

Disclaimer:

The views expressed in this document are those of the author, and do not necessarily reflect the views and policies of the Asian Development Bank (ADB), its Board of Directors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this document, and accept no responsibility for any consequence of their use. By making any designation or reference to a particular territory or geographical area, or by using the term “country” in this document, ADB does not intend to make any judgments as to the legal or other status of any territory or area.

Fiona Connell
AFDI, Shanghai, April 2018



ADB's Law and Policy Reform (LPR) Vision

An Asia and Pacific region governed by the rule of law, comprising comprehensive legal frameworks and effective judicial, regulatory and administrative institutions that implement and enforce laws and regulations fairly, consistently, predictably and ethically across the range of human interactions.

Rule of Law: United Nations

A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency

Rationale

Legal development enabling other aspects of development

- Business
- Environment
- Social Welfare

Rationale

Legal development as an end in itself

- Justice and stability
- Freedom from violence and corruption
- Human rights and personal dignity

Assistance in three aspects

- Frameworks: *comprehensive legal frameworks*
- Institutions: *effective judicial, regulatory and administrative institutions that implement and enforce laws and regulations fairly, consistently, predictably and ethically*
- Legal Empowerment: *citizen access to justice*

Danger of

"Focus on a predetermined ideal, articulated in terms of form rather than being based on an understanding of the socio-economic and political functions that rule-based systems play in a society."

Pritchett & Woolcock

Donors and practitioners must take into account:

"The tremendous particularity of legal systems"

Carothers

“We have also attached importance to learning from foreign legislative experience in order to absorb elements that are beneficial and useful for us; but we never blindly follow or imitate others. Different countries have different systems of laws, and we do not copy the laws of certain Western countries when enacting the socialist system of laws with Chinese characteristics. We do not enact laws that exist in foreign systems of laws but that do not suit [the PRC’s] conditions and realities.”

Standing Committee of PRC National People’s Congress 2011



Challenges

- Defining, monitoring and measuring impacts
- Establishing causality
- Lack of definitive research

ADB LPR includes:

Environmental laws & judicial capacity; Land-related laws; Clean energy regulation; Climate change and disaster risk management; Energy and water regulation; Anti-money laundering/counter terrorism financing; Bankruptcy and insolvency; Gender equity laws and capacity-building; Public-private partnerships laws and capacity-building; Financial markets and regulation; Capital markets regulation; Corporate governance

Our standards:

- Effective
- Relevant
- Efficient
- Sustainable

Example:

Environment and climate change laws

- Over 500 judges, court staff and prosecutors trained since 2010.
- Assisted creation of 6+ green courts and the promulgation of landmark environment and climate change jurisprudence in Asia.
- Trained 203 environmental law professors from 147 academic institutions across 14 DMCs via a train-the-trainers model.
- Established World's first specialized judicial network on environment in Asia: AJNE.

Example:

Legal Literacy of Women and Gender Equality Laws

- Gender sensitization and gender law training provided to mediators, Islamic leaders and paralegals in Afghanistan and to 300 judges in Pakistan.
- Instrumental in the establishment of Asia's first specialized Court for Gender-Based Violence Cases, Lahore 2017
- Led implementation of Gender Equality Law in Maldives.

Example:

Corporate and Commercial Law

- Drafting new Company and Insolvency Law in Myanmar.
- In Bangladesh, judges and lawyers trained in commercial dispute resolution;
- Developed bankable template PPP documents for the Bangladesh PPP Authority
- Arbitration initiative in Pacific countries, e.g. PNG, Fiji, Samoa

Example:

Anti-Money Laundering & Combating the Financing of Terrorism

Working in the Pacific and in Mongolia, assisted implementation of the international standards and exit from FATF “grey list” and formulation of mitigation measures to counter money laundering and terrorist financing risks.

Law and Policy Reform Work
in the
People's Republic of China

History: LPR 1994-2010

WTO and Basic Economic Legal System Development

Insolvency Law; legal Information System;
Environmental Protection; Natural Resources;
Government Procurement Law; Tendering and
Bidding Law; Foreign Trade Law; Banking Laws;
WTO Enforcement by Judiciary; AML
Framework; Competition Law; ADR;
Strengthening Judicial Capacity to Implement
Economic Laws; Planning the Legal System;
Securities Law

Current: LPR 2013 to now:

- 3rd and 4th Plenums of the 18th Party Congress
- Work with government to refine and target our program
- “ONE ADB” Approach: combining legal and sector knowledge
- Typical LPR TA structures

Infrastructure/PPP

- National Development and Reform Commission (NDRC) on Development of a Concessions (PPP) Law
- PPP Center under Ministry of Finance on development of PPP Contract Forms and Guidance

Finance

- People's Bank of China (PBOC) on a Banking Regulatory system to support the SME and micro finance sector
- PBOC on changes in Central Bank laws post- the Global Financial Crisis
- State Council Legislative Affairs Commission on Securities laws
- PBOC on Financial Consumer Protection

Environment and natural resources

- NDRC on Environmental Enforcement in the 13th Five Year Plan
- Supreme People's Court on Environmental Case Processes and Creation of Remedies

Non Profit Organizations

National Development and Reform
Commission on Developing a Regulatory
System for Non Profit Organizations

Delivery of Justice

Supreme People's Court on using AI
(Machine Learning) and Big Data to
improve Judicial Performance

Lessons Learned

- Local priorities; local system; local ownership
- Understand the limits and plan accordingly
- Build relationships