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LEGAL VICE PRESIDENCY
Annual Report FY 2012

*The Framework for Accountability
within the World Bank*



THE WORLD BANK

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THE WORLD BANK

Cover: Guatemala Education Quality and Secondary Education Project. Promoting access to secondary school among low income and indigenous students.
Credit: Alejandro Alcalá Gerez

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The annual report was developed under the guidance of Hassane Cisse, Deputy General Counsel, Knowledge and Research, who provided general strategic guidance, substantive input and support to the Annual Report Subcommittee.

This report covers fiscal year 2012.

From the Senior Vice President and World Bank Group General Counsel

Whilst nimbleness, innovation and simplification of processes are all welcome, the Bank has a fiduciary obligation to ensure that its funds are used for the correct purposes and the Legal VPU has played a key role in ensuring these reforms comply with the Bank's Articles of Agreement.

Welcome to the second annual report of the Legal Vice Presidency (Legal VPU) which covers fiscal year 2012, a period of significant political change and transition for a number of our members in the Middle East region following the Arab Spring, continuing impact of the global financial crisis, food crises, and natural disasters. The Bank has had to be more agile and flexible to respond quickly to these challenges, and the Legal VPU has played a significant role in providing timely advice to the complex legal issues arising from these challenges.

The Bank has been continuing its comprehensive internal reform program to strengthen accountability and to improve efficiency and effectiveness of its operations. The Bank introduced its first completely new lending instrument in 30 years, the Program-for-Results (PforR) financing instrument, moving towards program and results based lending, which required significant input from the Legal VPU. The Legal VPU led a review of



Photo: Franciscus Prahastanto/World Bank

World Bank Group General Counsel Anne-Marie Leroy visits the National Program for Community Empowerment Project, Indonesia.

methods of assigning authority and responsibility within management in the Bank and developed a new framework to strengthen accountability “the Accountability and Decision-Making Policy” which was approved by the President in May 2012 (described in Part II of this Report). Whilst nimbleness, innovation and simplification of processes are all welcome, the Bank has a fiduciary obligation to ensure that its funds are used for the correct purposes and the Legal VPU has played a key role in ensuring these reforms comply with the Bank’s Articles of Agreement. This report highlights a number of other significant reforms.

Support for Bank financing operations accounts for approximately 64 percent of the work of the Legal VPU. Legal VPU staff have worked to enable the Bank to respond to crises faced by member countries in a timely and efficient manner, often providing advice out of hours, to ensure that Bank operations are consistent with the Bank’s policies. This annual report will highlight some of the projects our staff worked on during the past year.

The Legal VPU also provides support and advice to clients and Bank teams on legal issues arising in relation to the environment and social safeguards, infrastructure and information technology projects public private partnerships, and banking, finance and insolvency. These teams are also involved in extensive knowledge development and dissemination activities. The annual report will highlight some of these initiatives from fiscal year 2012.

This year the Legal VPU, in collaboration with the Poverty Reduction and Economic Management Vice Presidency (PREM), oversaw the development of *The World Bank: New Directions for Justice Reform*, the first World Bank-wide approach to justice reform. It also prepared and issued a *Legal Note on Bank Involvement in the Criminal Justice Sector* which clarifies the Bank’s mandate in responding to the increasing requests from members for Bank support in reforming their criminal justice systems. The Legal VPU also developed a *Staff Guidance Note* which provides guidance to Bank staff on applying the *Legal Note* to operations.

The Legal Vice Presidency raised the profile of our knowledge and learning agenda this year through a number of new initiatives. In November 2011, the Legal VPU launched its first Annual Report, it brought together the legal departments of the World Bank, IFC, MIGA and ICSID, for the first joint Law, Justice and Development Week and it initiated the launch of the Global Forum on Law, Justice and Development, a forum that seeks to generate and share knowledge about innovative legal solutions to development challenges. The Global Forum is already supported by an impressive and expanding base of partners. Other notable initiatives included the reinstatement of our key annual flagship publication, the World Bank Legal Review, the formal publication of our sector work as World Bank Studies, the continued production of a compendium of legal publications and reports of the World Bank Group on a CD-ROM as part of our ongoing efforts to increase the accessibility of our knowledge and resources, and the development of training components and legal databases. These are also 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 tireless efforts have helped the Bank to continue to move its agenda 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 2012

The World Bank's Legal Team: Striving for Excellence

The Legal VPU is a frontline actor in the Bank's development agenda and serves as the Bank's corporate counsel, focusing on the many legal challenges associated with the governance and reform of a complex institution, and as a knowledge center, leveraging partnerships inside and outside the Bank to promote cross learning among practitioners to respond to client needs.

What We Do

In fiscal year 2012, 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:

- The Legal VPU is an *operational unit*, a frontline actor in the Bank's development agenda.
- the Legal VPU serves as the Bank's *corporate counsel*, focusing on the many legal challenges associated with the governance and reform of a complex institution.
- Legal VPU serves as a *knowledge center*, leveraging partnerships inside and outside the Bank to promote cross learning among practitioners to respond to client needs.



Photo courtesy of Jonathan Pavluk

Meeting of women in the village of Dodote, Oromia, Ethiopia.

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. They come from all over the world—with roughly 28% from Europe and Central Asia, 28% from North America, 18% from Asia, 14% from Latin America and the Caribbean, 10% from Africa, and 2% from Middle East and North Africa. Within the corridors of the Legal VPU, a myriad of languages are spoken including Albanian, Arabic, Bulgarian, Cantonese, Dutch, English, French, Greek, German, Hindi, Igbo, Italian, Japanese, Kazakh, Kiswahili, Kyrgyz, Malay, Mandarin, Marathi, Nepali, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, Tagalog, Tamil, Thai, Urdu and Vietnamese.

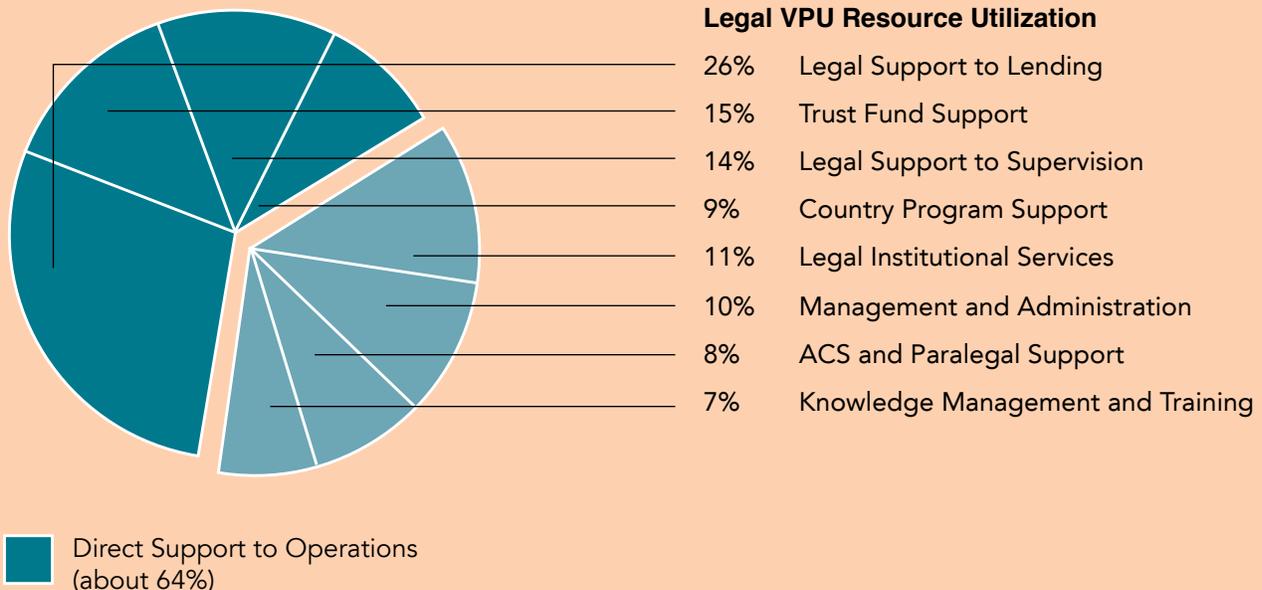
The Legal VPU is committed to training and cultivating new talent that will be able to better serve our client needs. With that in mind, the Legal Associates Program was launched in 2004 and is designed to introduce talented young legal professionals from all over the world to the Bank and to the Legal VPU.

Legal Associates who are invited to participate in the program will initially be with the Legal VPU for a one-year term, with the possibility of extending their stay for a second year, based on their individual performance and the business needs of the Legal VPU. Those who perform exceptionally well and successfully compete in the normal selection procedures may have the opportunity to remain as staff on a long-term basis. Accordingly, the program hopes to contribute to the gradual renewal of the legal talent of the vice presidency.

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.



Legal Associates rotate through the various practice groups within the Legal VPU in order to gain exposure to the different areas of the Bank's legal practice and to develop country expertise and Bank-specific legal skills.

Community Service

In an effort towards team building among colleagues in the Legal VPU, at the same time giving back to the community, our staff organized a successful LEG Community Service Day on June 8, 2012. The legal VPU spent a fruitful and enjoyable day doing a host of activities ranging from wetlands planting to preparing and serving food at selected venues, including Anacostia Watershed Society, DC Central Kitchen, Martha's Table and Habitat for Humanity.

A New Look

As part of its commitment to the roles of the Legal VPU within the Bank as well as to our mission, management reviewed the existing organizational structure of the Legal VPU to understand how we could better serve the clients we support. As a result, while the core functions of the Legal VPU will remain the same, certain units were reconfigured with the objectives of (a) creating better opportunities for staff to work in more than one region, (b) creating dedicated capacity to enable the Legal VPU to engage in projects across all regions which are complex, and (c) combining the work related to concessional donor relationships, including with respect to trust funds and global partnerships, with work related to IDA resource mobilization to enable the Legal VPU to serve the Concessional Finance and Global Partnerships Vice Presidency (CFP), in an integrated manner.

The chart on the facing page shows the new organizational structure of the Legal VPU as a result of the steps taken to implement this reconfiguration at the end of fiscal year 2012.



