

AFRICAN DEVELOPMENT BANK

AFRICAN DEVELOPMENT FUND

**BANK GROUP STRATEGY PAPER ON
LAW FOR DEVELOPMENT**

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JUNE 2001

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1. INTRODUCTION

- 1.1 1.1 The Bank recognizes that at the base of good governance is an equitable, effective, and efficient legal and judicial system that caters to the needs of the people and to the needs of economic operators participating in, or desirous of participating in, its Regional Member Countries (RMCs). Accordingly, in adopting the Policy on Good Governance, which grew out of the Bank's new Vision for economic development in Africa, the Bank Group has highlighted legal and judicial reform as an indispensable component of the initiatives to reduce poverty and promote regional economic integration among the RMCs.
- 1.2 1.2 The Bank implements this aspect of its Good Governance Policy through its program named and styled 'Law for Development' ("the Program"). Under the Program, law is used as a tool to help foster economic development in Africa. The Bank recognizes that this is one of several cardinal tools that can be used in the effort to achieve its Vision. The Bank is also aware that other legal and judicial reform efforts have been undertaken before. Consequently, in formulating this Strategy, the Bank has reviewed work done by other multilateral institutions and development agencies in Africa and other parts of the world. Close attention has been given to experiences in earlier legal and judicial reform programs in Asia, Latin America, and in Africa. The Bank recognizes that work in this area cannot yield instantaneous results. Nevertheless, the Bank believes that efforts and the achievements in this respect must be measurable over time and, most importantly, must be sustainable.
- 1.3 1.3 Experience shows that legal and judicial reform is a gradual, long-term undertaking that requires patience, governmental commitment, and significant outlays of financial resources. Experience also shows that policy support, particularly, economic policy support by governmental authorities is key to any successful legal or judicial reform program. Empirical evidence supports the view that this Strategy works in environments where economic policies move in tandem with legal and judicial reform efforts and that the benefits to the population are heightened where direct state management of economic activities is minimized.
- 1.4 1.4 The Bank acknowledges the complex nature of good governance and of legal and judicial reform. The Bank also recognizes that there are competing needs for the limited resources available for economic development and that there are equally competing demands within the

legal and judicial sectors of RMCs for the scarce resources being earmarked for the Program.

- 1.5 1.5 The Bank realizes that within the judiciaries of many RMCs the transaction costs for resolving disputes is high due to process delays, mounting caseloads, fees charged, and obsolete managerial techniques that impose high demands on the time judges must spend on administrative matters. It is also generally recognized that the level of funding for judicial and law related functions and services in most RMCs is inadequate and that mechanisms used to fund judiciaries have in many instances adversely affected the independence of judicial action. The Bank's objective would therefore be to facilitate greater responsiveness and effectiveness of the judiciary as an independent organ that addresses societal demands to resolve disputes and redress grievances.
- 1.6 1.6 The Bank therefore seeks, through a participatory approach with principal stakeholders within its RMCs, to develop a consensus that is tailored to addressing the peculiar challenges of each RMC. It has been demonstrated in projects elsewhere that attempts to conduct partial reforms which do not deal with real institutional or organizational constraints, or which fail to garner the support of the relevant actors, fail and thus frustrate expectations for fair and expedient judicial services. This approach, therefore, seeks to fashion a judicial system that is socially sensitive and equipped to efficiently and justly serve the local communities; an approach that engenders the confidence of businesses engaged in both domestic and global transactions that are desirous of doing business within the particular RMC. It requires the involvement of various groups within the society including the judiciary, the law societies, legal aid groups, academia and poverty reduction specialists.
- 1.7 1.7 The Bank's Vision is to help reduce poverty. Thus, the Law for Development Program takes a kaleidoscopic view that is not narrowed by a focus on market orientation, but includes ensuring access to justice for the poor as a means of redressing injustices, of ensuring stability, and of promoting informal transactions. The Bank realizes that in many of its RMCs literacy rates are low and as such certain aspects of judicial reform may be considered less relevant to those whose interaction with the law might be limited to low level bureaucrats and the police, and whose understanding of the legal system is poor. Accordingly, the Program for legal reform will be fashioned within the context of the prevalent legal regimes in the relevant RMCs, and will not be geared to a mere transplanting of foreign laws, legal concepts, and bureaucracies within a RMC.
- 1.8 The Bank's Vision also calls for greater economic integration in Africa. The Program will therefore place particular emphasis on regional

harmonization and approaches to legal and judicial matters. In this regard, the Bank will cooperate with other international and bi-lateral institutions in promoting legal and judicial reform. Already, by virtue of a Partnership Agreement entered between the Bank and the World Bank, the two institutions work together on matters of Good Governance in Africa. The Bank is expected to lead in this area and will strive to ensure efforts for legal and judicial reform in Africa are harmonized to obtain optimum results.

- 1.9 Financial Resources for the implementation of Law for Development will come primarily from the resources of the Bank and the Fund, and from contributions by bilateral donors, mobilized specifically for implementing the Bank Group's Good Governance Policy. Furthermore, the Bank Group will explore possible cooperation with large donor NGOs to mobilize additional donor resources for the implementation of program-related projects and activities.

