projects globally may have exceeded \$2 billion.

9. Despite the evident importance of and substantial growth in law and justice reform over recent decades, a review of the literature shows that there are mixed views on the results and effectiveness of these efforts. There are many official donor reports which assert the success of their work. Hammergren categorized these reports as being mainly for purposes of public relations.¹⁷ A characteristic example of this assertion, which is echoed by the World Bank and other major bilateral donors, is found in the review of USAID's portfolio of rule of law projects conducted in 2002:

USAID believes that its record of achievement in promoting justice and the rule of law is an impressive one. We are confident that major transformations have taken place in the rule of law and justice practices worldwide and that US foreign assistance programs, implemented through USAID and its partners, have made a substantial contribution to those transformations.¹⁸

10. These assertions are supported by some empirical evidence at a more technocratic level. Biebesheimer argues that, on the weight of this evidence, it is possible to measure some positive changes made by criminal justice reforms by a variety of due process indicators—for example, preventive detention, speed of trials, and structural reform through lawmaking and organizational change. This, she argues, goes some way toward answering the questions of whether institutional or operational reforms yield behavior changes that strengthen the rule of law in developing countries, although she does stand well back from assessing any broader impact on the stated goals of crime or violence rates, enhancing democracy or reducing poverty. She also describes the difficulty in evaluating law and justice reform primarily because of the lengthy time required to effect change, and the paucity of reliable data and a lack of baseline statistics. She concludes that much improvement remains to be made in measuring the progress and impact of criminal justice reform.¹⁹

¹⁴ Of this total, a single agency, USAID, contributed almost \$400 million. Peter DeShazo and Juan Enrique Vargas. 2006. *Judicial Reform in Latin America*, Policy Papers on the Americas Volume XVII, Study 2, Center for Strategic and International Studies, DC; and Footnotes 3 and 4.

¹⁵ Laure-Helen Piron. 2005. *Donor Assistance to Justice Sector Reform in Africa*. New York: OSJO.

¹⁶ ADB's Access to Justice Loan is valued at \$350 million and a \$300 million loan was being negotiated with the Philippine Government in 2008. AusAID is presently conducting a law and justice reform program in Papua New Guinea valued at around \$150 million. USAID has two law and justice initiatives in Cambodia valued at around \$40 million, and similar amounts in Afghanistan.

¹⁷ Footnote 3.

¹⁸ Gail Lecce. 2002. *Achievements in Building and Maintaining the Rule of Law*, Occasional Papers. USAID, Washington DC.

¹⁹ Christina Biebesheimer and Lisa Bhansali. 2006. *Measuring the Impact of Criminal Justice Reform in Latin America*. In T. Carothers, ed. Footnote 6. See also: M. Dakolias, various.

11. However, much more qualified judgments have been made by others within the World Bank and in academe. In a scathing survey, Carothers evaluates the experience of the "rule of law revival"—which corresponds to Jensen's fourth and fifth waves of judicial reform—and questions whether practitioners really know what they are doing.²⁰ He asserts what stands out about US assistance since the mid-1980s, which has mushroomed, is how difficult and often disappointing such work has been. The net effect is weak if negligible. He argues that after 30 years of activity, there is still a lack of a well-grounded rationale, a clear understanding of the essential problem, a proven analytic method, or an understanding of the results achieved. He argues that there is a lack of systematic, well-grounded knowledge of how external aid can be used to promote the rule of law, and criticizes the emerging "orthodoxy" on the basis that there is a disjunction between what is relatively easy to do and what is meaningful in advancing the rule of law. This is due in part to a surprising amount of uncertainty about the basic rationale for the rule of law promotion, which has two controlling axioms: that rule of law is necessary for economic development, and that it is necessary for democracy. When examined closely, however, neither of these propositions is as axiomatic as it may first appear. Carothers recounts that a colleague who had worked closely in promoting the rule-of-law in Latin America for many years told him recently, "we know how to do a lot of things, but deep down we don't really know what we are doing." He argues that the aid community is operating from a mythical imperative when it holds that a certain econometric model of the rule of law is vital for a country to prosper.²¹