Food and Friends



Anacostia Watershed



Habitat for Humanity



DC Central Kitchen



Martha's Table



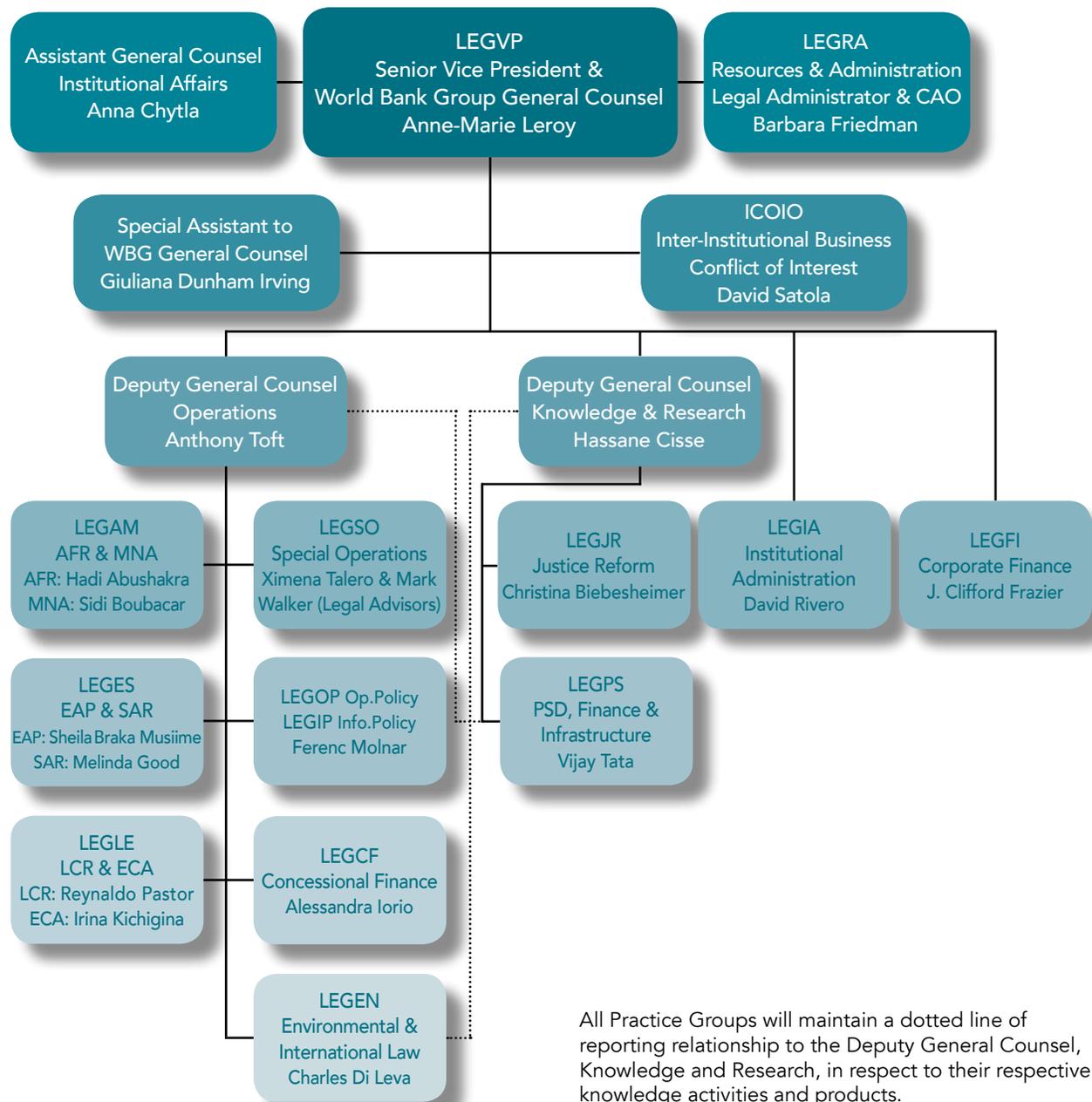
Ronald McDonald House



Iona Services

Organizational Chart of the Legal VPU

OCTOBER 1, 2012



All Practice Groups will maintain a dotted line of reporting relationship to the Deputy General Counsel, Knowledge and Research, in respect to their respective knowledge activities and products.



The Legal VPU and Bank Operations



Photo: Juan Carlos Alvarez

Karnataka Community Based Tank Management Project, India. Project beneficiaries came to greet Anne-Marie Leroy during a presentation of the project's positive impact on the community's livelihood.

Crafting Innovative Solutions for the Bank's Lending Portfolio

The Legal VPU has continued to provide critical support to the Bank's country operations as well as in regional and global initiatives. Several integral innovations and improvements have facilitated our lawyers' contribution in fiscal year 2012, including the introduction of a new lending instrument called Program-for-Results (PforR) Financing.

As a result, the Bank continues to respond to the reverberations from the global financial crisis and to the continued demand for development assistance around the world. IBRD commitments in fiscal year 2012 totaled US\$20.6 billion, down from US\$26.7 billion in fiscal year 2011. Commitments remain significantly higher than the historical average of US\$13.5 billion in fiscal

The Bank continues to respond to the reverberations from the global financial crisis and to the continued demand for development assistance around the world.

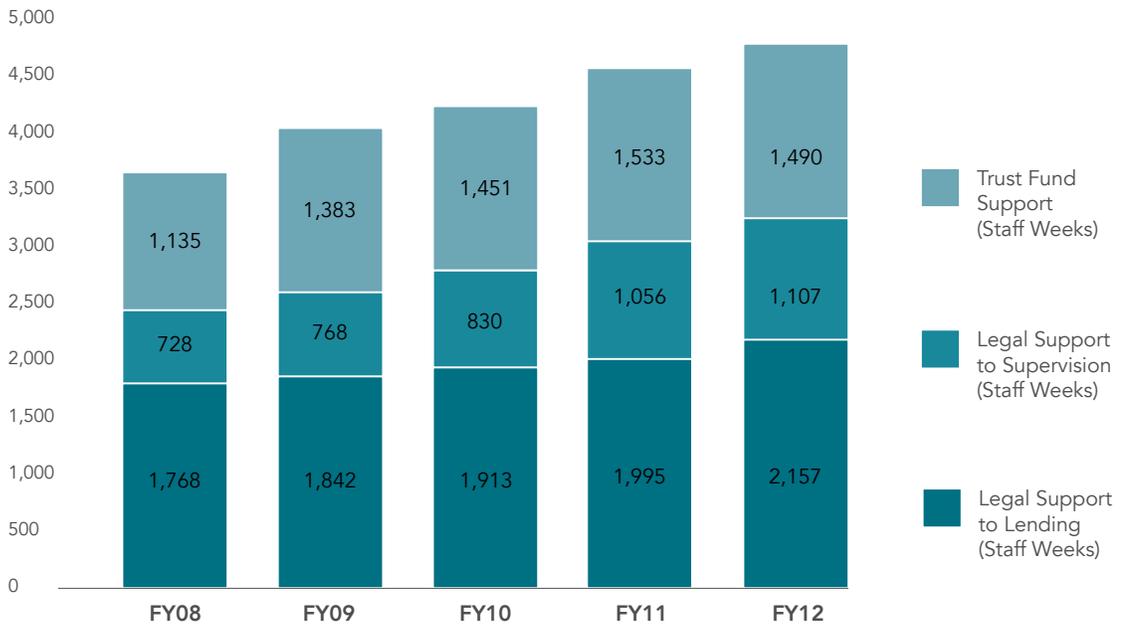
year 2005-08, but less than the record US\$44.2 billion in fiscal year 2010 when the crisis peaked. IDA commitments reached US\$14.7 billion, a 9.8 percent decrease from the fiscal year 2011 figure of US\$16.3 billion.



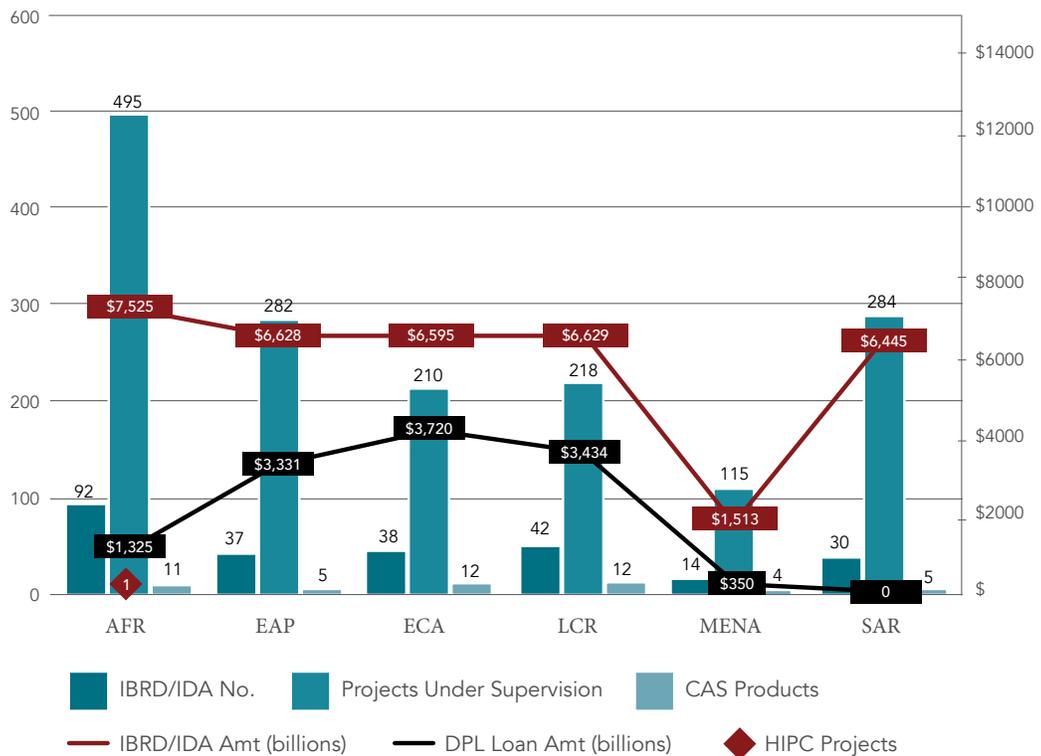
Photo: Dana Smillie

Vocational education and training center. National Initiative for Human Development Support Project (INDH).

Incremental Legal Support to Operations



Regional Deliverables (Fiscal Year 2012)



HIGHLIGHTS

Program-for-Results: Legal and Policy Support for a New Lending Instrument

On January 24, 2012, the Bank's Board of Executive Directors approved a new lending instrument called Program-for-Results (PforR) Financing. PforR is the first truly 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 nongovernmental programs, new or ongoing, and national, subnational, sectoral, subsectoral, or multisectoral in scope. Under PforR, there is a direct link between the disbursement of Bank funds and the delivery of defined, verifiable and critical results. PforR relies on the Bank's 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 key distinguishing feature of PforR.

The preparation of PforR involved a number of interesting legal and policy issues that often challenged traditional ways of doing business at the Bank. It called for creative approaches and legal solutions, which is never an easy task, but especially so in a complex institution such as the Bank, with its many constituencies and diverse clients and beneficiaries. Of course, PforR had to meet the requirements of the Bank's Articles of Agreement and the other key operational policies approved by the Bank's Board of Executive Directors and Senior Management, including those dealing with procurement, financial management, governance, social and environmental protection as well as technical soundness. Additionally, the rules framework for PforR needed to describe what can be financed by the new instrument, exclusions of certain activities, rights and responsibilities of the Bank and PforR borrowers, as well as the applicability of the Bank's legal remedies and anticorruption, sanctions and debarment requirements.



Photo: World Bank

Anthony Toft, Deputy General Counsel, Operations (first left). Myanmar National Community Driven Development Project.

It was also agreed by the Bank's Board of Executive Directors and Senior Management that unlike the Bank's other main project lending instrument (referred to as Investment Lending or IL), which relies on a relatively complex set of detailed policies and procedures, PforR would be regulated by a broadly formulated set of policies and operational requirements. These requirements are expressed through a dedicated single, concise, clear and user-friendly statement of operational policies and procedures. In Bank nomenclature, these are referred to as Operational Policies (OPs) and Bank Procedures (BPs). These mandatory statements are supported by, but are also clearly delineated from, nonbinding advisory guidance notes. Articulating rules that are clear, precise and yet sufficiently flexible required a deep understanding of the Bank's legal and institutional mandate, due consideration of the roles and responsibilities of the Board of Executive Directors, management and staff, oversight entities, and the Bank's clients and beneficiaries, recognition of the new instrument's developmental objectives, and, in practical terms, close daily cooperation between lawyers and operation clients.

Going forward, the OP and BP related to PforR are expected to be a model for the next generation of Bank's policies and procedures. In addition to providing key inputs to the formulation of the PforR OP and BP, the Legal VPU drafted PforR Anticorruption Guidelines that were approved by the Board.

PforR in Action

NEPAL

The Nepal Bridges Improvement and Maintenance Program is one of the first two PforR operations to be financed by the Bank. An IDA Credit of SDR 38.70 million (US\$60.00 million equivalent) was approved to finance the program in Nepal. The objective of the program is to provide safe, reliable and cost effective bridges in Nepal's Strategic Roads Network. The Bank-supported program is a part of the Nepal Department of Road's overall road and bridge infrastructure program as set forth in Nepal's Bridge Policy and Strategy. It consists of the activities related to the bridges: planning, technical design and quality control of bridge construction and maintenance; major and minor maintenance of existing bridges; construction of new bridges; and related capacity building and operating support activities, including, monitoring and evaluation, collection of bridge condition data, auditing, verification of Disbursement Linked Results, and training.

During the preparation of the program, Legal VPU lawyers worked with the team in Nepal to formulate specific terms of the Environmental Action Plan as well as the Disbursement Linked Indicators/Results in such a way that the actions and results are precise, actionable and measurable. Lawyers from different sections of the Legal VPU worked together to finalize the Financing Agreement, including providing advice on the application of the PforR OP and BP, the application of the Anticorruption Guidelines and advice on the Environment and Social System Assessment.



