LEGAL VICE PRESIDENCY
Annual Report FY 2013

The World Bank’s Engagement in the Criminal Justice Sector and the Role of Lawyers in the “Solutions Bank”
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The annual report was developed under the supervision of Hassane Cisse, Deputy General Counsel, Knowledge and Research, who provided general strategic guidance and substantive input to the Annual Report Subcommittee.

This report covers the Bank’s fiscal year 2013.
I am pleased to share with you the third annual report of the Legal Vice Presidency Unit (Legal VPU) which covers fiscal year 2013, a period of transition for a number of our members in Sub-Saharan Africa and the Middle East and which saw reengagement with Myanmar.

It was also a period of significant change within the World Bank Group. In early 2013, the Bank’s management proposed a two-prong approach to the Bank’s mission by setting ambitious targets to end extreme poverty and promote shared prosperity, pursuing both of these goals in an environmentally, socially and fiscally sustainable way. This framework was endorsed by the Bank’s Development Committee at the Spring Meetings in April 2013 and laid the foundation of a new and unified World Bank Group strategy which was endorsed by shareholders at the 2013 Annual Meetings. A significant change agenda for the World Bank Group is also underway to support these strategic directions and enhance the effectiveness of its institutions.

From the Senior Vice President and World Bank Group General Counsel

In early 2013, Bank’s management proposed a two-prong approach to the Bank’s mission by setting ambitious targets to end extreme poverty and promote shared prosperity, pursuing both of these goals in an environmentally, socially and fiscally sustainable way.

Anne-Marie Leroy, World Bank Group General Counsel, and David Rivero, Chief Counsel, at a Legal VPU Team Award Ceremony.

Photo: Dolie Schein/World Bank
The Legal VPU has played an important role in providing advice on the complex legal issues arising from these challenges and will continue to help the World Bank Group develop its strategy and implement the change agenda.

The Bank has continued its internal reform program to strengthen accountability and to improve efficiency and effectiveness of its operations. In 2012, the Bank’s Executive Directors discussed and strongly endorsed the “Investment Lending Reform”, an initiative to update, consolidate, restate and reclassify a number of investment lending operational policies (OPs) and Bank policies (BPs) and make related changes to operational policies, procedures, instructions and guidance notes. The Legal VPU was a key member of the reform team, providing continuous policy, legal, analytical and drafting support to Operations Policy and Country Services (OPCS).

Support for Bank financing to operations accounts for approximately 65 percent of the work of the Legal VPU. Legal VPU staff have helped craft solutions for a number of complex projects including the Regional Rusumo Falls Hydroelectric Power Project covering Burundi, Rwanda and Tanzania. It also worked on the first Program-for-Results (PforR) project in the LCR Region, the Uruguay Road Rehabilitation and Maintenance Program, which involved co-financing with a number of other lending institutions.

This annual report will highlight some of such projects our staff worked on during the past year.

In the context of the Accountability and Decision Making Framework, developed with extensive input from our staff, the Legal VPU put forward a note codifying the Bank’s operational lawyer’s specialty, which comprises two distinct yet interrelated parts: (a) the exercise of a legal professional expertise, and (b) the performance of an institutional role. The report provides a summary of the note.

The Legal VPU has also provided guidance on the Bank’s rules of engagement in a number of areas which are highlighted in this report. I led a consultation process on the Bank’s involvement in the security sector which is ongoing. As highlighted in this year’s essay in section II of the report, the Legal VPU has given guidance to management on a framework for the World Bank’s Engagement in the Criminal Justice Sector. The essay also provides some insights on what the role of lawyers
is likely to be in the “Solutions Bank.” The Legal VPU also played an important role in the development of a new legal and policy framework for the Bank’s engagement with Somalia, reengagement with Myanmar and in the review of the framework for Reimbursable Advisory Services provided by the Bank.

In fiscal year 2013, as part of a continued push for donors to pool funds, the Bank introduced the concept of “umbrella” trust fund facilities that aligned with Bank strategy in certain specific areas. The Legal VPU addresses many legal, policy and governance issues that arise as the trust portfolio continues to evolve from numerous small single donor trust funds to more dynamic and complex multi-donor trust funds.

The Legal VPU provides support and advice to clients and Bank teams on the legal issues arising in relation to the environment and social safeguards, infrastructure and information technology projects, public private partnerships, and banking, finance and insolvency. The Legal VPU’s insolvency and creditor rights team was a lead architect of a comprehensive report on the creation of an insolvency regime for natural persons and played a lead role in formulating legislative guidance on the UNCITRAL “Model Law on Cross-Border Insolvency.” Fiscal year 2013 saw further updates to the Bank’s safeguards and the Legal VPU contributed to the development of an approach paper and a technical briefing for the Board on safeguards.

The Legal VPU also conducted the first phase of a review of the World Bank Group sanctions system. A preliminary Phase 1 report was discussed with the Bank Audit Committee in March 2013 and the Legal VPU is expected to lead the implementation of its main recommendations.

At the request of the World Bank regional and sector teams, the Legal VPU staff manages a range of innovative justice reform trust funds, loans and fee-for-service programs, including the Kenya Judicial Performance Improvement Project, which is the first stand-alone justice project in the Africa Region. These activities are highlighted in this report.

I am grateful to the President, the Board, senior management, and all our colleagues around the Bank with whom we have worked to deliver a high-quality and responsive service to our member countries. I would also like to thank the dedicated staff of the Legal VPU, whose commitment has helped the Bank to continue to move its agenda and internal reforms forward. We continue to work with the rest of the Bank as we strive to help the Bank fulfill its mission of fighting poverty with passion and professionalism.

Anne-Marie Leroy
Senior Vice President and
World Bank Group General Counsel
I. The Year in Review: Legal Highlights from FY 2013
The World Bank’s Legal Team

What We Do

In fiscal year 2013, the Bank’s legal team continued to work towards fulfilling the mission of the Legal VPU in an efficient and productive manner—at all times ensuring the highest standard of service to Bank teams. The work of the Bank’s legal team can be grouped into three broad categories:

• an operational unit, a frontline actor in the Bank’s development agenda, both in terms of lending operations and advisory services.

• the Bank’s corporate counsel, focusing on the many legal challenges associated with the governance and reform of a complex institution.

• a knowledge center, leveraging partnerships inside and outside the Bank to promote cross learning among practitioners to respond to client needs.

The Legal VPU strives to operate with the highest standards of professional and ethical conduct and provide timely, proactive, value-added, and objective advice to its clients.

Photo: Dolie Schein/World Bank

Anthony Toft and Hassane Cisse, respectively Deputy General Counsel, Operations, and Deputy General Counsel, Knowledge and Research, lead the work of the Legal VPU on Operations and the Law, Justice and Development Agenda.
The Mission of the Legal VPU

The mission of the Legal VPU is to develop sound, flexible and innovative legal solutions to enable the Bank to successfully respond to the evolving needs of its members while protecting it from legal and reputational risks in a demanding global environment. The Legal VPU will promote the role of law as an important dimension of the Bank’s strategy for poverty alleviation and achieving sustainable and equitable economic growth.

In carrying out its mission, the Legal VPU shall operate with the highest standards of professional and ethical conduct and provide timely, proactive, value-added, and objective advice to its clients.

Who We Are

Our lawyers are a diverse group of individuals who have a wealth of experience in fields as far ranging as banking, insolvency, environment, justice reform, litigation, project finance and international law. With this diverse skill set, the Legal VPU is well equipped to provide support in a multitude of areas in the Bank, including to trust funds, lending operations, country programs and supervision. A breakdown of resource utilization for the Legal VPU in fiscal year 2013 is set out below.

Legal VPU Resource Utilization

<table>
<thead>
<tr>
<th>Utilization</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Support to Lending</td>
<td>28%</td>
</tr>
<tr>
<td>Legal Support to Supervision</td>
<td>12%</td>
</tr>
<tr>
<td>Trust Fund Support</td>
<td>15%</td>
</tr>
<tr>
<td>Country Program Support</td>
<td>10%</td>
</tr>
<tr>
<td>ACS and Paralegal Support</td>
<td>9%</td>
</tr>
<tr>
<td>Knowledge Management and Training</td>
<td>7%</td>
</tr>
<tr>
<td>Legal Institutional Services</td>
<td>10%</td>
</tr>
<tr>
<td>Management and Administration</td>
<td>9%</td>
</tr>
</tbody>
</table>

Direct Support to Operations (about 65%)
The Legal VPU and Bank Operations

Lucia Boki fetches water at a borehole in the village of Bilinyang, near Juba, South Sudan.

Photo: Arne Hoel/World Bank
Providing Frontline Support to the Bank’s Operations

The Legal VPU has continued to provide timely and critical support to the Bank’s country operations as well as regional and global initiatives.

To meet the Bank’s new key targets of reducing extreme poverty and promoting shared prosperity, the teams remain busy providing support to Bank lending operations: IBRD commitments in fiscal year 2013 totaled US$15.3 billion, down from US$20.6 billion in fiscal year 2012. Commitments remain significantly higher than the historical average of US$13.5 billion in fiscal year 2005-08, but less than the record US$44.2 billion in fiscal year 2010 when the financial crisis peaked. IDA commitments rose to US$16.3 billion, a 6.88 percent increase over fiscal year 2012 figure of US$14.8 billion.

To meet the Bank’s new key targets of reducing extreme poverty and promoting shared prosperity, the legal team remains busy providing support to Bank lending operations.

Photo: Roxana Bravo/World Bank

Signing Ceremony, Arab Development Portal.
Legal staff pictured: Sidi Boubacar, Chief Counsel, and Henri Joel Nkuepo, Associate Counsel.
**Accelerating Local Governance and Service Delivery in the Republic of South Sudan**

On February 26, 2013, the Board approved a US$50 million credit to the Republic of South Sudan to finance the Local Governance and Service Delivery Project (LGSD). While South Sudan had, over several years, benefited from financing through a large multi-donor trust fund, this was the first IDA credit to the new country, which gained independence on July 9, 2011 and has been a Bank member since April 18, 2012. The project is designed to help build the local government system in the new nation and improve local service delivery mechanisms. It will do this in part by supporting the government’s evolving policy framework for local governance which prioritizes decentralization, an effective service delivery framework, a local services support aid instrument, and safeguards for existing resource allocations to counties.

The LGSD project is the centerpiece operation of the new Interim Strategy Note for South Sudan for fiscal years 2013 and 2014, which was discussed at the Board on January 30, 2013. The Legal VPU supported this operation from identification, through appraisal and negotiations to Board approval. This required providing legal and policy advice in response to government requests, changes on the ground and evolving donor commitments. The project is designed as a co-financed operation, with IDA financing being complemented by the LGSD Trust Fund, contributed to by bilateral donors, and total project financing estimated to be US$100 million. The design of the Project called for detailed legal arrangements to reflect the particularities of the local government structures in South Sudan and the complexities of implementing a large community-driven project in a new state where capacity constraints remain significant. The Legal VPU’s support was essential in designing the implementation arrangements, managing safeguards and fiduciary risks, and ensuring that a range of legal issues relating to domestic law were appropriately handled, including compliance with local law and matters related to subsidiary agreements required for implementation partners. The negotiations required sustained support from Legal VPU colleagues given that it was the country’s first IDA credit, which included significant advance preparation to secure their successful conclusion. Overall, both the Bank team and country counterparts worked together effectively and Legal VPU input was highly valued.

**Regional Rusumo Falls Hydroelectric Power Project**

During 2013, a Bank team worked with the counterparts in the governments of Burundi, Rwanda and Tanzania to deliver IDA credits and grants in the amount of SDR226.6 million (equivalent to US$340 million) to the three countries (IDA Grant in an amount of US$113.3 (SDR 75.6) million to the Republic of Burundi, IDA Credit and Grant in an amount of US$113.3 (SDR75.6) million to the Republic of Rwanda, and IDA Credit in an amount of US$113.3 (SDR 75.4) million to the United Republic of Tanzania (the Participating Countries), for the Regional Rusumo Falls Hydroelectric Power Project (the Project).

The Project is designed to increase the supply of electricity to the national grids of participating countries. Most of the Nile Basin river countries are experiencing energy shortfalls and suppressed demand, and have committed to integrate their power systems through the East African Power Pool, which is supported by the Nile Basin Initiative (NBI). The two components of the Project are:

1. **In 1999, the Nile riparian countries established the Nile Basin Initiative (NBI) to develop the resources of the Nile River in a cooperative manner, share socioeconomic benefits and promote peace and security. The NBI operates under the leadership of a Council of Ministers in charge of the water affairs from the member states (Nile-COM) with the support of a Technical Advisory Committee (Nile-TAC) and a Secretariat (Nile-SEC). In 2005, the NBI launched a strategic action program to realize the shared vision of sustainable economic development through regional integration (the Strategic Action Program). The Strategic Action Program consists of two complementary components: (a) a Nile Basin-wide program (the Shared Vision Program) of collaborative action, exchange of experience, and capacity-building; and (b) sub-Nile Basin action programs (Subsidiary Action Programs) for collaborative physical investments in the Nile Equatorial Lakes and the Eastern Nile regions (the Nile Equatorial Lakes Subsidiary Action Program (NELSAP) and the Eastern Nile Subsidiary Action Program (ENSAP)).**

2. **Generally the Nile Basin countries include Uganda, Ethiopia, Tanzania, Kenya, Rwanda, Burundi, Democratic Republic of Congo, Eritrea and Sudan.**
entail the construction of a power plant complex and the construction of transmission lines. The design of the first component, which will be wholly financed by IDA, entails the construction of the Power Plant Complex. Rusumo Power Company Limited, a special purpose vehicle (SPV), was created under the laws of the Republic of Rwanda and is jointly owned by the governments of the Participating Countries. The SPV is the Project Implementing Entity and will own the Power Plant Complex. The Legal VPU contributed significantly in supporting Project preparation and worked closely with the task team and the Participating Countries to ensure the timely establishment of the SPV, as well as to guide the discussions and review of the underlying agreements as outlined below.

The key legal issues arise as a result of the institutional and implementation arrangements for the Project, which entail a number of core agreements. The general legal framework is based upon a tripartite agreement that was executed by the three countries. The implementation arrangements of the Project call for a management arrangement (referred to as the Project Implementation Support Agreement) to be concluded between the Project Implementing Entity and the NBI acting through Nile Equatorial Lakes Subsidiary Action Program (NELSAP) and the latter’s Rusumo Falls Project Implementation Unit (NELSAP-CU). For the purpose of establishing the SPV, the Participating Countries have negotiated and substantively finalized a Shareholders’ Agreement and an Implementation Agreement, each of which is to be executed among the Participating Countries and the SPV. Respective Power Purchase Agreements are also under discussion among the power utility companies, and will be executed between the SPV and the power utility companies prior to effectiveness of the respective financing agreements. The Project Implementation Support Agreement will be signed between the SPV and NBI (acting through NELSAP) prior to effectiveness. In addition, respective subsidiary agreements will be signed between the Project Implementing Entity and each Participating Country in connection with the on-lending of the respective financing for the Project. Taking into consideration the identified risks, the following key provisions are designed in the respective agreements:

The Shareholders’ Agreement provides that the SPV’s board will consist of two directors appointed by each government plus an independent board member. The independent board member must have proven relevant expertise, not be employed by a public service agency of any of the Participating Countries, and not be a national
of any of the Participating Countries. There is a further concern that one or more of the governments of the Participating Countries will not provide the necessary support for the SPV or will interfere with Project operations. To address this issue, the Implementation Agreement provides that, if any government defaults in its obligations under the Shareholders' Agreement or the Implementation Agreement (including the obligation to replenish the escrow account if needed, as described in the paragraph below), then its rights under the Shareholders' Agreement, including its voting rights, will be suspended. These provisions are intended to ensure that the SPV can, to some extent, operate independently of inappropriate interference.

As in all power projects, there is a concern that one of the power utility companies will fail to make payments under its Power Purchase Agreement. To address this concern and ensure liquidity for the Project, each Project Agreement requires that the corresponding power utility company will establish an escrow account. Each power utility company will be required to deposit and maintain an amount equal to six months' capacity charges pursuant to the Power Purchase Agreement into the escrow account, and the power utility company shall replenish the escrow account as needed during the term of the Power Purchase Agreement. If the power utility company fails to make required payments, then delivery of energy to that power utility company may be suspended, and such energy can instead be delivered to one of the other power utility companies. The governments of the Participating Countries are committed, under the Implementation Agreement, to backstop the obligation to replenish the escrow account.

In addition, there is a concern that one or more governments may not provide sufficient financial support to its power utility company, which could lead to the failure to make payments under the Power Purchase Agreement. To address this issue, the financing agreements provide that the repayment obligation of the SPV to the government of the Participating Country under the applicable subsidiary agreement will be suspended if the power utility company fails to make any payment due under the Power Purchase Agreement and will be reinstated only at such time as the power utility company has satisfied in full all payment obligations under the Power Purchase Agreement and replenished the escrow account. This is intended to foster the financial viability of the SPV and the Project, as well as to provide proper incentives to the governments of the Participating Countries.

The Project is classified as Category A for the purpose of environmental assessment. The following environmental and social safeguard policies are triggered: (a) OP 4.01 – Environment Assessment; (b) OP 4.04- Natural Habitats; (c) OP 4.36- Forests; (d) OP 4.11 – Physical Cultural Resources; (e) OP 4.12 – Involuntary Resettlement; (f) OP 4.37 – Safety of Dams; and (g) OP 7.50 – Projects on International Waterways. The Project involves downstream riparian countries of Lake Victoria and the Nile river (the Project is located on two transboundary rivers Kagera and Ruvubu in the Lake Victoria Basin). Notification required under OP 7.50 took place through formal consultations organized by NELSAP.
under NBI. There were a number of significant environmental and social safeguard questions, including specific considerations, related to the associated AfDB-financed transmission lines component.

### A New Legal and Policy Framework for World Bank Engagement in Somalia

The Legal VPU has been involved in advising on the legal and policy framework for Bank engagement in Somalia following the adoption of a new Constitution in August 2012, the formation of a new government in September 2012 and the significant security gains made in that country by the new Federal Government of Somalia (FGS). This work led to the preparation of a legal note: “Legal and Policy Framework for World Bank Engagement in Somalia” (the 2013 Legal Note) to provide guidance to staff on the implementation of Bank operations in this new political context. The Legal Note, circulated to the Board and senior management of the World Bank Group on April 29, 2013, superseded the “Legal Note on Parameters for Bank Operations in Somalia” prepared in 2005.

Unlike its predecessor, the 2013 Legal Note concluded that the FGS constituted an effective counterpart for Bank engagement. This determination was significant as it meant that for the first time since the Bank’s re-engagement in Somalia in 2002, the Bank would be able to channel funds directly to and sign legal agreements with the authorities. It also opened the legal space for arrears clearance discussions and the resumption of full Bank support once the arrears are cleared. This determination by the Bank sent positive signals to the rest of the international community about the Bank’s willingness to formally engage as soon as an appropriate opportunity arises.

In arriving at the conclusion, the Legal VPU reviewed the factual situation against the relevant principles of international law, previous Bank practice as well as the practice of other countries and international organizations. This new framework comes at a time when the Region is preparing to present the Interim Strategy Note (ISN) in November 2013 and as such the clarity of the legal approach will advance Bank work in the ISN period.

### Engaging in the Security Sector: Niger and Mali

**Engaging in the Security Sector: Niger and Mali**

With recent developments, especially in the Sahel region, the Bank is increasingly requested by countries to help with respect to their military expenditure, and maintaining security is increasingly seen as an integral part of supporting economic and social development.

The Saharan desert is an area lacking real and efficient border control for all kinds of trafficking (arms, drugs, humans, etc.) and terrorism-related activities.

Further to a military coup in Mali, more than half of the country has fallen under the control of jihadist groups connected to Al Qaeda in the Islamic Maghreb. With the support of the international community, the Malian army has been fighting to regain control of its territory and eradicate terrorism. But the Northern part of the country is largely devastated, and the armed fight comes at a high cost for the population and the economy.

Niger is surrounded by countries such as Libya, Mali, and Nigeria, with increasing terrorism pressure at its borders and security risk within its borders, principally due to armed returning soldiers and refugees from neighboring countries at a time of rising food insecurity. Chad is actively involved in fighting on the side of the Malian army.

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3 See also a more in depth analysis of the Bank’s involvement in the Criminal Justice Sector which forms part of the essay at Section II of this report: The Bank’s Engagement in the Criminal Justice Sector and the Role of Lawyers in the “Solutions Bank”.

4 A weak regional security architecture and general militarization in the region have facilitated cross-border trafficking of drugs and arms across the entire Sahel region. The military intervention against Al Qaeda in the Islamic Maghreb and Jihadist militants in Mali presents a risk of spill-over into Niger. Tuareg insurgencies elsewhere are perceived as a source of tension that could potentially involve the Nigerien Tuareg community (see paragraph 5 of the Niger FY 13-15, Report No.76232 NE).
Countries in the region have increased military expenditure very substantially over the last few years, but at the same time poverty is increasing.

Both Mali and Niger have requested help from the Bank to address security issues and preserve resources within their limited budget for the financing of economic and social development activities. Both countries have requested the Bank to carry out Public Expenditures and Institutional Reviews of the Security Sector.

Traditionally the Bank does not assist the security/military expenditure sector because of the provision against political interference in its Articles of Agreement as well as the lack of expertise of Bank staff in this area. The current Bank policy on military expenditure is derived from a December 1991 note to staff from the General Counsel and a General Counsel’s legal opinion to the Board. It describes the very limited cases when the Bank may be involved in the security sector as follows:

• The Bank, in effect, may not assess the appropriateness of military expenditures without straying from its mandate.
• In its Public Expenditures Review work (which at the time was not sector specific), the Bank is entitled to request information on military related “aggregate” expenditures: the Bank complements the IMF’s efforts to collect data (covering fiscal expenditures, international trade and external assets and liabilities that encompass military transactions).
• In countries where military spending is high and growing, and public outlays for development purposes are seriously inadequate, the Bank needs to raise the issue of inadequacy of public expenditures for development purposes with the country authorities. The judgment of “seriously inadequate” has to be country specific, taking into account total resources, essential development expenditures and the crowding out effect or opportunity cost of non-productive expenditures (such as, but not limited to, military expenditures).
• Another example of a possible area for Bank’s work is where a government has decided to make major changes in military outlays, either in the case of big political changes or strategic shifts in countries defense postures, and seeks the Bank’s assistance. In such a case, the Bank can respond.

In these limited cases the General Counsel’s opinion explained that military expenditures and economic and social development expenditures were like two sides of the same coin, and it is to better preserve available budget for economic and social development expenditures.

The General Counsel has undertaken a process of consultation which is expected to lead to the presentation of a paper to the OVPs on the Bank’s involvement in the security sector. Pending completion of the ongoing consultation process, the General Counsel has been amenable to letting individual cases be considered in the interim, subject to six requirements:

(a) an underpinning economic justification;
(b) the country would have to request the Bank’s engagement explicitly;
(c) the Bank should be provided assurances of legal access to relevant information to do its job (including what otherwise might be deemed confidential/sensitive national data);
(d) the Bank would need to undertake the task out of concern for the crowding out/coordination effects of security budgets on other sectors that are more traditionally within the Bank’s mandate;
(e) the Bank would need to act in concert with an acceptable partner that has specific sector expertise (e.g., the UN in Liberia—the Bank would not be making security sector judgment calls); and
(f) the proposal would need to be accompanied by an explicit risk analysis endorsed by the proponent Bank official to make him/her accountable for having assessed the initiative.

On this basis, the Bank has agreed to carry out a Public Expenditures Management and Fiduciary Review of the Security Sector in Niger and in Mali, to be delivered in fiscal year 2014. This is not a “Public Expenditures and Institutional Review” of the Security Sector, but a piece which would focus on the fiduciary aspects and comply with the six requirements above. At least in the case of Niger, such work has not triggered any objection from the Board when it discussed the Niger Country Partnership Strategy on April 30, 2013.
The MENA Transition Fund
The MENA Transition Fund was set up by the Deauville Partnership in October 2012 to support the countries in transition in the Middle East and North Africa (MENA) Region to formulate policies and programs and implement reforms. The Deauville Partnership was launched by the G8 in May 2011 as a response to the historical changes underway in several of these countries. The Transition Fund is a broad-based partnership among the members of the Deauville Partnership. It is aimed at improving the lives of citizens in the MENA Region, and supporting the transformation currently underway therein by providing grants for technical cooperation to strengthen governance and public institutions, and to foster sustainable and inclusive economic growth by advancing country-led policy and institutional reforms.

The members of the Deauville Partnership are: (a) donor countries: Canada, France, Germany, Italy, Japan, Kuwait, Qatar, Russia, Saudi Arabia, Turkey, the United Arab Emirates, the United Kingdom, and the United States; (b) MENA Region countries: Egypt, Jordan, Libya, Morocco, Tunisia, and Yemen (Transition Countries); (c) International Financial Institutions (IFIs): the African Development Bank, Arab Fund for Economic and Social Development, Arab Monetary Fund, European Bank for Reconstruction and Development, European Investment Bank, International Finance Corporation, International Monetary Fund, Islamic Development Bank, OPEC Fund for International Development, and the Bank; and (d) the Organization for Economic Co-operation and Development (OECD).

At the request of the Deauville Partnership, the Bank serves as the Trustee and provides the Coordination Unit for the Transition Fund. The Trustee operates as part of the Bank under Bank management and applicable policies and procedures. The Trustee administers the Trust Fund for the Transition Fund for purposes of receiving funds from donors and holds those funds in trust. It signs Contribution Agreements with each donor specifying the terms and conditions related to their Contributions and how the Trustee will administer the funds. It signs a Financial Procedures Agreement (FPA) with each IFI that elects to participate in the Transition Fund and become an Implementation Support Agency (ISA) for Transition Fund financed activities. The FPA serves as a framework agreement for all fund transfers by the Trustee from the Trust Fund to the ISA for proposals in which it is the designated ISA by the Transition Country. Subject to the availability of funds, the Trustee will make commitments and transfer funds from the Trust Fund based on funding decisions of the Steering Committee of the Transition Fund and under the terms of these legal agreements.

The Steering Committee is the primary organ of the governance structure of the Transition Fund. It serves as the decision-making body of the Fund and comprises decision making and observer members. All requests for funding are submitted to the Steering Committee by the designated Ministry of each Transition Country together with a written endorsement from the designated ISA. Recipient entities in Transition Countries include in principle all levels of government, judicial bodies, central banks, other state agencies and parliaments. The technical cooperation activities funded by the Transition Fund are in general Transition Country-executed with implementation support from ISAs. On an exceptional basis, Transition Countries may request that specific Projects, or components, be ISA-executed (this could include, for example, activities of a regional nature, or cases in which a specific IFI has unique in-house technical cooperation services to offer). Technical cooperation for parliamentary institutions is ISA-executed and requires written Transition Country consent. For Transition Country-executed activities, the recipient entity (or designated authority) enters into a legal agreement with the designated ISA for the transfer of funds which will include specific provisions in conformity with the requirements of the relevant FPA. The recipient entity will be required to implement the project in accordance with the policies and procedures of the designated ISA and to report on progress and financial aspects in accordance with the ISA’s requirements.