12. Obstacles to improving performance are: a lack of knowledge, specifically the great conceptual and practical complexity of legal and judicial reform; the tremendous particularity of legal systems and the functioning of law; the tendency of aid organizations not to devote resources to serious reflection and research on their efforts, which are of remarkably little academic interest; and the fact that most lawyer practitioners are not orientated to the empirical research that is necessary for organized knowledge accumulation. Finally, Carothers describes the lack of impact as "one of the most vexing issues concerning all these new areas of development aid."²²

13. Hambergren observes that judicial reform projects of both the World Bank and USAID have "fallen short" of their stated objectives, being only partially successful in providing infrastructure and equipment, drafting new codes, exposing participants to new ideas and supporting legal practitioners and scholars. These projects normally set goals such as increased access, greater judicial independence and professionalization, and the elimination of obstacles to investment and economic growth. However, the links between these goals and proposed activities are often not clear, making an evaluation of progress and effectiveness almost impossible. There is little agreement on what concrete improvements should look like. It is assumed that poor judicial performance impedes economic growth, so that any improvement in the former will have a positive effect on the latter; just as it is argued that institutional modernization enhances judicial independence and that reducing delays increases access. Moreover, she describes the World Bank's near absence of rigorous systematic evaluations as "disturbing." To the extent that it has evaluated these projects, the World Bank has relied on self-assessments by project staff and counterparts, desk exercises, and extremely short field reviews; they are no substitute for comprehensive monitoring and evaluation. She concludes: "What needs to be done is obvious. Both donors and national counterparts have to become

²⁰ Footnote 6.

²¹ Based on the increasingly criticized troika of fiscal austerity, privatization and market liberalization of the Washington Consensus throughout the 1980s and 1990s, coupled with mantras of stabilization and decentralization, see for example, J. Stiglitz, 2002. *Globalisation and its Discontents*, Penguin, London.

²² Footnote 6.

more serious about articulating their strategies, specifying their working hypotheses, and evaluating program results."²³

14. In a much-quoted analysis, Messick observes that the core of a judicial reform program typically consists of measures to strengthen the judicial branch of government, including: making the judicial branch independent, increasing the speed of processing cases, increasing access to dispute resolution mechanisms, and professionalizing the bench and bar. It is widely believed that judicial reform will significantly improve economic performance, focusing on enforcing property rights, checking abuses of government power, upholding the rule of law, enabling exchanges between private parties. Many argue that the rule of law fosters economic development, but rigorous econometric methods for verifying these hypotheses have not been subjected to any rigorous empirical test, though there is some indirect evidence to support them both. Sherwood, in what has become a touchstone for some in the World Bank, has argued that judicial reform does have a measurable impact on national economic growth, speculating that the "penalty to growth" momentum in a liberalized economy may be at least 15% if the judicial system functions poorly, using a range of business survey valuation techniques.²⁴ Pistor and Wellons have also validated the basic premise that law is relevant and important to market and private sector development in Asia and, in particular, to the development of financial and capital markets.²⁵ However, Messick goes on to argue that any causal relationship between judicial reform and development is probably better modeled as a "series of on-and-off connections or of couplings and decouplings," and remarks that it is an oversimplification to assert it is necessary.²⁶ Moreover, while few now question the importance of judicial reform for development, little is known about the impact of the judicial system on economic performance. The most that can be said at the moment is that the weight of opinion and evidence suggests the existence of some kind of relationship.

15. According to Sage and Woolcott, some of the explanations given for the disappointing results in law and justice reform initiatives over the past decade mirror the lessons learnt from the law and development movement of the 1960s. These include elite capture of the formal system and the reform process, lack of attention to local contexts and informal institutions, and the ongoing tendency to understand the "rule of law" and the role of law and the judiciary according to a US (or "Western") image. Other explanations have included related issues such as the lack of political will within countries and pervasive corruption.²⁷

16. Jensen describes the story of law and justice reform as one of modest successes and frequent failures, and of significant gaps between theoretical understanding of legal systems and project design and implementation. He argues that this is largely due to the lack of empirical

²³ Footnote 3. In a separate piece, Hammergren further argues that a core challenge for legal and judicial reform is to improve knowledge management, specifically the empirical rigors of diagnostics, monitoring and evaluation and research; see: Linn A. Hammergren. *Assessment, Monitoring, Evaluation and Research* (citation unknown).