Photo: World Bank

Signing Ceremony of the Nepal Bridges Improvement and Maintenance Program, at the Ministry of Finance, Nepal.

Our lawyers' significant contributions at different stages of this program in Nepal made the delivery of the first PforR operation in the Bank possible.

MOROCCO

Morocco National Initiative for Human Development (INDH) 2 Program is one of first two PforR operations to be financed by the Bank. An IBRD Loan of 227 million Euros (300 million US Dollars equivalent) was approved for financing the Program in Morocco. The objective of the Program is to improve access to and/or use of enhanced participatory local governance mechanisms, basic infrastructure, social services and economic opportunities in the Program Area. The Program Area covers the territory of Morocco, with the exception of the disputed territories (Western Sahara).

The Loan for INDH 2 will support the second phase of the Morocco's National Initiative for Human Development program which was launched in 2005. In 2006, the Board approved a EUR 78,900,000 loan (National Initiative for Human Development Support Project: Loan No. 7415-MOR) for the Kingdom of Morocco to assist the Borrower in implementing the first phase of its National Initiative for Human Development (2005-2010). This first operation was a Specific Investment Loan (SIL) through a Sector Wide Approach (SWAp) under which the Bank financed almost 10 percent of all expenditures and released annual tranches based on the satisfaction of disbursement conditions and indicators.

The first phase of the National Initiative for Human Development was launched with the objectives of combating social and economic exclusion and improving the living conditions of poor and vulnerable groups through enhanced economic opportunities, better access to basic services, and improved governance. The National Initiative for Human Development is based on local participatory governance and community-driven development (CDD) principles, and incorporates core values of inclusiveness, accountability and transparency. The first phase of its National Initiative for Human Development delivered important results on gender and youth, both by providing opportunities for voice and participation in decision-making as well as opening opportunities for economic and social inclusion.

The King of Morocco launched the second phase of the National Initiative for Human Development on June 4,

2011, expanding the target population and geographic scope, and increasing resource allocation. The new Government of Morocco, established in January 2012, also retained the second phase of the National Initiative for Human Development as a priority. Targeted results aimed for improved supply and access to basic services, infrastructure, and economic opportunity for poor and vulnerable groups; and strengthened local participatory governance.

The second phase of the National Initiative for Human Development includes the following subprograms to be implemented for the period 2011-2015: (a) a rural subprogram to alleviate poverty in rural areas; (b) an urban subprogram to alleviate social exclusion in urban areas; (c) a cross-cutting subprogram; (d) a vulnerability subprogram; and (e) a territorial upgrading subprogram.

The new Loan will be used to help finance activities (mainly projects to improve living conditions of the population, carried out by public entities, local governments or nongovernmental organizations) under subprograms (a), (b) and (c) in the Program Area from January 1, 2012 to December 31, 2015. Such activities will essentially replicate those under the 2006 National Initiative for Human Development Support Project.

During the preparation of the Program, Legal VPU lawyers worked with the team in Morocco in particular to formulate the Disbursement Linked Indicators/Results in such a way that the actions and results are precise, actionable and measurable, including the disbursement arrangements. Lawyers from different sections of the

Legal VPU worked together to finalize the Loan Agreement, including providing advice on the application of PforR OP and BP, the application of the Anticorruption Guidelines and advice on the Environment and Social System Assessment.

Our lawyers' significant contributions at different stages of this Program in Morocco made the delivery of this PforR operation in the Bank possible.

The Legal VPU Supports the Process for a New Country to Become a Member of Four World Bank Group Affiliates

SOUTH SUDAN

South Sudan, an independent state since July 9, 2011, became a member of four World Bank Group affiliates on April 18, 2012. The Legal VPU tapped the skills, experience and expertise of its staff—drawn from various practice areas including finance, trust funds, environment, operations, administrative affairs and the Africa region—to help the Bank respond to the new nation's needs. South Sudan needed access to resources for financing development activities including ensuring continuation of Bank support notwithstanding its changed status and the availability of additional resources in the transitional period and this new country needed to acquire membership in the World Bank Group affiliates.

From the Bank's perspective, the legal consequence of South Sudan's independence was the shift of its status from a "territory of a member" (Sudan) to a "nonmember sovereign state". Since the Bank's Articles of Agreement require that resources and facilities be exclusively

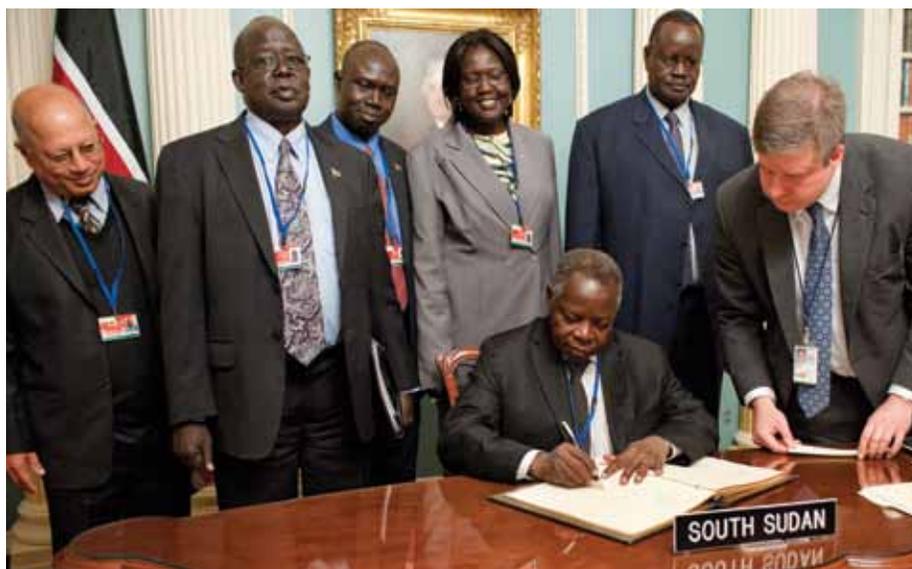


Photo: Deborah W. Campos

South Sudan Becomes
World Bank's Newest Member.

used for the benefit of their respective member countries, how could IDA continue to work in South Sudan prior to its membership to the Bank? In anticipation of the change of legal status of South Sudan, and with advice from the Legal VPU, the Bank's Senior Management requested the Bank's Board of Executive Directors to determine that the use of IBRD/ IDA resources and facilities in South Sudan would in fact benefit IBRD/ IDA members. The Bank's Board of Executive Directors made this determination at their meeting on June 14, 2011, a month before South Sudan became independent and on this basis Bank support to South Sudan could continue seamlessly when South Sudan became independent.

The Legal VPU also contributed to the eventual decision by the Bank's Board of Governors to utilize a portion of IBRD surplus in an amount of US\$75 million to South Sudan during the transitional period between South Sudan's independence and its anticipated membership with World Bank Group affiliates. The Legal VPU helped design and structure a unique trust fund for this purpose. Since then, three operations proposed to be funded under this trust fund have been prepared, appraised, negotiated and approved in fiscal year 2012.

As a new state, South Sudan had to apply for membership with World Bank Group affiliates in order to be eligible for additional financing options. Following a year of preparatory work supported by the Legal VPU, South Sudan fulfilled the membership requirements for four World Bank Group affiliates. On April 18, 2012, the Minister of Finance and Economic Planning of South Sudan signed the founding documents of the World Bank Group affiliates and deposited the requisite instruments of ratification making South Sudan the 188th shareholder and member of the Bank.

In discharging its advisory role, the Legal VPU leveraged the knowledge and judgment of a number of lawyers across different practice areas of the Legal VPU. Among other legal issues addressed were how to structure the arrangement to utilize IBRD resources to fund activities in a nonmember state, state succession and state creation under international law, privileges and immunities of international organizations, interpretation of the Articles of international organizations and commencement of membership to World Bank Group affiliates. The handling of the transition of South Sudan demonstrates that the Legal VPU is able to respond efficiently and effectively to increasingly complex operations and ensuring consistent and coherent legal support is made available to Legal VPU clients in a timely and integrated manner.



Photo: Deborah W. Campos

Anna Chytla, Assistant General Counsel
and Evarist Baimu, Senior Counsel, World Bank.

Meeting the legal and policy challenges of the Arab Spring

The Legal VPU worked closely throughout fiscal year 2012 with the Middle East and North Africa (MENA) Region to meet the legal and policy challenges of the "Arab Spring". Though these developments were largely unanticipated, the Legal VPU responded rapidly to advise the Region in an ever-evolving political, economic and constitutional environment.

In early January, the Legal VPU supported the delivery of a US\$500 million Governance and Opportunity Development Policy Loan in **Tunisia**, to assist the interim government to implement a program of measures for good governance during Tunisia's transition and in consolidating social and economic change. Consistent with popular demand in the region for increased economic opportunity, this was followed by a US\$34 million loan to improve access to finance for micro, small and medium enterprises in Tunisia.

In late January, grievances over the lack of economic opportunities and political inclusion in **Egypt** led to large-scale public demonstrations, civil violence and the overthrow of the Mubarak government. Management, with the support of the Legal VPU, undertook an assessment of existing and new operations in Egypt in the context of the Bank's policy on "Dealings with De Facto Governments" (OP/BP 7.30). The Legal VPU continues to provide close support to the MENA Region throughout Egypt's sustained transition to elected government. This includes the delivery of three loans, totaling US\$640 million, for the development of critical water and energy infrastructure and a rapid response project for access to basic infrastructure services for the poor and a short-term job creation for unemployed, unskilled and semiskilled workers. The Legal VPU also provided advice to the MENA Region on an Interim Strategy Note to guide Bank operations in Egypt during its transition period.

In July 2011, in response to widespread and sustained violence in **Yemen** and the existence of an extraordinary situation preventing the implementation and supervision of Bank operations, all disbursements for IDA credits and grants and for grants administered under Bank trust funds were suspended. The Legal VPU worked closely with colleagues in the MENA Region to ensure proper fiduciary management of the portfolio throughout the period of suspension, and provided advice to country teams and the Bank's Senior Management on donor issues, as well as reengagement with the transitional government following the lifting of the suspension of disbursement in January 2012.

In **Libya**, the Bank's Senior Management, in consultation with the Legal VPU, initiated a watching brief approach under the Bank's policy on "Development Cooperation and Conflict", OP/BP 2.30. The watching brief approach, launched jointly with the UN under the United Nations World Bank-Partnership Framework for Crisis and Post-Crisis Situations, initiated the preparation of a socioeconomic assessment in order to develop a better understanding of the context, dynamics, needs and institutions in Libya. With the overthrow of the Gaddafi government in August 2011, and the assumption of executive and legislative authority by the Libyan Transitional National Council, the Legal VPU also assisted the MENA Region to undertake an assessment of the Bank's engagement with Libya under OP/BP 7.30 (Dealings with De Facto Governments). Though the Bank did not have a lending portfolio in Libya at the outbreak of hostilities (the portfolio consisted principally of reimbursable technical assistance), the assessment provided the



Photo: Danielle Malek

Yemeni children, Sana'a.

MENA Region with a valuable mechanism for evaluating the Bank's future engagement in Libya.

In addition, the Legal VPU played an important role in structuring, drafting and negotiating legal documentation regarding the Micro, Small and Medium Enterprise Facility for the MENA Region (MSME Facility) under the Arab World Initiative which includes a comprehensive package of assistance including a horizontal and vertical Adaptable Program Loan (APL) program for IBRD loans, a technical assistance package, a plan to explore partnership arrangements and a proposed facility to be set up by the International Finance Corporation (IFC) which could be used by countries as a guarantee vehicle under the APL loans referred to above. The Legal VPU assisted the region in setting up the facility, and specifically in handling all legal aspects of the first two APL IBRD loans (to Tunisia funding credit lines, and to Morocco consisting of backing partial credit guarantees issued by a national guarantee institution), the regional multidonor trust fund with IFC for technical assistance, and general advice regarding the proposed IFC Facility.