All funding proposals are submitted in response to a Call for Proposals issued by the Steering Committee. The selection criteria for seeking financing from the Transition Fund are detailed in the Operational Manual of the Fund approved by the Steering Committee on October 29, 2012 and amended on January 4, 2013. They require, among other things, that the proposal respond to transformational and cross-cutting needs to address a broad range of inter-related thematic areas covering all three pillars of the Deauville Partnership (Finance, Trade, and Governance).

The Transition Fund has come a long way since it was announced. Within less than a year of its operation, it has received contributions and confirmed pledges amounting to US$176 million from Canada, France, Japan, Kuwait, Qatar, Russia, Saudi Arabia, Turkey, the United Arab Emirates, the United Kingdom and
the United States. The target of the Transition Fund is US$250 million over three years. The Transition Fund has so far approved 28 projects for an aggregate amount of US$101.1m (6 in Egypt for a total of US$19.8m, 5 in Jordan for a total of US$23m, 1 in Libya for US$2.6m, 6 in Morocco for a total of US$25.7m, 7 in Tunisia for a total of US$20.4m, and 3 in Yemen for a total of US$9.6m). The Bank is the designated ISA for 10 of these projects for an aggregate amount of US$54.1m (1 in Egypt for US$7.1m, 2 in Jordan for a total of US$15m, 4 in Morocco for a total of US$20.6m, 1 in Tunisia for a total of US$5.1m, and 2 in Yemen for a total of US$6.3m).

The Legal VPU was instrumental in developing and negotiating common terms among all Transition Fund partners for fund flows, governance and operations. The process was made particularly efficient through negotiation of the forms of agreements for all donors and IFIs simultaneously, along with a comprehensive operations manual that addressed governance and procedural aspects. Only after all donors, Transition Countries and IFIs had agreed to these establishment documents could the Transition Fund be set up and fund flows begin. The Legal VPU continues to support the Bank in its Trustee and Coordination Unit roles as well as in its role as one of the supporting IFIs.

**Uruguay Road Rehabilitation and Maintenance Program**

As highlighted in the fiscal year 2012 Annual Report, the Board has recently approved a new lending instrument called Program-for-Results Financing (PforR). PforR is the first new lending instrument at the Bank in almost three decades. PforR has several unique developmental and design characteristics. It seeks to provide support to borrowers’ own developmental programs. Such programs may be governmental or non-governmental programs, new or on-going, and national, sub-national, sectoral, sub-sectoral, or multi-sectoral in scope. Under PforR, there is a direct link between disbursement of Bank funds and the delivery of defined, verifiable and critical results. PforR relies on Bank assessments of program systems and institutions, promotes an integrated approach to risk, and encourages management rather than avoidance of risk, by identifying risks, and balancing them against results. PforR relies on the borrowers’ fiduciary, environmental and social systems, and seeks to address gaps in such systems through a combination of initiatives, from legal requirements and actions, to capacity building, disbursement incentives and to implementation support.

The emphasis on program and system level assessments, rather than at the transaction level, is a distinguishing feature of the PforR instrument.

The Road Rehabilitation and Maintenance Program (the Program) for the Oriental Republic of Uruguay (the Borrower) is the first PforR operation approved in the Latin America and Caribbean Region. The development objectives of the Program are to sustain at least 35 percent of the Borrower’s national road network, which has deteriorated in recent years, in good or very good condition and improve road sector management. The Program includes activities related to the rehabilitation and/or maintenance of roads and bridges and provision of technical assistance to various public institutions.

The amount of the Bank’s loan towards the Program is US$66 million and the total cost of the Program is expected to reach US$510 million. One innovative feature of this PforR is that the Program will be co-financed by loans from the Inter-American Development Bank (IADB) and the Fund of the Development of the Countries of the Rio del Plata Basin (FONPLATA) so the PforR Anti-Corruption Guidelines (ACGs) will also apply to the financing to be provided by the co-financiers, as such financing will fall under the scope of the Program.

During the preparation stage of the Program, an interesting and difficult issue arose in the context of reviewing the Environmental and Social Safeguards Assessment for the Program. The Borrower has certain expropriation laws that provide protection to persons affected by the expropriation process but does not protect people without occupation rights or permits. This constituted a theoretical gap in the social systems applicable to the Program. The risk was assessed by the Bank, and as mitigation, the Bank considered that the expropriation of illegal occupiers was highly unlikely given the nature of the Program. As further mitigation, in the unlikely event that a future subproject could affect an informal or illegal settlement, the Borrower’s Ministry of Transport and Public Works would be responsible for developing relocation plans to assist displaced persons, regardless of their legal status, as it did in a satisfactory manner in other similar projects. This flexibility was permitted under OP 9.00 and is one of the advantages of the new PforR instrument.
With respect to the application of the ACGs, Legal VPU lawyers worked together to find acceptable arrangements consistent with the guidelines. The Borrower confirmed its full commitment to the ACGs in the Loan Agreement and the modalities to implement the ACGs are reflected in the Minutes of Negotiations. Specifically, for fraud and corruption cases, the Bank can request an investigation to be conducted by the government of Uruguay and they will respond accordingly under Uruguay’s legal and institutional framework. The ACGs will also apply to FONPLATA-financed contracts and IADB-financed contracts under the Program. The World Bank/IADB cross-debarment list will apply and investigations will be coordinated with the Bank, on a case-by-case basis. The Bank considered these arrangements to be appropriate based on: (a) the Borrower’s systems performance evaluation carried out by the Bank, and its assessed capacity to handle fraud and corruption risks under the Program; and (b) the overall low fraud and corruption risk of the Program in the Uruguayan context. The Borrower has both a strong legal framework and high institutional capacity to address fraud and corruption risks. This legal framework is in compliance with the principles and procedures recognized at an international level and certainly in agreement with the ACGs for PforR operations.

The Western Balkans Investment Framework

Between the end of 2011 and January 2013, Legal VPU lawyers worked closely with the Europe and Central Asia (ECA) Region on drafting and negotiating two administration agreements with the European Bank for Reconstruction and Development (EBRD), as co-manager of the European Western Balkans Joint Fund, for contributions under the Western Balkans Investment Framework (WBIF) (the WBIF Administration Agreements). One is for projects under a Regional Western Balkans program. The other one is for projects under a Kosovo-only program.

A distinctive and innovative feature of the WBIF Administration Agreements is that they are drafted as umbrella agreements with a form of “Implementation Agreement” to be used for each individual project. Projects selected by the WBIF Steering Committee will be implemented by the Bank in accordance with the terms of specific Implementation Agreements between EBRD and the Bank. The legal team borrowed this approach from the old form of Framework Fee-Based Services Agreement (pre-Reimbursable Advisory Services (RAS)).

Two fundamental reasons prompted this approach. Pursuant to the WBIF requirements, once a project proposal is approved for financing out of the WBIF resources, the EBRD must enter into an “implementation agreement” with the financial institution approved for project implementation. Also, the Bank has a limited number of vehicles available for capturing funds from external sources, including Externally Financed Outputs and Trust Funds. Given the reporting requirements of the WBIF, the Bank proposed to EBRD to open a Trust Fund, through which projects to be implemented by the Bank would be financed. The Legal VPU proposed then to embed the substance of the implementation agreements of the WBIF, to the extent acceptable to the Bank, into an umbrella Administration Agreement for each of the geographic areas intended to be covered by the Bank (regional Western Balkans, and Kosovo).

Another feature of the WBIF Administration Agreements is that they are not for a specified amount: because projects are approved periodically under the WBIF, the EBRD has not committed to a pre-determined sum to be made available to the Bank. The compromise reached by the Bank and EBRD was that the parent Trust Fund account for each of the WBIF Administration Agreements would only be opened upon signature of a number of Implementation Agreements amounting to at least US$1 million in aggregate.
Once the Bank and EBRD reached an agreement on the WBIF Administration Agreements, they had to be presented to the European Investment Bank (EIB), the other co-manager of the WBIF, to obtain its approval of the agreements as required by the WBIF procedures. Through the negotiations process, EIB agreed to sign the WBIF Administration Agreements as a demonstration of its approval, but not as a party to the agreements, and to allow EBRD to sign the subsequent Implementation Agreements.

Legal VPU lawyers took a leadership role in engaging with EBRD and EIB during the entire negotiations process, and the Legal VPU continues to have a fundamental role in preparing the Implementation Agreements for eight projects.

**Quito Metro Line One Project**

The Quito Metro Line One Project is a US$1.68 billion operation that will support the construction and operation of the first metro line in Quito, Ecuador. Initially, the government of Ecuador requested financial support from the Inter-American Development Bank (IADB), the European Investment Bank (EIB), and the Andean Development Cooperation (CAF), and they prepared the project according to their standards during 2012. In January 2013, the Bank received an official request to finance part of the cost of the project, and in July 2013 it approved a US$205 million loan to the Municipality of Quito with a guarantee from the Republic of Ecuador.

The Bank will jointly co-finance with IADB, EIB and CAF one large works contract for the construction of the metro and has agreed that the contract will be procured following the IADB procurement rules. This is an unprecedented decision for the Bank. In previous cases of joint co-financing, the Bank has been defined as the leading agency, with its procurement rules prevailing. This time, however, the Bank was a late comer into the process, and therefore, understanding the advantages of the application of one set of rules, it agreed to use the IADB rules, that are, by and large, harmonized with those of the Bank.

To apply the IADB rules, the Bank’s Board had to approve a waiver of the Bank Procurement Guidelines and the provisions of OP 11.00 that call for use of the Guidelines. The waiver request excluded three provisions of the Procurement Guidelines: (a) the eligibility requirements to allow participation of firms and individuals and the procurement of goods, works and non-consulting services from all countries, and to recognize the ineligibility, to be awarded a Bank-financed contract, of a firm sanctioned by the Bank in accordance with its prevailing sanctions procedures; (b) the misprocurement requirements; and (c) the fraud and corruption provisions. The Bank also retained the application of its Anti-Corruption Guidelines and its unrestricted right to exercise the remedies provided under the Loan Agreement and as stipulated in the General Conditions. Similarly, the Bank retained the exercise of its fiduciary supervision responsibilities during Project implementation. The co-financing approach also required IADB to seek a waiver from its Board of Directors to accommodate the Bank’s universal eligibility provision and the application of the Bank’s suspension and debarment lists.

The Loan Agreement refers to the IADB’s Guidelines as the applicable procurement rules, subject to the three caveats mentioned in the paragraph above, and provided that the application of these guidelines does not lead to results that in the Bank’s judgment are contrary to the economy and efficiency considerations of the Bank’s Articles of Agreement. If the Bank were to make such a judgment, it could refrain from disbursing under the loan.

In addition, given the joint nature of the co-financing to be provided for the works contract, expenditures ineligible for financing by any of the co-financiers would not be eligible for Bank financing either. This cross-ineligibility approach would not constitute cross-debarment per se but rather recognition of the practical reality that a jointly co-financed expenditure cannot be made unless all sources of financing are available. This approach has been reflected in the Loan Agreement as an amendment to the definition of Eligible Expenditures in the General Conditions.
During implementation, each co-financier is to supervise the project, but coordination among them will be critical to minimize transaction costs for all involved, especially the client. To address this need, the Bank is currently discussing “Principles of Collaboration” (PoC) that define procedures through which the Bank and the other three co-financiers will cooperate and coordinate during the supervision of Project implementation.

Myanmar Reengagement and Reform Support Credit

In the recent past, Myanmar has witnessed an unprecedented political transition. There has been a rapprochement between the government and Aung San Suu Kyi, chairperson of the opposition party National League for Democracy. Several political prisoners have been released, and the National League for Democracy contested and won several parliamentary seats in by-elections held earlier this year. The government has also signed ceasefire agreements with various armed groups in a bid to resolve Myanmar’s ethnic conflicts. In addition, the government has undertaken several economic-policy reforms including liberalizing its exchange rates and trade policies, rationalizing taxes, introducing fiscal decentralization, and reforming its budgetary process.

The international community has welcomed Myanmar’s political transition by lifting various long-standing sanctions against Myanmar and strengthening diplomatic relations. For its part, the Bank has undertaken a significant reengagement effort with Myanmar. As part of this effort, in November 2012, the Bank issued an Interim Strategy Note for Myanmar. At the same time, it also provided an IDA Pre-Arrears Clearance Grant to support community-driven development since Myanmar had outstanding IDA arrears.

As envisaged under the Interim Strategy Note, in January 2013, IDA’s Board of Executive Directors approved the Myanmar Reengagement and Reform Support Credit. The Credit is in support of a development policy operation in the amount of SDR287.75 million (equivalent of US$440 million).

The operation’s development objective is to support Myanmar’s critical reforms for strengthening macroeconomic stability, improving public financial management, and enhancing the investment climate. It was also intended to facilitate the clearance of Myanmar’s IDA arrears and pave the way for the resumption of new lending.

Just prior to the IDA Credit’s approval, the Japanese Bank for International Cooperation (JBIC) gave Myanmar a bridge loan to formally clear its IDA arrears. Part of the IDA Credit’s proceeds was then used to repay the principal amount of JBIC’s bridge loan.

The operation’s program document identifies a number of economic, institutional, and political risks. The Bank proposes to mitigate some of these risks by providing technical assistance for establishing a robust framework for macroeconomic management. It also intends to support various government peace-building and reform initiatives. Finally, it will work closely with donors to build Myanmar’s institutional capacity.

The design and preparation of the operation took several months. Various Legal VPU lawyers from multiple practice groups worked closely with their colleagues in the Region and across the Bank’s departments and vice presidencies. In recognition of their efforts, the team was awarded an excellence award by the East Asia and Pacific Region.
Gender-Based Violence and Domestic Violence in the Pacific and Timor-Leste

Since September 2012, the Legal VPU has been involved in designing, advocating and implementing several initiatives related to the fight against gender-based violence and domestic violence in the Pacific and in Timor-Leste.

This is a region in which two women out of three have been subject to some sort of physical or sexual violence in their lives. Gender-based violence and domestic violence are major developmental challenges in this region. In this context, under the leadership of the Legal VPU, two institutional development fund (IDF) Grants were finalized and signed for the Solomon Islands and Kiribati to improve services for victims of gender-based and domestic violence in these countries. The objective of both projects is to support the Solomon Islands and Kiribati to improve the access to services for victims and survivors and improve awareness and data collection. On April 16, 2013, the Legal VPU also organized in Timor-Leste, a national consultation workshop to identify priority actions and financing sources to further implement the Timor-Leste National Action Plan on Gender Based Violence. This consultation identified six priority actions, for prevention, access to services, and access to justice, for which further work will be developed by the Bank or other donors, including through south-south cooperation schemes. The Legal VPU is currently also organizing a National Workshop in Vanuatu in order to support the country to finalize its “National Action Plan on Gender” which will include special provisions in the fight against domestic violence in Vanuatu.

Through the Legal VPU’s support, the fight against gender-based violence and domestic violence has been included as a priority action in many country programs, including Marshall Islands, Timor-Leste and Solomon Islands. On the advocacy side, the Legal VPU participated in an International Conference organized by the University of New Caledonia on “Sustainable Development in Oceania: Towards a New Ethics?” held in Kone, New Caledonia, in April 2013, and made a presentation on the legal and social issues related to gender-based violence and domestic violence in the Pacific. The Legal VPU also launched an awareness campaign against do-
Domestic violence by asking male colleagues in the Sydney and Dili offices to pose with a sign “Real Men Do Not Beat Women” for International Women’s Day (March 8, 2013) as the theme of that day was “Ending Violence Against Women”. This initiative has been very challenging but ultimately, it has been a rewarding experience. It is an initiative from which no one can expect rapid or immediate results. Change takes time and conscience does its silent and efficient work but this is an area in which the Legal VPU can contribute substantially and has shown that it can deliver quality work and make a real difference in the life of women and men alike for a better and happier world.

Reimbursable Advisory Services: A Growing Line of Business

Reimbursable Advisory Services (RAS) are a key feature in the Bank’s Knowledge Agenda and of significant importance for the Bank’s engagement with middle and high income countries, including non-borrowing members. As of May 2012, the size of the RAS portfolio under active management reached nearly US$100 million (i.e., contracts signed).

The Bank recently undertook a review of the RAS framework on the basis of the Bank’s RAS practice and engagements since 2008. It also identified and analyzed various issues related to the significant growth of RAS agreements and recommended a series of measures to mainstream, harmonize and strengthen the RAS line of work.

The Legal VPU has played a significant role in this review of the RAS framework, and has also implemented several measures recommended by the review. More specifically, the Legal VPU prepared standard terms for the RAS legal agreements, in order to: (i) provide more consistent treatment among clients, (ii) help the Bank manage risks better, and (iii) reduce time needed to negotiate each agreement. In addition, the Legal VPU introduced substantive changes in issues like liability and applicable law to the RAS legal agreements to align them with the practice of IFC and the Bank’s Treasury Vice Presidency. Finally, the Legal VPU developed a new Framework Agreement for RAS transactions for situations, where the Bank intends to engage in an extensive program of work including RAS with non-sovereign clients.

Regional Breakdown: Revenues in RAS, FY08-FY12 in US$ million

![Regional Breakdown: Revenues in RAS, FY08-FY12 in US$ million](image-url)
The following examples showcase the Legal VPU’s experience in providing legal support in RAS in two regions (ECA and LCR).

**ECA Region: Support to European Union Member States**

The provision of Reimbursable Advisory Services by the Bank to European Union (EU) member states has been rapidly expanding over the past few years in unprecedented ways in the ECA Region to support public authorities to address mainly horizontal issues and regional development sector specific challenges. Whether in areas such as public sector governance, finance sector, social protection, environment or transport, the EU member states have drawn on the Bank’s wealth of analytical experience and advisory services, in many instances with the support of the European Commission.

Indeed, the Bank is actively providing advisory services in EU member state countries including Romania, Bulgaria, Poland, Latvia, Slovakia, Czech Republic and Hungary, at the ministerial and local government levels to improve the implementation process of the EU structural instruments, the absorption of EU funds by member states made available following their accession to the EU, and the preparation for the next programming period of 2014-2020.

In Romania, one of the largest EU member states clients of the Bank in the area of RAS, the Bank has been, in the period of 2012-2013, providing assistance to the country through a series of more than 20 advisory services agreements under implementation or preparation, which are gathered under the absorption of EU Structural Funds program, and include technical assistance and studies for areas such as judicial reform, public administration, competitiveness, agriculture, land registration, regional development, education and transport. Legal VPU advisory lawyers have also been on some of the teams providing this technical assistance.

In entering into RAS agreements, the Bank partners with EU clients in an expanded relationship that goes beyond standard contractual terms and the Bank does not bid on advisory projects but is rather sought out as a development partner by EU member states that are using EU funds to finance the costs of such services. In doing so, EU member states are applying a specific exemption for international organizations under the EU legislation on public procurement.

**Reimbursable Advisory Services (RAS) (formerly called Fee-Based Services or Reimbursable Technical Assistance)** are an increasingly important way for the Bank to meet emerging client demand through the provision of customized advisory services.
In other countries such as Poland, the Bank has been advising the national and local governments on an array of innovative specialization initiatives designed to boost their research and innovation strategies.

The Legal VPU has been proactively advising EU member states and the ECA Region in the preparation and negotiation of the RAS agreements and memorandums of understandings, as well as their implementation, while ensuring that the Bank’s applicable policies, safeguards and quality control mechanisms are followed to provide quality advisory services across countries and sectors.

**LCR Region: The Mexico Experience**

Mexico has been a pioneer in the use of RAS in the LCR Region. Mexico started using this instrument in 2007, and since then it has been requesting it regularly. Mexico sees the Bank as an objective third party that brings credibility, knowledge, and global experience. In a context of limited IBRD resources, RAS offer the Bank an opportunity to support Mexico’s development agenda within the margins of its Single Borrower Limit (SBL).

There is an important peculiarity in Mexico with respect to the processing of RAS with entities part of the federal, state or municipal public administration. Before signing a RAS agreement, the Secretariat of Foreign Affairs of Mexico shall render a favorable opinion on the appropriateness of the agreement. By so doing, it will ensure that such agreement does not exceed the scope of legal authority of the agency which enters into it, interfere with the attributions of the Federal Government or contravene Mexican foreign policy.

The Bank sees a growing demand for RAS in Mexico, particularly as the Bank continues to build its credibility in the provision of RAS. The Bank is now focusing on working more closely with IFC and concluding a RAS framework agreement with Mexico to streamline the development of future RAS agreements with various Mexican entities.

**Clarifying the Role of the Bank’s Operational Lawyer**

The Bank’s Accountability and Decision Making (ADM) framework specified five distinct roles for participants in the Bank’s decision-making process. Of the various roles applicable to participants in the decision-making process at the Bank, country lawyers and Regional Chief Counsel (henceforth “operational lawyers”) perform both an advisory role and a clearance role. Under the ADM framework, a person in the clearance role is responsible for attesting that a proposal complies with essential requirements in the clearer’s specialty. A person in the advisory role is responsible for rendering relevant and current advice with respect to the portion of a proposal that is within his or her specialty.

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5 See the General Counsel’s essay in the Legal VPU Annual Report for fiscal year 2012 —“Clear Accountability and Effective Decision Making”.
In light of the above, the Legal VPU put forward a note codifying the Bank’s operational lawyers’ specialty, which comprises two distinct yet interrelated parts: firstly, the exercise of legal professional expertise, and secondly, the performance of an institutional role.

**The Bank’s operational lawyer's specialty comprises two distinct yet interrelated parts: firstly, the exercise of legal professional expertise, and secondly, the performance of an institutional role.**

For purposes of the Bank’s operational practice, an operational lawyer’s professional expertise relates to the proper translation of an original project or subsequent restructuring proposal into a legal agreement text, thus encompassing expertise in the drafting and negotiation of covenants and conditions, as well as an understanding of project objectives and descriptions, so as to produce texts that are, inter alia, clear, complete, accurate and therefore monitorable and enforceable. As a result, this expertise also extends to interpreting agreed texts and the applicability of Bank remedies during implementation phases of the project cycle, including justification and proper processing of such remedies and compilation of supporting evidence.

The expertise also extends beyond individual agreement drafting to designing the overall contractual architecture for an operation, taking into account the mandates/powers of the relevant project entities, their legal personality (or lack thereof) and thus their capacity (or lack thereof) to enter into binding legal agreements with others. These considerations determine not only who the Bank can contract with, but also to what extent the entities can contract among themselves. Such considerations in turn are critical in shaping project design (including flow of funds and implementation arrangements generally). As a result, beyond simply translating a project proposal into legal text, an operational lawyer, because of his or her expertise, may also contribute towards shaping the proposal itself so that it is legally coherent.

Regarding their institutional role, operational lawyers (through their reporting to the General Counsel) are relied upon by the Bank’s Executive Directors as custodians and interpreters of the Articles of Agreement. This means that operational lawyers play a role, broader than their given technical expertise, as part of an internal checks and balances system whereby they are alert to the need for ensuring that operations and policies stay within the Bank’s mandate and are prepared in a way that respects the Bank’s governance structure, the Bank’s unique nature as a cooperative serving its member...
countries, the proper relationship between Executive Directors and Management, and of the need for complete and transparent presentation of proposals (including their risks) to Bank decision-makers. This does not mean operational lawyers are the enforcers of compliance with Bank policies, but it does mean that they: (a) must point out deviations from such policies; and (b) should insist that such deviations be acknowledged for appropriate consideration by the relevant authorizing level in the institution’s governance system.

Although the operational lawyers’ specialty defines the scope of their clearance and advice, there is also a separate kind of advice that a country lawyer and the Chief Counsel can give. Examples include advice as to the wisdom of a particular project feature that, although Bank policy compliant, may raise certain risks. This category can, for instance, refer to major flaws in the project design or implementation arrangements which would raise the risk of the project not achieving its development objectives, or lead to misuse of funds. In addition, operational lawyers may advise on fiduciary or safeguard concerns even if the proposed project has been cleared by the relevant experts on safeguards or procurement. These are not strictly “legal” issues, unless they reach a scale that on its face would suggest there is in fact a policy violation.

Finally, any advice given by an operational lawyer, even outside the realm of his or her specialty, will likely be appreciated by internal clients if provided in a timely, thoughtful and constructive manner. There is much an operational lawyer can offer in terms of institutional memory, project cycle experience and country insights that, ADM provisions notwithstanding, can be of great value and which operational lawyers, as “citizens” of the Bank, can always offer for colleagues’ consideration without interfering with corporate institutional decision-making processes.

Although this description of the Bank’s operational lawyer’s specialty as well as the scope of the advisory role of operational lawyers reflect years of institutional practice by the Legal VPU, the note issued by the General Counsel in fiscal year 2012 serves as a reference point for better understanding of the role of the operational lawyer both by the lawyers themselves and their internal clients.

Legal Team, including Mariangeles Sabella, Senior Counsel, Ria Dharmawan, Associate Counsel, and Retno Widuri, Operations Assistant, with colleagues from the World Bank Jakarta Office, Indonesia.

**Investment Project Financing: Revamping a Lending Instrument and a Shift in the Bank’s Normative Architecture**

On October 25, 2012, the Bank’s Executive Directors discussed and strongly endorsed what is being referred to as “the Investment Lending Reform”—an effort to update, consolidate, restate and reclassify in a more clear and concise manner a number of stand-alone investment lending (IL) OPs and BPs, and make a number of related changes to operational policies, procedures, instructions, and guidance notes. The Executive Directors also approved several specific IL-related policy changes. The Legal VPU was a critical member of the reform team, providing continuous policy, legal, analytical, and drafting support to OPCS.

The new OP/BP 10.00 (now called Investment Project Financing), as in the case of PforR and Development Policy Lending instruments, constitutes a single dedicated instrument-specific OP/BP, although for now the current IL safeguard and procurement OPs/BPs remain unchanged and will continue to apply.

The main elements of the new OP/BP are the following:

a. It consolidated 19 OP, 18 BPs, 9 Operational Memoranda, and one remaining Operational Manual Statement (OMS) into a single instrument-specific and concise OP 10.00/BP 10.00; the affected OPs, BPs, Operational Memoranda, and OMS are to be retired.

b. It resulted into the reclassification of some OP statements as BPs or instructions, and some BP statements as instructions or guidance.
c. It contained six policy changes:

(i) extended the “special considerations” provisions currently available for countries suffering from natural or man-made disasters or affected by conflicts to situations of fragility or “specific vulnerabilities”, including for small states;

(ii) revised and updated the requirements of economic analysis for IL operations;

(iii) changed the procedures for a series of IL projects that represent part of programmatic engagement (series of operations);

(iv) eliminated the requirement that additional financing closing date not extend three years beyond the date of the original financing closing date;

(v) added flexibility to the timing of audit requirements; and

(vi) increased the general Project Preparation Advance limits.