²⁴ Robert M. Sherwood. 1994. Judicial Systems and Economic Performance, *Quarterly Review of Economics and Finance*. 34, p. 101. He also proposes that an assessment of the relative costs and benefits of judicial systems versus informal social trust network transactions would better inform efforts to improve judicial performance in advancing economic growth and development. Robert M. Sherwood. *Judicial performance: its economic impact in 7 countries*, (undated paper).

²⁵ Katharina Pistor and Philip Wellons. 1999. *Role of Law and Legal Institutions in Asian Economic Development, 1960–1995*, New York: OUP. Significantly, the authors see this relationship as complex and not readily reducible to formulaic treatment. They stress that, to be effective, law has to be embedded in the overall economic policy framework, and law reform projects should be assessed not in isolation but within a broader context of economic policies.

²⁶ Richard Messick. 1999. *Judicial Reform and Economic Development: Survey of the Issues*, World Bank Research Observer. Oxford. pp. 117–136, p. 120.

²⁷ Footnote 1.

research, which is required to plan interventions, to evaluate progress and demonstrate the exercise of due diligence. He notes that the process of measuring outputs is not easy: ascertaining causality is extremely difficult, time-consuming and expensive, and consequently most monitoring focuses on efficiency, e.g., reduction of delays and backlog, clearance rates and cost per unit case; and is under-invested in by the development community.²⁸

17. This critique is built on by Heller who describes the record of effectiveness of rule of law assistance as "spotty." This is because the movement has chosen a political strategy that reinforces existing legal institutions by investing in a coalition of judges rather than generating ownership; it has strengthened the traditional autonomy and monopoly of courts rather than generating a demand-driven civil society focus; and it has left largely undisturbed a domain of formalist judicial culture that separates itself from and defers to political administrations. He also argues that the rule of law approach lacked penetration by being unable to extend reforms and incentives that have changed behavior in the upper courts to the lower courts, where the mass of people in developing nations encounter the law.²⁹

18. Golub extends the critique of what he terms "the rule of law orthodoxy" as flawed and incomplete, based on questionable assumptions, lacking proven impact, and ignoring the legal needs of the disadvantaged. This orthodoxy devotes too much attention to building formal structures and state institutions, and too little to civil society and direct impacts on the poor. He criticizes the dominant "top-down" institutional-centric approach, arguing that it is unlikely to produce changes that will contribute to a better life for significant numbers of people in developing societies; and proposes an alternative that focuses a central role on civil society, and concentrates on legal empowerment of disadvantaged persons rather than the reform of state institutions. What is required, he argues, is the actual implementation of existing laws in a pro-poor manner, and fortifying the capacities and powers of the poor.³⁰

19. There appears to be an emerging critical consensus that the law and justice reform movement of the past 20 years has been characterized by: (i) a systematic lack of knowledge and rigor in the assessment, design and evaluation of projects and in particular, underinvestment in impact evaluation; (ii) inadequate and/or ineffective change management strategies centering excessively on the supply side, particularly the judiciary which, at best, are imbalanced by lacking any corresponding focus on the demand side, notably civil society; and (iii) spotty performance and a disappointing lack of evidence of success, which may as much be a deficit of evidence as a deficit in results.

20. The Paris Declaration in 2005 reflected a consensus among development partners and developing nations on the need to improve development effectiveness through adopting principles promoting ownership, harmonization, alignment, managing for development results, and mutual accountability.³¹ Whether or not as a direct effect of these concerns or the earlier criticisms, there is now a discernible further wave to the law and justice reform movement. This latest trend may be seen as acknowledging the shortcomings of earlier endeavors with a shift

²⁸ Footnote 3.

²⁹ T. Heller. *An Immodest Postscript*. Footnote 3.

³⁰ Stephen Golub. *A House without a Foundation*. In Erik Jensen. 2003. Washington, DC: Carnegie Endowment for International Peace; and also see: Stephen Golub, 2003. *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Paper no. 41 (Oct). Washington, DC: Carnegie Endowment for International Peace.