2. Summary of The Bank Group Action Plan on Law for Development

- 2.1 2.1 Projects under Law for Development will not be exclusively stand alone projects. Aspects of the Program will be integrated into other Bank Group institutional support and capacity building projects. This will require close collaboration between the Legal Department and the Operations Complex of the Bank. This will also ensure a comprehensive approach to redressing the structural legal and judicial impediments that hamper economic development in its RMCs.

- 2.1 2.2 Legal Department: To cope with the expanded workload, the capacity of the Legal Services Department will be enhanced. Accordingly, a Unit on Good Governance, headed by a chief counsel, will be established in the Office of the General Counsel. The Unit will utilise the services of legal consultants, who are specialised in matters of legal and judicial reform. The establishment of this Unit will enable the Department to: (i) effectively participate in facilitative research on legal reform for economic development; and (ii) also manage related technical assistance projects. The Legal Services Department will undertake the tasks of building appropriate legal databases on African law and of handling various substantive development law issues of relevance to RMCs including, but not limited to, land reform issues; private sector development issues, such as legal issues relevant to the development of stock exchange and capital markets; statutory and judicial reforms, including issues of access to justice, deregulation, harmonization of laws, and infrastructure support; legal aspects of transparency issues, such as anti-corruption and public accountability; and co-ordination of these

activities with the legal teams of other MDBs, international agencies, and other parties participating in legal and judicial reform.

- 2.2 2.3 Legal & Judicial Reform Conferences: The Bank will convene and co-sponsor two conferences next year in Africa on legal and judicial reform for Africa. These conferences will be convened in conjunction with the World Bank. The conferences will bring together, among others, the heads of the judiciaries in RMCs, ministers of justice and attorneys general of RMCs, the heads of the law societies or bar associations in RMCs, legal aid societies, and academics. The Operations Complex and the Legal Department of the Bank Group will actively participate in the organization and programme of the conferences. The main purpose of the conferences is to discuss with and obtain from the participants pragmatic proposals to strengthen the legal and judicial environment in RMCs for African economic development. The conferences will also discuss a comprehensive joint strategy Paper to be developed with support from the Bank and the World Bank. This is consistent with the Bank's strategy to draw on the knowledge and experience of those on the front-line who would facilitate a buy-in by other knowledgeable stakeholders and help obtain the requisite governmental commitments.
- 2.3 2.4 Model Legislation: The Legal Department will prepare two key types of model legislation. First, in furtherance of the Bank Group's good governance Policy that recognizes the deleterious effects of corruption on economic development, the Bank will develop model Anti-corruption legislation that would be made available for adoption by RMCs. In support of the anti-corruption efforts, related legislation and rules in areas such as procurement and the conduct of public servants, will be proposed to plug the leakages that are draining most African economies. The Bank's strategy will be to emphasize both preventative and curative measures. Secondly, in furtherance of the Bank's policy on regional integration, a uniform Banking law will be drafted that could be used by regional organizations, such as ECOWAS, to bring greater harmony and facilitate cross-border banking transactions. The Bank will also prepare model codes of conduct that could be adopted by judicial officers and other public servants that would help address issues of corruption and ethics.
- 2.4 2.5 Registries: The Law for Development Program will further promote the Bank's policy of economic cooperation and regional integration by supporting the development of regional registries. A recognized constraint to good and effective governance in RMCs is the absence of efficient registries both for movable collateral used in secured transactions and for companies. The Bank's Good Governance Policy notes this deficiency and as part of the approach for Legal and Judicial Reform the Policy encourages Bank Group action in developing reliable, efficient registry systems. A dire need exists for registries at the national levels and at

regional levels to facilitate financings and cross-border secured transactions. By way of illustration, the OHADA Treaty allows for the adoption of certain Uniform Acts. One of the first Acts adopted by the OHADA member states is the Uniform Act on General Commercial Law. The provisions of the General Commercial Law contemplate the setting-up of a Register of Commerce and Charges (Registre du Commerce et du Credit Mobilier) in each member state. It is intended that the details of all businesses and all charges over assets of such businesses must be filed in such registries. Currently, registries do not exist at equal levels of efficiency and comprehensiveness in RMCs, and even where they do exist, they are not integrated. The Bank will assist in financing the establishment of registries, such as permitted under the OHADA laws, and will encourage the adoption elsewhere of similar systems.

- 2.5 2.6 African Legal Support Facility: The Bank Group has in the past supported the African Capacity Building Foundation, the African Project Development Facility, and other foundations and facilities for specific purposes other than those related to legal and judicial reform. To promote the twin purposes of legal and judicial reform, the Bank will spearhead the establishment of a facility exclusively for these purposes. The facility would provide or arrange technical assistance to RMCs to improve selected areas of legislation, enhance judicial capacity building, fund law-related studies, and furnish legal assistance for technical projects, where the internal capacity within the government of a RMC does not exist or is unavailable to provide the required legal services. This latter assistance could take the form of the Project Preparation Facility recently made available to RMCs by the Bank Group. The African Legal Support Facility would also assist in organizing systems for court reporting, publication of court reports and statutes, developing law libraries, legislative drafting services, support for regional arbitration centers, and other research databases and facilities.
- 2.6 2.7 Training: The Joint Africa Institute (JAI) as constituted concentrates on training in economic and financial matters. This could be expanded to include legal and judicial training. Alternative sources of such training include utilizing the capabilities, and where available, the facilities of established training expertise, or, if accepted, the African Legal Support Facility. The Bank will also seek to arrange in-country public awareness programs to further educate the mass of the populations in RMCs on their rights under their respective legal systems. The Legal Department would assist in formulating appropriate curriculum, based on the results of studies to be undertaken and of the conferences.
- 2.7 2.8 Corporate Governance: The internal mode of performance by corporations directly influences their efficiency and consequently macro-economic growth. With the increasing efforts to privatise and to use the