In addition to the new OP/BP, Investment Project Financing (IPF) is now governed by mandatory IPF Instructions which set out Bank-wide technical rules and mechanics of processing IPF operations. These Instructions reflect mainly processes already in place under the retired BPs and Operational Memoranda. A characteristic of the IPF Instructions, which are developed for internal use, is that they assign roles and responsibilities to the people involved in the institutional process of IPF operations, in accordance with the Bank’s accountability and clear decision making framework developed by the Legal VPU.

The overall thrust of these reforms were to rationalize, clarify, classify, and update the Bank’s IL operational policies and procedures, and to improve understanding of and consequently compliance with these operational rules, ultimately improving the quality and efficiency of the Bank’s work. The IL reform is a core component of the Bank’s broader modernization agenda which aims to strengthen effectiveness and developmental impact of the Bank, with emphasis on results and accountability.
Trust Funds

The Legal VPU contributed to addressing many legal, policy and governance issues that arose as the trust fund portfolio continued to evolve from numerous small single donor trust funds to more complex multidonor trust funds and financial intermediary funds.

Disbursements from the Bank’s trust fund portfolio continue to grow, reflecting the increased importance of trust funds as a key source of development financing. Overall disbursements under trust funds have grown from US$5.8 billion in fiscal year 2007 to US$10.2 billion in fiscal year 2013. Of this total, financial intermediary funds (FIFs) accounted for US$5.8 billion and IBRD/IDA trust funds for US$4.0 billion. The cash contribution level and total amount of funds held in trust have increased sharply since fiscal year 2007, while the number of trust funds continued to decrease in fiscal year 2013, reflecting efforts to consolidate their number. Cash contributions to trust funds supporting activities directly implemented or supervised by IBRD or IDA—comprising recipient-executed trust funds (RETFs) and Bank-executed trust funds (BETFs)—were US$3.5 billion in fiscal year 2013. The number of FIFs continued to grow, with cash contributions to FIFs standing at US$7 billion in fiscal year 2013.
The Legal VPU’s trust fund-related work has grown in parallel with these developments. Our specialists work closely with the Concessional Finance and Global Partnerships Vice Presidency (CFP), Controllers, Trust Fund Quality Assurance, Operations Policy and Country Services (OPCS), and the Regions and Networks on a wide range of trust fund issues. Working with such a variety of clients and partners, we advise on trust fund policy and procedural issues, develop model forms of trust fund documentation, provide legal and governance advice on new and existing trust funds, review trust fund proposals, and participate in the drafting and negotiating of trust fund agreements and framework agreements.

A notable theme in fiscal year 2013 was the ongoing effort to consolidate the total number of trust funds. Rather than establishing more and more trust funds with narrow missions, donors were encouraged to pool funds in new, so-called “umbrella” facilities aligned with Bank strategy in certain areas. This is a significant reason why the amount of funds held in trust has grown steadily even as the total number of trust fund accounts has declined. From a peak of 780 trust fund accounts in fiscal year 2010, the number of active trust fund accounts fell to 685 accounts in fiscal year 2013. This reduction in the number of trust fund accounts has increased the efficiency of trust fund administration, and is welcomed by the Bank and donors alike.

In fiscal year 2013, the Legal VPU addressed many legal, policy and governance issues that arose as the trust fund portfolio continued to evolve from numerous small single donor trust funds to more dynamic and complex multi-donor trust funds (MDTFs) and FIFs. As the number of active trust funds slowly declines, the trust fund portfolio is becoming more complex, and increasingly dominated by MDTFs and FIFs. In fact, by fiscal year 2013, MDTFs represented 50 percent of total active trust funds, and accounted for a significantly larger proportion of all funds held in trust. In short, the typical Bank trust fund is an increasingly complex legal creation, with increasingly complex legal needs. The Legal VPU’s involvement in servicing a number of these trust funds is outlined below.

HIGHLIGHTS

**Umbrella facilities**

As part the broader effort to further harmonize and consolidate trust funds administered by the Bank, the Bank introduced the concept of “umbrella” trust fund facilities in 2013. Donors were encouraged to contribute funds to a common pool that provided a more strategic and efficient platform, which would support Bank strategy in a particular area, such as education or trade. This would be done under the oversight of the relevant Bank sector board, and responsibility for umbrella funds would reside fully within the Bank, both from fiduciary and programmatic perspectives. The umbrella model was seen as a way to reverse increasing trust fund fragmentation, donor customization, shared decision making and restricted funding. Umbrella facilities instead would feature consensus around Bank strategy for their substantive scope and reliance on Bank operations for their operating modality. Based on the Bank’s standard IBRD/IDA multi-donor trust fund business model, the umbrella approach was adopted in fiscal year 2013 after comprehensive donor consultation.

Working with CFPTO and others, the Legal VPU participated in the concept and design phase of this broadly agreed approach. It was particularly instrumental in shaping the engagement of donors as articulated in the donor agreement, by which donors would have primary input at inception of the umbrella trust fund and annual consultative input over the life of the trust fund. To date, the Bank has entered into four umbrella facilities, all of which were negotiated by the Legal VPU:

1. Umbrella Facility for Gender Equality (UFGE). This umbrella facility is aligned with the Bank’s gender strategy and the strategic directions laid out in the World Development Report 2012, and it supports awareness, knowledge and capacity for gender-informed policy-making.
2. Multi-Donor Umbrella Facility for Capacity Development (MUFCD). The MUFCD supports the World Bank Institute’s strategy for capacity development, as approved by the Board of Executive Directors in 2009 and updated every year since then.
3. Umbrella Facility for Trade and Development (UFTD). Supporting activities in the regions, net-
works and other operational units related to trade, this umbrella facility is aligned with the Bank’s trade strategy. It responds to client demand for assistance and provides analysis of issues in anticipation of future demand.

4. Systems Approach for Better Education Results (SABER) Umbrella Facility. Aligned with the Bank’s Education Strategy 2020, SABER helps countries improve learning for all by designing and employing new tools to strengthen education policies and institutions.

The Global Food Safety Partnership
The Legal VPU played a significant role in the establishment of the Global Food Safety Partnership (GFSP) Multi-Donor Trust Fund. GFSP aims to bring together concerned global stakeholders to collaborate on capacity building activities for improved food safety systems, with a view to enhancing agri-food value chains and improving public health outcomes. By financing the delivery of a five-year work plan of demand-driven food safety capacity building and advisory services for countries, GFSP will support the Bank’s and stakeholders’ vision for improved food safety as a global public good, and contribute to food security, accelerated economic growth, facilitated trade and reduced rural poverty.

A unique and interesting feature of GFSP is that it envisages that various organizations may become non-financial or in-kind contributors to the partnership through the provision of, among other things, technical input and expertise in the design and delivery of the five-year work plan of GFSP. This may give rise to several legal and other issues not commonly found in other trust funds (e.g., conflicts of interest, reputational risks, etc.). The Legal VPU expects to continue to actively support GFSP and assist in addressing these issues that GFSP may face as it builds momentum in the coming months.

Buy-down of IDA Credits
In 2002, IDA launched the Investment Partnership for Polio program to fund the immunization of children in high-risk polio countries through a cooperative arrangement between IDA and private donors to convert outstanding IDA credits into grants. Under the program, regular IDA credits would be converted to grant terms through the provision of donor trust fund resources used to pay the borrower’s charge and repayment obligations under the credit upon successful implementation of the project. If the project implementation is not satisfactory, the borrower’s obligations under the original credit agreement remain in effect.

In support of the program, the Legal VPU negotiated an Administration Agreement between IDA and the Bill & Melinda Gates Foundation in December 2002 that established the Global Program to Eradicate Poliomyelitis Trust Fund. The Gates Foundation and others have made grant contributions over the past ten years to the Trust Fund to pay the charges and buy down the outstanding principal amount of project credits after the projects have been successfully implemented as determined by an independent performance audit. Six of the ten projects have already been bought down in full.

In 2012, the Gates Foundation proposed supporting Pakistan with a partial buy-down of its IDA credit, presenting a departure from previous arrangements, which had fully bought down all previous loans under the program. The Legal VPU, working together with HDN and CFP, consequently negotiated modifications to the Administration Agreement with the Gates Foundation in fiscal year 2013 to facilitate the partial buy-down of eligible credits. The need to revise the Administration Agreement along these lines also offered the Legal VPU the opportunity to update the Administration Agreement to reflect changes in a number of areas, including program management and administration, determination of the discount rate applied to arrive at the value of the eligible credit being bought down, and payment of interest charges prior to buy-down of eligible credits. The revised framework has recently been applied to the credit for Pakistan for which the Legal VPU prepared amendments to the Financing Agreement between IDA and Pakistan to effect the partial buy-down of the credit.

The Global Environment Facility
Established in 1991, the Global Environment Facility (GEF), the world’s largest public environmental fund, addresses global environment issues while supporting national sustainable development initiatives. The GEF provides grants and concessional funding to recipient countries for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer and the persistent organic pollutants, through a variety of agencies including the Bank and UN agencies.

Since its inception, GEF has been replenished every four years and to date, five times. In the fifth replenishment in 2010, the GEF received a record boost from 30 donor countries pledging US$4.25 billion. The restructuring in 1994 entrusted the GEF to become the financial mechanism for both the UN Convention on Biological Diversity and the UN Framework Convention...
Since 1994, the Bank has served as the Trustee of the GEF Trust Fund and also provided administrative services. In serving as the Trustee, the Bank serves in a fiduciary and administrative capacity and is bound by its Articles of Agreement, by-laws, rules and decisions. Contributions to the GEF Trust Fund are made to the Trustee by donors in accordance with the terms of replenishment resolutions adopted by the Bank’s Executive Directors. The Trustee administers the GEF Trust Fund in accordance with the terms of the GEF Instrument and relevant replenishment resolutions.

The Legal VPU plays a significant role in assisting the Bank to perform its obligations as Trustee. This year the Legal VPU was heavily involved in the preparatory work for the upcoming GEF replenishment, and also helped the Trustee to draft the Financial Procedures Agreement for the Least Developed Countries Fund, the Special Climate Change Fund, and the Nagoya Protocol Implementation Fund for each project agency.

Last but not least, the Legal VPU assisted the Trustee to address issues pertaining to misuse of some GEF funds. In accordance with the decision of the GEF Council, the Legal VPU supported the Trustee to amend the existing GEF Financial Procedures Agreements to ensure that any resources that have not been used for the purposes provided will be returned to the Trustee.

The Green Climate Fund

In response to the invitation by the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC), the Bank has been serving as the interim trustee of the Green Climate Fund (GCF), which aims to make a significant and ambitious contribution to the global efforts towards attaining the goals set by the international community to combat climate change. The Legal VPU has been working closely with the Bank’s team on the design and establishment of a designated FIF to receive, hold and administer contributions to the GCF.

In fiscal year 2013, we have effectively executed agreements with various contributors for the FIF to enable the operationalization of the GCF in an expedited manner. Following the recognition of the juridical personality and legal capacity of the GCF by the Republic of Korea (host country of the GCF), the Legal VPU has also negotiated and executed the agreement with the GCF to set forth the terms and conditions for the administration of the FIF and the services to be provided by the Bank as the interim trustee.
Special Operations

By covering certain risks that private financiers cannot take or are not willing to take, the Bank’s guarantee products make private financing possible and improve commercial debt terms.

In 2013, the Legal VPU inaugurated a new unit with the mission of handling complex or transformational projects, including Bank guarantees. The new Special Operations group is also a unique example of collaboration between the Legal VPU and internal clients and is embedded with its main client, Financial Solutions (TWIFS) in order to foster seamless cooperation and communication on projects.

Photo: Tomislav Georgiev/World Bank

Macedonia
Guarantees
Bank guarantees facilitate the mobilization of commercial debt within our member countries in order to promote development in member countries’ public and private sectors by supporting policy reform, infrastructure projects and the growth of legal and commercial institutions. By covering certain risks that private financiers cannot take or are not willing to take, the Bank’s guarantee products make private financing possible and improve commercial debt terms. The Legal VPU provides support in respect of all Bank guarantee products, currently: (a) IBRD Partial Credit Guarantees (PCGs) (including Policy-Based Guarantees (PBGs)) to support sovereign borrowing and (normally) public sector projects, providing partial cover of debt service default and/or credit risks of sovereign and public-sector borrowers (e.g., state owned enterprises); and (b) IBRD and IDA Partial-Risk Guarantees (PRGs) to support private sector projects, covering debt service default caused by government non-performance of contractual obligations to a specific project. While PBGs provide fiscal support of a member country’s development program, PCGs and PRGs are project-based. In providing these guarantees, the Bank requires a counter-guarantee from the participating member country, as in its lending operations.

In 2013, the Legal VPU played an essential role in the modernization of Bank guarantee policies and procedures, mediating between the pragmatic concerns of adapting these instruments to today’s markets and the needs of the Bank to find creative ways to promote development. The Legal VPU has continued to innovate, structuring and negotiating the first partial credit guarantee for financial intermediation and the first guarantee funded out of trust funds, as well as to work productively with counterparts in the private sector such as sponsors, lenders and law firms, member country finance and economic ministries, and co-financiers at other international development institutions to extend Bank guarantees in a number of different countries and contexts.

HIGHLIGHTS

Modernization of the Bank’s Operational Policy on Guarantees
The Legal VPU has been heavily involved in the forthcoming updates to the guarantee program, slated to go to the Bank’s Board of Executive Directors at the end of 2013. These updates propose, among other things, streamlining certain policy requirements, extending certain types of guarantees to qualifying IDA countries, and mainstreaming Bank guarantees, to the extent applicable, with other Bank investment project financing and development policy financing instruments.

Philippines Renewable Energy Development Project: CTF guarantee
The Philippines Renewable Energy Development Project proposes to utilize a Clean Technology Fund (CTF) guarantee. This is the first time that a guarantee would be issued out of trust funds administered by the Bank, and the Legal VPU was instrumental to the structuring of the project, which was otherwise not possible with existing IBRD guarantee instruments. Being the first trust fund guarantee, the tasks involved identification and resolution of a host of policy issues and drafting of a new set of agreements for which there were no precedent. This work by Legal VPU lawyers paved the way for further use of trust funds in guarantee operations in future. The project is expected to go to the Bank’s Board of Executive Directors towards the end of the calendar year.

FYR Macedonia IBRD Policy-Based Guarantee II Operation
This ECA Region award-winning PBG, the second in the Former Yugoslav Republic of Macedonia, allowed Macedonia to obtain international commercial financing on favorable terms and tenor while leveraging IBRD’s resources. The Legal VPU designed and negotiated the PBG and its documentation both with internal clients in the Treasury Vice Presidency and with the country and its lenders, working quickly to expedite continued support for this member country’s program of financial sector reforms, as set out in the member country’s Letter of Development Policy, which the Legal VPU also advised on and cleared.
Croatian Export Financing Partial Credit Guarantee Operation

The Legal VPU was instrumental to the structuring of, and facilitating Board approval of, the groundbreaking Croatian Export Financing Partial Credit Guarantee (PCG) operation, the first Bank guarantee for financial intermediation, in this case in support of private-sector lending to the Croatian Bank for Reconstruction and Development (HBOR) for on-lending to Croatian banks and private-sector entities engaged in export and foreign currency-earning endeavors. Working alongside the Region, the Treasury Vice Presidency and TWIFS, the Legal VPU provided advice on guarantee, environmental and procurement legal, policy and procedural requirements, and explained the features and functioning of IBRD partial credit guarantees to HBOR representatives and their internal legal counsel, the Croatian Ministry of Finance and its advisors, as well as potential private-sector lenders. The Legal VPU customized the PCG structure to reflect HBOR’s statutory environment and our financial intermediation requirements, drafting and negotiating the necessary agreements with the parties.

Foxtrot Côte d’Ivoire Block Cl-27 Expansion Project Partial Risk Guarantee

The Legal VPU’s expeditious assistance in this operation was vital to the prompt Board submission, approval and closing of this complicated IDA letter-of-credit Partial Risk Guarantee (PRG) operation involving collaboration across World Bank Group entities, as MIGA and IFC also provided support to different transaction parties for this gas platform expansion project in Côte d’Ivoire. Our lawyers’ comprehensive review and input allowed this operation to quickly come on line to complement our sister organizations’ support and provide additional support sought by transaction sponsors. The Legal VPU also coordinated efforts with the Regional Safeguards Coordinator and MIGA to make this operation the first to use the new World Bank Performance Standards, another step in the alignment and synergy of the World Bank Group entities.
Safeguard Policies

The Legal VPU plays a number of essential roles in the interpretation and application of the Bank’s ten safeguard policies. On a daily basis, we provide legal assistance to the Bank’s operational staff, regional safeguard advisors, and borrowers on how to manage environmental and social aspects of Bank projects. Fiscal year 2013 saw an upsurge in the number of requests for advice from lawyers in the Legal VPU relating to projects under preparation or in implementation and regarding the on-going review and update of the Bank’s safeguards policies. The issues on which our advice was sought varied greatly, from the interpretation of the language in the safeguard policies to delicate matters touching on client-specific approaches to policy compliance. Legal VPU lawyers developed covenants to deal with identified risks and to ensure that prevention and mitigation measures are implemented.

Over fiscal year 2013, we continued in our role as lead focal point for the two “legal safeguard” policies: OP 7.50, Projects in International Waterways, and OP 7.60, Projects in Disputed Areas—in respect of which, again, there were more than a hundred specific requests for advice. We have prepared a number of tools to help in the implementation of OP 7.50 including a comprehensive and chronological database of riparian notifications—with information on the project, the riparian countries that received the notification, the nature of issues giving rise to the notification and the international waterways concerned. In addition, Legal VPU lawyers have prepared a matrix of international conventions and agreements relevant for the application of OP 7.50 in each Bank Region. This advice is also relevant when Legal VPU lawyers are reviewing country and other applicable institutional, legal and regulatory systems under projects using the new policy on Program for Results.

The effectiveness and development impact of projects and programs supported by the Bank has substantially increased as a result of attention to environmental and social safeguard policies. Modernization of the policies provides an opportunity for the Bank to maintain its relevance for a broad range of borrowers.
In the context of a number of operations over fiscal year 2013, the Legal VPU played a significant role alongside the Operations Risk Management Department (OPSOR) in assessing national legal frameworks through the lens of Bank safeguards. We contribute to safeguard policy clarifications and reforms when needed and participate as core faculty members in safeguard training activities for both staff and clients.

Finally, over fiscal year 2013, the Legal VPU advised Bank management throughout the steps of the Inspection Panel (the Panel) process for ten requests for inspection, some of which are still on-going. In this regard, we contributed to the preparation of management responses and facilitated interactions with the Panel. Separately, the General Counsel continued her independent function as counsel to both the Panel and the Board.

HIGHLIGHTS

Contributing to Safeguards Policy Review and Clarification
With the Sustainable Development Network (SDN) and the Operations Risk Management Department (OPSOR), the Legal VPU has been a key partner in all steps to date regarding the review and updating of Bank safeguards. The Legal VPU contributed to the development of the Approach Paper which was published in October 2012. This was followed up with a series of consultations at which Legal VPU lawyers participated. A total of 83 meetings with stakeholders from over 40 countries across all regions were held. The Legal VPU also partnered with SDN and OPSOR in preparing the technical briefing for the Board and going forward, will be involved in further outreach and feedback analysis.

Legal Advice in the Drafting of the World Bank Performance Standards
Legal VPU lawyers were closely involved in the preparation of the World Bank Performance Standards (OP 4.03) whose adoption was approved by the Board of Executive Directors in mid-2012. This new operational policy will be for Bank financing or support destined to projects, or their components, that are owned, constructed, and/or operated by the private sector. The policy also covers, inter alia, technical assistance activities for preparatory work for private sector engagement in public-private partnerships, as well as investment operations that include medium- or long-term management contracts, affermage/leases, privatizations, concessions, and projects within the Build-Own-Transfer family.

I am exceptionally pleased with the broad range of support that the Legal VPU provides the Safeguards Team in OPCS. This is an outstanding team and represents the best of the Legal Department in terms of their quality of leadership, excellent performance and strong individual skills that are effectively used in a collective manner.

—Results of the Legal VPU Client Survey

Advising Management on Inspection Panel Matters
Seven new requests for inspection were registered by the Inspection Panel in fiscal year 2013 for projects in Ethiopia, Afghanistan, Kenya, Egypt, Malawi, Nepal and Romania. The year also saw the completion of inspections for the Kosovo Power Project, the Kenya Energy Sector Recovery Project and the India Improving Rural Livelihoods through Carbon Sequestration Project. The Legal VPU played a leading role in all phases of these cases, from participating in the preparation of Management Responses to interaction with the Inspection Panel and national counterparts. We also continued to lead the supervision and monitoring of the Bank’s support for legal review in Albanian courts of grievances arising from an earlier case in Albania.
Environment, Climate Change and Natural Resources Management

Because natural resources and the quality of our environment are significant to the global development agenda, the Legal VPU maintains an active and comprehensive environmental and natural resources law practice. Over fiscal year 2013, the Legal VPU provided specialized legal support to Bank operations, partnerships and clients in the broad areas of environment and natural resources management. The focus of this advice covered issues to do with forest and land tenure governance and land use planning, wildlife and biodiversity management, oceans and fisheries management, pollution control, mining, and related issues. The overall objective of this role of Legal VPU lawyers is to ensure that Bank-supported reforms are guided by best-practice comparative law developments at the national level, and by a clear appreciation of the complex array of applicable international obligations and principles.

The Legal VPU contributes significantly in the design and implementation of international partnerships, including the Global Environment Facility (GEF), for which it serves as legal advisor to the Secretariat, and the Consultative Group on International Agricultural Research (CGIAR). The support to the CGIAR has contin-
ued in the past fiscal year focusing on questions arising from the establishment of the Consortium of International Agricultural Research Centers as an international organization with its own international legal personality. At the corporate level, the Legal VPU continued to provide legal advice to the Sustainable Development Network (SDN) in the context of the Bank's strategies on the environment, agriculture, climate change, biodiversity and related issues.

Lastly, Legal VPU lawyers have continued to provide the full range of legal services in support of the Bank's initiatives on carbon finance building on the rich tradition of the Bank's leading role in this area. Our carbon finance-related practice has expanded to providing legal support to more than a dozen carbon funds or facilities for which the Bank is trustee, including the Forest Carbon Partnership Facility (FCPF), Carbon Initiative for Development (Ci-Dev) and Carbon Partnership Facility.

HIGHLIGHTS

Support on Carbon-Finance Transactions
In 2005, the Bank, acting as trustee of the first tranche of the Umbrella Carbon Facility (UCFT-1), entered into two Emission Reductions Purchase Agreements (ERPAs) for the sale and purchase of certified emission reductions generated in accordance with the Kyoto Protocol rules under two Hydrofluorocarbon (HFC)-23 incineration projects in China (HFC-23 CERs). Due to a ban issued by the European Union Emissions Trading Scheme on the import of such HFC-23 CERs generated from 2013 onwards and the corresponding decline in value of such credits for UCFT-1 fund participants, our carbon finance lawyers successfully assisted the Bank's Carbon Finance Unit in facilitating a process whereby UCFT-1 participants and the two project entities agreed to restructure the two ERPAs to allow for their early termination while securing the continued incineration of HFC-23 under the two projects. This legal work included the drafting of various complex legal documents allowing for an early termination of the ERPAs and the UCFT-1 itself.

With the end of the first commitment period for the Kyoto Protocol on December 31, 2012, the Legal VPU has also played a crucial role in providing legal advice for the portfolio management of existing ERPAs. Furthermore, Legal VPU lawyers delivered comprehensive legal services for the development and the implementation of new initiatives, such as Ci-Dev, which was designed to build capacity and develop tools and methodologies to help the poorest countries of the world access carbon finance, mainly in the area of energy access, as well as a third tranche for the BioCarbon Fund, which aims to scale up climate-smart land use and deliver landscape level transformations.

In addition, over fiscal year 2013, our advice focused on the drafting of a new set of tailor-made ERPA General Conditions for the sale and purchase of Emission Reductions to be generated from programs aiming at reducing emissions from deforestation and land degradation (so-called REDD plus) under the Forest Carbon Partnership Facility (FCPF). Our lawyers advised the FCPF in developing and guiding the endorsement of a detailed term sheet containing the core terms and procedures for a future FCPF ERPA, and on this basis, developed the tailor-made ERPA General Conditions.

Support to the Global Partnership for Oceans
The Legal VPU provided advice on the establishment of the Global Partnership for Oceans (GPO). This involved an early analysis of the potential implications of international law (including the UN Convention on the Law of the Sea) for the program, support towards the preparation of the Framework Document for the partnership, preparation of the Declaration for Healthy, Productive Oceans to Help Reduce Poverty which was launched in Rio de Janeiro last year, design of the governance arrangements for the Multi-Donor Trust Fund to support the work of the GPO, preparation of a Memorandum of Understanding for the Ocean Investment Roundtable that will provide co-financing resources for projects supported by the MDTF, and preparation of Guidelines for Participants in the GPO in order to address potential reputational risk issues that may arise in the future as a result of partnering with private sector entities and individuals.
Support for Socially Responsible Mining

Over the last decade, various initiatives such as the Extractive Industries Transparency Initiative, International Standard Organization management series, and the UN Global Compact have heightened the interest both in the public and private sectors for corporate social responsibility, environmental stewardship, and environmentally and socially responsible practices and standards in the Extractive Industries (EI) sector. Many multinational corporations have already adopted their own corporate guidelines and principles to manage environmental and social risks associated with their operations. In addition, an increasing number of governments have recently either passed or amended their laws and regulations to capture improved environmental and social practices related to EI. The Legal VPU, in collaboration with the Oil, Gas and Mining Group (SEGOM), conducted an extensive analysis to explore (a) the kinds of environmental and social obligations that are typical in the EI sector; (b) the roles that key stakeholders generally play in the EI sector; (c) contexts in which environmental and social obligations arise and the way in which these obligations are imposed (both legally and non-legally binding obligations); and (d) effective enforcement measures for these obligations. The analysis focused on the legal and institutional frameworks of Chile, Mongolia and South Africa as case studies. The findings have been incorporated into the EI Sourcebook (http://www.eisourcebook.org/), an online resource for international good practices in the EI sector.

Support on International Water Law and Transboundary Water Governance

In February 2013, the Legal VPU contributed to the organization and delivery of an international water law and transboundary waters training for senior Afghan government officials in Kabul. The training event was co-hosted by the Ministry of Energy and Water (MoEW) and the Ministry of Foreign Affairs (MoFA). Twenty five senior government officials from six different ministries and government agencies participated, including from the Interior Ministry, Ministry of National Defense, Ministry of Tribal Affairs and Border Lands, and the National Environmental Protection Agency. The training gave the participants an introduction to international environmental and water law and global experience on transboundary water resources management in multi-country basins. The training focused on learning and extensive discussions regarding the management of Afghanistan’s transboundary water resources between the senior officials from the different ministries concerned with transboundary waters and border affairs.