³¹ The Paris Declaration measures to have been taken by 2010 focus on using development strategy frameworks in DMCs, aligning aid flows to national priorities, strengthening capacity by coordinating support/programs, using country systems, sharing analysis, and using results-oriented frameworks to assess progress of national development strategies and sector programs.

away from the traditional institutional capacity building approach centered on top-down state-centric reform efforts toward a more human rights and entitlement based, empowerment, or demand-side approach. This includes reviewing the assumptions of existing approaches, for example, the reach of the formal sector, the role of interim and informal institutions, and the role of customary processes of community-based justice as it affects the quality of life and opportunity of ordinary people.³²

21. Writing in 1999, Sen argued that development should be seen primarily as the process of expanding the real freedoms that people enjoy. He defined five types of freedom: political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security. Each of these distinct types of rights and opportunities help to advance the general capability of the person. This freedom-centered understanding of economics and of the process of development is an agent-oriented view where, given adequate social opportunities, individuals can effectively shape their own destiny and help each other, rather than being passive recipients of the benefits of development programs. Sen applied this paradigm to legal and judicial reform at a conference at the World Bank in 2000, when he called for a more integrated view of legal development, rather than talking independently about its economic, social, political or legal components.

We don't ask: which kind of human development: economic, social, political or legal? Rather, human development encompasses them all, and they can be, in this perspective, together, not in isolation from each other. The very idea of legal development may then be contingent on certain social or economic characteristics. Legal development must, constitutively, take note of the enhancement of people's capability, their freedom, to exercise the rights and entitlements that we associate with legal progress. Given this need for conceptual integrity (in this case, the need to see legal development not just in terms of legislation and laws but in terms of effective freedoms and capabilities), all the instruments that causally influence these freedoms must be taken into account in assessing what progress is being made in enhancing the development of a successful legal and judicial system.³³

22. The World Bank reviewed its approach to law and justice reform and is moving from a formalistic legal interpretation to include explicit consideration of human rights, including access to justice.³⁴ Building on Sen's advocacy, Decker notes that, while legal development and human rights remain separate discourses, there is mounting evidence of greater coherence and growing commitment to identify synergies and complementarity, and the emergence of a rights-based approach in development thinking, building on accountability, transparency, empowerment, participation, equality and vulnerable groups.³⁵

³² It should be noted that much of this research and critical self-appraisal emerging in the literature is generated from within the World Bank which indicates a commitment as a knowledge institution which is much clearly visible from outside than from any other MDB or bilateral agency.

³³ Amartya Sen. 2000. *What is the Role of Legal and Judicial Reform in Development*. World Bank Legal Conference. Washington DC.

³⁴ Roberto Dañino, 2005. *Opening Remarks at the Workshop on Legal Convergence and Development*. Paris Place de Droit, Paris. See also: A. Palacio. 2006. *The Way Forward: Human Rights and the World Bank*, World Bank. Washington D.C. In 2006, the General Counsel issued a note entitled *Legal Opinion on Human Rights and the Work of the World Bank*, which concluded that "The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development and activities, since it is now evident that human rights are an intrinsic part of the Bank's mission." It is "permissive": allowing, but not mandating, action on the part of the Bank in relation to human rights.

³⁵ Klaus Decker, Siobhan McInerney-Lankford, and Caroline Sage. 2005. *Human Rights and Equitable Development: Ideals, Issues and Implications*, Working paper. Washington, DC.

23. Simultaneously, others in the World Bank reviewed fundamental assumptions and extending the boundaries of early approaches toward more pro-poor justice reform approach. Failures of law and justice reform may be seen as a product of a flawed theory of what “law,” “justice,” and “institutions” are, how they come to take the form they do, and thus how they can be established elsewhere. One of the main challenges for the justice sector reform movement has been its focus on a predetermined ideal, articulated in terms of its *form*, rather than being based on an understanding of the socio-economic and political *functions* that rule-based systems play in any given society. Reforms that fail to address the principal problems underlying inequitable justice systems may not only have no effect on social and economic conditions, but actually may perpetuate and reinforce existing inequalities. The assumption that legal systems are innately just, and thus simply need to be strengthened, is arguably flawed. Rather than starting from a “rule of law” model from which deviations can be measured and targeted, it may be more helpful and realistic to “assume anarchy”. While political, economic and social rights for disadvantaged people may be introduced with legal reforms, real change is unlikely to occur without attention to broader social dynamics and the effects of reforms on these dynamics.³⁶ As part of the potentially far-reaching new justice for the poor approach, the World Bank recognized that not enough is yet known about the nature of justice needs and how legal reform should work, and is undertaking research to assess how prevailing customary justice systems interact with the state, and to explore how projects might be designed to better articulate them. Since 2002, this approach has been implemented in four countries including Cambodia and Indonesia.³⁷