private sector as a fulcrum for economic development, the need for greater transparency in the way corporations are governed becomes even more imperative. Corporate governance affects the stakeholders, the corporation's potential to access global capital markets, and its societal relationships. Proper corporate governance can have the effect of furthering Bank Group goals, such as expanded commercial activities on a regional level, curtailment of corruption, reduction of poverty, and environmental protection. The rules and the standards applied among shareholders, directors, and management determine the direction of the corporation and will be modernised to improve corporate contribution to economic development.

- 2.8 2.9 Commercial Law: Issues relating to the liberalising of economies for greater private sector participation, both domestically and internationally, affect economic growth and the ability of countries to attract investment. Internationally, the laws governing private sector activities are being revised and harmonised to facilitate cross border transactions. Even where these laws are not done by conventions or treaties, model laws are being introduced for these purposes. Issues pertaining to securitizations, insolvencies, security interests in movable properties, and other laws that affect the economic environment are critical to the development of RMCs. The Bank Group policy will promote the adoption of modernised laws and assist in building the requisite legal and judicial infrastructure for the implementation of these laws.
- 2.9 2.10 Regional Cooperation & Integration: As stated earlier, the Vision of the Bank calls for greater economic cooperation and regional integration. The ADF VIII's provisions for funding of multi-national projects support this aspect of the Vision.
- 2.11 Electronic & Other Information Databases: From the ADF VIII resources and from bi-lateral resources earmarked for good governance, funding will be obtained for the initiative to establish electronic databases and websites that will make available to RMCs and interested parties the selected laws of RMCs and other relevant information that would facilitate cross-border transactions. The Bank Group will also use these resources to become the premier source of electronic information such as bibliographies, articles and books on law development in Africa, particularly those works produced in Africa. With this the Bank will become a clearinghouse for African law development information and will be in a position to gather and distribute statistical and other information on legal institutions in Africa. In conjunction with the Bank's Communications office, the Legal Department will establish a *Law for Development Bulletin* with a concentration on issues pertinent to African economic development.

3. 3. Priorities and Performance Indicators

- 3.1 3.1 Priorities and Performance Indicators: The Strategy calls for the attainment of certain goals within the short term (i.e. one year). These short-term goals are the springboard from which the Programme will be launched. In order of priority they are: (i) the strengthening of the Legal Department to execute work related to Good Governance; (ii) preparation of a Comprehensive Strategy Paper for legal and judicial reform in Africa jointly with the World Bank; and (iii) organizing and convening the conference(s) on legal and judicial reform in Africa.
- 3.2 3.2 In the medium term (i.e. 1-2 years) the Programme will (i) establish the electronic and other information databases; (ii) work with OHADA and other regional organizations interested in establishing commercial and corporate registries; (iii) prepare and circulate draft model legislation and codes of conduct in selected areas; (iv) arrange a feasibility study for the establishment of the African Legal Support Facility; (v) commence law-related training programs within the framework of the Joint Africa Institute or other suitable institution(s); and publish the *Law for Development Bulletin*.
- 3.3 3.3 It is anticipated that in the long-run (i.e. 3-6 years) the Programme will ensure the adoption of legislation in the various RMCs to ease public access to and the understanding of the judiciary and other dispute resolution mechanisms, and equip the legal system with the tools and infrastructure needed for the delivery of legal and judicial services.
- 3.4 3.4 The nature of some of these activities and projects lend themselves to easy measurement because the results are tangible. The more difficult achievements to measure are the intangibles. Some of these intangibles would be assessed only over time based on the performance of the judiciaries and alternative dispute resolution mechanisms, the enactment and enforcement of new laws and codes of ethics or conduct, the increase in foreign capital in-flows, and the overall conduciveness of the environment for investment. The test of the success of the Programme would lie ultimately in its impact on the poor both in terms of their perception of the degree of equity attainable in the system, the added economic benefits the revised system offers which has an impact on their lives, and, most importantly, on the sustainability of the reforms.

Conclusion

The Bank Group is committed to an effective Strategy on Law for Development that is based on poverty reduction and regional economic

cooperation and integration. Particular emphasis in developing the Strategy depends on the active participation of various stakeholders in the member countries of the Bank Group. The Bank recognizes that the implementation of a Strategy that uses law as a tool to further African development can only be realized with the commitment of member countries of the Bank Group, especially those countries within which contemplated legal and judicial reforms will occur.