Partnership for Market Readiness

The Legal VPU has continued to provide legal support to the Partnership for Market Readiness (PMR), which was launched at the sixteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in 2010. So far, the PMR has brought together 30 countries to share experiences, pool knowledge and is one of the newest market instruments to address the impacts of climate change in developing countries. A number of these countries received support from the PMR over fiscal year 2013. In March 2013, Chile received PMR support to study and design a domestic emissions trading scheme (ETS). China received PMR support to design a national ETS and evaluate the challenges of participation of state-owned enterprises in said ETS. Costa Rica has been granted PMR funding to assess the suitability of sector programs for national offset schemes and/or international markets. Mexico has also received support to develop and implement crediting Nationally Appropriate Mitigation Actions in the urban sector and set up a registry and a Monitoring Reporting and Verification system.
Governance and Anti-Corruption, and the Sanctions System

The Bank has a long engagement in the area of governance and anti-corruption (GAC), which is critical for the attainment of its mission of reducing poverty. As the 2012 World Bank Group Updated GAC Strategy reiterated, “the Bank’s objectives of strengthening governance and tackling corruption reflect the impact that poor, weak or ineffective governance, as well as corrupt practices, can have on the prospects for sustainable growth and poverty reduction.” The Bank has a number of anti-corruption tools with direct application to its operations, including anti-corruption provisions in its legal agreements with borrowers and other recipients of Bank financing, and certain practices and procedures, particularly in the area of procurement, aimed at reducing the risk of, or detecting and addressing, potential fraud and corruption in Bank-financed operations. The Legal VPU supports the GAC agenda at the global, country and project levels.

At the global level, the Legal VPU supports the Stolen Asset Recovery Initiative (StAR), a partnership between the Bank and the United Nations Office on Drugs and Crime, to support international efforts to end safe havens for corrupt funds. Operating under the Financial and Private Sector Development Vice Presidency, StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. The Legal VPU has been actively engaged with the StAR team at each stage of the initiative, such as: (a) drafting of the StAR Concept Note; providing the StAR team with legal advice on the legal parameters for the initiative; (b) collaborating to develop guidance on country engagement under StAR, outlining permitted activities in this area such as assistance with audits aimed at tracing possible stolen assets, legal research, financial

Photo: Frank Vincent/World Bank

Colloquium on Suspension and Debarment, organized under the aegis of the Global Forum on Law, Justice and Development, October 9, 2012, World Bank, Washington DC.
analysis, and broad legal advice and assistance on preparing requests for mutual legal assistance; and (c) acting as peer reviewers for StAR products and publications.

At the national level, the Legal VPU provides advice on the legal parameters for engagement on the ‘demand side’ of governance outside executive government. Most notably, through the articulation, application and interpretation of the 2009 Guidance Note on Multistakeholder Engagement jointly issued by EXT, WBI and SDN.

At the project level, the Legal VPU is supporting the design of the various anti-corruption tools and also providing legal advice to task teams facing fraud and corruption issue in the course of the Bank’s lending operations, including providing real-time advice on the application of the Anti-Corruption Guidelines to the Bank’s new Program for Development financing instrument. The Legal VPU also plays a central institutional role in the Bank’s administrative process for sanctioning firms and individuals accused of having engaged in one or more sanctionable practices in connection with Bank financing (the Sanctions System). Its responsibilities include the following:

First, the Legal VPU develops, drafts, issues and maintains the legal framework for the sanction process.

Second, the Legal VPU plays an advisory role for the Integrity Vice Presidency (INT), the Bank’s Office of Suspension and Debarment (OSD) and the Sanctions Board in interpreting the Bank’s relevant legal framework, both procedural and substantive.

In providing legal advice in connection with a particular sanctions case, the Legal VPU limits its advice to legal principles, and therefore refrains from expressing any opinion as to the outcome of the case or on the weight or credibility of the evidence. Given its institutional role, the advice of the Legal VPU is authoritative to the extent it relates to the Bank’s legal framework or matters of legal policy. Importantly, the Legal VPU has no authority to influence, interfere with, or overrule OSD determinations or decisions of the Sanctions Board, which determinations or decisions are taken independently, fairly, and impartially, solely on the merits of the case.

Third, the Legal VPU plays an approval or clearance role in a number of ancillary processes envisaged by the Sanctions Procedures and related internal protocols.

The Legal VPU acts as the custodian of the Bank’s legal and policy framework, under which it facilitates the proper functioning of the Bank’s sanctions process, without, however, direct participation in the process itself.

HIGHLIGHTS

Completion of Phase I of the Review of the Sanctions System
A ROBUST SYSTEM WITH ROOM FOR ENHANCEMENT
At the request of the Bank’s Audit Committee, the Legal VPU conducted the first phase of a review of the World Bank Group sanctions system, which focused on the implementation of the various reforms that have been implemented since the newly configured sanctions process began operations in 2007, the impact of the regime on Bank operations, and the legal adequacy of the system in light of current developments in national and international law. The second phase will address the larger, first-principles issues of the overall efficiency and effectiveness of the system—i.e., whether the system as a whole is meeting its objectives of excluding corrupt actors and deterring fraud and corruption in World Bank Group operations, at an appropriate cost to the World Bank Group. A preliminary Phase I report was discussed with the Bank Audit Committee in March 2013 in executive session and the Legal VPU is expected to lead the implementation of its main recommendations.

The Legal VPU in this preliminary Phase I report reached the following main conclusions and recommendations:

Overall Assessment of the Sanctions System. After a slow first few years, the system as a whole has been heading in a positive direction since early 2010; this
trend has accelerated since early 2011. The picture is one of steady improvement in processing times, coupled with increasing output in terms of sanctions imposed. Notwithstanding this overall positive picture, steps to further improve the overall performance of the system were recommended, including: acceleration of the rollout of a system-wide automated case management system; a study of quality controls across the system; the adoption of performance standards; possible use of panels by the Sanctions Board (SB) rather than plenary sessions for cases that do not pose novel issues; expansion of SB membership to include additional alternates to facilitate quorums; and a resequencing of the first tier of sanctions proceedings before the OSD.

Operational Issues. Consultations with staff highlighted a number of ways in which the sanctions system creates issues for Bank operations, particularly procurement. Two key issues were identified: (a) the inability of the Bank and its co-financiers to mutually and fully recognize their respective debarment lists as a basis for ineligibility, as well as the Bank's limited ability to permit borrowers to apply their national debarments as a basis for ineligibility, and (b) the under-use of Early Temporary Suspensions to help reduce fiduciary risks for the Bank while a firm is under investigation.

A number of measures were recommended to be considered to address the operational issues arising from the sanctions system, including: permitting the Bank to refer to third-party debarments as a basis for ineligibility; adding ineligibility for joint co-financing as a basis for ineligibility of expenditure under Bank financing; reviving discussions with the UN and other international organizations, as well as bilateral donors, on cross-debarment arrangements similar to those already in place with other MDBs; extending the reach of current application of borrower debarment systems to international competitive bidding (ICB) and removing and/or reinterpreting the current requirement that the borrower system be “judicial” in nature; exploring ways to further strengthen internal controls to prevent disbursements to or on account of suspended or debarred parties, listing all known sanctioned or suspended affiliates by name on the debarment and suspension lists and studying ways to make this more effective through disclosure requirements on sanctioned parties; and clarifying the language in the Bank's procurement policies and standard bidding documents (SBDs) regarding the impact of debarments on eligibility.

Legal Adequacy. The report found that the Bank's sanctions regime appears to meet, and in some cases exceed, fundamental principles under general notions of due process and the emerging doctrine of global administrative law (GAL). The fairness and transparency of the system has been considerably enhanced over the years through reforms like the transition to external chairpersonship of the SB, publication of SB and Evaluations Officer (EO) decisions and the issuance of public information notes about the system, including publicly available Sanctioning Guidelines.

There remain some areas for improvement. GAL principles would also call for more transparency and participation in the Bank's process for making sanctions policy. The report recommended that the Bank Group consider the following measures to further strengthen the fairness and transparency of the sanctions system:

- The first tier of sanctions proceedings (i.e., the “EO Stage”) should be resequenced so that OSD review constitutes a decision-making process that allows Respondents to provide their pleading prior to the OSD taking a decision.
- OSD decisions, including ETS determinations, should be subject to review by the SB, at the request of either Respondents or INT.
- The independence of all SB members and of the OSD should be enhanced by providing them with six-year, non-renewable terms with prior removal only on the grounds now applicable to external SB members. The terms of SB members should be staggered so that turnover is more gradual than at present.
- The Bank Group should make the SB an all-external body, with appropriate measures to mitigate the loss of expertise currently provided by its internal members, for example, by naming MDB retirees to the SB and providing the SB with access to Bank staff for expert advice.
- Future changes in sanctions policy should be subject to external consultation in the same manner as the Bank undertakes when making changes to operational policy, including through posting on the external website and, if resources allow, face-to-face consultation with key stakeholders.
- For the sake of fairness and to create more “equality of arms” among contending parties, the system should strive for the maximum transparency possible.
As part of the process of finalizing the preliminary Phase I report, and for the purpose of adequately capturing issues of implementation, efficiency, and effectiveness of the Sanctions System, the Legal VPU is also conducting consultations with external stakeholders to solicit feedback on the system.

The consultation aims to:

- Solicit the views of external stakeholders on the “track record” of the Sanctions System and the implementation of the various reforms of the system.
- Solicit the views of external stakeholders on the above main findings and recommendations of the review team in the Phase I report.

Procurement Policy Review

Legal VPU lawyers prepared a background paper on the “Comparison of the International Instruments on Public Procurement” as an input to the ongoing Procurement Policy Review. It is intended to provide background that would establish a baseline of common understanding and appreciation of the different international instruments that affect public procurement—the WTO’s Government Procurement Agreement (GPA), the EU Procurement Directives, the UN Convention against Corruption (UNCAC), and the UNCITRAL Model Law. The Bank has a particular interest in understanding the main features of these instruments, how they influence the public procurement landscape and how they interact with the Bank’s own Procurement Guidelines and Consultant Guidelines. The paper was published on the World Bank’s external website at http://www.worldbank.org/procurementconsultation.

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Non-Engagement of SMEs. The Report found a pattern of non-engagement by SMEs in the system. As noted above, more than half of Respondents, most of them SMEs, are sanctioned “by default” because they do not respond in any way to Notices of Sanctions Proceedings. Moreover, only a fraction of debarred parties have responded to overtures from the Integrity Compliance Office concerning the conditions for their release from debarment outside the context of settlements. Without reaching out to actual Respondents, the report could only make educated guesses at the reasons behind this pattern of non-engagement. It does seem apparent, however, that the system has an “SME issue” that merits further study.

“Right-Sizing” the Bank Group’s Approach to Fraud and Corruption Issues in Operations. The Report recommended that the Bank look to expand its “toolkit” of approaches to deal with fraud and corruption issues in its operations beyond the current choice of sanctions proceedings, settlements or the Voluntary Disclosure Policy (VDP). Available options would range from informal, operational approaches to deal with minor infractions in real-time all the way to full-blown, formal sanctions proceedings with robust due process to deal with major cases that are likely to be heavily litigated. A clear framework—both in terms of criteria and decisionmaking—would need to be developed to inform the choice of approach according to the nature of the problem, the need for immediate action and other relevant factors.

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Infrastructure and ICT

Many of the Bank’s activities in infrastructure and ICT include components for legal, regulatory and institutional reform to help client countries maximize the benefits of investment and also attract private sector investment in these sectors.

With the focus on eliminating poverty, the Bank continues to place emphasis on improving infrastructure in member countries and the role of the private sector and private sources of financing in infrastructure. Governments are increasingly seeking support from the Bank through lending and assistance activities to improve the legal and regulatory climate for private investment in infrastructure and Information and Communication (ICT). This support includes components for legal, regulatory and institutional reform.

The Legal VPU provides advice on legal, regulatory and institutional frameworks for infrastructure and ICT and sectoral reform. It also advises on legal issues related to private sector investments in infrastructure and public private partnerships (PPPs), and assists the Bank’s operational and advisory staff on the transactional aspects of Bank-financed or guaranteed infrastructure and ICT across all regions.

The Legal VPU’s infrastructure specialists also continue to participate in the World Bank Group’s Global Expert Team for PPP and advise Bank management in connection with Bank-wide initiatives and strategies related to infrastructure and ICT and contribute to a regular legal column to the IFC’s Handshake online magazine on public private partnership projects (www.ifc.org/handshake).
HIGHLIGHTS

Advising on Legal and Regulatory Frameworks for PPPs
The Legal VPU continued to support a number of Bank funded PPP Projects in sub-Saharan Africa, particularly Ghana and Kenya, which include components to support the legal and institutional framework for PPPs. The Kenya project received approval from Bank’s Board of Directors in fiscal year 2013. The Legal VPU also provided support and advice on a number of draft PPP laws including those of Jordan, Romania, Liberia and Sierra Leone.

Providing Legal Support to Bank Power-Sector Investments
TRANSMISSION LINE FOR WEST AFRICA
The Legal VPU provided support to a project, which was approved by the Bank’s Board of Directors in July 2012, to design, construct, own, and operate a transnational transmission line that will cross Côte d’Ivoire, Liberia, Sierra Leone, and Guinea. The line is expected to form part of the West African Power Pool (WAPP), and is envisaged to capitalize on the region’s rich hydropower resources by opening markets for this power in countries that are short on supplies. In the near future, the line is expected to become the backbone for a national grid in Sierra Leone where 93 percent of the population remains without access to power, and to significantly reduce the cost of power in Liberia by providing access to lower-cost generation capacity than is currently available domestically. The Legal VPU’s role on this project continues from prior years on development of the institutional and contractual framework for implementing the project. This includes work on power purchase and transmission services agreements for anchor transactions; on-lending arrangements to make available proceeds of Bank financing to a special purpose vehicle established by International Treaty among the four countries involved to construct, own, and operate the project; and escrow and other governance arrangements to manage the flow of funds.

NIGERIA’S POWER SECTOR REFORM
The Legal VPU was engaged in the ongoing Bank support of the reform process in Nigeria’s power sector. In 2010, the Federal Government of Nigeria (FGN) announced a forward-looking roadmap to address the chronic problems in the countries’ power sector. The FGN decided to divest its generation and distribution assets and rely on private sector support to revamp the sector’s wholesale and retail operations. The FGN also decided to increase its reliance on independent power producers to significantly increase the generation capacity in the country that had fallen woefully behind demand for power as a result of years of under-investment in the sector. The FGN requested Bank support in the form of credit enhancements and other risk mitigation instruments to facilitate private sector development and financing of specific projects. The guarantees and infrastructure advisory teams in the Legal VPU have been engaged with the Region and other Bank units on providing this support through a series of partial risk guarantees that would be designed to ensure that the most advanced projects reach financial close. In this effort, the Bank has been coordinating with both MIGA and the IFC to ensure appropriate leverage across the whole World Bank Group spectrum to provide the scope and depth of support needed.

ADVICE ON THE MOROCCO Ouarzazate Concentrated Solar Power Project
The Legal VPU has been working closely with the MENA Region on implementing the first 160 MW phase of the Ouarzazate Concentrated Solar Power Project through a PPP structure on a project finance basis. Once completed, the project would represent one of the largest solar energy projects of its kind in the World, and the biggest step forward for the MENA Region to begin tapping its large solar power potential. The project is also expected to be part of future electricity trades between North Africa and Europe as the framework for such trades begins to take shape. Infrastructure advisory, procurement, and operations teams in the Legal VPU have been advising both the Region and the client in Morocco on the contractual framework and implementation approach. In addition, infrastructure advisory teams in Legal VPU have been working on a cross-support basis in leading the task teams on this project and the subsequent new project to develop the second and third phases of the solar power complex.
REHABILITATION OF THE KARIBA DAM AND DEVELOPMENT OF THE BATOKA GORGE DAM ON THE ZAMBEZI

The Legal VPU has been working closely with the Region and the Financial Solutions unit on different alternatives for the rehabilitation of the existing Kariba Dam straddling the border between Zambia and Zimbabwe and operated by the bi-national Zambezi River Authority. The rehabilitation targets much needed work on the dam’s plunge pool and sluice gates to ensure continued operation of the dam. The dam provides a significant portion of the electricity used in both Zambia and Zimbabwe, and is a significant contributor to cross-country trades on the Southern Africa Power Pool. The Legal VPU has also been working closely with the Region and the Financial Solutions unit on options for developing and financing the new Batoka Gorge dam upstream from the Kariba Dam. This work focuses on the envisaged contractual framework and options for bond and other capital markets arrangements in local and international markets.

Addressing Legal Dimensions of Bank ICT Interventions

In ICT, the Legal VPU was engaged in supporting a number of new initiatives and many ongoing programs aimed at bringing the benefits of market liberalization and core infrastructure, including in small/fragile and post-conflict states. In fiscal year 2013, work has focused on (a) getting the policy/legal/regulatory enabling environment “right”, which remains a core aspect of the Bank’s engagement on project preparation and project supervision work in the sector; and (b) supporting the preparation and supervision of legal and transactional work advising on financing, building and the management of investments in new infrastructure (e.g., submarine cables). There has also been strong demand for more work on privacy, cyber-security, freedom of and access to information, especially in the context of projects for electronic identification systems (“e-ID projects”). E-ID projects have tremendous potential to improve outcomes, especially for the targeting and provision of government services, and the Legal VPU has been working intensively to help project teams analyze the legal enabling environment in order to ensure that it is sufficient to support successful implementation of project objectives.

Providing Legal Support in Transport and Water

VIETNAM DPEP EXPRESSWAY PPP PILOT PROJECT

The Legal VPU has been intensively involved with this proposed toll road project, which will be the first major public-private partnership transaction in the transport sector in Vietnam. This highly innovative transaction will have a competitively-selected international “Second Investor” join with a previously-identified Vietnamese “First Investor” to create a project company to build, operate and maintain a tollroad of approximately 100 km near Ho Chi Minh City. The Government of Vietnam will provide Viability Gap Financing for the project using an IDA credit, and the project will also be supported by an IBRD loan which the Government will on-lend to the project company. The proposed project is expected to reach financial closure in fiscal year 2015.

In addition, experts from the Legal VPU were part of the team advising, through a Reimbursable Advisory Services arrangement, the Romanian Ministry of Transport on developing a PPP program. The Legal VPU was also engaged in supporting the Dar Bus Rapid Transit project in Tanzania.

In the water sector, the Legal VPU continues to provide input on regulatory frameworks and on contractual arrangements for projects in the water sector, including developing a regulatory options paper for the Philippines.
Insolvency

Effective insolvency and creditor/debtor regimes facilitate the redeployment of productive resources and provide risk management mechanisms to support the resiliency and stability of the financial system.

The Legal VPU, through its leadership of the World Bank’s Insolvency and Creditor/Debtor Regimes (ICR) Initiative, plays a key role in the analysis and assessment of credit protection and insolvency legal frameworks in client countries, which produce Insolvency and Creditor/Debtor Regimes Reports on the Observance of Standards and Codes (ICR ROSCs). Our specialists carry out an analysis of a country’s legal framework and then canvas public and private sector stakeholders on how the framework is being implemented and applied. The ICR ROSCs set out this analysis and also provide prioritized recommendations on how a client country might strengthen its credit protection and insolvency legal frameworks.

The ICR team of the Legal VPU also participates in numerous Bank initiatives directed to assist client countries with their ICR reform strategies. The functions of the team in the implementation of the Bank’s standard setting role in insolvency and creditor/debtor regimes alongside its international partners in this area, have been, and continue to be, fundamental.

Photo: Dolie Schein/World Bank

World Bank Insolvency Taskforce on the Treatment of the Insolvency of Natural Persons at the Law, Justice and Development Week 2012.
The Standard-Setting Role of the World Bank

The Legal VPU continues to work on the development of the insolvency and creditor/debtor regimes standard and on the production of guidance and supporting documents for the benefit of client countries.

After the Task Force meeting held in Washington DC in January 2011, the Bank pursued the project of producing a comprehensive document that provides guidance to countries interested in the creation of an insolvency regime for natural persons. The drafting committee and the working group created within the World Bank Task Force completed their work in May 2013, and the result is a comprehensive report which includes a full discussion of the policy choices and challenges in the development of a personal insolvency regime. The report describes the benefits of a modern insolvency system, and the challenges that policy makers face in the design of a personal insolvency system, including a detailed discussion of the different approaches and their advantages and disadvantages. The report has received significant international attention, and dissemination sessions have already been held at the United Nations, the European Parliament, and in countries such as India, Mexico, and Ukraine.

After the formal resolution adopted by the United Nations Commission for International Trade Law (UNCITRAL), staff from UNCITRAL and the Bank are working on a set of principles for secured transactions law, that will supplement the ICR standard in this part of the legal environment of credit. At the same time, the Legal VPU has collaborated very actively with UNCITRAL in the development and finalization of the Guide on the Implementation of a Security Rights Registry, which was approved by the Commission in its plenary session of 2013. This Guide provides the regulatory tools to establish modern secured transaction registries, which may have immediate relevance in the increase of access to finance in developing countries. Also in the area of secured transactions, the Legal VPU cooperates with FPD in the submissions of proposals to the Financial Stability Board and the Basel Committee for the appropriate regulatory recognition of the risk reduction effects of security interests over movable assets. Finally, it is worth mentioning that UNCITRAL has started a project on a Secured Transactions Model Law, and the Bank will cooperate on this project to ensure that the Model Law will be a useful instrument for developing countries, taking into account their specific challenges and national characteristics.

The Legal VPU has participated in the formulation of legislative guidance on key elements of the UNCITRAL Model Law on Cross-Border Insolvency, the internationally recommended framework for the cooperation in the insolvencies of multi-national enterprises; and the duties and liabilities of corporate directors when their company is in severe financial distress. The resulting documents, an expanded and revised “Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency” and a proposed new Part IV of the “UNCITRAL Legislative Guide on Insolvency,” were approved by the Commission in 2013. Guidance on directors’ duties seeks to strike a careful balance in incentivizing directors to take appropriate steps in the face of imminent or actual insolvency without discouraging responsible commercial risk-taking. The Legal VPU continues the work started at the 2011 Task Force meeting to assess what lessons can be learnt from the recent financial crises as to the proper bankruptcy treatment of financial contracts. This work is being undertaken through engagement with the bar, bench, academia and financial experts.

In addition, Legal VPU experts participated in the working group charged with developing the UNIDROIT Principles Regarding the Enforceability of Close-out Netting Provisions, which were adopted by the UNIDROIT Governing Council in May 2013. This is the first global instrument in international law specifically devoted to close-out netting and is intended to provide guidance to legislators and regulators worldwide on the implementation of modern netting legislation in each jurisdiction.

Leading the Preparation of ROSCs and supporting FSAP in the area of Insolvency and Creditor/Debtor Regimes

The Legal VPU delivered ICR ROSCs for Colombia, Malaysia, and Vietnam, and a factual update for the Uruguay ROSC. Work is underway for an ICR ROSC in Namibia, and there are several countries where the initiation of an ICR ROSC is currently being considered.
Dissemination events were held for the ICR ROSCs in Mexico, Paraguay, and Russia, with ample participation of public and private stakeholders. The events helped raise awareness of the importance of the insolvency and credit framework and the opportunities for reform.

In addition, the Legal VPU supported the Financial Sector Assessment Program (FSAP) led jointly by the Bank and the IMF, by providing input on insolvency and creditor rights issues in a number of countries.

Staff from the Legal VPU also participated in the FSAP conducted in the Democratic Republic of Congo (DRC). This is the first FSAP conducted in a post-conflict fragile state. The analysis of the regulation of credit and insolvency required a balanced redesign and careful adaptations of the methodology and coverage of the insolvency and creditor/debtor law assessment to the needs and challenges of a low income economy with a fragile institutional structure.

**Technical Support for Modernization of Insolvency and Creditor/Debtor Regimes**

The Kuwait ICR ROSC, completed in 2012, was disseminated through a public workshop co-organized by the Kuwait Ministry of Commerce and Industry and the Bank’s Kuwait Office. The ROSC exercise and the workshop received significant public attention, sparked discussion in the press, and generated considerable momentum for reform. At the ensuing invitation of the Minister of Commerce, the Bank formulated a Reimbursable Advisory Services proposal, which was approved by the Council of Ministers. Pursuant to this proposal, to be implemented over two years, an inter-disciplinary Bank team will advise a specially mandated cross-Ministerial steering group that is charged with designing new frameworks for expedited distress resolution, enterprise rehabilitation and liquidation, and security interests in movable assets; create an innovative specialist commercial court; and design the legal and regulatory framework for registries for movable security interests and commercial credit history.

The Legal VPU, together with ECA and CIC colleagues, produced a report that included an analysis of the current Polish Insolvency System. The report, titled “Poland: Towards a Stronger Insolvency Framework”, was well received by the Polish Authorities.

The Legal VPU, working together with colleagues from the Vienna Financial Sector Advisory Center (FinSAC), assisted the authorities of Montenegro and Albania in the improving regimes for the resolution of non-performing loans.

Following a successful ICR ROSC Update in Kenya, the Legal VPU supported the country team in responding to the request by the Attorney General’s office for a detailed analysis of a Draft Insolvency Bill that was later submitted to Parliament. The ICR team, working closely with the Bank’s country teams, also supported reforms to insolvency laws in Mozambique and Kazakhstan, and to the modernization of the legal framework for secured transactions in Colombia and Pakistan.

**Insolvency – Developing and Disseminating Knowledge**

Staff participated in numerous dissemination activities and the specialists of the group published articles and produced research on important topics of insolvency and the legal environment of credit. In particular, the topic of the treatment of personal insolvency has featured in many of the current research projects.

During the Law, Justice and Development Week 2012, the Legal VPU organized a session on “The Restructuring and Resolution of External Sovereign Debt”. Focusing on current issues on sovereign debt restructuring, the speakers (drawn from both the public sector including the IMF and United Nations Conference on Trade and Development (UNCTAD) and the private sector) shared their perspectives and experiences in dealing with sovereign distressed debts, especially in Europe.

The Legal VPU participated in the organization of the tenth INSOL/UNCITRAL/World Bank Judicial Colloquium held at The Hague in May 2013. The Colloquium brought together more than seventy insolvency judges from all continents, representing both developed and developing countries. The Colloquium emphasized the international and comparative aspects of insolvency law, and provides a much needed exposure to complex insolvency questions. The program was intensive, addressing multiple topics such as the problems of sophisticated cross-border insolvencies; the judicial role in insolvency cases with sensitive employment, pension, and environmental issues; and the discussion of a hypothetical case on the role of the judge in the confirmation of insolvency plans.
Staff also participated in numerous international conferences, such as the Regional Latin American conferences held in Cartagena and Sao Paulo, the Microfinance Workshop organized by UNCITRAL, and the European Corporate and Household Insolvency Workshop of the IMF.

Community of Practice on Insolvency Law
A Community of Practice on Insolvency Law, co-led by the Bank and the Bank of Italy was established within the framework of the Global Forum on Law, Justice, and Development. The Community of Practice is already operative and relies on the efforts and active participation of a dedicated and specialized community of researchers, lawyers, and international organizations. The first project of the Community of Practice has the objective of exploring the relationships between company law and insolvency law by gathering data from a wide range of jurisdictions. The project foresees, specifically, the production of a report on the obstacles that company law presents to the effective reorganization of companies in different countries.
Banking and Finance

In delivering legal and technical assistance, a significant contribution apart from improved laws and regulation is the policy discussion—imparting cross regional and country experience as well as international good practices.