Legal Solutions for Developing Renewable Energy in Africa

OUARZAZATE I CONCENTRATED SOLAR POWER PLANT PROJECT, MOROCCO

This innovative project supports the first phase in the development of a 500 MW solar power plant in the Kingdom of Morocco, and will represent the largest Concentrated Solar Power (CSP) plant in the world. The Ouarzazate project responds to the government's "Morocco Solar Plan" (MSP) calling for the development of 2000 MW by 2020. In addition to furthering the country's low-carbon growth strategy, the MSP is intended to help address Morocco's growing need for electricity at a time of increasing public awareness of the anthropogenic impact on the climate system from fossil-based generation, and to stimulate investment and economic development at a critical time for the entire region's political landscape. Phase I of Ouarzazate is the first step in what is expected to be a transformational project for Morocco and all of North Africa. The project is expected to support development of an export market into Europe to meet the region's climate change targets, and, at the same time, diversify and increase generation resources for domestic supply in Morocco. For these reasons, the Bank pledged its support for this first phase of the project, as part of a consortium of other bilateral and multilateral funding institutions.

Ouarzazate will be developed in phases by the Moroccan Agency for Solar Energy (MASEN), the State-owned entity created by the government for the specific purpose of implementing the MSP. The project will be implemented as a public-private partnership (PPP) with private sponsors selected through international competitive bidding in accordance with the Bank's Procurement Guidelines. This implementation structure envisages also the creation of a special purpose company by the selected private sponsors to finance, construct, insure, own, and operate the plant to be constructed under Phase I. MASEN and the special purpose company will then enter into a power purchase agreement. The project has a number of novel features: (a) it is supported by both the International Bank For Reconstruction and Development (IBRD) and the Clean Technology Fund (CTF) loans; (b) the IBRD loan provides a gap fill mechanism similar to a "feed-in tariff fund" (to help pay the incremental costs of renewable energies which could be replicated in Morocco, and elsewhere in the world); and (c) the Bank's financial support is one of the elements of a larger PPP transaction, where the Bank plays an important role of lender and technical advisor, and coordinates the efforts of many external partners.

A number of teams from the Legal VPU worked closely with the project team on the extensive documentation surrounding the PPP transaction, and provided innovative legal input not only on the Bank-financed part of the project, but also for the overall PPP transaction, including the structure of the future special purpose company and the contractual framework between suppliers, contractors, and government agencies. Crafting the Bank's legal agreements also presented a challenge since many risks could not be ascertained in advance (i.e., before completion of the PPP bidding process), so conditionality embedded in the Bank's agreements refers to future actions and agreements which are anticipated under the transaction. The project is considered the most valuable contribution to Morocco's lending program recently.

LOM PANGAR HYDROPOWER PROJECT, CAMEROON

In March 2012, the Bank's Board of Executive Directors approved an International Development Association (IDA) credit to the Republic of Cameroon for the Lom Pangar Hydropower Project. At its core, the project supports the construction of a regulating dam (designed to facilitate future hydroelectric development on the Sanaga River), along with a 30 Megawatt hydroelectric power plant and a 105 km transmission line connecting the plant to Cameroon's Eastern Grid, plus associated environmental and social measures. Once completed, the project is expected to increase hydropower generation capacity, reduce seasonal variability of water flow, and increase access to electricity in the country. This project also leverages IDA resources through cofinancing provided by a number of other multilateral and bilateral organizations.



Photo: Dana Smillie

Solar Power Plant, Morocco.

The project was presented as a high risk, high return investment. The “high risk” nature stems from risks at country, sector, and implementation levels. Accordingly, the legal issues were many, and the input required from the Legal VPU was significant.

Our lawyers were instrumental in advising on a variety of complex matters, including on:

- environmental and social safeguards in terms of reviewing safeguard documentation and generally assisting with the overall project design in an effort to best mitigate safeguard risks;
- adequacy of the enabling environment by conducting due diligence on the legal and regulatory framework of Cameroon’s energy sector and advising on the risks and mitigation measures through innovative provisions in the legal agreements, namely in light of the country’s adoption of a new electricity law in the months preceding Board approval; and
- cofinancing arrangements given the multiple donors (and their respective policies and procedures) involved by providing guidance on how to reconcile the Bank’s policies and procedures with such other policies and procedures.

Addressing Urban Challenges in Two Asian Megacities

JAKARTA URGENT FLOOD MITIGATION PROJECT (JAKARTA EMERGENCY DREDGING INITIATIVE - JEDI), INDONESIA, AND THE METRO MANILA WASTEWATER MANAGEMENT PROJECT (THE MANILA PROJECT), PHILIPPINES

Introduction: Jakarta and Manila are two Asian megacities, facing megachallenges to provide services for their populations. They each face problems related to inadequate sanitation and drainage, a high incidence of waterborne diseases, and serious environmental pollution. The high population density in each city exacerbates these problems. The Bank assisted the two cities to design projects to address two urban challenges related to water, flooding in the case of Jakarta, and treatment of wastewater in the case of Manila. Both projects involved relatively straightforward infrastructure investments, but the rapidly changing urban environments in which the projects were being implemented presented complex institutional, legal and safeguards issues, that were both challenges and opportunities for the projects.

Jakarta regularly floods during the rainy season, bringing transport and commerce to a halt, causing damage and economic losses, and increasing health risks for the large urban population. Forty percent of the city lies below sea level and land subsidence continues. The JEDI Project supports the dredging of selected key floodways, canals and retention basins identified as priority sections of the flood management system. The project also seeks to demonstrate sustainable institutional, social and environmental practices. Resolving the challenges



Farhana Asnap

Jakarta Emergency Dredging Initiative – JEDI

of flood mitigation in Jakarta is a complex undertaking, requiring resolution of difficult issues under the institutional responsibility of different and often disconnected stakeholders.

Metro Manila is located on the largest island of the Philippine archipelago and is in the hydraulic zone of three major water systems: the Laguna Lake, the Pasig River and the Manila Bay. Domestic wastewater is the primary source of pollution in the Manila Bay watershed. The city is flat, so that canals and water courses flow too slowly to carry solid waste away and what runoff that does occur is channeled into the Manila Bay, creating high levels of pollution that endanger fishing and recreation. In 2007, a group of concerned residents of the Metro Manila area brought a case to the Supreme Court against the government agencies charged with protecting and preserving Manila Bay. In a landmark decision that was sharply critical of the government agencies' inaction in the face of growing pollution¹, the Supreme Court ordered the concerned government agencies to clean up, rehabilitate and restore the water quality of the Manila Bay within a determined time frame. The Manila Project supports the efforts of the authorities to improve wastewater services by financing the construction of sewage treatment plants and associated wastewater conveyance systems.

In *the JEDI Project*, the Bank team, including lawyers from the operational and safeguards advisory units, devised control points throughout implementation and after completion, covering environment, resettlement, complaints handling and other issues. One issue involved the disposal of nonhazardous dredged material in a purpose-built confined disposal facility (CDF) in Jakarta Bay and the government's planned use of the CDF for reclamation after the project ends. Jakarta Bay is the site of numerous reclamation activities as Jakarta expands its habitable space. A reclamation company (majority government-owned) is building the CDF. The CDF is necessary for the project, but the Bank does not have a direct relationship with the CDF company. Despite the regulatory and contractual obligations of the company, there remained a risk that it could allow nonproject materials into the CDF, which could potentially include hazardous materials, or it could mismanage the reclamation, in both cases with adverse impacts long after the project has ended. The project technical design and covenants addressed postproject risks, including demar-

cating the end of active involvement with the CDF and providing future events warranties and liability limitation mechanisms. The Bank accepted the risks intrinsic to working in a complex urban environment. The government accepted the Bank's requests for undertakings beyond the project closing and beyond direct project parties.

In *the Manila Project*, the question of how to ensure that the borrower and the project implementing entities remained accountable for the effects of the project without taking responsibility for actions beyond their control was also considered. Extensive consultations among the Philippine counterparts, the project team, the regional safeguards units and lawyers from the operational and safeguards advisory units led to implementation and safeguards arrangements that struck this balance. For example, the objective of the project "to improve wastewater services in selected subcatchments of Metro Manila and surrounding area" was carefully crafted so as to ring-fence the project. A subcatchment was defined as the wastewater treatment plant (including sludge and treated wastewater transportation and disposal arrangements) pipelines for carrying treated wastewater financed by the Bank and sewerage lines that collect wastewater leading to the Bank financed wastewater treatment plant. In a subcatchment where there is Bank financing, all activities—Bank financed or non-Bank financed—necessary to achieve the stated development objective will follow the Bank's safeguards policies. In a subcatchment where there is no Bank financing—even if it is adjacent to a Bank financed subcatchment—the Bank's policies on safeguards will not apply.

Two cities, one conclusion: The intense discussion and collaboration required between government and Bank teams in Manila and Jakarta frame both an opportunity and a challenge for the Bank to think, going forward, about ways to address difficult institutional, legal and safeguards issues in complex urban projects with sophisticated middle-income borrowers.

¹ Metropolitan Manila Development Authority et al versus Concerned Residents of Manila Bay (General Record Nos. 171947-48)

Coordinated Legal Services to Support Forests and Climate Change Activities

Mexico requested support from the Bank to develop and implement a new package of services focused on forests and climate change. In response, a set of instruments was designed to support sustainable management, restoration, and expansion of Mexico's forests, while promoting local socio-economic development to strengthen local communities' resilience to climate change and spearheading the global effort on Reducing Emissions from Deforestation and Forest Degradation (REDD+). A list of financial instruments involved in this package is included in the table below.

The Global Environment Facility (GEF) grant was fairly complicated given the intricate legal structure that supports the activities of Mexico's National Commission for the Biodiversity (CONABIO). The activities of CONABIO are financed through a biodiversity trust fund (the Trust) but, in Mexico, trust funds do not have legal personality: they have a technical committee which makes decisions regarding the use of the funds of the trust, and a trustee, who executes the decisions made by the technical committee. As a result, the parties to the GEF grant agreement are IBRD (as trustee of the GEF), the trustee of the Trust (as recipient of funds), and the United Mexican States. The latter is involved because

Instrument	Description
Forests and Climate Change Forest Investment Program (FIP)	The FIP is a program of the Climate Investment Funds to support developing countries' efforts on REDD+ and promote sustainable forest management. Mexico is one of eight pilot countries worldwide. FIP resources included a US\$16.34 million Strategic Climate Fund (SCF) Forest Investment Program Loan, and a US\$25.66 million SCF FIP Grant.
Forests and Climate Change Sector Investment Loan (SIL)	The US\$350 million IBRD SIL will support Mexico in two main areas: (a) multiscale institutional strengthening; and (b) incentive programs to communities. The activities of the IBRD SIL are co financed by the SCF FIP Grant and the SCF FIP Loan described above.
Social Resilience and Climate Change Development Policy Loan (DPL)	Forestry is one of three pillars in the Social Resilience and Climate Change DPL (US\$300 million). The pillar supports three policy actions: (a) launching of a new collaboration among CONAFOR and the Ministries of Agriculture and Environment; (b) creation of one national and three state-level REDD+ civil society Consultative Groups; and (c) inclusion of REDD+ in the first inter-municipal initiative. These actions are also supported by the French Development Agency
Forest Carbon Partnership Facility (FCPF)	A US\$3.6 million grant from the FCPF for Readiness Preparation has been prepared to support activities that would culminate in a Readiness Package consisting of: (a) a national REDD+ strategy; (b) a national forest reference level; (c) a forest monitoring and verification system; and (d) a system for addressing environmental and social safeguards.
Program on Forests (PROFOR)	The Bank mobilized PROFOR grants to support CONAFOR in: (a) assessing Mexico's community forestry enterprises' competitiveness in local and global markets (US\$150,000); and (b) conducting a South-South collaboration on REDD+ and Payments for Environmental Services with Costa Rica and Ecuador (US\$150,000).
Global Environmental Facility (GEF)	The objective of the Sustainable Production Systems and Biodiversity project is to conserve and protect nationally and globally significant biodiversity in Mexico through improving sustainable management practices in the productive landscape in priority ecological corridors. This will be financed with a US\$11.688 million GEF grant negotiated this year.

two of the four members of the technical committee of the Trust are part of the Executive. It is the Secretary of the Mexican Secretariat of Environment who appoints the president of the technical committee, and the president has a tie-break vote. Therefore, the United Mexican States has the possibility to control the decisions of the technical committee. In order to ensure compliance with all the legal obligations of the GEF grant agreement (including fiduciary and safeguards obligations), the United Mexican States committed to use its voting rights in the technical committee of the Trust in such a manner as to comply with the provisions of the grant agreement.