24. Significantly, this shift in the World Bank’s approach may give rise to a prospect of convergence in a more human development paradigm of reform, grounded in international human rights law, which has been espoused by United Nations agencies³⁸ and, more recently by DFID among others.³⁹ In the “human rights-based approach” of the United Nations, poverty is defined as a denial of human rights, the realization of which has to be carried out as a participatory, accountable and transparent process, implying equality in decision making. Human rights instruments, such as the Universal Declaration of Human Rights, provide a coherent framework for practical action at the international, national and subnational levels to reduce poverty. Principles of equality and nondiscrimination address one of the root causes of poverty. The human-rights-based approach to poverty reduction espouses the principles of universality and indivisibility, empowerment and transparency, accountability and participation. It addresses the multidimensional nature of poverty beyond lack of income. The United Nations has learned that the rule of law is not a luxury and that justice is not a side issue, with the former

³⁶ Klaus Decker, Caroline Sage, and Milena Stevanova. 2006. *Law or Justice: Building Equitable Legal Institutions*, Unpublished paper. Washington, DC.

³⁷ Daniel Adler, Doug Porter and Michael Woolcock. 2007. *Legal Pluralism and the Role of Interim Institutions*. Unpublished paper. Jakarta.

³⁸ UNDP’s “Access to Justice for All” policy also prioritizes people’s equal ability to use justice services, regardless of their gender, ethnicity, religion, political views, age, class, disability or other distinctions. The World Bank has similarly adopted “access to justice” as one of three strategic objectives, in addition to legal and judicial reform. This covers improving access to existing services, expanding access by encouraging nontraditional users and the use of new dispute resolution mechanisms, or creating new legal standing. The World Bank now explicitly recognizes that member states have human rights obligations and that they can be assisted in fulfilling them—a major change from earlier attitudes to human rights, described as lying outside the World Bank’s mandate.

³⁹ DFID has in recent years adopted a safety, security and accessible justice approach, which recognizes that in order to meet its Millennium Development Goal target for poverty reduction, it is necessary for a country to develop the capacity to ensure safety, security and access to justice for all. It also recognized that poor people, particularly women, are the most vulnerable to all forms of crime and civil conflict, including domestic violence; and that in very many cases, formal justice systems fail to protect them, as being the key focus for its development approach. DFID. 2001. *Making Government Work for Poor People*. London; DFID. 1997. *Eliminating World Poverty: A Challenge for the 21st Century*. London. See also: Chris Stone and Joel Miller. 2005. *Supporting Security, Justice, and Development: Lessons for a New Era*. New York: Vera Institute.

Secretary-General arguing that “we must take a comprehensive approach to Justice and the Rule of Law.”⁴⁰

25. Despite some criticism of being “soft,” this approach is both normative and measurable. The Universal Declaration of Human Rights recognizes human rights as the foundation of peace, justice and democracy. Within this normative framework, in 1998 UNDP adopted its policy of “Integrating Human Rights with Sustainable Human Development.” Subsequently, in 2000 and 2002, the *Human Development Report* affirmed that human development is essential in realizing human rights, and human rights are essential for full human development. UNDP’s attempt to capture the multidimensional nature of poverty is expressed in its efforts to develop the human development index, the gender-related development index, the human poverty index, and the *Human Development Reports*.⁴¹

26. The Declaration on the Right to Development (1986) provides particular guidance in linking norms, processes and implementation by addressing development as a comprehensive economic, social and political process. In this sense, the human-rights-based approach reaffirms human rights as fundamental values. It provides the foundations for governance and acknowledges that access to justice strategies encompasses basic human rights and entitlements that are indispensable to combat poverty, and to prevent and resolve conflicts.⁴²

27. Law and justice reform is an important and increasingly substantial component of international development assistance around the world. It has grown into a very big business through a succession of reinventions since World War II. Despite this, law and justice reform in general, and capacity building and monitoring and evaluation in particular, has been characterized by spotty performance and some difficult unanswered questions. These are now spurring critical reflection and renewed experimentation among development agencies and the academic community. This brief survey of the past 50 years indicates that: (i) support for law and justice reform is recent, formative and still evolving; (ii) effectiveness has been patchy and limited at best, with little compelling evidence that reforms have contributed to the reduction of poverty or other stated goals; and (iii) weaknesses of approach are largely caused by continuing deficits in knowledge including poor diagnostics, lack of an empirically-sound development model, and underinvestment in rigorous planning and performance evaluation.