The Legal VPU’s banking and capital markets team provides legal advisory services and collaborates with other international financial institutions and national regulators, as well as international regulatory bodies, to assist client countries to improve the legal and regulatory frameworks of their financial sectors. This work includes analysis of countries’ legal and regulatory frameworks for the financial sector, consumer protection as well as providing technical advice on appropriate legal and policy framework to underpin robust and efficient financial systems. The team also participates in the Financial Sector Assessment Program (FSAP), a joint program of the IMF and the Bank and support the implementation and supervision of financial sector projects of the Bank.

Mahmoud Mohieldin, former World Bank Managing Director and currently President’s Special Envoy, chairs the session on Islamic Finance: Opportunity, Inclusion, Equity, at the Law, Justice and Development Week 2012.
Providing Legal Advice and Technical Assistance in Reforms to Legal Frameworks for Financial Sector

In delivering legal and technical assistance, a significant contribution apart from improved laws and regulation is the policy discussion—imparting cross regional and country experience as well as international good practices. Another important contribution is building the capacity of the policy makers and relevant stakeholders through knowledge products and training.

For fiscal year 2013, the banking team, working with the East Asia Financial Sector, provided technical advice to the authorities in Indonesia, Cambodia, Vietnam and Myanmar in reforming their legal and regulatory frameworks for the banking system as well as developing strategies for sound and sustainable institutions in the banking sector. In Myanmar, where economic reforms follow decades as a closed, state-directed economy that left the country far below its potential and behind its neighbors, particularly in the financial sector, the banking team is actively assisting the central bank of Myanmar to develop the legal and regulatory framework to make its financial system more transparent, stable, and resilient to internal and external shocks; improve regulation and supervision and link it appropriately to international standards in order to support macro-financial stability; improve financial infrastructure, notably make the payments system more efficient and secure in transferring funds and remittances and increase the range of finance through development of insurance and capital markets. In Indonesia the team is assisting the FPD team to deliver technical assistance in the revision of the Central Bank, Financial Services and Insurance law. Our lawyers are also working closely with the crisis management team to enhance the crisis management capability of the regulatory authority. In Cambodia, through a FIRST funded project, the team is advising the authorities in the revision of the Central Bank and Financial Institution Law. The new regulatory framework when enacted will improve the effectiveness of the central bank in its role in ensuring stability and soundness of the financial system and monetary policy, enhance the governance, risk management and transparency in the system. In the area of capital markets, technical advice was also given to the capital market authorities in Sri Lanka, Mongolia and West Bank Gaza in the comprehensive reforms to the capital market laws to underpin the robust and efficient development of long term financing for the economy. In Myanmar where legal reforms are taking place often ahead of a comprehensive financial sector strategy, our lawyers provided advice on the necessary elements in securities law so as to provide a sound foundation for the functioning of an embryonic market.

Islamic Finance

The Legal VPU has been actively involved in advising on Islamic banking issues through its representation on the Bank's Islamic Finance Working Group. The Legal VPU has in 2012 convened sessions during the Law, Justice and Development Week on “Sustainable Islamic Finance” and “Effective Insolvency Regimes for Islamic Finance” which were attended by a wide group of international participants that included private sector participants, regulators, Islamic Shar’ia experts and policy makers. Our lawyers also advised the Islamic Finance Working Group in relation to the contribution from the Turkish authorities towards the funding and other arrangements for the Global Islamic Finance Development Center (the Center) that is established in Istanbul, Turkey in the amount of US$10 million. The Center is to deliver best-practice research, technical assistance and advisory services on developing Islamic finance globally. Advice was also given to the preparation and signing of MOUs with a range of international financial institutions including the Islamic Development Bank and International Centre for Islamic Education and other private sector participants that have global presence in the Islamic finance sphere.

Capital Markets Development

The Legal VPU’s involvement in capital markets development in member countries is delivered through advisory services in strengthening legal and regulatory frameworks with the goal of assisting client countries to diversify their financial systems by providing long term financing instruments and creating new investment vehicles. The global financial crisis has increased the demand for domestic securities markets primarily due to the outflow of foreign investors, inability of domestic banks to meet extensive financing requirements and the need by companies to de-leverage and increase the demand for
In order to support this development objective, the legal and regulatory framework for capital markets needs to be substantially modernized in these countries. Our lawyers have provided advice to a number of member countries including Turkey, Pakistan, Sri Lanka, Mongolia, Azerbaijan, Columbia and West Bank Gaza during this financial year.

**Macro-prudential and Financial Stability and Financial Sector/Central Banking Laws**

One of the key lessons learned from the global financial crisis is the importance of ensuring macro-prudential oversight over the financial system to reduce the risk and the macro-economic costs of financial instability. It is recognized as a necessary ingredient to fill the gap between macroeconomic policy and the traditional macro-prudential regulation of financial institutions. This is a new policy and there are hardly any legislative examples for countries to emulate. The Legal VPU team has been active in advising central banks and financial services authorities—including the Reserve Bank of South Africa, Bank Indonesia and South Korea on incorporating this policy and related institutional arrangements into the appropriate financial services/central bank laws.

**Consumer Protection and Financial Literacy**

The Legal VPU has been actively involved in the development and updating of the “Global Principles on Consumer Protection & Financial Literacy” as well as participating in a diagnostic review of countries that provides a systematic analysis of the legal, regulatory and institutional frameworks for consumer protection in financial services and programs for financial education. The banking and capital markets team participated in two Consumer Protection and Financial Literacy (CPFL) Assessments in this financial year, namely in relation to China and Pakistan. The China CPFL assessment was carried out to provide the Chinese regulatory authorities with a strategic framework to develop the appropriate institutional and regulatory frameworks for consumer protection as well as a national strategy for enhancing financial literacy. Our lawyers have contributed this important area of work through peer reviewing of key knowledge products and diagnostic reports on other countries.

**FSAP and the Role of the Legal VPU**

Our lawyers have been involved in the Financial Sector Assessment Program (FSAP) in the areas of legal and regulatory assessment for the financial sector as well as capital markets development. FSAP seeks to diagnose potential vulnerabilities and analysis of development priorities in the financial sectors of member countries. One objective of the FSAP is to help countries map a transition to a more diversified and competitive sector without creating vulnerabilities. The existence of a wide and diversified set of sound, well managed institutions and markets also reduces the likelihood and magnitude of a financial crisis. Hence, the Legal VPU’s involvement in the modular FSAP seeks to provide an assessment of the gaps and areas that need strengthening in the legal and regulatory framework for the financial sector as well as in the capital markets. Countries where our lawyers have participated in FSAP missions for this financial year include South Korea and Mongolia. Our lawyers have also peer reviewed FSAP reports of other countries.

**Participation in Standard Setting**

The Legal VPU has been actively involved in providing intellectual input as well as perspectives from developing countries in various international standard setting initiatives including the UNIDROIT’s Study Group on Close Out Netting, Financial Stability Board’s “Methodology on Bank Resolution” and OECD’s “Global Principles on Consumer Protection & Financial Literacy”.

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**Note:**

The text provided is a natural representation of the document's content as read. It aims to accurately capture the essence of the original text without adding any new information or insights.
Justice Reform

New World Bank Group strategic goals of eliminating extreme poverty and boosting shared prosperity means a paradigm shift with clear recognition of the criticality of equity and justice to achieve inclusive growth and fairness in distribution and allocation of resources. The Legal VPU’s work on law and justice reform contributes to achieving these twin goals by providing advice and assistance to Bank task teams and client countries on how to build and improve institutions that provide citizens with conflict resolution and prevention services, sound and equitable and enforcement of laws, and public safety. Our justice reform team consolidates and disseminates knowledge through publications, a website and regular training courses with Bank staff. The team also provides advisory services on justice sector assessments, public expenditure and institutional reviews in the justice sector, justice reform and governance strategies and supports and coordinates a Bank-wide community of practice on justice reform. The Justice for the Poor (J4P) program, also housed in the Legal VPU, is a global research and operational program supported by a trust fund from the Australian government, in collaboration with other donors, which engages justice reform as a cross-cutting issue in the practice of development. Grounded in evidence-based approaches focused on the perspective of the poor and marginalized, the program aims to improve the delivery of justice services and to support sustainable and equitable development processes which manage grievance and conflict stresses.
Supporting the Bank’s Justice Reform Operations and Analytics

At the request of Bank regional and sector teams, the Legal VPU manages a range of innovative justice reform trust funds, loans and Reimbursable Advisory Services programs, including significant justice components of larger projects. The Legal VPU supports regional and sector teams by leading and advising on both operational and analytical justice reform activities. Ongoing activities in fiscal year 2013 included:

Operational leadership and assistance for:

• Second phase of the Afghanistan Justice Service Delivery Project, with South Asia PREM to improve justice service delivery and increase access to and use of legal services.

• Enhanced Justice Sector Services Project in Mongolia, to strengthen justice institutions to enhance public service delivery, transparency, and access to information.

• Abu Dhabi Judiciary Reimbursable Advisory Services in the United Arab Emirates, to provide ongoing assistance for a judicial modernization process.

• Access to Justice Project in Nigeria, to enhance legal aid capacities in Kaduna State.

• Supporting Legal Aid Project in Indonesia, to assist the Government of Indonesia with implementing the Legal Aid Law.

• Judicial Performance Improvement Project in Kenya to reduce judicial delay and increase transparency and accountability.

• Justice Services Strengthening Project in Colombia, to improve judicial performance and access to justice.

• Judicial Performance Enhancement Project in Morocco, to enhance quality and transparency of service delivery of courts.

• Legal Aid Program – in Jordan, to understand demand and improve response to justice services needs of the poor.

Analytical and advisory work:

• Advice on Report on the Status of Contract Enforcement in Poland.

• Fiscal and Institutional Review of Local Courts and Magistrate Courts in Solomon Islands.

• Strengthening institutional capacity and improving judicial performance in Serbia with Public Sector and Institutional Reform, Europe and Central Asia.

• Justice Public Expenditure and Institutional Reviews in Morocco and El Salvador.

• Fee Based Services and Reimbursable Advisory Services in Colombia, to reduce delays and improve performance of administrative, civil and family courts.

• Case File Review in the Superior Tribunal of Mexico City.

• Impact evaluation to improve health service delivery in Sierra Leone.

• Support to a study on the costs of crime and violence in Papua New Guinea.

• Analysis of conflict stresses and conflict management approaches in Solomon Islands.

• Analysis of the dynamics of crime and capacities for prevention in Honduras.

Supporting Judicial Performance Improvement in Kenya

This year marked the launch and commencement of implementation of the Kenya Judicial Performance Improvement Project (JPIP), supported by the Legal VPU. This project, valued at US$120 million, is the second largest Bank-funded stand-alone justice project and the first stand-alone judicial project in the Africa Region.

The JPIP provides funding to support a more independent role for the judiciary as laid out in the 2010 Constitution of Kenya. The vision of this new role, set out in more detail in the Judicial Transformation Framework 2012-2016, is anchored on four main pillars, comprising (a) people-focused delivery of justice; (b) transforma-
tive leadership and professional and motivated staff; (c) adequate infrastructure and sufficient resources; and (d) ICT as an enabler.

In line with these priorities, the project consists of four components. The first component provides support for improved court administration and case management, including major ICT infrastructure. The second component supports judiciary training and staff development, and the third component supports construction and refurbishment of court infrastructure. The final project component will support the judiciary’s management of the project which entails procurement and financial management, coordinating implementation of project activities, monitoring and evaluation, and compliance with environmental and social safeguards. The first year of project implementation focused on establishing a foundational project structure and preparing for future activities, as well as recruiting core project staff.

Afghanistan Justice Sector Reform Project Extends to Second Phase

The Afghanistan Justice Services Delivery Project, managed by South Asia PREM and supported by the Justice Reform Group of the Legal VPU, seeks to implement the Government’s National Priority Program Justice for All; mitigate the impact of the Transition; put the justice system on a sustainable path for long term results; and improve service delivery. Valued at US$85.5 million, the project represents the largest single investment made by the Bank in the justice sector in a fragile and conflict-affected state. This is a continuation of ongoing Bank support to judicial improvement in Afghanistan since 2007.

The Justice Services Delivery Project focuses on expanding access to justice for Afghan citizens and strengthening the capacity of justice institutions to provide services. The first year of project implementation saw strong buy-in and commitment to the project approach and objectives from partners at both the central and local level. A December 2012 workshop in Kabul brought together representatives from justice institutions at both the central and local levels to design action plans for the implementation of a project component. Through a series of provincial visits, the project team also engaged with local community leaders, who expressed strong support for the project. In addition to the foundation of support and ownership from partners, the first year of implementation also established cooperation and understanding between central, local and informal justice institutions. Collaboration between these partners is a key element to successfully creating a community justice partnership and expanding accessibility of legal and dispute resolution services for users.

Contract Enforcement in Poland

Legal VPU lawyers contributed to work led by the ECA Financial and Private Sector Development unit on improving Poland’s Doing Business and Investment Climate indicators. Legal VPU lawyers conducted analytical work and drafted the findings in a report: “The Status of Contract Enforcement in Poland”. This publication provides an assessment of the state of contract enforcement in Poland by focusing on the analysis of the civil and commercial courts as the main venues for contract enforcement. It studied the most critical elements of court functioning, highlighted key issues that are worthy of further attention by policy makers, and formulated recommendations for immediate and mid-term reforms. This work, led by ECA Financial and Private Sector Development, received an award for excellence from the Europe and Central Asia Vice Presidency. Follow up work and assessments in the justice sector are currently being discussed with Polish authorities.

Conducting a Justice Public Expenditure and Institutional Review in Morocco

Although still relatively new to the justice sector, Public Expenditure and Institutional Reviews (PEIRs) provide important additional insight to more efficiently utilize resources and improve justice institutions’ efficiency and performance. This year, the Justice Reform group of the Legal VPU, in collaboration with PREM MENA, conducted a PEIR of the justice sector in Morocco. This is the first justice sector PEIR conducted in the MENA Region, and demonstrates the potential that these analyses have to inform strategic thinking about needs in the sector.
Justice sector reform gained new momentum in Morocco following a program of reforms initiated in 2007. The reforms focus on strengthening judicial independence, raising integrity standards in the judiciary and improving access to justice for citizens and firms. The PEIR gathered evidence on opportunities and challenges of the judiciary to inform the strategic goals of the reform process. The review focused on four key areas relevant to the reform process: (a) access to justice, (b) the judiciary’s caseload and performance, (c) the judiciary’s human resources and management, and (d) the evolution and management of the sector’s public expenditures. The review included a detailed analysis of changes in court performance across the country and over time and a provided data set for future benchmarking data for all courts in Morocco.

Findings indicated that the reform efforts are gradually increasing public trust in the judiciary, and as such the system is facing an increasing demand for judicial services. To meet this rapidly increasing demand, the judiciary faces opportunities for improvement in human resources, budget and physical capacity. In addition to providing valuable baseline data for future reforms, these findings also informed the development of a new US$15.8 million World Bank Judicial Performance Enhancement project in Morocco, which began operations in 2013.

Working Towards Judicial Excellence with the Abu Dhabi Judicial Department

In line with the Abu Dhabi Economic Vision 2030 and as a part of the government wide restructuring efforts, the Abu Dhabi Judicial Department was established as an independent judicial entity in 2007. Led by the 2030 Vision, the Abu Dhabi Judicial Department (ADJD) developed its first comprehensive five year Strategic Plan which set out the ambitious goal of becoming one of the leading high performance courts worldwide. The Plan identifies 5 strategic goals: Access to Justice; Fair and Accomplished Judicial System that provides effective and innovative Judicial Services; Public Trust and Confidence; Highly Qualified Workforce and Motivating Work Environment; and Transparency and Accountability. These goals reflect international best practices and frameworks for judicial excellence and continue to guide the ADJD as it reviews its progress and identifies priorities for the next five years.

Since 2009 to present, the Legal VPU has provided support for the ADJD’s efforts to achieve the goals set out in its strategic plan. The scope of the Legal VPU’s engagement focuses on support to four entities of the ADJD: the Strategic Planning and Performance Management Bureau, the Case Management Systems (CMS) Department, the Human Resources (HR) Department, and the International Cooperation Department (ICD). Building on initial assessments, support to these departments centers around sharing international best practices, developing recommendations for improvements of the operations in the four areas, and capacity building in form of training and workshops. Additionally, a range of good practice recommendations was provided in the form of reports outlining, for example, feasible implementation steps for judicial selection and establishment of specialized courts and suggestions for new performance measurement and strategic planning documents. Moving forward, the Legal VPU will continue to promote the ADJD’s development through ongoing engagement and technical assistance.

Focusing on Evidence-based Justice Programming

The Legal VPU continually strives to apply a rigorous and scientific approach to justice reform activities, using evidence-based programming to provide efficient and effective solutions to clients. Research, analysis and testing are used to identify justice activities backed by evidence of effective outcomes.

Data collected through quantitative methods provides key information to guide the Bank’s justice programming. Over the past year, Public Expenditure and Institutional Reviews (PEIRs) in Morocco and El Salvador gathered data which can help to inform efficient and effective spending in the justice sector.

Qualitative analyses also provide the Legal VPU activities with a foundational understanding of patterns of disputation and the political economy of justice reform. Focus group discussions, individual interviews, and political economy analyses are used to understand the social, political and economic features that impede justice outcomes for end users. For example, qualitative research conducted by the Legal VPU’s Justice for the Poor Program on benefit sharing for women in the Ok Tedi Mine Continuation Agreements in Papua New Guinea provided important contextual understanding for the “Women in Mining” Technical Assistance Program of the Bank’s Sustainable Energy, Oil, Gas and Mining Unit.

Impact evaluations to test operational alternatives are another emerging area of evidence-based practice for justice projects. Initial designs are underway to evaluate the effects of using information technology to speed
up case processing in Senegal, measure motivation of legal aid staff and public take up of services in Nigeria, assess the efficiency and integrity of court registries in Kenya, and evaluate mobile court services in Colombia. These impact evaluations will provide data to inform future projects and better understand the best ways to deliver justice.

Updates from the Justice for the Poor program
The Justice for the Poor (J4P) program of the Justice Reform Unit focused on implementing the recommendations of a review process conducted in 2012 and building on analytical work done in earlier program phases to design and implement a number of innovative operational projects. Operational projects included four recipient-executed activities in the East Asia and Pacific region: a US$3.9 million project to support dispute resolution with a community development project in Indonesia; training and research to support legal aid providers also in Indonesia; the "Fair Land Dealings" program to foster an enabling environment for fair land dealings in Vanuatu; and support for Community Officers in the Solomon Islands. J4P continued supporting a project to establish legal aid centers in Nigeria. In addition to ongoing project activity implementation, the team provided support to enhance partners’ performance management standards and link them to project outcomes. J4P also continued supporting a randomized controlled trial in Sierra Leone to evaluate the impact of community compacts, non-financial awards to health workers and paralegal assistance as means of improving health service delivery. Preliminary observations from this research suggest positive impact around certain clinics, including communities building health infrastructure, behavioral changes on the part of nurses and improved community-nurse relations.

J4P also continued analytical work throughout its program areas. The report “Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands” detailed findings from a multi-year research project in Solomon Islands exploring the contemporary justice needs and experiences of rural Solomon Islanders. In Vanuatu, the J4P program began compiling lessons learned from past infrastructure projects to better understand how local communities are affected by public asset investments and how Government can develop better strategies to address the impacts of these investments. In Timor-Leste, J4P finalized a collaborative study on sub-national spending in partnership with the Government of Timor-Leste.

Engaging with Justice and Security Issues in Fragile and Conflict-Affected States
To strengthen the Bank’s response to justice and security issues in Fragile and Conflict-Affected States, the Legal VPU is developing innovative client engagement strategies focused on addressing the sources of conflict and fragility while strengthening legitimate and effective justice institutions. At the strategic level, the Legal VPU partnered with country teams to integrate attention to justice issues into Country Partnership Strategies, recognizing the importance of injustice as a conflict driver and justice institutions as critical to overcoming fragility and conflict. New strategies in Liberia, Yemen, the Democratic Republic of Congo, Timor Leste, Solomon Islands, Papua New Guinea, and Nigeria reflected targeted analysis and input focused on justice.

The Legal VPU has also designed and tested new evidence-based methodologies for assessment, program and policy design in three priority business lines focused on Fragile and Conflict-Affected States: strengthening the delivery of justice service, improving citizen security, and mitigating and managing injustice and grievance as they arise across sectors. In the area of justice service delivery, an analysis of local courts in the Solomon Islands integrated fiscal, institutional and political economy analysis to inform the design of a program focused on improving access to justice services at the local level. In the area of citizen security, the Legal VPU contributed to the LAC Social Development-led Safer Municipalities violence prevention program in Honduras through an analysis of local crime dynamics and prevention capacity in communities and municipalities that will inform the design of local-level strategies for preventing and mitigating violent crime. The Legal VPU also informed the design of criminal justice interventions as part of a regional violence prevention program in Central America. In partnership with other sectors, the Legal VPU designed measures for mitigating and managing injustice and grievance, including in South Sudan through the design of a facility to manage conflict around the delivery of local services as part of the Local Governance Service Delivery Project. In Liberia, Côte d’Ivoire and the Democratic Republic of Congo, the Legal VPU designed projects focused on managing grievance and conflict around the management of land and natural resources.
The Legal VPU and the Bank’s Corporate Governance
Supporting the Bank’s Finance Teams

The Legal VPU supports the Bank’s Treasury, Controllers, Corporate Finance and Risk Management, and Concessional Finance and Global Partnerships Vice Presidencies on a wide range of transactional and policy issues. In this capacity, the Legal VPU:

- Advises upon and negotiates the terms of the Bank’s financial transaction and investments.
- Provides legal and governance advice to the Treasury’s banking and asset management business lines.
- Negotiates the terms of pension investments and provides policy and governance advice to the Pension Finance Committee.
- Advises the Audit and Budget committees and the management committees on finance, risk management, and financial products.
- Creates innovative financing solutions using capital markets and structured finance techniques to provide highly desirable development outcomes.

The Legal VPU creates innovative financing solutions using capital markets and structured finance techniques to provide highly desirable development outcomes.

Photo: Farhana Aznap/World Bank

Floods in Jakarta, Indonesia.
Supporting the Bank’s Capital Markets Activities

The Legal VPU provides core legal support for the Bank’s capital markets activities—including the Bank’s capital markets borrowing, investments and hedging activities which are carried out by the Capital Markets, Investment Management and Treasury Operations Departments of the Treasury Vice Presidency.

In fiscal year 2013, the Bank raised the equivalent of US$23.5 billion in the capital markets through 300 bond issuances in 21 different currencies. Legal VPU lawyers and analysts provide support on the offering documentation and regulatory issues for these bond issuances. Perhaps the two most prominent bond issuances by the Bank this year were a CNY2 billion issuance in Hong Kong which was the Bank’s largest ever offshore Renminbi bond; and a NZD500 million issuance which was the largest Kauri bond issuance by an official sector issuer. Aside from these issuances, our lawyers have helped develop and expand the World Bank Green Bond program—a bond issuance program which facilitates lending for climate change related projects which has over US$3.5 billion in issuance in 17 different currencies to date.

In respect of the Bank’s hedging activities, in fiscal year 2013, the Treasury Vice Presidency carried out the equivalent of US$13.1 billion over-the-counter (OTC) swaps. Legal VPU lawyers advise on numerous issues relating to these swaps including close-out and netting, collateral arrangements and other risk mitigation issues.

As a result of the recent financial crisis, there is a new and rapidly developing regulatory environment imposed on the OTC derivatives markets in the United States and the European Union which has required substantial input and support from the Legal VPU. Our lawyers are involved in the effort to distinguish the Bank from other financial market participants in the context of new regulations being introduced which affect the manner in which the OTC derivatives market operates. For instance, the Legal VPU has been working together with regulators in the United States and the European Union, as well as with other international regulators to clarify the Bank’s position within existing and/or pending regulation of the OTC derivatives markets and its operators, especially given the Bank’s immunities as an international organization.

Use of OTC Derivatives by IBRD

The Bank uses over-the-counter (OTC) derivatives for a number of critical functions, including (a) to manage its exposure to fluctuations in interest and currency rates, (b) to reduce funding costs of its borrowing activities, (c) to control risk and to improve the return on its reserves portfolios; and (d) to provide risk management solutions for its clients. The Bank does not use derivatives for speculation.

By utilizing OTC derivatives, the Bank is able to diversify funding sources and offer new debt products to its investors. Generally, IBRD swaps funds which it has raised through capital markets bond issuances in multiple currencies into its main operating currency (US dollars) and the interest rate bases of its emerging market loan assets to minimize currency and interest rate risks in its balance sheet. Conversion to other currencies or into fixed rate funding is carried out subsequently, also through OTC derivatives, to correspond with the respective IBRD borrower loan agreement terms. The Bank also uses interest rate swaps and currency swaps for asset-liability management purposes to match the pool of liability as closely as possible to the interest rate and currency characteristics of liquid assets and loans.

In addition, the Bank facilitates access to hedging tools for its member countries and IDA to help meet their risk management needs. In IDA’s case, these derivatives intermediation helps to ensure that the value of multi-year pledges by donor governments in various currencies are insulated from foreign exchange movements so that IDA can plan multi-year development projects all for the benefit of the world’s poorest countries. Using instruments such as currency swaps and interest rate swaps, caps and collars assists clients in managing interest rate and currency risks, while less common tools such as drought risk

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6 See section “Use of OTC Derivatives by IBRD” for an explanation of how over-the-counter swaps are used in the Bank’s activities.
contracts have helped with more fundamental environmental and development issues.7

IBRD has the capacity to effectively manage its OTC derivatives operations, including transaction valuation tools and collateral management operations. The credit exposures on OTC derivative transactions are controlled through specific credit rating requirements for counterparties and other credit assessment tools used by independent credit risk units as supported by Legal VPU lawyers. Our lawyers also provide core legal advice to help manage risk through netting, collateralization and other arrangements in the legal agreements governing derivatives transactions.

Pacific Islands Nations Utilize Market-Based Solutions for Disaster Risk Mitigation and Financing

Following the authorization by the Executive Directors on October 5, 2012 for the offer of natural disaster products to cover geological events (e.g., earthquakes)—in addition to already-covered meteorological events (such as wind and precipitation)—to client countries, sub-national entities and regional and international organizations, a series of innovative pilot catastrophe risk transactions for five Pacific Island nations were executed that will provide the governments of these countries with immediate funding in the event of a natural disaster.

These five Pacific Island nations—the Marshall Islands, Samoa, Solomon Islands, Tonga and Vanuatu—are some of the most vulnerable in the world to natural hazards, which cause millions of dollars of damage and threaten the lives of tens of thousands of people. Eight Pacific nations sit among the world’s top twenty countries with the highest annual losses, on average, from disasters as a proportion of their Gross Domestic Product (GDP). The pilot catastrophe risk transactions are designed to test whether a risk transfer arrangement that relies on state-of-the-art financial risk modeling techniques will attract demand from market intermediaries and it is the first ever Pacific scheme to use parametric triggers which link immediate post-hazard payouts to specific events and imputed losses.