Meeting the Legal and Policy Challenge in Regional Fibre Optic Cable Projects

CARIBBEAN REGIONAL COMMUNICATIONS
INFRASTRUCTURE PROGRAM

On May 22, 2012, the IDA Board of Executive Directors approved credits to three of the four countries, participating in the first phase of the Caribbean Regional Communications Infrastructure Program (CARCIP). Along with the credits, an IDA regional grant to the Caribbean Regional Communications Union (CTU) was also approved.

The first phase of CARCIP includes specific country projects for Grenada, Saint Lucia, Saint Vincent and the Grenadines and Dominican Republic. Although the proposed IBRD-financed project for the Dominican Republic will be presented to the Board at a later date, the Project is designed and was prepared as part of the first phase of the CARCIP along with the four IDA-financed projects.

CARCIP is designed as a horizontal regional APL to allow the flexibility for other countries in the Caribbean region to participate in subsequent phases of the Program. The participating Caribbean countries are developing a regional digital strategy to address key policy and regulatory bottlenecks, which constrain the use of information and communication technology (ICT) to stimulate growth. CARCIP is designed to support the implementation of the regional strategy and to provide opportunities to the region to bridge some of the gaps in regional and domestic broadband communication infrastructure, including a submarine cable infrastructure and landing stations, domestic backbone networks and cross-border links, and national and regional internet exchange points. The Program also aims at creating an enabling environment that leverages the regional and domestic infrastructure to foster employment and economic growth.



Photo: Jannina Flores Ramirez

Sulphur Springs (near Soufrière), Saint Lucia.

The objective of the Program is, therefore, focused on drawing country efforts at the regional level to increase access to regional broadband networks and advance the development of ICT-enabled services in the Caribbean region. In the design of components and activities, the Legal VPU provided the in-house expertise in ICT projects to focus specific components to include technical assistance for the design and implementation of the PPP arrangements and for strengthening and harmonizing the legal and regulatory framework for telecommunications. The Legal VPU was also at hand to advise on the environmental and social safeguard policy questions under the Program both at the regional and national levels in view of the two policies that are triggered as a result of the project (OP/BP 4.01 “Environmental Assessment”, and OP/BP 4.12 “Involuntary Resettlement”).

The CTU, a regional organization established in 1989 under the Agreement for the Establishment of the Caribbean Telecommunications Union with a mandate to facilitate the development of the Caribbean ICT sector, satisfied the eligibility criteria for regional organizations that receive grants under IDA 16. The criteria entails: (a) the recipient is a bona fide regional organization that has the legal status and fiduciary capacity to receive grant funding and the legal authority to carry out the activities financed; (b) the recipient does not meet eligibility requirements to take on an IDA credit; (c) the costs and benefits of the activity to be financed with an IDA grant are not easily allocated to national programs; (d) the activities to be financed with the IDA grant are related to regional infrastructure development, institutional cooperation for economic integration, and coordinated

interventions to provide regional public goods; (e) grant cofinancing for the activity is not readily available from other development partners; and (f) the regional entity is associated with an IDA-funded regional operation involving some of the participating member states.

In view of the participation of the Dominican Republic, an IBRD only country, the Legal VPU provided guidance and clarity required to ensure that IDA Grant will be used for the benefit of the IDA only countries to the exclusion of the IBRD only participating country. Since IDA funds cannot be used for the benefit of the IBRD countries, the activities undertaken by the CTU will be directly targeted to Grenada, Saint Lucia and Saint Vincent and the Grenadines, whereas the Dominican Republic will only benefit from the anticipated improvement in regional ICT and connectivity at the regional level.

Two other regional institutions are involved in Project implementation (i.e., the Eastern Caribbean Telecommunications Authority (ECTEL), and the Caribbean Knowledge and Learning Network (CKLN)). The role of the two organizations is critical for the activities associated with regulation harmonization, and research and education, since the two institutions have specific mandate and expertise on these areas. For the purpose of harmonizing the regional institutional arrangements, the Legal VPU designed the implementation agreements. The coordination between the national and regional level entails technical agreements between the participating countries and CTU.

Since Dominican Republic is not a member of the CTU, at the regional level, a memorandum of understanding among the three participating CTU countries, Dominican Republic and the CTU is being elaborated for the purpose of cooperation in implementation of the project activities.



Photo: World Bank

Signing of three credits for Grenada. V. Nazim Burke, Minister of Finance, Francoise Clottes, World Bank. Legal staff pictured: Edith Mwenda and Manju Ghumman.

Safeguard Policies

The vision of the Bank's safeguard policies goes beyond mitigating risks and avoiding harm. They are fundamentally aimed at promoting desirable social and environmental development outcomes. Sound legal strategies are critical for their effectiveness.

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. In fiscal year 2012, we fielded well over two hundred specific requests across all regions for safeguard advice on projects under preparation or in implementation, with issues ranging from simple to complex, requiring long-term legal involvement in numerous instances. We develop covenants to deal with identified risks and to ensure that prevention and mitigation measures are implemented. We serve 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.



Photo: Anne-Marie Leroy

State of Rio de Janeiro, Brazil.

The Legal VPU plays a key role with Operations Policy and Country Services (OPCS) in assessing national legal frameworks through the lens of Bank safeguards, identifying equivalencies and gaps, and helps lead the piloting of the Use of Country Systems approach under OP 4.00. 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, the Legal VPU advises Bank management throughout the steps of the Inspection Panel process, contributing to the preparation of management responses and facilitating interaction with the Panel, while separately, the General Counsel retains an independent role as counsel to both the Panel and the Board.

HIGHLIGHTS

Rolling Out the Common Approach for Safeguards in FCPF

The Legal VPU continued to help put in place the unique safeguards architecture for the Forest Carbon Partnership Facility (FCPF), playing a leading role in the finalization and rolling out of the “Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners” (Common Approach). The Common Approach, adopted by the FCPF Participants Committee in Oslo in June 2011, paves the way for Delivery Partners other than the Bank to participate in grant administration. The challenge was to achieve consensus between the Bank and a number of potential Delivery Partners (DPs), UNEP, IADB, ADB, FAO—each of which has its own sustainability policy—on a common set of safeguard standards that all DPs would be responsible for applying in the context of REDD+ activities. The Legal VPU is currently assisting the FCPF team in the conclusion of the first Transfer Agreements between the Bank and IADB and UNDP, which will operationalize the Common Approach in five countries where those DPs are taking the lead.

Advising Management on Inspection Panel Matters

Six new requests for inspection were registered by the Inspection Panel in fiscal year 2012 for projects in India (3), Kenya, West Bank and Gaza, and Kosovo. The year also saw the completion of inspections for cases in Peru, Papua New Guinea and the ESKOM project in South Africa. 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 Panel and national counterparts. We continued during the year to lead supervision and monitoring of the Bank’s support for legal review in Albanian courts of grievances arising from an earlier case in Albania.

Contributing to Safeguards Policy Review and Clarification

The Legal VPU has been a key partner with the Sustainable Development Network (SDN) and the Operations Policy and Country Services (OPCS) in the development of an approach paper for the review and updating of Bank safeguards, a process that is expected to get fully underway in fiscal year 2013. In parallel, we have worked closely with OPCS and the Regional Safeguard Advisors on a number of policy-related initiatives, including the development of guidance notes on the application of safeguards in fragile and conflict affected situations, and on tailoring safeguards application to different types of technical assistance activities.

Legal Drafting Tools for Safeguards Covenants

As part of its ongoing Knowledge Management activities, the Legal VPU has developed an online database entitled “Safeguards Definitions and Covenants: A Drafting Resource.” This database resource is aimed at providing Bank lawyers with sample text taken from actual investment lending operations to assist them with drafting the most commonly-used safeguards-related definitions or covenants that address a project’s legal policy requirements for environmental assessment, pest management, indigenous peoples, physical cultural resources, involuntary resettlement, and safety of dams. In addition to providing sample text for 250 definitions and covenants taken from actual projects, search features and results include links to project documentation in the Operations Portal. The database is also linked to the Legal VPU’s Annotated Safeguards OP/BP database.

Advising on the Environmental and Social Dimensions of Program-for-Results (PforR)

The newly adopted PforR adopts a risk-management approach to address potential environmental and social impacts. Rather than applying the Bank's suite of safeguard policies, PforR operations involve an upfront environmental and social system assessment (ESSA) that describes and assesses the applicable legal and institutional frameworks in borrowing countries against principles spelled out

in OP/BP 9.00. The Legal VPU played a key role in the design of the PforR approach to environmental and social risks and has advised task teams in all Regions in reviewing and improving the ESSAs that have been produced in the initial round of PforR operations. This involvement has been particularly important in light of PforR's reliance on robust analysis of national legal provisions and institutions, which is critical for informed risk management decisions by the Bank's Senior Management.



Photo: Jonathan Pavluk

World Bank legal staff support site inspections to verify findings of environmental and social impact assessments with respect to possible resettlements of community. This site is in rural Rwanda.

Environmental and Natural Resource Management

For the Bank to respond meaningfully to new and intensifying environmental challenges, innovative lawyering is essential to ensure effective targeting of Bank operations, and to help clients adapt national and international legal frameworks.

In addition to its work on safeguard issues, the Legal VPU provides specialized legal advice to Bank operations, partnerships and clients, at national and global levels, across a wide range of environmental and natural resource management issues and initiatives.

For country or regional operations that focus on environmental or natural resource issues, the Legal VPU frequently contributes to assessments of national legal frameworks for pollution control, forestry, watershed management, fisheries, land tenure and planning, wildlife, mining, and related issues. Our input helps 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.

At the corporate level, the Legal VPU provides specialized legal advice to the Sustainable Development Network (SDN) Vice Presidency and others involved in developing the Bank's strategies on the environment and related issues. We help shape the Bank's participation in international fora and initiatives on climate change, biodiversity, forestry, agricultural land investment, and related subjects. The Legal VPU plays a key role 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).

Finally, our lawyers provide a full array of legal services in support of the Bank's initiatives in carbon finance. The Legal VPU was a key player in designing the legal architecture and institutional arrangements when the Bank pioneered carbon finance more than a decade ago. Today the Legal VPU's carbon-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). We also provides legal services for the Climate Investment Funds (CIF administrative unit, which provides secretariat services for the CIFs.)



Photo: Anne-Marie Leroy

State of Rio de Janeiro, Brazil.

HIGHLIGHTS

Legal Support to Global Oceans Partnership

Lawyers in the Legal VPU worked closely with colleagues from SDN in establishing the Global Partnership for Oceans (GPO). The GPO was launched at the Rio+20 UN Conference on Sustainable Development in June 2012. Legal VPU staff helped the team prepare the “Declaration for Healthy, Productive Oceans to Help Reduce Poverty”, which spells out the key objectives of the partnership. The declaration has attracted more than 100 signatories from the private sector, civil society and national governments.

Combating Wildlife Crime

The Legal VPU intensified its support to boosting internal capacity to help countries deal with environmental crimes, such as illegal logging, poaching of wildlife, toxic discharges, unlicensed fishing, and related corruption and money laundering. Recognizing that such crimes are placing increasing stress on natural resources, the Bank, along with the World Customs Organization, the UN Office of Drugs and Crime, Interpol and CITES launched the International Consortium on Combating Wildlife Crime (ICWC) as a partnership to leverage the capabilities of each institution to achieve better compliance with sustainable natural resource management regimes. Further to ICWC’s mission, the Bank—through the Development Grant Facility—and other partners, supported the preparation of a Forest and Wildlife Crime Analytic Toolkit. The toolkit provides new ideas on how countries can combat wildlife crime. The Legal VPU staff contributed to this work by discussing the importance of the international legal framework and provided guidance on analyzing the robustness of national level legislation and subsequent legal reform.