28. Of perhaps most interest is the increasing vigor in the academic discourse. This is stimulating an amount of critical self-reflection among some development partners, notably the World Bank, and, it may be argued, spurring an ongoing process of active research and experimentation. In effect, the global law and justice reform picture is of challenges certainly not won but nonetheless dynamically enjoined, at least in certain quarters.

⁴⁰ Remarks, as delivered by then Secretary-General Kofi Annan of the United Nations, to the ministerial meeting of the Security Council on “Justice and the Rule of Law: the United Nations Role” on 24 September 2003 at the UN Headquarters in New York.

⁴¹ The core UN human rights treaties include: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Rights of the Child; Convention Against Torture; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination.

⁴² These values include universality and indivisibility, equality and nondiscrimination, participation and inclusion, accountability and the rule of law.

MANAGEMENT RESPONSE TO THE SPECIAL EVALUATION STUDY ON ADB TECHNICAL ASSISTANCE FOR JUSTICE REFORM IN DEVELOPING MEMBER COUNTRIES

On 21 September 2009, the Director General, Independent Evaluation Department, received the following response from the Managing Director General on behalf of Management:

I. General Comments

1. We welcome the Special Evaluation Study (SES) on ADB's technical assistance (TA) for justice reform in its developing member countries (DMCs). The scope of the study is quite limited, as it only covers TA and only the justice sector, thereby leaving the wider area of legal and regulatory reform aside. However, in spite of the modest scope of the study, it is useful in that it highlights a specialized area of work that has been given limited attention. Given the emphasis in Strategy 2020 on inclusive growth, it is also helpful that the study has taken a broad view of the concept of justice, not limiting it to the formal justice sector, but also covering empowerment of those who are not served by the institutions that are supposed to deliver justice.

2. We are pleased to note the conclusion of the SES that the justice reform TAs have been successful.

3. We agree with the finding that, similar to ADB's technical assistance projects generally, many justice reform TAs had weak design and monitoring frameworks, making the impact of the TAs difficult to monitor and evaluate. As ADB's experience in developing meaningful design and monitoring frameworks continues to increase, it is expected that these weaknesses can be overcome.

4. We agree with the findings relating to delays in completion of the TAs. As the study correctly points out, in many cases, the work needed more time than was originally allotted. We have come to realize that justice reform projects are quite complex and, to the extent they entail institutional changes, discussions with various stakeholders can add considerably to the time frame originally envisaged. It is also true that, due to the lack of sufficient resources dedicated to the work, the administration of some of the TAs was less efficient than desirable.

II. Comments on Specific Recommendations and Follow-up Action

5. **Recommendation (i). Decision whether to scale up justice reform assistance.** We agree that for Management to take an informed decision on whether to scale up justice reform assistance, or continue at the level as before, the outcomes of loan assistance need to be evaluated first. An evaluation of 22 TAs is an insufficient basis for a strategic decision on this issue. Indeed, it is questionable whether the additional evaluation of three loans in the sector would provide conclusive grounds for a decision on whether to scale up the assistance. However, given the complexity of the sector and the limited appetite of DMCs to borrow or use scarce grant allocations for the sector, it would seem that there are currently no compelling reasons to direct more lending or ADF grants to the sector, over and above the type of loans that have been made so far in response to opportunities as they arise.

6. **Recommendation (ii). Continuation of technical assistance in the sector.** We agree that on the other hand, the SES provides sufficient basis to conclude that TAs on justice reform should continue, wherever this work can contribute to assisting DMCs in the empowerment of their people and the strengthening of their institutions for more efficient delivery of justice services. This work, as well as work done on legal and regulatory reform, contributes to the elements of inclusive growth and good governance under Strategy 2020.