The first series of pilot transactions were executed in January 2013 and were structured as catastrophe swaps intermediated by the Bank for the five Pacific Island nations and four reinsurers; Mitsui Sumitomo Insurance Co. Ltd, Tokio Marine & Nichido Fire Insurance Co. Ltd, Swiss Re Risk Solutions Corp. and Sompo Insurance Inc. The transactions will cover earthquake risk (including for the first time for a transaction of this nature, tsunami) and tropical cyclone risk. The premia for the transactions was paid on behalf of the Pacific Island nations by Japan through the Pacific Disaster Risk Financing and Insurance Multi-Donor Trust Fund. The Legal VPU worked with finance teams throughout the Bank, Finance and Private Sector Development (FPD) and East Asia and Pacific (EAP) on the execution of these transactions.

As a result of the successful execution of this first series of transactions, plans are underway to execute a second series of transactions for five Pacific Island nations for the 2013-2014 tropical cyclone season in the Pacific and it is expected that at least one additional Pacific Island nation will join the current five that participated in the first series of transactions.

Photo: Lauren Day/World Bank

Building Seawalls. Tarawa, Kiribati.

7 See also section on “Pacific Islands Nations Utilize Market-Based Solutions for Disaster Risk Mitigation and Financing” below.
**AgResults Initiative: Innovation in Agriculture, Financing, Research and Delivery**

Seventy-five percent of the world’s poor reside in rural areas and most of them are farmers. Without more and better investment in agriculture, especially in smallholder farming, the Bank’s overarching objectives of eradicating extreme poverty and promoting shared prosperity cannot be achieved. In fiscal year 2013, CFP and SDN Vice Presidencies collaborated with the governments of Canada, the United States, Australia, the United Kingdom, as well as with the Bill & Melinda Gates Foundation to launch an innovative initiative called AgResults.

The AgResults Initiative is a donor-funded initiative designed to overcome market inefficiencies adversely affecting smallholders and harness the financial resources, dynamism and flexibility of innovators in the private sector, in non-governmental organizations (NGOs), in research institutions and beyond, to explore, develop, and put into use technologies that could help smallholders in developing countries.

The overall objective of the AgResults Initiative is to improve the lives of the smallholder farmers it touches. The AgResults Initiative will use pull mechanisms making payments after the achievement of specific results. Pull mechanisms are results-based financial incentives rewarding successful innovations and their adoption. They are designed to overcome market failures, and encourage private and public sector innovators to develop products and services that they would not otherwise bring to the market.

Legal VPU lawyers helped structure the platform for the AgResults Initiative as well as continue to support the structuring of individual pull mechanisms which will be developed as part of the AgResults Initiative. Well-structured pull mechanisms can be used to close the gap between the demand for socially desirable goods and services and their supply by the private sector in developing countries. Legal VPU lawyers helped design and structure another successful pull mechanism which has helped to dramatically reduce the price of vaccines for children in developing countries (www.vaccineamc.org).

In connection with this initiative the Bank has solicited 38 pull mechanism ideas from 24 experts in four thematic groups established by the AgResults Initiative. These groups focused on the areas of (a) Inputs/Increasing Yields, (b) Outputs/Post-harvest Management, (c) Livestock, and (d) Nutrition.

AgResults will fill a gap in the continuum of Bank solutions around developing and supporting adoption of needed agriculture technologies. Expected benefits of the AgResults Initiative to the Bank will also arise from its innovation lab character and the ability to explore and develop pilots of specific interest to the Bank. The AgResults Initiative is carefully designed with strong potential to achieve development results as well as useful lessons learned on the use of innovative financial instruments.
Institutional Affairs

The Legal VPU provides active support on a wide spectrum of issues related to the Bank’s operational and other policy matters. In this capacity, we assist in the advancement of the Bank’s operational policy reform agenda by contributing actively to the modernization and simplification of the Bank’s policies, facilitate policy implementation through advice in interpreting and applying the Bank’s policies for lending operations, and contribute to the “Knowledge Bank” by conducting research and sharing information related to the Bank’s operational policies.

The Legal VPU also provides significant support and input on legal and policy matters regarding investigations of fraud and corruption in Bank-financed projects.

Our operational policy function includes provision of support to the Board Committee on Development Effectiveness (CODE) and participation in various Bank-wide management committees (Governance Council, International Development Fund Committee, State- and Peace-Building Fund Committee, etc.).

We assist in the advancement of the Bank’s operational policy reform agenda by contributing actively to the modernization and simplification of the Bank’s policies.
Supporting the Board of Governors and the Executive Directors

The Legal VPU assists the Corporate Secretariat, the Board of Governors and the Executive Directors with a wide range of governance and procedural matters. Lawyers are involved in the preparation of the Annual Meetings of the Board of Governors and the Spring Meetings of the Development Committee. They advise on the appointment of Governors and Alternates, election of Executive Directors, subscription to shares, membership issues, voting, modernization of procedures, and other matters. Support is also provided to the Joint Committee on the Remuneration which considers changes in salary and benefits of Executive Directors and their Alternates and makes recommendations to the Board of Governors.

Accountability and Decision-Making Framework

The Accountability and Decision-Making (ADM) Framework developed by the Legal VPU in 2012 was implemented in Bank operations in April 2013. ADM modernizes the ways in which the Bank assigns accountability and makes decisions. The goal is to move the institution to disciplined, participative-style decision making with clearly defined decision roles, which will facilitate better client service. ADM focuses on clarifying roles in key decisions, establishing efficient processes, and modifying behaviors that interfere with the quality and speed of decision-making. The Legal VPU participated in the implementation team and continues to assist with disseminating ADM concepts outside of operations.

Policy and Procedure Framework

The Executive Directors approved the Legal VPU’s proposal to adopt a new Policy and Procedure (P&P) Framework for the Bank. The framework establishes four categories of regulatory documents: Policy, Directive, Procedure, and Guidance. It also requires P&P documents to specify who is responsible for issuing, maintaining, interpreting and waiving them. The framework calls for a fully-searchable electronic repository of all current and expired documents, and prompt and effective communication of information about new and revised P&P documents to relevant staff. The Legal VPU will be responsible for administering the P&P Framework, maintaining the repository, and ensuring that P&P documents are developed, implemented, managed, and disseminated by issuers and sponsors consistently with the new approach. New or revised P&P documents with an effective date on or after January 1, 2014 will be required to comply with the framework.

Managing Inter-Institutional Business Conflicts of Interest

Inter-institutional business conflicts of interest (i.e., those resulting from the operational activities of a unit within one World Bank Group institution that are or appear to be in conflict with those of another Bank Group member) are managed in accordance with Guidelines approved by the Conflicts of Interest Council in fiscal year 2013. The Council, chaired by the World Bank Group General Counsel, also includes the following offices: Bank Managing Director, IFC Executive Vice-President and CEO, MIGA Executive Vice President, IFC Vice-President and General Counsel, MIGA General Counsel and Bank Vice-President and Chief Ethics Officer. The World Bank Conflict of Interest Office (CoIO) is housed in the Legal VPU and the Head of the CoIO reports to the General Counsel. Under the Guidelines, the head of the Bank CoIO liaises with counterpart officers in IFC and MIGA who report to their respective General Counsel.

The Bank CoIO is advisory in nature, and undertook approximately 16 cases during the fiscal year, mostly in the infrastructure sectors, but also expanded its coverage, notably, to conflicts in the banking and financial sectors. The head of the office also, amongst other things, participated in a number of institutional reviews including a

8 The WB CoIO may be contacted at: wbcoi@worldbank.org
number of country frameworks, aligning the new Reim-
bursable Advisory Services rules with the CoI Guidelines
and worked closely with the Change Management team
in developing recommendations to Senior Management
regarding management of inter-institutional business
conflicts of interest in the context of the on-going insti-
tutional reforms. The Head of the CoIO also continued
delivering training which will continue throughout the
upcoming fiscal year.

Access to Information
The Information Policy group, serves as the institutional
policy anchor for the World Bank Policy on Access to
Information (“AI Policy”). It also serves as the secretariat
for the Access to Information Committee (“AIC”), which
is the management body responsible for, inter alia, over-
seeing the AI Policy’s implementation, and the secretariat
for the Access to Information (“AI”) Appeals Board,
which is the impartial body of outside experts appointed
by the President to consider second-level AI appeals.

Following two successful years of the AI Policy’s imple-
mentation, the Information Policy group, along with
other units of the Bank, continued the Bank’s efforts to
maximize the public’s access to information held in the
Bank’s possession. As part of its monitoring and reporting
responsibilities, in fiscal year 2013, the Information
Policy group wrote and issued the following reports:

• Board paper, World Bank Policy on Access to
  Information – Experience in the First 18 months
  of Implementation. This Board paper provides a
  comprehensive overview of the Bank’s implementation
  experience from the AI Policy’s effectiveness on July 1,
  2010, through December 31, 2011. This paper, which
  was issued to the Board and publicly released in De-
  cember 2012, discusses (a) the measures that the Bank
  has taken to strengthen the systems and infrastructure
  that support the AI Policy, (b) the public’s views on
  how the Bank has performed, and (c) the impact that
  the AI Policy has had on the development community.
  It also considers areas of the AI Policy that could be
  further clarified and developed in view of the Bank’s
  implementation experiences and makes recommenda-
  tions in that respect.

• Access to Information Survey – 2012. As part of its
  monitoring and reporting activities, the Information
  Policy group carried out the Bank’s second AI Survey,
  which covered the period of July 1, 2011, through
  June 30, 2012. The objective of the AI Survey was to
  obtain public feedback that could help ascertain client
  satisfaction, and identify opportunities for additional
  enhancement of the Bank’s AI systems and processes.
  For the 2012 AI Survey, 32 percent of those surveyed
  responded (i.e., 197 respondents out of 621 persons
  surveyed). The survey results showed that the public’s
  overall level of satisfaction with the Bank’s implementa-
  tion of the AI Policy improved in 2012 compared
  to 2011. The Information Policy group reported the
  survey results to management, and included relevant
  aspects in the AI Annual Report. The full AI Survey
  results have been made public.
• **World Bank Access to Information Annual Report – fiscal year 2012.** In fiscal year 2013, as part of its monitoring and reporting commitment to the Board, the Information Policy group issued the Bank’s second AI Annual Report, which reviews the Bank’s second year of implementing the AI Policy. Following its endorsement by management, the AI Annual Report was shared with the Board and made public.

• **Board paper, World Bank Policy on Access to Information – Proposed Modification.** The Information Policy group worked extensively with Executive Directors, the Corporate Secretariat Vice Presidency and management on a modification of the AI Policy to introduce a new declassification framework for Board transcripts and the statements of Executive Directors and staff made at meetings of the Board, distinguishing such records arising from meetings held as Regular Sessions from those arising from meetings held as Executive Sessions and Restricted Executive Sessions. The paper also recommended modifying the Board’s exercise of the Bank prerogative to restrict certain Board records. The Board approved the modifications in April 2013, with effect on July 1, 2013.

• **World Bank Policy on Access to Information, July 1, 2013.** With effect on July 1, 2013, the Information Policy group issued a revised AI Policy that reflects the Board approved modifications noted above, along with other updates.

Additionally, in fiscal year 2013, the Information Policy group continued to work closely with front-line Bank units that are responsible for implementing the AI Policy, including the External and Corporate Relations Vice Presidency (“ECR”) and the World Bank Group’s Archives Unit. Through this collaboration, the Information Policy group worked to ensure the Bank’s effective management of public access information cases. The Information Policy group also continued to manage the Bank’s AI Focal Point program, which consists of a roster of more than 180 staff members across the Bank who serve as AI champions by supporting their colleagues in the implementation of AI Policy matters.

In fiscal year 2013, the Information Policy group published three AI Focal Point Newsletters, which informed staff of AI Policy updates and events, new AI Policy interpretations, and Frequently Asked Questions. The Information Policy group also provided ongoing policy support and advice to the AIC and the AI Appeals Board. In fiscal year 2013, the Information Policy group supported the AI Appeals Board in considering the first set of second-level appeals received by the Bank since the inception of the AI Policy in 2010.

The Information Policy group also continued to advise external partners and international financial institutions (“IFIs”), assisting them in their development of access to information policies and regimes. In fiscal year 2013, along with ECR, the Information Policy group represented the Bank at the IFI Working Group on Disclosure and Stakeholder Engagement meetings hosted by the European Bank for Reconstruction and Development. As the leader among the IFIs on public access to information matters, the Bank used the forum to share its experiences in promoting institutional accountability, global transparency and citizen-centered approach to development.
Administrative Matters

The Legal VPU’s role as the Bank’s legal advocacy team not only involves the interpretation of the privileges and immunities clause of the Bank’s Articles of Agreement but involves several dimensions of international law as well as the unique body of law applicable to the Bank. It also involves the application of internal policies and procedures as well as the preparation of contracts and agreements that aim to allow the World Bank to operate while preventing disputes and setting the terms of the relationships among the World Bank and the parties with which it deals.

The Bank’s legal advocacy team—Advocating for the Bank in Conflicts both Internal and External.

Setting up #thinkEQUAL exhibit at World Bank headquarters in Washington DC.
Representing the Bank before the Administrative Tribunal

The Legal VPU represents the Bank as the Respondent in cases filed by staff members with the Administrative Tribunal. These cases are decided by the Administrative Tribunal in decisions that are final and binding on the Bank and Applicants. The Legal VPU is responsible for properly responding to these cases on behalf of the Bank by preparing and filing briefs, as well as presenting evidence and testimony in hearings. The Applications before the Tribunal challenge administrative decisions and disciplinary actions against staff, typically alleging non-observance of contracts of employment, and terms of appointment. The Applications deal with issues such as misconduct, unsatisfactory performance, discrimination, retaliation, termination of employment, and non-renewal of appointment, amongst others.

Providing Legal Support to the Regions and Country Offices

The Legal VPU assists the Bank’s Regional Vice Presidencies and Country Offices by providing advice and guidance on a host of institutional and administrative matters, such as negotiating and drafting Establishment Agreements with the Bank’s member countries. These Establishment Agreements are signed for the purpose of fleshing out and further securing the status, privileges and immunity of the institution and its staff in the Country Offices. On an ongoing basis, we assist in dealing with national legislations that attempt to undermine our privileges and immunities in those countries. The Legal VPU also advises on various legal matters encountered by Country Offices, including real estate matters and taxation issues involving the Bank and its staff.

In fiscal year 2013, the Legal VPU assisted in negotiations for several new Establishment Agreements with member governments. This includes the successful conclusion of a new World Bank Group Establishment Agreement comprising the Bank, IFC and MIGA with the Government of Myanmar. In addition, the Legal VPU contributed to numerous real estate transactions, including the purchase of land and office buildings for new Country Offices. For example, the Legal VPU was instrumental in finalizing a sub-lease for new premises of the World Bank Group office in Singapore which, for the first time, brings three World Bank Group organizations, the Bank, IFC and MIGA, in the same space.

Advising on Legal Aspects of Human Resources

Our lawyers provide legal advice to the Human Resources Vice Presidency and its staff on the interpretation and application of the Staff Rules and human resources policies, as well as on the formulation and reform of policies and on enactment of rules. We also provide advice on various legal problems that involve Bank staff. The Legal VPU also provides assistance to managers involved in Peer Review Services proceedings. Pursuant to a services contract with IFC, the Legal VPU provides similar legal assistance to IFC’s Human Resources department.

In fiscal year 2013, the Legal VPU worked closely with the World Bank Group’s management to facilitate the creation of the World Bank Group Integrated Services unit, which combined the World Bank Group’s IT, HR, and HR staff and functions.

Advising the Ethics and Business Conduct Vice Presidency (EBC) and the Integrity Vice Presidency (INT)

The Legal VPU provides legal advice to both INT and EBC on matters that fall within their respective mandates under the Staff Rules. In advising EBC and INT, the goal of Legal VPU is to ensure that the interests of the institution are protected, the rights of staff are respected, and the governing procedures are followed.

Managing the Bank’s Real Estate Transactions at Headquarters

The Legal VPU continuously assists in the negotiating and drafting of agreements for the lease or purchase of real estate property at Headquarters. We also support the General Services Department and provide legal advice on issues of building operation and maintenance.

Coordinating Outside Litigation

The Legal VPU represents the World Bank in outside litigation and dispute resolution involving the institution, and selects local counsel, where necessary, to defend the institution and protect its interests.
Resolving Tax Issues
The Legal VPU provides legal advice and handles matters involving the tax immunities of the institution and its staff.

Advising on the Legal Dimensions of New Information Technology and Intellectual Property
The Legal VPU provides legal advice to the Bank’s Information and Technology Solutions department as well as to the External and Corporate Relations department relating to the Bank’s use of technology and its social media strategy and practices, and on privacy policies and terms of use for websites and platforms. This advice includes legal advice relating to software licensing and management. The Legal VPU also provides legal advice to the Bank on matters relating to Intellectual Property. We advise the Bank’s business units on how best to protect the Bank’s Intellectual Property rights while also respecting the rights and needs of member countries and their peoples.

In fiscal year 2013, the Legal VPU represented the Bank in a group of Inter-Governmental Organizations (IGO) who successfully negotiated with Creative Commons to create a new public copyright license tailored to protect the privileges and immunities of international organizations. The Legal VPU also provided advice on the legal risks inherent in the Bank’s decision to use cloud computing services. Lawyers from the Legal VPU also continued to work with counsel from other IGOs to persuade the Internet Corporation for Assigned Names and Numbers (ICANN) to provide special protections for the names and acronyms of IGOs in ICANN’s newly-introduced domain names. This effort is aimed at reducing the amount of fraud and abuse that may occur in connection with World Bank Group names on the internet.
Global Convening, Knowledge and Learning

From right to left: W. Paatii Ofosu-Amaah, former Vice President and Corporate Secretary, World Bank, and moderator of the General Counsel Roundtable on Managing Legal Risks in a Complex World, with Hassance Cisse, Deputy General Counsel, Knowledge and Research, World Bank.
Knowledge and Learning

In a world that is increasingly interconnected and risky, the quest for opportunity by individuals and organizations shines a new spotlight on the potentially transformative role that effective law can play in accelerating and sustaining growth, as well as in ensuring that growth can be both inclusive of underserved populations and equitable across society.

—Law, Justice and Development Week 2012

The emerging strategic directions for the Bank which called for the harnessing of knowledge to build prosperity and end poverty, a better combination of financing, knowledge and convening power to deliver customized solutions to clients, and the building of a new science of delivery for development, had major implications in the work and knowledge agenda of the Legal VPU.

We continued to build on our strengths to fill knowledge gaps and contribute to the science of delivery for development.

We assessed where we stand in respect of the creation, sharing, and delivery of knowledge solutions to development.

We identified the constraints we faced and how to smartly overcome them.

We stayed engaged in the debate and built a value proposition that makes a difference in the development agenda.
In determining the objective of the annual Law, Justice and Development Week, to be held on November 18-22, 2013, we have integrated the concept of the “Science of Delivery” as outlined by the World Bank Group President Jim Yong Kim and have invited development practitioners devoted to law, justice and development to explore how law and justice tools and knowledge can be used to improve development delivery and help translate the values of voice, social contract and accountability into development impact.

For the first time, events sponsored by the Global Forum on Law, Justice and Development (GFLJD) were organized in the context of the World Bank/International Monetary Fund Spring Meetings, providing a platform where the voices of constituencies working on law, justice and development could be heard—an important milestone for Bank’s legal community and GFLJD partners.

Our staff also contributed significantly in designing knowledge resources that help our lawyers in their daily operational work, and in organizing events that aimed at building strong collaboration and exchange among experts working in the same field. Important contributions to the scholarship of law and development, such as the Law, Justice and Development Weeks and the World Bank Legal Reviews, and our partnership with the Global Forum on Law, Justice and Development, have raised the profile of the Legal VPU as a legal community in the Bank, and as a global convener and connector of knowledge in law, justice and development.

HIGHLIGHTS

Law, Justice and Development Week 2012
OPPORTUNITY, INCLUSION AND EQUITY – RESPONDING TO THE CHALLENGES OF OUR TIME
The Law, Justice and Development (LJD) Week 2012, a major knowledge sharing event jointly organized by the legal departments of the Bank, International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), International Centre for Settlement of Investment Disputes (ICSID), explored how law and justice contribute to better development outcomes through opportunity, inclusion and equity. With a combination of plenary and parallel sessions, the event addressed challenging global development issues, including justice institutions’ response to social movements; innovative use of legal practices to secure sustainable management of natural resources; current issues on sovereign debt restructuring; the role of Islamic finance in the global financial system; and access to justice and inclusion for society’s most marginalized populations. The Law, Justice and Development Week 2012 also featured an India Day that explored, among other things, recent initiatives in India aimed at advancing social and economic rights.

Partners of the Global Forum on Law, Justice and Development had dedicated sessions and a meeting that presented the work of the thematic working groups, and included a demonstration of the ICT platform and the work programs for fiscal year 2013.

Hernando de Soto, President of the Institute for Liberty and Democracy, delivered a keynote address and spoke about the connection between doing business with the poor and the rule of law, and called for more synergies between the expanding legal protection to the poor and inclusive and sustainable economic growth in developing countries.

More information can be found at www.worldbank.org/ljdweek2012.
Hernando de Soto, President of the Institute for Liberty and Democracy, delivers a keynote on The Recession, Doing Business with the Poor and the Rule of Law.

Sam Muller, Director, Hague Institute for the Internationalization of Law, speaks at the session on Coordinated Governance – Co-organized with the World Economic Forum Global Agenda Council on Rule of Law.

African Development Bank officials attend the session on Emergence of New States and Issues around Failed States – South Sudan and Somalia.

“The Cost of Injustice” Keynote Speaker: Hon. Maria Lourdes Punzalan Aranal-Sereno, Chief Justice of the Supreme Court of the Philippines.

Keynote Speaker James Silkenat, President-Elect, American Bar Association, at the reception hosted by ABA.
Law, Justice and Development Week 2012

Achievements
• Major learning and knowledge exchange forum for World Bank Group staff, external partners and experts
• First face-to-face meeting of partners of the Global Forum on Law, Justice and Development thematic working groups to address key issues in their respective areas
• Unique panel and opportunity for interaction with 21 General Counsel and senior legal officers of international financial institutions
• Participants introduced to a wide range of new and cutting edge publications and knowledge products
• Participants encouraged to think beyond the spoken and written word through visual representation of opportunity, inclusion and equity in the Colors of Life exhibit
• World Bank Group’s role strengthened as global convener and connector of knowledge on Law, Justice and Development

Examples of sessions offered
• Justice institutions’ response to social movements
• Innovative use of legal practices to secure sustainable management of natural resources
• Current issues on sovereign debt restructuring
• Health law and rights
• Access to justice and inclusion for society’s most marginalized populations
• Outcomes of Rio+20 and international law for sustainable development
• Islamic finance
• India Day focusing on the role of India’s judiciary in promoting socio-economic development, India’s experiences with the Right-to-Information Act, and India’s recent legislative initiatives in the development space, its national livelihoods mission, and its gender empowerment programs
• Emergence of New States (e.g., South Sudan) and issues around the so-called “failed” States

Some Numbers
• A 5-day event
• 268 panelists/moderators
• 692 external participants
• 780 World Bank Group/International Monetary Fund staff members
• 10 plenary sessions
• 44 parallel sessions

India Day
Each year, the Law, Justice and Development Week includes sessions dedicated to a particular emerging market economy and India was featured in 2012. In the last two decades, India has attracted global attention as one of the world’s largest and expanding economies, and its development initiatives have charted a course for less-developed and developing economies. Discussions centered on how to strengthen formal and informal access to justice, private sector development and rule of law, socio-economic rights and the right to information. Panels explored the role of law and legal institutions in facilitating equitable development especially in light of recent legislations and judicial decisions. The introduction of rights-based initiatives through legislations like the National Rural Employment Guarantee Act and the Right to Information Act as well as recent judicial activism in the area of social, cultural and economic rights have laid a good foundation for more inclusive development. Other sessions discussed key issues on how to further reform India’s legal system and how India can create a more balanced growth across socio-economic classes. Our speakers included eminent jurists, scholars and legal practitioners.
“Key Issues in Modernizing and Reforming India’s Legal System” with Bibek Debroy, Centre for Policy Research, India, Trikkur V. Somanathan, Director, World Bank, and NR Madhava Menon, Founder and Director, National Law School of India University and Commission for Centre-State Relations, Former Member, Law Commission of India.

Introduction and Welcome: Isabel Guerrero, Vice President, South Asia Region, and Anne-Marie Leroy, Sr. Vice President and Group General Counsel, World Bank.

Anne-Marie Leroy, Ambassador Nirupama Rao, and World Bank Executive Director Mukesh Nandan Prasad at the closing session.
Knowledge Products Presentation
A presentation of knowledge products took place at a luncheon event on December 11, 2012 with opening remarks by Meg Kinnear, Secretary-General, ICSID.

The luncheon was an opportunity for brief presentations of the Bank’s and other partners’ recent knowledge products including:

- World Bank Legal Review: Legal Innovation and Empowerment for Development, Volume 4
- World Bank Law and Policy Digest
- Legal Pluralism and Development Scholars and Practitioners in Dialogue
- The World Bank Legal Vice Presidency Annual Report fiscal year 2012
- OECD – World Bank joint publication on Integrating Human Rights into Development
- Visual presentation of IFC’s legal knowledge management
- ICSID – Caseload-Statistic; Foreign Investment Law Journal; Investment Laws of the World; Investment Treaties; Annual Report 2012
- Environmental Law Institute – Assessing and Restoring Natural Resources in Post-Conflict Peace Building
- EPA – China Environmental Law Initiative Website
- International Development Law Organization (IDLO) – Compendium of Legal Best Practices for the Green Economy
- OECD – Strengthening Integrity and Fighting Corruption in Education – Serbia
- UNODC – Criminal Justice Reform in Post-Conflict States: A guide for practitioners

Photos: Dolie Schein/World Bank
Staff across the Legal VPU played an active role in the Law, Justice and Development Week as Speakers, Coordinators and Participants.

Photos: Dolle Schein/World Bank
Much has been written about the role of law in furthering development. More analysis and debate is needed to understand more fully the true nature of this role. The World Bank Legal Review collects much of this debate and analysis, contributed by scholars and practitioners from around the world. The subtitle of the volume, Legal Innovation and Empowerment for Development, focuses attention on how the law can respond to the challenges posed to development in a world slowly emerging from a protracted economic crisis. “Innovation” in law means new strategies and ways of thinking about what the law can do in the development realm. “Empowerment” can mean many things, such as how to place the law into the hands of the poor. The two concepts are linked by their relevance to the future of law as a force for development.

This volume contains essays that examine legal innovations and efforts at empowerment worldwide, in individual countries and in the broader international system more generally. Contributions have been collected from scholars and practitioners across the world.