Support to Global Environment Facility

The Council members of the GEF represent constituencies which are formed taking into account the need, on the one hand, to achieve an equitable representation of all GEF participants and, on the other hand, to give due weight to the funding efforts of all donors. At a GEF Council meeting, a point was raised whether arrears in contributions to the GEF Trust Fund has an impact on constituency formation, more particularly whether a donor country can still maintain its single-country constituency even when its contribution to the GEF trust

fund has decreased over the years. Beyond the political considerations behind this question (hence to be decided by the Council), the question has a strong legal component, having to do with the interpretation of the GEF Instrument and the practice that the GEF has developed in the almost 20 years since its restructuring in 1994. For this reason, the GEF Secretariat requested that the Legal VPU (in its capacity as advisor to the GEF) draft what would then become GEF Council paper GEF/C.41/11. Rev.01. The paper, after a detailed analysis of the rules on the composition of GEF constituencies and the prerogatives of the Council under the GEF Instrument, concluded that decreasing contributions do not have automatic effects for single-country constituencies (of which there are currently ten), but the GEF Council may always approve alterations to constituency composition without any need to amend the GEF Instrument, unless the GEF Council alters the rules and criteria contained in the GEF Instrument. This paper was well received at the 41st GEF Council meeting in August 2011 and was instrumental in diffusing potential problems.

Addressing Land Risks of Commercial Agriculture Investment

This year witnessed growing attention within the Bank to enhancing the contribution of commercial agriculture to development in Africa. At the same time, there has been continued concern within the Bank and globally about the social and environmental risks associated with a new wave of international investment in African agricultural land, in particular concerning the effects on local land rights and livelihoods of vulnerable populations. The Legal VPU has helped task teams negotiate the tension between these opportunities and risks, contributing to legal and land rights diagnostic studies and the design of land risk mitigation approaches for projects in Ghana, Senegal and Tanzania.

World Congress on Justice, Governance and Law

In advance of the United Nations Conference on Sustainable Development Rio+20, the Legal VPU led the Bank's partnership with UNEP and other organizations in convening the World Congress on Justice, Governance and Law for Environmental Sustainability, held in Brazil, on June 17-20, 2012. The Congress attracted more than 200 participants, comprising high-level judges, prosecutors, auditors and other legal experts, and aimed to foster a common vision on the effective use of justice, law and governance strategies in promoting environmentally sound development. In addressing the Congress on behalf of the Bank, Charles Di Leva, Chief Counsel, Environmental and International Law, stressed the critical importance of transboundary environmental, strategic and social impact assessments, of international donors confirming project compliance with national law, and of building mechanisms to address public grievances within the context of donor-funded initiatives.

Promoting the Use of Alternative Dispute Resolution in Carbon Contract Disputes

To streamline and economize dispute resolution in the context of the Bank's carbon fund work, the Legal VPU was instrumental in helping to pioneer mediation of carbon contract disputes as a valuable alternative dispute resolution tool. The process was used this year for the first time at the Bank to settle a dispute with a public entity which was the counterparty in an emission reduction purchase agreement. The settlement documents have been made accessible to the public.



Photo: Jonathan Pavluk

Rusumo Falls

Infrastructure and ICT

The updated World Bank Group Infrastructure Strategy FY12-15 entitled “Transformation through Infrastructure” lays out the framework for transforming the Bank’s engagement in infrastructure and places emphasis on the role of the private sector and private sources of financing in infrastructure.

Many of the Bank’s activities in infrastructure and Information and Communication Technology (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.

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

Many of the Bank’s activities in infrastructure and Information and Communication Technology 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.

Our infrastructure specialists also participate in the World Bank Group’s Global Expert Team for PPP and advise the Bank’s management in connection with Bank-wide initiatives and strategies related to infrastructure and ICT. They have also contributed a regular legal column to the IFC’s Handshake online magazine on PPP projects—www.ifc.org/handshake.



Photo: Arne Hoel

Cellular tower, Ghana.

HIGHLIGHTS

Assisting Legal and Contractual Components of Bank Projects Supporting Countries in Developing their PPP Programs

The Legal VPU supports a number of PPP Projects in Sub-Saharan Africa, particularly Nigeria, Ghana and Kenya, which have different components, such as supporting the legal and institutional framework for PPPs, supporting prefeasibility and feasibility studies for specific proposed PPP projects and providing loans for government support to projects which are not otherwise commercially viable (for instance, where the tariff charged to support the financing of the infrastructure is deemed too high for consumers to bear without a subsidy). The Nigeria project became operational in fiscal year 2012 and the Ghana project was submitted to the Bank's Board of Executive Directors for approval in fiscal year 2012. The Kenya project is projected to be submitted to the Bank's Board for approval in the second quarter of fiscal year 2013. The Legal VPU has provided support and comments on the optimal legal and policy frameworks for these jurisdictions. Ghana and Kenya have published their PPP policies in fiscal year 2012, and draft PPP laws are scheduled to be presented to their respective Parliaments by the end of fiscal year 2012 or early in fiscal year 2013. The Legal VPU is also assisting the Governments in the preparation of Terms of Reference for consultants for prefeasibility and feasibility studies, and the selection and prioritization of projects as part of ongoing support to build capacity in the relevant agencies and line ministries.

The Legal VPU has also been supporting a diagnostic study of the role that the East African Community (EAC) can play in developing PPPs in the region, particularly in projects with a regional dimension.



Photo: Curt Carnemark

Nairobi, Kenya

Providing Legal Support to the Bank's 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. On this project, different units of the Legal VPU worked closely to provide support on the development of the institutional and contractual framework for implementation of the project through an international treaty and a suit of contracts that will govern operation of the line.

NIGERIA'S POWER SECTOR REFORM

The Legal VPU was engaged on the continuing effort of the Bank to support 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 country's 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 underinvestment 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 the Multilateral Investment Guarantee Agency (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

(See description in “Legal Solutions for Developing Renewable Energy in Africa”, page 15).

SUPPORT FOR POWER SECTOR INITIATIVES IN CAMEROON

Various units of the Legal VPU were engaged in support of a number of power sector projects in Cameroon. The Kribi Gas Power Project, which was approved by the Bank’s Board of Executive Directors in November 2011, involves both an IBRD guarantee and an IFC loan to assist with the construction of a 216 Megawatt power plant (designed to be subsequently expanded to 330 Megawatt). The Legal VPU advised on the development of an innovative guarantee instrument, which will provide coverage to a consortium of local commercial lenders (see section on “Guarantees”, page 32). In addition, various teams from the Legal VPU made contributions in regard to operational considerations, social and environmental issues and the development of Cameroon’s legal and regulatory framework for the power sector. The latter units were also actively engaged with the Lom Pangar Hydropower Project (see description in “Legal Solutions for Developing Renewable Energy in Africa”, page 15). Furthermore, the Legal VPU was extensively involved in supervision activities under the Cameroon Energy Sector Development Project (which had been approved by the Bank’s Board of Executive Directors in 2008), focusing on capacity building and private sector development issues.



Photo: Lauren Day

Building Seawalls. Tarawa, Kiribati.

Addressing Legal Dimensions of the Bank’s ICT Interventions

The Legal VPU was engaged in supporting a number of new initiatives aimed at bringing the benefits of market liberalization and core infrastructure, including in small/fragile and postconflict states. In the past year, our work has focused on: (a) getting the policy/legal/regulatory enabling environment “right”, which is a hallmark of the Bank’s successful work (as was noted in the Independent Evaluation Group’s 10-year retrospective review), and is a core aspect of our engagement on project preparation 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).

NEW PACIFIC PROJECTS

Technical Assistance Lending for the Kiribati Telecommunication and ICT Sector Development Project was approved by the Board on July 25, 2012. The Project aims to: (a) strengthen the legal, regulatory and institutional environment to encourage new investment in the ICT sector; (b) provide advisory support to the state-owned Telekom Services Kiribati Limited; and (c) support the creation and implementation of a subsidy fund to improve services in areas, especially on remote Outer Islands, that are not viable on purely commercial terms. Kiribati is currently one of the least “connected” countries in the world and telephone and Internet costs are very high.

A Development Policy Operation was negotiated with the Marshall Islands on July 12, 2012, which is designed to support: (a) the transition from a monopolistic to a liberalized telecommunications market; (b) the reform and restructuring of the majority state-owned National Telecommunications Authority; and (c) the development of a new legal and regulatory framework for telecommunications/ICT and an independent regulatory function. It is anticipated that this engagement will lead to the first World Bank Project in the Marshall Islands. The Marshall Islands became a member of the Bank in 1992.

Broadband Connectivity Across Regions

We have also been engaged in providing assistance under various regional projects supporting activities to improve the legal enabling environment and invest in broadband connectivity infrastructure. These engagements spanned Africa (the West African Connectivity Infrastructure Project, Central African Backbone Project and the Regional Connectivity Infrastructure Project), the Caribbean (Caribbean Connectivity Infrastructure Project) and the Pacific (the Regional Connectivity Project).

- In South Sudan, a fragile, postconflict state, an infrastructure investment project is being prepared focusing on: (a) developing and implementing a new legal and regulatory enabling environment for the ICT sector; and (b) investing in fibre optic cable systems to improve international and domestic connectivity. The project will fall under the umbrella of the Regional Connectivity Infrastructure Project for Eastern Africa.
- The Caribbean Regional Communications Infrastructure Program was approved by the Board on May 22, 2012. The Program is focused on, among other things: (a) improving physical connectivity infrastructure, including submarine cable infrastructure, terrestrial broadband backbone fiber networks, and terrestrial and submarine cross-border links; and (b) capacity building focused on the legal and regulatory enabling environment, and options for designing and implementing a PPP that will own, manage and ensure competitive and non-discriminatory access to the infrastructure. In addition to a regional grant, the first phase of this Program covers Grenada, Saint Lucia, and Saint Vincent and the Grenadines.
- Under the umbrella of the Pacific Regional Connectivity Project, Technical Assistance and Investment projects are being prepared in the Federated States of Micronesia (FSM) and Palau, which are aimed at: (a) supporting core legal and regulatory reforms and institutional capacity building; and (b) landing submarine fibre optic cables and bringing the benefits of high-speed connectivity to Palau and FSM without submarine fibre (i.e., Yap, Chuuk and Kosrae). Initial discussions have also commenced with the Government of Samoa regarding options for investing in a new submarine cable.

LEADERSHIP ON DEVELOPING A CORPORATE-WIDE STRATEGY REGARDING PROTECTING THE WORLD BANK BRAND AND DOMAIN IN THE FACE OF THREATS FROM NEW GTLD APPLICATIONS

In addition to project related work, assistance was given over the past year in connection with the development and elaboration of the new ICT sector strategy which was published by the Information and Communication Technology Group (TWICT). We are also pleased that the Legal VPU received implicit recognition in the IEG report for its excellent work over the past decade on elaboration of legal and regulatory enabling environments. We expect to see strong demand for more work on privacy, cyber-security, freedom of and access to information. These issues are taking on increasing importance as connectivity improves internationally through the development and implementation of high-speed infrastructure networks (e.g., submarine and terrestrial fibre links). We have also taken a leadership on behalf of the Legal VPU, working with TWICT, Information, Management and Technology (IMT), and External Affairs (EXT), on developing a corporate-wide strategy regarding protecting the World Bank brand and domain in the face of threats from new generic top-level domain (gTLD) applications, advising the Web Governance Council on adopting that strategy, as well as working with the General Counsel of some 26 Intergovernmental Organizations (IGOs) in crafting a common position of the trademark protection of IGOs in the face of the new gTLD process.

Structuring Solid Waste, Transport and Water Projects

In water, the Legal VPU supported the Bank team that provided input to the Philippine Government on its proposals for restructuring the water sector and developed an options paper on possible mechanisms for economic regulation of the Philippine water sector, drawing from international experience. It also provided support to the Water and Sanitation Program (WSP) on developing a form of lease contract for small scale water projects in Kenya and conducted a comparative analysis of contracts developed for small scale rural water projects worldwide.