7. **Recommendation (iii). Make assistance more effective and efficient.** We agree with the recommendation that in order to make the assistance more effective and efficient, there is a need for a clear definition of responsibilities, sufficient resources and improved quality at entry. The SES indicates that the majority of justice reform TAs were generated by the Office of the General Counsel. We agree that sufficient resources are needed to support this work but this will have to be determined in the context of the Bank's overall resource requirements and availability. As mentioned in paragraph 3 above, design and monitoring frameworks need to be improved, which will lead to better quality at entry. We expect that the bank-wide experience gained in this regard over the last decade will contribute to making the necessary improvements.

DEVELOPMENT EFFECTIVENESS COMMITTEE

CHAIR'S SUMMARY OF THE COMMITTEE DISCUSSION ON 23 SEPTEMBER 2009

Special Evaluation Study on ADB Technical Assistance for Justice Reform In Developing Member Countries (IN.253-09)

1. DEC members agreed that a strategic, informed decision should be taken on whether to scale up ADB's assistance for justice reform. DEC pointed out that success in this area required commitment and political will. At the moment, however, such operations appeared to be supply-driven. The Independent Evaluation Department (IED) explained that in cases where technical assistance (TAs) had led to loans, justice reform may be considered demand-driven. To take an informed decision on whether to scale up support for justice reform, it might be better to evaluate the loans first. A decision to scale up operations in justice reform should be accompanied by allocation of adequate resources.
2. DEC inquired whether the Office of the General Counsel (OGC) had enough staff and other resources to continue conducting justice reform TAs. The General Counsel responded that OGC had to give priority to supporting the operations departments, but a number of lawyers found the TA work personally and professionally fulfilling, and they were willing to find time even after working hours to process and administer these TAs. However, ADB needs to provide additional staff resources to do such justice reform work more efficiently. DEC asked whether ADB could incorporate more legal components in its loans. The General Counsel explained that legal components are added to project and program loans, but implementation of laws continues to be a challenge.
3. Referring to the need for selectivity under Strategy 2020, DEC pointed out that if ADB did more work in justice reform, it may have to do less in some other area. On the other hand, if ADB were to discontinue its work in this area, would some other organization have a comparative advantage in justice reform? Managing Director General responded that ADB is keen to increase its operations in this area, even without loans. ADB must do it; the question is how to do it. No other organization has a better comparative advantage in this area.
4. DEC pointed out that good governance is often a problem in infrastructure projects, with failure of the judicial system a key issue. The link between justice reform and good governance may provide the necessary justification for strengthening operations in this area. Managing Director General noted that work in this sector also supports private sector operations, making it even more relevant to Strategy 2020.
5. DEC inquired how ADB measures the success of TA in justice reform. Apart from whether it leads to a loan, there should be criteria such as evaluating implementation of recommendations made under the TAs. A better design and monitoring framework is essential for properly assessing the results of these TAs. Managing Director General responded that a key measure of success of a TA is to have a buy-in by the government or at least an opportunity to put issues on the table for the government's reflection. In most countries, there are enough laws; the problem lies in their implementation. ADB should therefore shift its focus away from regulatory frameworks to judicial system implementation. As for the results framework, implementation of recommendations requires political will and it takes time and accurate records. In the meantime, ADB may have to settle for measuring outputs rather than outcomes.

Conclusions

6. DEC members underscored the importance of good governance as a driver of change, and justice reform as an integral part of the move towards good governance.
7. DEC noted that out of 44 TAs in justice reform, three had been upgraded to loans but none of the loans had yet been evaluated. While it may be premature to take a decision on whether to scale up justice reform, members underlined the importance of taking an early decision on whether ADB wants to work on justice reforms in a whole-hearted way.
8. DEC members acknowledged the difficulties in defining a results framework for evaluating the success of technical assistance in justice reform and noted that the design and monitoring framework for such TAs required improvement.
9. DEC emphasized the importance of ownership and partnership with its developing member countries in justice reforms.
10. DEC also underlined the scope for justice reforms through project loans by having appropriate covenants in loan agreements.

Ashok K. Lahiri
Chair, Development Effectiveness Committee