The second annual report of the Legal VPU covered a period of significant political change and transition for a number of our members in the Middle East Region following the Arab Spring, as well as the continuing impact of the global financial crisis, food crises, and natural disasters. The Legal VPU has played a significant role in providing timely advice to the complex legal issues arising from these challenges. The report offered some highlights, which included the new framework to strengthen accountability (the “Accountability and Decision-Making Policy”), other significant reforms and projects, and initiatives in relation to the environment and social safeguards, infrastructure and information technology projects, public-private partnerships, and banking, finance and insolvency.

Legal Vice Presidency Annual Report Fiscal Year 2012
THE FRAMEWORK FOR ACCOUNTABILITY WITHIN THE WORLD BANK
Edith Ruguru Mwenda and Victoria Delmon, Senior Counsel, present the Legal Vice Presidency Annual Report for fiscal year 2012.
World Bank Law and Policy Digest
A TOOL FOR WORLD BANK OPERATIONAL LAWYERS

As the Bank’s development mandate has evolved, its legal and policy framework for operations has grown a lot more complex. These changes have had significant implications for the role and responsibilities of operational lawyers. The Law and Policy Digest, an internal website developed under the leadership of our lawyers, summarizes and restates the basic legal and policy elements of the Bank’s operations with applicable excerpts and citations to Articles provisions, Operational Policies, General Conditions, and Legal Opinions. Twenty chapters were made available in the initial launch and more will be added to the collection. The Digest is a simple and effective tool that allows lawyers to provide accurate, up-to-date and clear guidance on the legal and policy aspects of their work.

Law and Policy Digest Chapters Initially Launched

1. Bank’s Basic Legal And Policy Framework
2. Choice of an IBDR Borrower or an IDA Recipient
3. Graduation
4. Guarantees
5. Negotiations, Signing and Effectiveness
6. Investment Project Financing
7. Procurement
8. Safeguards
9. Development Policy Lending
10. Program-For-Results Lending
11. Trust Funds
12. Financial Aspects of Loan Operations
13. Reimbursable Advisory Services
14. Negative Pledge
15. Contractual Remedies
16. Arrears Clearance, Debt Relief and HIPC Initiative
17. International Law Dimensions of Bank Operations
18. De Facto Governments
19. Access to Information
20. Structuring Legal Agreements for Bank-Financed Operations

Governance and Anti-Corruption Website
HTTP://WWW.WORLDBANK.ORG/LEGAL/GAC

The Legal VPU has recently designed a new website to serve as the World Bank’s primary source of information on the legal aspects of the Bank’s work on the GAC agenda for external and internal audiences. Among other things, it brings together the principal guidance that the Legal VPU provides on GAC-related legal issues, the legal framework for GAC-related aspects of Bank projects and programs, as well as the policies, procedures and guidance for the Bank’s sanctions regime, with links to key operational documents and other resources. In addition, the staff of the Legal VPU have published on matters related to the Sanctions System and also participated in conferences discussing developments in the field of anti-corruption.

Frank Fariello, Lead Counsel with the Operations Policy Practice Group of the World Bank’s Legal Vice Presidency, is the Bank’s primary legal focal point for its Governance and Anticorruption strategy and sanctions system.
Global Forum on Law, Justice and Development
GENERATING INNOVATIVE LEGAL SOLUTIONS TO DEVELOPMENT CHALLENGES

Initiated and supported by the Legal VPU, this unique forum seeks to integrate and to mainstream in the development discourse, process and outcomes consideration of law, justice and equity. GFLJD allows the enormous potential of a coalition of intellectual partners (across continents, disciplines, and roles) to be harnessed in a way that makes their results-oriented knowledge products readily available to policy makers, which in turn can have a significant impact on development outcomes. GFLJD currently has 136 partners and as such is the largest global partnership on law, justice and development.

A number of high-level events took place in fiscal year 2013 including dedicated sessions during the Law, Justice and Development Week and the World Bank Group/International Monetary Fund Spring Meetings. These marked an important milestone for GFLJD partners.

GFLJD Highlights

Thematic Working Groups
• Empowerment and Equity for Diverse Communities
• Environmental & Natural Resources Law, Climate Change and the Law
  - Environmental Participation Access to Justice, Court and Tribunals
  - Green Economy and the Law
  - Legal Aspects of Sustainable Energy for All
  - Natural Resources Governance (Water, Land, Forest)
• Governance and Anticorruption
• Justice and Rule of Law Reform
• Law and The Economy
  - Insolvency and Creditor/Debtor Regimes (CoP)

Spring Meeting Sessions
• Roundtable Dialogue on Enhanced International Cooperation to Combat Cybercrime
• Preventing Mass Atrocities through Development Policies: A Roundtable on Economic, Social and Legal aspects
• Counterfeit Medicines: How to address the development challenges
The restructuring and resolution of external sovereign debt.

German international cooperation for the rule of law: Lessons learned from the constitutional reform.
**Colloquium on Counterfeit Medicines**

Counterfeit medicines are a global public health problem. Many factors facilitate the spread of counterfeit medicines but one of the most important, in developing countries, is the weakness in national medicine regulatory systems including the underlying legal framework. According to WHO, out of the 193 WHO member states, only about 20 percent are known to have well-developed medicine regulatory systems, 50 percent of the member states implement regulation at various levels and 30 percent have no medicine regulation in place at all or only very limited capacity. Building effective regulatory systems and the underlying legal framework, while challenging, is essential to addressing the problem of counterfeit and substandard medicines.

Legal frameworks are weakened because in many countries they are non-existent, lack integration with relevant ministries, and do not give enough powers to regulatory and law enforcement inspectors or the prosecutors. Counterfeiting is often treated only as a trademark violation without regard to the public health consequences of counterfeit medical products such as when patients unnecessarily die from treatable diseases or are poisoned from adulterated products or they just do not receive the intended therapeutic, diagnostic or preventive benefits. Often law enforcement is not equipped to recognize counterfeit medicines, or the sanctions for counterfeiting are so low, that counterfeiters see them as just the cost of doing business. Corrupt officials may tip off wealthy counterfeiters for a bribe or let them out of jail after a short time.

At the international level, the issue is confounded by debates about the definition of counterfeit medicines. It is important to differentiate the subjects of enforcement of intellectual property rights (IPRs) from enforcement of medicine regulations. Medicine regulatory agencies are just responsible to protect public health and in this regard, must focus on issues of authenticity or the correct representation of source, content and quality. It is also important to avoid any unintended consequences of legislation and regulation of medicines so that access to legitimate and lower-cost generic drugs is not undermined as generics are indispensable to ensure access to essential medicines for patients everywhere, but especially in developing countries.

Counterfeits are a global problem that requires global, regional and national solutions. Various approaches have been recently initiated at the international level. In fiscal year 2013, counterfeit medicines was the focus of two events organized within the framework of the GFLJD. The role of law was highlighted as an essential component of the solutions continuum to the problem of counterfeit medicines including regulatory, law enforcement and consumer focused interventions.

The first event took place on October 2-3, 2012. Its objective was to contribute to a multidisciplinary understanding of the global phenomenon of “Counterfeit Medicines: Impact and Potential Solutions”. The panelists presented and discussed the scale and trend of the phenomenon, its public health and economic impact and the potential solutions from legal, regulatory, technology and enforcement perspectives. Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel, opened the workshop and introduced a video message from Hon. Marisol Touraine, Minister of Social Affairs and Health, France.

Key take away messages included:

1. Legislative frameworks are essential to health and pharmaceutical sector regulatory and law enforcement functioning.

2. Legislative strengthening in health and pharmaceutical sector governance will be more effective when this work is explicit in programming.

3. Twinning is winning: Twinning between the legal and health communities; between ministries of health and justice; between countries; and between UN bodies and international organizations, would produce better results.

4. Good models exist for the work ahead and tag teaming by international consultants with local legal talent.

To support the work of all those who are focused on counterfeit medicines, the event concluded with a proposal to establish a GFLJD community of practice entitled “health systems”.


The second event, a side session of the Bank/IMF 2013 Spring Meetings, explored how to address the development challenges and examined the use of the Medicrime Convention as a benchmark of international standards, for countries to assess their national laws’ capacity and address the problem of counterfeit medicines. GFLJD Partner experts provided factual background information, highlighted key features of a strategic framework centered on the Medicrime Convention approach, and proposed a few potential next steps to pursue the targeted approach in collaboration with multi-sector partners.

Some of the Chairs and Speakers of the Counterfeit Medicines Workshop included:

First row from left to right:
- Michele Forzley, JD, MPH, Senior Scholar, O’Neill Institute for National and Global Health Law
- Pierre Delval, Executive Director, WAITO Foundation
- Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel
- Hon. Marisol Touraine, Minister of Social Affairs and Health, France (Video Message)

Second row from left to right:
- Tom Woods, President, Woods International, LLC.
- Sabine Walser, Administrative Officer, Council of Europe
- Marco Nicoli, Senior Project Manager, and Andreas Seiter, Senior Health Specialist, World Bank
- Patrick Lukulay, Vice President, Global Health Impact Program, US Pharmacopeia.
The Treatment of the Insolvency of Natural Persons

In 2011, the World Bank Insolvency Task Force created a working group to work on a report on the treatment of the insolvency of natural persons. The increase in access to finance around the world, the conditions of economic crisis, and the general evolution of the economy and society have increased the importance of designing modern regimes for the insolvency of natural persons, effective at dealing with the complex problems and ramifications of the problem of personal over-indebtedness. The treatment of the insolvency of natural persons is at the core of many of the efforts directed against financial exclusion and poverty, and a fresh start policy in personal insolvency is perceived as an efficient way of promoting entrepreneurship and avoiding the loss of valuable economic and human resources to society as a whole.

Two sessions, organized during the Law, Justice and Development Week 2012, allowed a presentation of the issues included in the report on the treatment of the insolvency of natural persons. The drafting committee members presented the main topics covered in the report, namely:

• Foundations of the law of the insolvency of natural persons – General regime design
• Institutional framework
• Access to the formal insolvency regime
• Participation of creditors
• Liquidation
• Payment plans
• Treatment of mortgages
• Discharge

The morning session concluded with the intervention of Professor Karen Gross, on the broader context of the insolvency of natural persons. The afternoon session, devoted to a global update on the status of legislation on the insolvency of natural persons around the world, included a series of national reports on the regulation of the insolvency of natural persons, to illustrate the challenges and opportunities of addressing the over-indebtedness of individuals in diverse social and economic environments. The countries covered in these national presentations were the following:

• Colombia
• India
• South Africa
• Thailand

The sessions were followed by a half day Insolvency Task Force meeting.

Judicial Colloquium on Insolvency

The Legal VPU participated in the organization of the tenth INSOL/UNCITRAL/World Bank Judicial Colloquium held at The Hague in May 2013. The Colloquium brought together more than seventy insolvency judges from all continents, representing both developed and developing countries. The Colloquium emphasized the international and comparative aspects of insolvency law, and provided a much needed exposure to complex insolvency questions. The program was intensive, addressing multiple topics such as the problems of sophisticated cross-border insolvencies; the judicial role in insolvency cases with sensitive employment, pension, and environmental issues; and the discussion of a hypothetical case on the role of the judge in the confirmation of insolvency plans.
Conference on Women, Equity and Land and Natural Resource Governance

From December 6-7, 2012, the Legal VPU’s Justice for the Poor Program, in partnership with the International Food and Policy Research Institute and Australian National University Law, Governance and Development Initiative, convened a workshop in Canberra, Australia on Women, Equity and Land and Natural Resource Governance: The South-West Pacific in Comparative Context. Given the central role of land and natural resources in development and economic growth in the South-West Pacific, the workshop sought to understand the impact on women and the potential for promoting more equitable outcomes. Conference discussions focused on global theories and evidence of the developmental benefits derived from increased inclusion of women in land and natural resource governance, and how those lessons can apply to the South-West Pacific context.

Impact Evaluations Workshop for Public Sector and Justice Projects

The Justice Reform Unit of the Legal VPU participated in the PREM and DIME-organized “ieGovern: Impact Evaluation for Public Sector Governance and Justice” workshop from June 24-27 in Dakar, Senegal. This event brought together government counterparts, researchers and Bank staff to develop initial impact evaluation designs for Bank-supported public sector and justice projects in Africa. Beyond developing the initial impact evaluation designs, the workshop provided an opportunity for researchers and project teams to build an African community of practice on impact evaluations. For the Bank, this workshop is the start of the engagement of public sector and justice reforms with impact evaluation.

Expert Workshop on the Security-Justice-Development Nexus

On November 15 to 16, 2012, the Legal VPU’s Justice for the Poor Program, along with the Social Development Department and the Center for Conflict, Security and Development, convened an expert workshop on the Justice-Security-Development Nexus: Theory and Practice in Fragile and Conflict-Affected Countries. The workshop was part of a Bank-Netherlands Partnership Program (BNPP)-funded project aimed at strengthening the conceptual and empirical base for programming on justice and security in these environments, and adding value to the Bank’s strategic and operational work through country engagements. A select group of scholars and practitioners discussed ways to re-conceptualize the Bank’s work based on existing theory and practice, and better support the development of legitimate and effective justice institutions in fragile and conflict-affected situations.
Legal Aspects of Governance and Reserves Management Workshop

The Legal VPU’s Corporate Finance Practice Group recently presented its annual Legal Aspects of Governance and Reserves Management Workshop, as part of the World Bank Treasury’s Reserves Advisory and Management Program (RAMP). The Workshop was exclusively dedicated to legal aspects of investing assets in private sector financial markets and presented by the Legal VPU lawyers and Treasury officers with extensive experience in investment management. The Workshop was a hands-on, one week long interactive session, where presenters shared their knowledge and expertise in investing official assets, including the Bank’s portfolios, with legal officers and decision makers from central banks, sovereign wealth funds and public investment funds of emerging market countries on a “practitioner to practitioner” basis. Representatives from 26 central banks, national pension funds and public investment bodies from 24 countries in Europe, Asia, Africa and the Americas participated in the Workshop, including heads of legal, risk and business teams, directors, legal advisors and other officers of the participating institutions.

The Legal Workshop was first offered as a two day event in 2006 and due to the demand from RAMP clients became an annual feature of the World Bank Treasury’s RAMP workshop program. In 2012, for the first time, the Workshop was also offered twice in the same year. The second Legal Workshop, on December 3 to 7, 2012, co-hosted by the Central Bank of the Dominical Republic, was dedicated to central banks of Central and South American countries. The Workshop followed the same practitioner to practitioner model and the Legal VPU speakers shared their knowledge of practical legal aspects of investing, such as safekeeping of assets, use of derivatives to hedge certain risks in fixed income portfolios, legal framework for engaging private sector asset managers and other commercial sector financial firms to manage institutional funds. The focus of the Workshop was also on issues common to legal climates of the participants and certain innovative legal solutions developed by Legal VPU lawyers in the course of 2012 to increase efficiency in managing client portfolios. In addition to the Dominican Republic, legal and business decisions makers from central banks of Costa Rica, El Salvador, Guatemala, Honduras and Uruguay participated in the Workshop.
In fiscal year 2013, the Legal VPU continued its initiative to provide free public guidance and resources on the contractual and legal issues surrounding public-private partnerships (PPPs), through the highly regarded PPP in Infrastructure Resource Center (PPPIRC) Website Project. During fiscal year 2013, the site received an average of almost 16,000 visitors/month, making it one of the most popular World Bank websites. These visits originated from a total of 224 countries, with a significant number of users coming from developing countries. The website continued to receive generous support from the Public Private Infrastructure Advisory Facility (PPIAF), Norad (the Norwegian Agency for Development Cooperation) and the IFC. During fiscal year 2013, the website added numerous links to legal resources on PPPs in renewable energy (including links to solar, wind, hydro, geothermal and biomass power projects) and clean technology PPPs (including a sewerage treatment plant powered by solar power). The Legal VPU PPPIRC team also created a mobile platform for the site to broaden its use, particularly in Sub-Saharan Africa and East Asia. This valuable knowledge resource is increasingly being referenced in the major publications on PPP resources, such as the Guide to Guidance published by the European PPP Expertise Centre (EPEC), as well as on popular online sites such as Wikipedia.

Community of Practice on Insolvency Law
A Community of Practice on Insolvency Law, co-led by the Bank and the Bank of Italy, was established within the framework of the Global Forum on Law, Justice, and Development. The Community of Practice is already operative and relies on the efforts and active participation of a dedicated and specialized community of researchers, lawyers, and international organizations. The first project of the Community of Practice has the objective of exploring the relationships between company law and insolvency law by gathering data from a wide range of jurisdictions. The project foresees, specifically, the production of a report on the obstacles that company law presents to the effective reorganization of companies in different countries.

Matthew Moorhead, Associate Counsel; Shirmila Ramasamy, Senior Counsel; and Sheila Braka Musiime, Chief Counsel, presenters at the Global Lawyer Course where students from the University of Melbourne Law School explored functions and responsibilities of international lawyers at the World Bank and the IMF.
Legal VPU Staff Initiatives

In fiscal year 2013, several members of staff showed much resilience and creativity in developing and implementing an initiative outside their regular work program. Legal VPU staff developed a project to support pregnant or parenting young women who are at risk by giving them access to information and communication technologies (ICT) and providing them with essential computer skills, technical and vocational training to improve their chances at finding employment.

The initiative started in 2011 when Legal VPU lawyers submitted a project proposal to the Bank’s Youth Innovation Fund. The objective of such fund is to empower young Bank professionals to identify new opportunities and implement, as co-task team leaders, small sustainable projects to benefit youth in developing countries.

Although their project proposal did not win at the time, Legal VPU lawyers started looking for alternative funding. As a result of their efforts the Colombia and Mexico Country Units and the Legal VPU decided to support this proposal through a financial contribution, and the donation of ten used laptop computers.

The Project was implemented from June 1, 2012 to April 30, 2013, in coordination with Fundación Brazos Abiertos (FBA), a non-governmental organization established in Medellín, Colombia, in 1991, under the oversight of the Colombian Institute of Family and Welfare, to
provide at-risk children and youth with a safe place and opportunities to study and receive training.

The Project focused on three main areas: (a) facilitating the provision of in-house education and training activities, in a safe environment and in an efficient manner; (b) supporting the updating of FBA’s ICT teaching guidelines and practices; and (c) providing the project participants with the skills, knowledge, competencies and behavioral skills to prepare them for the challenges in the local labor market.

At the professional level, the Project provided staff with an opportunity to understand, based on first hand experiences, the Bank’s approach to development, achieving results with limited funding. In a very short implementation period, the project team achieved a number of important milestones including the following:

• The establishment of a fully functioning computer lab with ten working stations, providing a learning environment and the necessary tools to successfully implement in-house training on computer skills.

• Creating an ICT curriculum as part of FBA’s successful program of prevention, education, training, and re-socialization.

• Improving access to the necessary tools (computers and internet connection) to take advantage of training on basic computer skills and vocational training provided by institutions such as Colombia’s National Learning Institution (SENA), enabling them to personalize their learning process in a supportive environment. The access to the online courses allowed the project participants to take advantage of opportunities for continuing education.

Staff from the Legal VPU that provided support during the implementation of the Project included: Mirtha Escobar, Carolina Restrepo, Olga Palinkasev Gregorian, Mariana Montiel, Barbara Friedman, Jhon Balderrama, Reynaldo Pastor (pictured), and Robert Williams (not pictured).
The Five Pillars of the Legal VPU’s Knowledge and Learning Agenda in FY 2013

PILLAR 1. Intellectual Leadership through Research and Publications
- The World Bank Legal Review: Law, Legal Innovation and Empowerment for Development, Volume 4
- Twenty-six articles/monographs by the Legal VPU staff were published
- The quarterly Law, Justice and Development E-Newsletter was disseminated, reaching 7,306 readers

PILLAR 2. The Law at your Fingertips
- Governance and Anticorruption Website
- Law and Policy Digest
- Procurement Database
- Safeguards Definitions and Covenants

PILLAR 3. Law, Justice and Development University
- Annual New Lawyers Training led by experienced Bank lawyers. The training provides an overview and introduction to the work program delivered by the Legal VPU’s various practice groups. The training includes, among other subject matters, an introduction to the project cycle and lending instruments, fiduciary and safeguards aspects of project finance, trust funds, corporate and advisory work, and administrative matters. In fiscal year 2013, the training included innovative presentations with video and practical exercises across the project cycle
- Continuing legal education for staff and provision of career guidance to junior staff through mentoring
- The Legal VPU hosted or cosponsored over 30 learning events during the year, on topics as diverse as judicial reform, harmonization of business law in Africa, safeguards and grievance mechanisms, international environmental liability, property rights and development, public-private partnerships, sanctions reform, sovereign defaults, intellectual property, hydrodiplomacy, international water law, and regional integration, among others

PILLAR 4. Partnerships and Global Convening
- Law, Justice and Development Week 2012, Opportunity, Inclusion and Equity: Responding to the Challenges of our Time, Washington DC, December 12-14
- Global Forum on Law, Justice and Development

PILLAR 5. Outreach and Communication
Legal VPU Senior Management participated in a wide range of international meetings and fora including:
- XXXIX Course on International Law – Rio de Janeiro, Brazil: Lecture on the “Current Issues in International Development: Some Perspectives from the World Bank, August 2012
- ABA International Fall Meetings on Rule of Law and Development, October 2012
- IMF/WB Annual Meetings, Tokyo, October 12-14, 2012
- GFLJD Meetings, Seoul, Singapore, and Doha, October 15-23, 2012
- World Economic Forum Summit on Global Agenda 2012, Dubai, November 12-14, 2012
- IBA £1 million Initiative, London, November 29 - December 1, 2012
- Keynote Speech at the Stefan Riesenfeld Symposium, University of California in Berkeley, February 10-11, 2013
- UN High Level Retreat, Greentree, Long Island, NY, March 26-27, 2013
- Hague Conference on Private International Law, The Hague; Meetings with DFID and EBRD, April 4-11, 2013
- 18th Annual Meeting of General Counsel of IFIs, Rome, May 30-June 2, 2013
- Nagoya University Law School, Japan, Lecture, Legal Aspects of World Bank: June 21-29, 2013
Law Resource Center

Throughout 2013, the Law Resource Center staff continued to provide high quality information sources and services in support of the Legal VPU work program, while leveraging resources to maximize their impact in meeting the business needs of our clients. With the goal of preserving the Bank’s informational past, the Law Resource Center staff focused on archiving paper and electronic materials systematically, applying metadata to facilitate access to the institutional memory for the future, while at the same time working to reduce the carbon footprint of the Bank. We launched the “Legal VPU Review of Document Management Practices: Paper to Electronic” initiative, encouraging staff to capture knowledge and share information by increased filing in the Bank’s official repository. The goal of the project is to capture a larger portion of electronic administrative information, reducing paper files as much as practical.

Archiving the past while striving for greener access in the future.

The Legal VPU Management also approved the Information Management (IM) Strategy, committing to a minimum of 5% increase in electronic filing over last year.

The Law Resource Center is comprised of the Law Library, Legal Help Desk, Legal Records Center, and Official Documents Desk.
II. The Bank’s Engagement in the Criminal Justice Sector and the Role of Lawyers in the “Solutions Bank”: An Essay

By Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel
I. Introduction
The World Bank is undergoing several fundamental changes in the way it does business. These changes began some years ago, but have accelerated with the “change agenda” initiative of the Bank’s President, Jim Yong Kim. As these changes are implemented, they are likely to produce a major shift in paradigm for the way Bank staff does its work. Among other things, and most significant for lawyers, is a shift from a “rules-based” to a “principles-based” normative approach to operations that encourages informed risk-taking to find solutions to pressing development issues. This “Solutions Bank” poses a series of challenges for the Legal VPU, as it adjusts to this new reality in which the “bread and butter” of lawyers—rules—no longer play the same central role in decision-making.

This paper posits that lawyers will still have a crucial role to play in the “Solutions Bank”, but a different one than before, requiring a different approach to legal issues and, indeed, a new concept of our normative architecture. Moreover, it argues that the necessary paradigm shift has already begun, and it takes, as a prime, early example, the evolution in legal thinking that began in 2005 and culminated in the 2012 Legal Note on Bank Engagement in the Criminal Justice Sector (the “2012 Legal Note”).

II. The “Solutions Bank”
Key Features and Initiatives from a legal perspective

As mentioned, the Bank is undergoing certain fundamental changes in its way of doing business. Some of the most significant developments include the Bank’s first new lending instrument in over thirty years—Program-for-Results financing—as well as the ongoing reforms to its traditional investment lending (IL) program. More recently, Bank President Jim Yong Kim has introduced an ambitious change agenda aimed at making the Bank more effective in its effort to end extreme poverty and boost shared prosperity including adoption of a new World Bank Group strategy and an integrated global practices model for the Bank’s work in key sectors.

Among the most significant developments are major reviews of the Bank’s procurement and safeguards policies, as well as the Accountability and Decision-Making (ADM) framework and the Policies and Procedures Framework (PPF), both of which have been strongly influenced and supported by the Legal VPU. All of these will have significant implications for the work of lawyers.

Program-for-Results Financing. The World Bank’s most recent financing instrument, Program-for-Results (PforR), was approved by the World Bank’s Board of Executive Directors on January 24, 2012. This new lending instrument puts significant emphasis on project outcomes through direct linkage of funding to the achievement of verifiable results and performance actions rather than inputs and transactions.

The Bank’s assessment of a proposed program is based on various country and program-specific strategic, technical, and risk considerations. Therefore, the assessment

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9 The change agenda incorporates a number of change proposals, one of which is to instill and nurture a culture of informed risk-taking and building an institutional architecture for informed risk management.
considers the existing economic, technical and political situation in the member’s territory as well as the strength of existing institutions in determining the parameters of the program and whether to strengthen or build institutions to minimize risk.\textsuperscript{15}

**Investment Lending Reform.** The reform of the Bank’s traditional investment lending instrument has been under discussion within the Bank since 2009, and has become an integral part of the Bank’s ongoing change agenda. As originally envisioned, the concept of “IL reform” consisted of five elements: (a) adoption of a risk-based approach; (b) enhanced implementation support; (c) a rationalized menu of financing options; (d) improvements in the operational enabling environment; and (e) IL policy reform. In October 2012, the Executive Directors approved a number of these reforms.\textsuperscript{16}

A first key component of these reforms was the issuance of a new OP/BP 10.00 (Investment Project Financing) which rationalized and updated the panoply of the Bank’s operational policies and procedures in a single policy and procedural statement. BP 10.00 supports informed risk-taking, providing that Bank staff assess the main risks to achieving the applicable project’s development objectives and results—importantly, taking into account the attendant risks of inaction\textsuperscript{17}—at both the concept and appraisal stages of project approval;\textsuperscript{18} Bank staff are required to continuously monitor risks during project implementation and adjust project modalities accordingly.\textsuperscript{19}

**The Change Agenda.** In July 2013, President Jim Yong Kim announced plans for changing the way the Bank does business aimed at, \textit{inter alia}, the World Bank Group’s risk culture and the cost of doing business with the Bank Group.\textsuperscript{20} This agenda calls for a major shift in the way the Bank deals with risk, supported by the simplification and rationalization of the Bank’s normative architecture and business processes.