In transport, it supported the Bank team reviewing the model form Engineering, Procurement and Construction (EPC) contract for roads developed by the Indian Planning Commission and has assisted in the legal structuring of a number of road projects in India, including the annuity road project in Karnataka. It also provided support on proposed port projects in West Africa.

In solid waste, the Legal VPU supported a team providing technical assistance to the Kuwaiti government in analyzing its solid waste sector and reform thereof. It also participated in a team analyzing challenges facing PPPs in the solid waste sector between private providers and municipalities in Morocco and proposing measures to resolve these challenges.



Photo: John Hogg

National road up the West Coast, the N7.
Runs from Cape Town to Namibia.

Guarantees

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.

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's 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 nonperformance of contractual obligations to a specific project. While PBGs provide fiscal support for 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.

Fiscal year 2012 saw the Legal VPU continue to break ground in structuring and supporting new features, instruments and member countries with Bank guarantees, as well as in comprehensively providing vital input in updates designed to modernize the Bank's guarantee program. Along with these innovations, the Legal VPU continued to work productively with its counterparts in private sector sponsors, lenders and law firms, member country finance and economic ministries, and cofinanciers at other international development institutions to extend Bank guarantees in a number of different countries and contexts.



Photo Courtesy of Hisham Abdo Kahin

Trung Son Hydropower Project, Vietnam.

HIGHLIGHTS

Modernization of the World 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 2012. These updates propose, among other things, streamlining certain policy requirements and extending certain types of guarantees to qualifying IDA countries.

Kenya Private Sector Power Generation Support Project IDA Partial Risk Guarantee Series

This operation involves a series of guarantees of four sub-projects to support power production efforts in Kenya, in advance of the guarantee modernization which will address procedures for providing guarantees in a series. This modernization will address procedures for further guarantee series. The project was developed in coordination with IFC and MIGA, who will also participate in some of the subprojects, and was jointly discussed at the Board. It will bring a combined 284 MW of additional power supply to Kenya, while the World Bank Group's proposed risk mitigation package enabled Kenya to mobilize the investments in the project with a reduced scope of sovereign guarantee to the project. The project received an Africa Vice Presidency award for Best Projects. The Legal VPU was responsible for all key aspects of drafting and negotiating guarantees in this series, among different counterparties and often under extreme time pressures.

IDA Partial-Risk Guarantees in Support of the Joint Railways Concession for Kenya and Uganda

Following a successful restructuring of this project to facilitate the injection of additional funding, the two partial-risk guarantees in support of the joint Kenya and Uganda railways concession became effective in the summer of 2012. The railways concession is intended to improve management, operational and financial performances of the two railway networks in both Kenya and Uganda for the duration of a 25 year concession. The two partial-risk guarantees provide political risk mitigation guaranteeing to the project companies undertaking the project the payment by each of the governments of Kenya and Uganda of early termination payment obligations. The Legal VPU was instrumental in draft-

ing and negotiating the very complex documentation for these PRGs which follow a deemed loan structure, under which termination payments by the governments will be converted into loans which repayment would be guaranteed by IDA.

Kribi Power Project IDA Partial Risk Guarantee in Cameroon

This long-awaited project aims to bring power to over 100,000 new households in Cameroon, a country in need of increased power supply. In addition to featuring the cooperation of IFC and many other development banks (EIB, Proparco, AfDB, FMO and BDEAC), it includes groundbreaking features such as participation by local banks in a major project finance transaction, a roll-over option designed to double the maximum tenor of local loans, and a special credit guarantee component authorized by the Board, which anticipates upcoming features of the guarantees modernization. The Legal VPU was deeply involved in the analysis of the provision of a credit guarantee features in this IDA operation, and in drafting and negotiating transaction documentation to reflect the many innovative features of this complicated and long-awaited operation.

FYR Macedonia IBRD Policy-Based Guarantee Operation

This Europe and Central Asia Vice Presidency award-winning PBG, only the second in ten years, allowed the Former Yugoslav Republic of Macedonia to obtain its first international commercial loan on favorable financing terms and tenor while leveraging IBRD's resources. The Legal VPU played a key role in designing and negotiating 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 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.

Insolvency

Effective insolvency and creditor/debtor regimes are an essential element for economic growth and the development of any economy, as well as representing a key factor for the stability of the financial sector.

The Legal VPU, through its leadership of the World Bank's Insolvency and Creditor/Debtor Regimes 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). The Legal VPU's specialists carry out an analysis of the 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 the client country might strengthen its credit protection and insolvency legal frameworks.

The Legal VPU plays a central role in the World Bank's standard setting for insolvency and creditor rights.

The insolvency team of the Legal VPU also participates in numerous Bank initiatives directed to assist client countries with their insolvency law 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: Salwa M. Saleh

Jose Garrido, Senior Counsel, presenting World Bank Study on Out of Court Debt Restructuring.

HIGHLIGHTS

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 World Bank Insolvency Task Force meeting held in Washington DC in January 2011, the World 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. A working group was created within the World Bank Task Force, and the group made substantial progress in the process of drafting a comprehensive report on approaches to the insolvency of natural persons.

After a 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 key part of the legal environment of credit. At the same time, the Legal VPU is collaborating very actively with UNCITRAL in the development of a guide for the creation of registries for security interests over movable assets. This project has an immediate relevance to access to finance in developing countries.

The Legal VPU plays a critical and continuing role 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 multinational enterprises, and the duties and liabilities of corporate directors when their company is in severe financial distress.

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 finance at events such as the National Conference of Bankruptcy Judges, in collaboration with the American Bankruptcy Institute, as well as in-house at the Legal VPU.

Leading the Preparation of ROSCs and Supporting the Financial Sector Assessment Program in the Area of Insolvency and Creditor/Debtor Regimes

The year 2011-2012 was extremely productive for the work of the Insolvency Initiative: the Legal VPU completed ICR ROSCs for Ghana, Rwanda, South Africa, Peru, Kazakhstan, Thailand, Russia, Brazil, Paraguay, Kenya, Kosovo, Kuwait, Bangladesh, Mongolia, and Romania. The South Africa ICR ROSC was extremely well-received by the authorities and opened the way for additional work in the area of the insolvency of financial institutions and the insolvency of natural persons.

During 2012, work was underway on ICR ROSCs for Malaysia and for Colombia. In the latter case, the ROSC will update the previous report, which was completed before the reform of the Colombian insolvency framework.

Dissemination events were held for the ICR ROSCs in Tanzania and Thailand, with ample participation of public and private stakeholders. The events contributed to raise awareness about 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. The Legal VPU provided input for the Financial Sector Assessment Programs (FSAPs) of Mexico, Brazil, Mongolia, Rwanda, and Latvia. In the cases of Rwanda and Latvia, the Legal VPU also produced technical notes that were incorporated to the FSAP reports.

Providing Technical Assistance on the Reform of Insolvency and Creditor/Debtor Regimes

The Legal VPU, working together with IMF and IFC colleagues, played a key role in assisting Ukrainian authorities in the creation of the new Insolvency Law, which was passed by the Rada in December 2011. While reform of the country's ICR framework is in progress and there remains much room for improvement, the new law represents a significant advance on the status quo ante. Our lawyers also assisted Belarussian authorities in their ongoing efforts to modernize their insolvency regime.

The insolvency and creditor rights team has also supported activities of the access to finance group, such as the reform of the secured transactions law in Colombia and the introduction of a new framework for creditor information systems in Haiti.

Developing and Disseminating Knowledge

The Legal VPU 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. (see section on “The Legal VPU’s Contribution to Knowledge and Learning”, page 68).



Photo: Salwa M. Saleh

Session on The Regulation of the Insolvency of Natural Persons at the Law, Justice and Development Week 2011.

Banking and Finance

Assist client countries in improving the legal and regulatory frameworks of their financial sectors.

The Legal VPU's banking and capital markets team contributes to the legal and regulatory aspects of the Financial Sector Assessment Program (FSAP), a joint program of the IMF and the World Bank. Through these programs and other initiatives, it provides legal advisory services and collaborates with other international financial institutions and national regulators, as well as international regulatory bodies, to assist client countries in improving the legal and regulatory frameworks of their financial sectors. This work includes analysis of countries' legal and regulatory frameworks for financial services and for consumer protection.



Photo: Shehzad Noorani

HIGHLIGHTS

Islamic Banking

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 spoken on behalf of the Bank at various international conferences, including the conference organized by Red Money on "The Role of Sukuk in Development" in Kuala Lumpur and a conference that was organized by the Islamic Financial Services Board in Bahrain on "Effective Insolvency Regimes for Islamic Finance", as well as the Bank's training program on Islamic finance and the Knowledge Management seminar organized by the Financial and Private Sector Development Vice Presidency on Islamic Finance and Development. All these events were attended by a wide group of international participants that included private sector participants, regulators, Islamic Shar'ia experts and policy makers. The Legal VPU also contributed to speeches delivered by the Managing Director of the Bank on Islamic finance at international conferences. Our lawyers peer reviewed a number of proposals on Islamic Finance in the East Asia and Pacific and South Asia Regions as well as contributed a specific chapter on "Insolvency Regimes: Developing an Analytical Framework for Meeting Legal and Regulatory Challenges in Islamic Finance" to a joint publication with the Islamic Financial Services Board on "Effective Insolvency Regimes: Institutional, Regulatory and Legal Issues Relating to Islamic Finance".

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 equity financing. 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 Cambodia, Laos, Turkey, Pakistan, Sri Lanka, Mongolia, Nepal, Maldives, Botswana and West Bank and Gaza during this fiscal year.

Macroprudential and Financial Stability and Central Banking Laws

One of the key lessons learned from the global financial crisis is the importance of ensuring macroprudential oversight over the financial system to reduce the risk and the macroeconomic costs of financial instability. It is recognized as a necessary ingredient to fill the gap between macroeconomic policy and the traditional macroprudential 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—including the Reserve Bank of South Africa and Bank Indonesia on incorporating this policy and related institutional arrangements into the central bank law.



Photo: Salwa M. Saleh

Vijay Tata, Chief Counsel,
Private Sector Development and Infrastructure,
Law, Justice and Development Session on Legal Framework
for International Financial Regulation

Consumer Protection and Financial Literacy

The Legal VPU has been actively involved in the development and updating of the “Global Principles on Consumer Protection and 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 diagnostic review by our lawyers includes detailed assessment of the banking and nonbanking segment of the financial sector and make prioritized recommendations to address the weaknesses in the legal, regulatory and institutional framework. The India FSAP Update was the launching pad for the consumer protection assessment as part of an FSAP program. The technical note—the first of its kind on the consumer protection in the banking system—was done for the FSAP and it was well received by the authorities.

Modular FSAPs and Role of the Legal VPU

Our lawyers have been involved in FSAPs in the areas of legal and regulatory assessment for the financial sector as well as capital market development. The modular 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 include India, China, Mongolia, Pakistan, Cambodia, Indonesia, Thailand, Chile and Argentina.

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 and Financial Literacy”.

Developing and Disseminating Knowledge

Legal VPU staff have been involved in a number of conferences and publications, as described on page 68.

Justice Reform

The Legal VPU manages a range of innovative justice reform trust funds, loans and fee-for-service programs, including significant justice components of larger projects.

The Legal VPU provides 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, sound and equitable interpretation 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. In collaboration with the Poverty Reduction and Economic Management Vice

Presidency, the Legal VPU coordinated the development of *New Directions in Justice Reform*, the articulation of the World Bank's new strategy for justice reform. The team also provides advisory services on justice sector assessments, public expenditure and institutional reviews in the justice sector, justice reform and governance strategies, economic sector work, operational projects and also 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, that 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 effectively.



Photo: Graham Crouch

Kabul, Afghanistan.