The Bank will operate under the premise that “the biggest risk is not achieving results”, signaling a significant increase in the Bank’s “risk appetite” to allow the Bank to support more readily high-risk/high-reward operations with potentially transformational results. By focusing on grievance redress mechanisms in projects and helping the Bank’s client countries to strengthen their own risk management systems, the approach calls for informed risk assessment and management rather than risk avoidance.

In support of this shift in risk appetite, the change agenda also aims to make the Bank more agile in responding to client countries’ needs by simplifying, rationalizing and clarifying the Bank’s internal policies and procedures and business processes.

Some of the more significant initiatives supporting the change agenda include two major policy reviews:

- **Review of Procurement Policies.** Since May 2012, the Bank has been engaged in the first phase of a comprehensive review of its procurement policies, including public consultations with approximately 2,000 external stakeholders from 96 countries.\textsuperscript{21} This first phase has resulted in a Proposed New Framework for Procurement in World Bank Investment Operations,\textsuperscript{22} currently under consideration by Executive Directors of the World Bank Group, calling for a new procurement policy framework that reflects the complexity and diversity of the Bank’s global operations and supports country systems, guided by principles rather than prescriptive rules.

\textsuperscript{15} Id. paras. 5 – 10: The Bank conducts four types of assessments, namely: (a) technical assessment, (b) fiduciary systems assessment, (c) environmental and social systems assessment, and (d) integrated risk assessment.


\textsuperscript{18} Id. para. 15.

\textsuperscript{19} Id. para. 36.

\textsuperscript{20} President Jim Yong Kim’s internal communications message to all World Bank Group Staff dated 07/23/2013.


\textsuperscript{22} The Executive Directors of the World Bank Group are considering a Proposed New Framework for Procurement in World Bank Investment Operations, which was presented to them on April 12, 2013. Please see the Procurement Consultation website for more information, available at http://web.worldbank.org/WEBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:23226925--pagePK:84271-piPK:84287-theSitePK:84266,00.html.
- **Safeguards Review**: In July 2012, the Bank launched a two-year process to review and update its current environmental and social safeguard policies, aimed at aligning the Bank’s safeguards policies with the changing needs and aspirations of borrowers, the external context, and the business of the Bank. A key feature of the new framework will be a risk assessment approach. This entails a measured shift towards the mitigation and management of risks throughout the life of an operation, proportionate to the scale of these risks. The Bank could increase its use of a risk-based approach for the management of its portfolio with monitorable and measurable risk indicators so that decision-making can be informed by predetermined tolerances for risk.

In support of the change agenda, LEG has been particularly active in two initiatives aimed at clarifying and rationalizing the decision-making processes in the Bank:

- **ADM Framework.** The Accountability and Decision-Making (ADM) Framework, introduced in April 2013, sets out a protocol for clearly defining roles and responsibilities in the key decision-making processes in the Bank, i.e., recommendation role, advisory role, clearance role, concurrence role and decision role. Ideally, there is one decision-maker—with accountability for the consequences of his/her decisions—while others provide various forms of input into the decision.

These two initiatives are meant to clarify and rationalize decision-making. In and of themselves, they are “content-neutral”—they do not require, for example, that a particular norm be designated as a policy, directive, procedure or guidance—but by creating a clear substantive and procedural framework for decision-making, they provide the necessary architecture for the effective decentralization of decision-making, reduction of clearances in favor of advice and an unambiguous shift from binding rules to high-level principles supplemented by non-prescriptive guidance.

The *leitmotiv* of all these initiatives undergirding the construction of a “Solutions Bank” is clear: more agile, less regulated decision-making based on informed risk-taking. And yet, this approach is not entirely new to the Bank. A principles-based, risk-management approach...
to decision-making has been evolving in a critical, cutting-edge, high-risk/high-reward area of the Bank’s work since 2005. And, while it may come as a surprise to many Bank staff, this evolution was spearheaded by the Bank’s lawyers.

III. The 2012 Criminal Justice Legal Note

A. Background

Until recently, the Bank’s involvement in the criminal justice sector had been fairly constrained, primarily due to concerns about its relevance to the Bank’s mandate, as well as political interference and reputational risks.

This is not to say, however, that the Bank had not been engaged in the criminal justice sector. The extent of the Bank’s past activity in this sector is difficult to quantify, as criminal justice activities tend to be embedded as components in larger projects. Nevertheless, it is clear that the Bank has been involved in justice reform projects that have included criminal justice and in policing, albeit in limited circumstances and mainly in the areas of traffic management, port security, environmental management, financial police, health, social welfare, as part of disaster relief projects and as part of overall public sector reform. The Bank has also financed technical advisory services and equipment for targeted interventions in prisons against HIV/AIDS and tuberculosis, financed the refurbishment of juvenile temporary placement facilities in police stations, and financed the development of data collection systems in prisons. The Bank had also played a limited role as fiscal agent for police-related expenditures, and financed assessments of law enforcement institutions (i.e., police, prosecutors and courts) in dealing with money laundering and the financing of terrorism.29

B. The Bank’s Traditional Legal Thinking

The World Bank’s legal framework (or more precisely its Articles of Agreement) limits the Bank’s scope of action, and defines what is permissible and what is not. The Legal VPU, however, has always maintained that the Articles should not be a straitjacket, but should rather be interpreted purposively to allow the Bank to adapt to changing realities30 provided that interpretation does not contradict the letter of the Articles. It was in that spirit that the Bank’s current involvement in the criminal justice sector has been made possible through progressive interpretation of the Articles.

Until 2005, as articulated in a series of legal notes and opinions, and in advice to Executive Directors in connection with particular project proposals, the view was that engagement in the criminal justice sector, in particular work with law enforcement, lay outside the bounds of the Bank’s mandate. The position, which was most clearly articulated in 1997, is that such expenditures would not be consistent with the “productive purposes” provision of the Articles and, moreover, that Bank appraisal of police activities would necessarily require the Bank to take into account political considerations, in violation of the “political prohibition”.

Underlying this cautious position was a clear concern about the perceived operational and reputational risks of working in the sector, where life-and-death questions are commonplace. The position was generally (if perhaps not entirely correctly) interpreted as a complete bar to engagement in the criminal justice sector.

The traditional risk avoidance approach did have its advantages, and principal among them was clarity and efficiency. Particularly in a large bureaucracy like the Bank, drawing a “bright line” between the permissible and the impermissible has definite advantages, especially in terms of transaction costs. A clear prohibition precluded the need for potentially lengthy discussions about the appropriateness of a particular intervention, or whether it fell within or outside a more complex set of criteria. In a high-risk environment, clear guidance (both positive and negative) provided a level of “comfort” to both staff and external stakeholders, which task teams could cite a kind of force majeure, thereby avoiding potentially difficult discussions that might arise if a refusal of support for a particular activity requested by a borrowing country came from a discretionary decision by Bank staff. This was particularly true where, as in this case, the prohibition was ostensibly based largely on concerns over the Bank’s mandate and Articles prohibitions, against which no “appeal” or exceptions could be made.


30 See e.g., Ibrahim Shihata, The World Bank Legal Papers, “Interpretation as Practiced at the World Bank” (Martinus Nijhoff Publishers, 2000), x/iii et seq.
It should not be forgotten that the risks of involvement in the sector, both operational and reputational, are (still) very real. Police are granted repressive powers by the State and serious abuses of this power occur in many Bank member countries. Police can become allied with particular political parties or ethnic factions. Prosecutions can be similarly misused for political ends and prisons can be (and have been) the scene for human rights abuses. Moreover, the sector is notoriously complex and requires substantive expertise that the Bank largely lacked, which intensifies the inherent operational and reputational risks for the Bank and its clients.31

The traditional approach to the sector was therefore a perfectly plausible one, but it came at a cost that many in the Bank—and many of the Bank’s stakeholders—found unacceptable. While there are certainly distinct advantages to drawing a “bright line” between the permissible and the impermissible, one must be careful to draw the line in the right place. By effectively declaring any intervention in criminal justice off limits, the traditional approach made impermissible a number of interventions that posed little or no legal risk to the Bank and fell indubitably within the Bank’s mandate: access to justice for the poor, case management, activities to support poor people affected by crime or the criminal justice system such as victim support or violence reduction programs. Indeed, these activities would pose little risk and very unlikely lead to abuse on political grounds or human rights violations.

One particularly egregious example of the downsides of the traditional “bright line” approach was the need to draw sometimes artificial distinctions between criminal and civil justice. In countries where civil and criminal matters are handled by a single court system, the Bank was obliged to condition its assistance on the creation, by the client country, of parallel systems to manage civil cases, supported by the Bank, and another system for their criminal cases. This posed an opportunity cost for the Bank, both in terms of the potential development impact of programs that it could not support and in terms of the failure to meet client expectations, especially for middle-income countries.

The cumulative disadvantages of the traditional approach led, in some cases, to “under the radar” activities in the criminal justice system. Bank-support for “off limits” activities were embedded in components or projects that did not ostensibly have anything to do with criminal justice. Conversely, activities that were at the margins of the traditional “bright line” approach were never coded as criminal justice activities. This resulted in a loss to the Bank of lessons learned, success indicators and other knowledge that was not captured in any systematic way—a particularly unfortunate loss in an area where the lack of knowledge of what works and what doesn’t work is one of the principal challenges. Moreover, since activities that are “illegal” cannot be regulated, such activities that did occur “under the radar” were not subject to oversight and safeguards that would have helped to manage the risks inherent in working in the criminal justice sector.

C. The Paradigm Shift: From Risk Avoidance to Risk Management, From Rules to Principles

The evolution in the Bank’s thinking on engagement in the criminal justice sector began in earnest in 2005 with a team of Bank lawyers concerned with the missed development opportunities that the traditional approach imposed. At that time, the issues of crime and security were growing more pressing for many of our clients, especially in Latin America and the Caribbean, who in turn were looking to the Bank for assistance. Other multilateral development banks with similar mandate limitations had already started to engage in the criminal justice sector.32

31 Of course, because of these risks, that expertise was never developed. This created a self-reinforcing feedback loop, whereby perceived risk exacerbated actual risk.

The team was faced with a twofold challenge: First, how to fit engagement in the sector within the Bank’s purposes, given the views expressed that work in the sector lacked a “productive purpose”? Second, how to ensure that engagement did not run afoul of the “political prohibition” in the Articles?

Ibrahim Shihata’s 1990 Memorandum on Governance provided the groundwork for the team’s analysis. That Note, however, required that the Bank’s governance work meet a rigorous “direct economic effect” test. While the correlation between crime and economic development had become increasingly clear since 1990, proving an actual causal relationship—let alone the direct one that the test seemed to require—between interventions in the sector and economic growth, given all problems of attribution and other difficulties, remained elusive. But a study of legal advice over the years had shown that, in practice, the “direct economic effect” test had been applied (even by Shihata himself) in such a way as to allow for interventions that showed promise but were not necessarily guaranteed to have a direct economic effect. Indeed, if the test were taken literally, few Bank projects in any sector would likely meet the test. In reality, the Bank was willing to assume operational risks that a project would not produce its intended development impact, so long as there was an appropriate and objective economic rationale that it could be expected to do so.

As for the political prohibition, the team realized that not all engagement in the criminal justice sector carried the same risks of entanglement in the political affairs of the client country. Moreover, work in the sector, while posing considerable risks in certain cases, also promised potentially transformational rewards. And the risk of staying out the sector, in particular in those countries where citizen security had become central to their development challenges, was itself unacceptable. The team argued that an outright ban on engagement in the sector was overbroad, advocating for moving from risk-avoidance to a risk-management approach to political interference risks posed by work in the sector.

This evolution culminated in the 2012 Legal Note on Bank Engagement in the Criminal Justice Sector. The Legal Note concluded that the Articles did not, as a general matter, prohibit Bank support for activities in the criminal justice sector. In lieu of a ban on such activities, the Note calls for submitting proposed Bank support to a two-part test for compliance with the Articles: proposed Bank activities in the criminal justice sector must be supported by (a) an appropriate and objective economic rationale and (b) measures to assess and mitigate the risk of political interference.

Recognizing the very real risks that the Bank faces in this area, the Legal Note proposed a series of risk-management measures:

- **Country Ownership.** Ensuring country ownership, as evidenced by a specific request or consent from the borrowing government, as well as broad consultation, whenever practicable, with other non-state stakeholders. Acknowledging that full consensus, while a theoretical ideal, is not possible in many cases, the 2012 Legal Note counsels that the Bank should seek to ensure the maximum degree of consensus practicable and, at a minimum, that the activities to be supported by the intervention are not likely to cause the Bank to become entangled in partisan or ideological controversy.

- **General Avoidance of Involvement in Specific Case Enforcement.** Avoiding support for investigations, prosecutions and judgments under criminal laws in specific cases, the Bank should focus its support on institutional capacity building, technical assistance and other activities that address sector or sub-sector-wide issues.

- **Risk Analysis.** At the heart of its risk-management approach, the Note advises that before undertaking any intervention in the sector, the Bank should engage in an analysis of risk of political interference posed by the intervention under consideration, taking into account country context, the project participants (whether as implementers or beneficiaries), and the nature of the proposed activities, to determine whether these may pose risks of interfering in the political affairs of the member country. This analysis should include appropriate measures to mitigate the risks identified.

- **Special Review.** In high-risk cases, the proposed intervention is subject to a special review mechanism.

33 “Issues of ‘Governance’ in Borrowing Members: The Extent of their Relevance under the Bank’s Articles of Agreement”, Memorandum of the Vice President and General Counsel, December 21, 1990.

34 “[T]he Bank should not allow political factors or events (no matter how appealing they may seem to be) to influence its decisions unless… it is established that they have a direct and obvious economic effects relevant to its work. Id., paragraph IV.2.iv.

35 The 2012 Legal Note built on a 2006 Legal Opinion which, for various reasons, did not find full institutional acceptance, but which encapsulated the evolution in thinking, perhaps a bit too far “before its time”. See Roberto Dañino, “Legal Opinion on Bank Activities in the Criminal Justice Sector,” January 31, 2006.
whereby relevant risks are carefully analyzed and a considered decision is taken whether to proceed with the intervention and, if so, the appropriate safeguards and assurances required to avoid Bank involvement in the internal political affairs of the concerned member countries.

- Close Monitoring. In all cases, the Bank should monitor the implementation of its interventions in this sector closely and willingness to exercise its legal remedies—including the suspension or cancellation of loans, credits or grants (in whole or in part)—if events make it unlikely that the project will be carried out as intended or if the risk of political misuse increases and cannot be mitigated.

Applying the above analytical framework, the Legal Note classified potential interventions in the criminal justice sector into three broad categories: (a) low-risk situations that pose few or no Articles issues (e.g., case management systems, research on crime or criminal justice, and support for poor and vulnerable crime victims); (b) high-risk situations that the Bank should avoid (e.g., financing of weapons and other lethal equipment, anti-narcotics law enforcement campaigns, and specific law enforcement cases) and (c) "grey areas" that entail high potential risks and merit special scrutiny and guidance (e.g., support for police, prosecutors, and prisons).

While the Legal Note provided the overall analytical framework for risk management, at the same time, the Legal Vice Presidency, in consultation with those units in the Bank working on criminal justice issues, developed a Staff Guidance Note on World Bank Support for Criminal Justice Programs,36 with more granular guidance to guide its work in the sector. Shortly thereafter, a Criminal Justice Resource Group (CJRG), with experts from across the Bank, was created and tasked with helping task teams identify and manage risks inherent in engagement in the sector. This kind of guidance and support is critical to any principles-based approach, as it helps ensure consistency of approach and outcome.

In looking at the framework established by the 2012 Legal Note, one is struck by the multiple parallels to the themes that are now so prominent in the ongoing change debate, most notably the shift from risk avoidance to informed risk-taking, coupled with close monitoring of implementation to address those risks that may materialize. The Legal Note identifies an analytical framework for decision-making, with expert inputs, as a key component to success.

IV. The “Solutions Bank” and the Legal Vice Presidency

The change agenda, and in particular its emphasis on principles-based over rules-based decision making, will require us to rethink the traditional role played by lawyers in the Bank. Some thinking has already been done on this subject, in particular as regards the role of operational lawyers under the ADM. The Legal Vice Presidency issued a Legal Note on May 7, 2013,37 which articulates operational Bank lawyers’ specialties, posits that operational lawyers perform both an advisory role and a clearance role in processing Bank projects and programs.

The 2012 Legal Note lays the groundwork for a possible paradigm for the future role of Bank lawyers in dealing with Articles’ interpretation—one of the Legal Vice Presidency’s most important institutional roles—and may well provide a blueprint for other areas as well. While the Note creates considerable room for discretion and informed risk-taking, crucially, it does so by creating an analytical framework for informing decision-making. It puts overall parameters around the Bank’s work in the sector through the identification of activities that are clearly low risk (“green light” activities) and those should be considered generally outside the Bank’s mandate (i.e., “red light” activities), while creating, instead of fixed “rules”, an analytical framework for risk assessment and management for the “grey areas” within those broad parameters.

Lawyers would have a special role to play under this new paradigm, as their training provides them with a structured way of thinking about issues, balancing competing factors in a systematic rather than impressionistic way, that does not always come naturally to professionals in other disciplines. Following ADM principles, lawyers would play a clearance role when it comes to the overall parameters for Bank activities under the Articles, while playing an advisory role in applying the analytical framework to activities falling within those broad parameters.


37 Legal Note: The Role of LEGVPU Operational Lawyers under the Accountability and Decision-Making Guidance, Anne-Marie Leroy, May 7, 2013.
The implementation of the 2012 Legal Note provides good evidence that the shift from risk avoidance to risk management, and from bright line rules to broad principles, need not spell the end of the lawyers’ role in Articles’ interpretation or any other aspect of the Bank’s work. In fact, the Legal VPU continues to play a central role in the Bank’s engagement in the sector, through direct support to task teams in assessing and managing sector-related risks. Of course, the precise role of the lawyer will vary according to subject matter and the sector is a natural fit for lawyers’ special expertise. But there are other areas where the paradigm could well apply.

V. Putting the New Paradigm Into Practice

By way of example of how this paradigm could work, this paper will look at two possible areas for future work: the Bank’s fiduciary duty and the exercise of contractual remedies.

A. A Principles-Based Approach to the Fiduciary Duty

The Articles of Agreement obligate the Bank to take “appropriate measures to ensure that the proceeds of Bank loans are used for the purposes intended, with due regard to considerations of economy and efficiency”. This obligation, commonly referred to as the “fiduciary duty” has provided the legal basis for a whole series of operational and other policies, procedures and practices in such areas as procurement, financial management, and operational and other policies, procedures and practices.

This would be in line with a long tradition of Article interpretation by the Legal Vice Presidency. Much of this tradition has concerned the “political prohibition” under the Articles (the 2012 Legal Note being one recent example), the “productive purposes” requirement, or the overall purposes of the Bank. Curiously, the fiduciary duty has never been the subject of this kind of holistic interpretation; the Bank has rather relied on specific policies and procedures to implement its duty. But as those specific policies and procedures are reformed, there may be good reason to revisit the fiduciary duties from first principles.

B. Exercise of Contractual Remedies

The General Conditions provide for a series of actions that the Bank may take in response to a borrower’s failure to repay the loan in a timely fashion or otherwise comply with the conditions on which the loan was extended, among other triggers. These remedies include total or partial disbursement and anti-corruption. As discussed, one of the hallmarks of the “Solutions Bank” is a move away from strict rules to principles-based approach, as well as towards increasingly reliance on country systems, in many of these areas, most notably in procurement policy.

The Legal Vice Presidency will have a key role in ensuring that these develop in a way that is consistent with the Bank’s mandate and, in particular, with the fiduciary duty. It can do this through in-time advice in connection with particular initiatives and ideas. It could also contribute to the overall change agenda by providing its views on the broad parameters of the fiduciary duty, on the one hand, and by articulating an analytical framework for its fiduciary activities within those parameters, on the other.


The Bank has guidance on the exercise of these remedies, which in the case of suspension for non-payment are quite specific and prescriptive. Outside non-payment, however, the guidance is quite limited. And while this has provided task teams with considerable leeway in decision-making, it has also tended to create difficulties, especially in the area of fraud and corruption, where the Bank’s exercise of remedies has sometimes been subject to criticism for lack of an overall guiding approach. This lack of guidance, coupled with a lack of clear roles and responsibilities, have led to considerable churning in decision-making when faced with hard choices.

The exercise of remedies raises a number of difficult and complex issues relating to general principles of law such as proportionality, the requirements of good faith dealings and the right to cure, as well as—particularly in the area of fraud and corruption, where the event of default is normally a hidden phenomenon—issues of evidence and information sharing. These issues lend themselves well to the new paradigm. There are clearly some overall parameters that can usefully be set for the exercise of remedies, defined in the first instance by clarifying the principles in the first instance and in helping advise on their application to specific cases on an ongoing basis. The ADM Framework will be crucial in defining the roles and responsibilities in decision-making, which currently creates significant churning.

C. The Continuing Role of Rules

In looking at these potential new areas for more principles-based norms, it is important also to remember that this new paradigm may not work well in all scenarios and for all areas of the Bank’s work.

The great advantage of the principles-based approach is that it allows the Bank to tailor its decision-makings, on a case-by-case basis, to the actual circumstances presented by a particular situation, rather than to rely on (more or less effective) bright lines that, while easy to apply, do not always make sense, as shown by the Bank’s traditional thinking on engagement in the criminal justice sector. But herein lies the greatest disadvantage as well: without appropriate guidance and processes, any case-by-case approach can fall prey to inconsistencies in outcomes, whether apparent or real, in the application to particular cases, which over time may undermine its perceived legitimacy.

The principles-based approach also lacks the biggest advantage to the rules-based approach—ex ante clarity that should result in low transactional costs. A risk management analysis, while appropriate for cutting edge activities like support for criminal justice, may not be the most appropriate choice for “bread-and-butter” operations, where speed and efficiency considerations are often paramount.

Risk management does not mean ignoring risks. It means finding out what the risks are, mitigating those risks to the extent practicable, and carefully weighing the residual risks against anticipated benefits. In short, meaningful risk management takes time and thought. It does not mean less work; indeed, it often means more work than relying on hard-and-fast rules. The experience with the first cohort of PforR programs is a good case in point; Bank staff report that preparation takes as long if not longer than for traditional IL. There are ways to mitigate this downside of the new approach, which is why good-quality guidance (like the 2012 Guidance Note) and appropriate decision-making processes under ADM principles will be crucial in making the paradigm work.


46 Id., IBRD Section 7.03(c); IDA Section 6.03(c).

47 Id., IBRD Section 7.06; IDA Section 6.06.

48 Development Committee Communiqué, April 23, 2006. It was this critique that ultimately led to the Bank’s adoption of its 2007 Governance and Anti-Corruption Strategy, which ironically did not address the question of contractual remedies.

49 Some of this work has already been done, in the 2006 Commentaries to the General Conditions. Unfortunately, the usefulness of those Commentaries has been limited by a lack of dissemination to Bank staff—even LEG staff.
It may also be that the Bank finds that there are still areas where the traditional rules-based approach works better. That will certainly continue to be the case in areas that are inherently rules-based such as staff appeals and sanctions. Essentially, areas where consistency, ease of processing and time-sensitivity are key considerations are areas where rules may well continue to play a useful role.

VI. Conclusion

Lawyers are sometimes labeled, fairly or unfairly, as suffering from excessive risk aversion. That may be true in some cases, and risk identification is an important part of a lawyer’s value added, but risk aversion is not an inherent part of a lawyer’s mindset. The Legal VPU’s leadership role in enabling and facilitating the Bank’s work in the criminal justice sector work gives lie to that perception. Best-practice lawyering does not just mean identifying issues and risks, it means finding solutions as well.

It is our strong conviction that the Legal VPU will play a continuing and crucial role in the “Solutions Bank”, but one that will be, in many ways and in many areas, fundamentally different from the one it has traditionally played. I firmly believe that, building on our past accomplishments and our continuing contribution in areas like the ADM Framework and the PPF, we will be ready for the challenge.
Staff List

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Okeke, Edward Chukwuemeke Senior Counsel
Ramakrishnan, Ranjini Counsel
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Baza Nunez, Escarleta Associate Counsel
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D’Amelj, Antonio Cristian Counsel
<table>
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**Operations Policy (LEGOP)**

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<tr>
<td>Talero, Blanca Ximena</td>
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**Private Sector Development, Finance and Infrastructure (LEGPS)**

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<tr>
<td>Tata, Vijay Srinivas</td>
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<tr>
<td>Alvarez, Eugenia M.</td>
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<tr>
<td>Annamalai, Nagavallia</td>
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<td>Delmon, Victoria Hilda Rigby</td>
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<td>Keane, Mary J.</td>
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**Resources and Administration (LEGRA)**

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<tr>
<td>Balderrama Rojas, Jhonny F.</td>
<td>Senior Resource Management Officer</td>
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<td>Chavez, Zenaida L.</td>
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<td>Farrales, M. Victoria</td>
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<td>Gutenberg, Laurel Wood</td>
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<td>Hakobyan, Diana</td>
<td>Records/Archives Associate</td>
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<td>Lai, Judy Ka-Yuk</td>
<td>Resource Management Analyst</td>
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<td>Lalime-Mowry, Laura J.</td>
<td>Information Officer, Library</td>
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<td>Paulraj, Mariadoss</td>
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<td>Rhodes, Kimberly Erin</td>
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<td>Wiese, Georgina</td>
<td>Senior Knowledge Management</td>
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<td>Zaun, Tamika Emilia</td>
<td>Program Assistant</td>
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**Special Operations (LEGSO)**

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<td>Restrepo, Monica Teresa</td>
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### Abbreviations and Acronyms

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<td>ACG</td>
<td>Anti-Corruption Guidelines</td>
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<td>ADJD</td>
<td>Abu Dhabi Justice Department</td>
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<td>ADM</td>
<td>Accountability and Decision Making</td>
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<td>AfDB</td>
<td>African Development Bank</td>
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<td>AFR</td>
<td>Africa Vice Presidency</td>
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<td>AI</td>
<td>Access to Information</td>
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<td>BETF</td>
<td>Bank-Executed Trust Fund</td>
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<td>CAF</td>
<td>Andean Development Cooperation</td>
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<td>Certified Emission Reduction</td>
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<td>CFP</td>
<td>Concessional Finance and Global Partnerships Vice Presidency</td>
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<td>CFPTO</td>
<td>Global Partnership and Trust Funds Operations</td>
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<td>CGIAR</td>
<td>Consultative Group on International Agricultural Research</td>
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<td>Carbon Initiative for Development</td>
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<td>Case Management System</td>
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<td>Country Management Unit</td>
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<td>CODE</td>
<td>Committee on Development Effectiveness</td>
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<td>Conflict of Interest Office</td>
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<td>Consumer Protection and Financial Literacy Assessment</td>
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<td>Development Impact Evaluation Initiative</td>
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<td>FinSAC</td>
<td>Vienna Financial Sector Advisory Center</td>
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<td>Fund for the development of the Countries of the Rio del Plata Basin</td>
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