HIGHLIGHTS

Supporting the Bank's Operations on Justice Reform

At the request of World Bank regional and sector teams, the Legal VPU manages a range of innovative justice reform trust funds, loans and fee-for-service programs, including significant justice components of larger projects. The Legal VPU supports regional and sector teams by leading justice reform projects including:

- Abu Dhabi fee-for-service program providing technical assistance on justice reform (US\$900,000).
- Afghanistan Phase 2 Justice Service Development Project (US\$85.5 million grant from the Afghanistan Reconstruction Trust Fund).
- Mongolia Enhanced Justice Sector Services Program (US\$5 million IDA grant).

In collaboration with other sectors, the Legal VPU contributes to:

- The Access to Justice component of the Serbia Multi-donor Trust Fund (US\$2.7 million).
- The Judicial Performance and Improvement Project in Kenya (US\$120 million).

Identifying New Directions in Justice Reform

In collaboration with the Poverty Reduction and Economic Management Vice Presidency (PREM), the Legal VPU oversaw the development of *New Directions in Justice Reform*, the articulation of the Bank's strategy for justice reform. *New Directions* was developed as a companion to the Bank's Updated Governance and Anti-corruption (GAC) Strategy and represents the first World Bank-wide approach to justice reform. The *New Directions* paper establishes priorities for the Bank's justice reform work including: (a) applying a problem-solving and empirically based approach to justice reform anchored in the needs of end users that focuses on actual realizations and accomplishments; (b) identifying flagship justice reform initiatives as sites of learning and innovation; (c) integrating justice reform into select Bank operations, including natural resources and service delivery; (d) developing a focus on justice reform in fragile and conflict-affected states; and (e) developing organizational

structures that strengthen the Bank's ability to realize the vision presented in the *New Directions* paper.

Refining the Bank's Approach to Criminal Justice

The Legal VPU prepared and issued a *Legal Note on Bank Involvement in the Criminal Justice Sector* in February 2012. Member countries are increasingly requesting World Bank support for assistance reforming their criminal justice systems and the *Legal Note* clarifies how the Bank's mandate is responding to these demands. The note found that criminal justice sector work is not precluded under the Bank's Articles of Agreement and the Bank has already financed numerous criminal justice interventions in the area of governance. A *Staff Guidance Note: World Bank Support for Criminal Justice Activities* accompanies the *Legal Note* and provides guidance for staff in applying the *Legal Note* to Bank activities. The *Note* is framed around four areas, which set out the steps that task teams should take when considering an activity in the criminal justice sector. These are: (a) Justification for Criminal Justice Work; (b) Risk Assessment; (c) Risk Mitigation; and (d) Assistance and Review Processes. Criminal justice reform activities will complement Bank work in several sectors such as natural resource governance, environmental crimes and crime and violence. The Legal VPU is establishing a cross-sector Criminal Justice Resource Group (CJRG) and will host its secretariat in an effort to provide Bank teams with a resource for designing and implementing projects in the criminal justice sector and managing potential risks of engagement.

Justice in Fragile and Conflict-Affected Societies: Operationalizing World Development Report 2011 (Conflict, Security and Development)

A core finding of WDR 2011 is that the emergence of effective and legitimate institutions to manage justice, security and jobs is crucial for countries to break out of cycles of fragility and violence. The Legal VPU is leading the Bank's work on justice in fragile and conflict-affected societies (FCS) in close collaboration with the Center for Conflict, Security and Development and the Social Development anchor. This work involves engaging in a range of FCS to inform the Bank's Country Partnership Strategies, conduct analytical work and develop

justice programming and justice-sensitive components of sectoral operations. To this end, our justice reform team is working in South Sudan, Liberia, Nigeria, Côte d'Ivoire, Yemen, Honduras, Solomon Islands and Timor Leste. This work is enhanced by our emphasis on deepening understanding of how different kinds of political settlements, social and fiscal pressures affect the nature of justice institutions, toward identifying new approaches that maximize the effectiveness of development assistance.

Justice for the Poor Refines Analytical and Operational Work Program.

The Justice for the Poor (J4P) program completed a Mid-Term Review (MTR) of its East Asia and Pacific Regional Program in December 2011. The MTR clarified program focus around three operational areas: access to justice, equity and conflict management in service delivery, and land and natural resource governance. The program includes development effectiveness and gender as thematic areas. New programmatic activities are expected to include support to pilot a community dispute management and governance initiative in Solomon Islands, a pilot initiative to provide advisory services on leasing to customary land holders engaged in leasing negotiations in Vanuatu and support to prosecuting corruption associated with community driven development in Indonesia. The J4P program is also active in Africa where it is working on social accountability and legal empowerment in Sierra Leone and Nigeria, justice and community-driven development in South Sudan and the intersection of resource investment and local justice in Liberia.

Using Public Expenditure and Institutional Reviews in the Justice Sector

While Public Expenditure and Institutional Reviews (PEIRs) are commonly used across World Bank sectors, Bank teams have only recently started to use PEIRs in the justice sector. Bulgaria and Serbia were the first justice sector PEIRs and three others are currently under preparation for Croatia, Morocco and El Salvador. PEIRs analyze various aspects (expenditure level and composition, caseloads, performance, institutional arrangements, political economy, budgeting, procurement and financial management, and physical, human and ICT resources) to develop strategies for improving justice sector efficiency and performance through more effective utilization and management of resources. The Legal VPU will continue to support Bank teams in Bank Regions and Sectors to conduct justice sector PEIRs in an effort to promote evidence-based justice reform in client countries.

Supporting Justice Sector Reform in Mongolia

The justice sector in Mongolia has changed significantly in the 20 years since the country became a democracy. The Bank and other international partners have provided significant assistance to justice reform, particularly around independence of the judiciary. While Mongolia has made progress, still much needs to be done. Building on prior efforts, the World Bank Country Management Unit in Mongolia asked the Justice Reform Practice Group to manage the Enhanced Justice Sector Services Project (EJSSP), a US\$5 million investment lending project. Starting in June 2009, the aim of this project is to enhance access to justice and the efficiency and transparency of the courts and court decision enforcement agencies.

The project has had significant impact, despite its relatively modest size. Websites provide access to all laws, higher court decisions and other important government decrees; legal assistance is provided via internet and SMS messages; over 1000 community paralegals have been trained to provide legal information and assistance to the poor in the capital and rural areas, including some of the most remote locations. A comprehensive public information campaign is raising awareness of legal issues and access to justice options. Legal information material was developed in Braille, minority languages and others in everyday language and is distributed throughout the country, including through “Nomad libraries”, mobile book collections aiming to reach herder families.



Photo: Saraa Horioo

Legal Aid center for ethnic minorities in Bayan-Ulgii Aimag, supported by the EJSSP, Mongolia.

Some of the most significant impacts have come from very small investments. For under US\$30,000 the project provided assistance to two legal aid centers in the western most province of the country with significant minority populations. In just two years, a total of 2210 individuals were directly assisted through various forms of legal advice, over half of which were poor women. Kazakh women in particular are often limited in being able to seek assistance for their problems, not only due to language issues but also since they often may not address a state organization without the permission of their husband. In practice, this cultural norm does not apply to women addressing legal aid centers. Disadvantaged seek assistance for varied claims, including access to social entitlements (pensions), altercations over land, lack of civil registration documents required to access other services (e.g., health care), labor rights and some criminal cases. Other assistance is focusing on improving law school education, including the advancement of legal clinic adjudication which not only builds students' practical skills but provides for another resource to deliver free legal aid to the poor.

The project is also supporting infrastructure improvement. The program will construct four court buildings and three court enforcement agency buildings in rural areas. The sites were chosen based on need—in terms of increasing case load and population and deterioration of facilities—and personnel previously shared cramped and

run down facilities that simply did not provide the necessary space and resources to enable personnel to effectively undertake their work. The judiciary in these areas is now utilizing the better facilities to increase the range of services they are providing to the local populace and, on their own initiative, are undertaking legal outreach and information campaigns as well as starting to offer mediation services. Soon project activities will connect every court, court enforcement agency and prosecutor office via fiber optic cable. This will allow for more effective data exchange and management supported by software developed with support of this project and the GIZ.

Many challenges continue to remain and Mongolia's rapid economic growth is likely to give rise to many more. However, the infrastructure, increased capacity of justice system officials as well as the increased availability of legal assistance and information available to everyone has laid an effective basis for the continued sustainable development of the justice sector in support of the broader development goals of Mongolia.

Bringing Justice to Health Services: the Role of Sierra Leone's Community Paralegals

In a clinic in Moyamba district in southern Sierra Leone, mothers stand in line with their infants to receive immunizations that the government now provides free of charge. The Government's Free Health Care Initiative (FHCI), launched in 2010, guarantees free health



Photo: Saraa Horloo

The new court building for Bor-under Soum, funded by the EJSSP, Mongolia.

services for pregnant and breastfeeding women, as well as children under five. It is a hopeful picture for a country that is one of the least safe places in the world for a woman to give birth, with one out of every seven women dying on account of pregnancy or childbirth. Yet, a closer look reveals that as each mother reaches the front of the line, the nurse is demanding six cups of rice before she will provide the immunization. Feeling powerless, the mothers comply.

Despite the FHCI policy change, users regularly report improper fees such as the cups of rice demanded in Moyamba. Nurses are also often absent and the Government and UNICEF statistics cite “leakage” of up to 30% of FHCI drugs before they reach health clinics. Improving accountability around the delivery of services will be essential in translating the progressive FHCI policy into tangible outcomes. Experience from other countries suggests that social accountability (or “demand-side” accountability) programs can complement supply-side efforts to improve health outcomes². The Bank, Government, and civil society groups in Sierra Leone have all embraced a role for social accountability and justice services in improving health care delivery.

The Legal VPU’s Justice for the Poor Program (J4P) is supporting these efforts by testing and evaluating several social accountability approaches to improving health service delivery including community-clinic monitoring and legal empowerment. With financing from the De-

2 See, e.g., M. Bjorkman and J. Svensson, “Power to the people: Evidence from a randomized experiment on community-based monitoring in Uganda,” *Quarterly Journal of Economics* 124/2 (2009).

centralized Services Delivery Project (I and II), the Government is currently conducting a randomized controlled trial on the impact of joint community-clinic monitoring on health outcomes. Through the use of scorecards showing their clinic’s performance, community monitoring enables community members and clinic staff to draft a joint action plan to improve health and then monitor one another’s performance.

With support from the Bank’s Nordic Trust Fund and in partnership with the legal empowerment organization Namati, the J4P program is also exploring how Legal Empowerment tools, such as trained community paralegals, can tackle challenges in health care delivery and complement social accountability efforts in the health sector. Community paralegals (lay persons trained in the law and operating in approximately a third of Sierra Leone’s chiefdoms) may be able to help citizens navigate administrative accountability channels to address larger, systemic breakdowns in service delivery.

Documenting Impact and Supporting Policy Dialogue

The J4P program is using a range of methodological approaches to measure the impact of the above initiatives. The impacts of community monitoring is being tested via a randomized controlled trial, supplemented by qualitative research to understand the dynamics of influence. The legal empowerment initiative is being explored as a scalable alternative that leverages existing accountability structures. Findings will help the Ministry of Health clarify policy and evaluate justice and accountability strategies for scale-up under the government’s decentralization strategy.



Photo: Margaux Hall

A CONCERN Worldwide facilitator in Tonkolili district, Sierra Leone, shows a group of traditional birth attendants their clinic scorecard on the number of children who completed their first year of immunization.

Trust Funds

The Bank's trust fund portfolio continues to grow, reflecting the increased importance of trust funds as a key source of development financing. The cash contribution level, disbursement level, and total amount of funds held in trust have all increased sharply since fiscal year 2007. 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\$3.9 billion in fiscal year 2011, a slight decline from US\$4.3 billion in fiscal year 2010. However, the number of Financial Intermediary Funds (FIFs) and the amounts managed by the Bank under FIFs have continued their increase from prior years, with cash contributions to FIFs increasing to US\$6.1 billion in fiscal year 2011 from US\$6 billion in fiscal year 2010. Overall disbursements under both trust funds and FIFs have grown from US\$5.6 billion in fiscal year 2007 to US\$8.3 billion in fiscal year 2011. Of this total, FIFs accounted for US\$4.5 billion and IBRD/IDA trust funds for US\$3.8 billion.

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.

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), Regions and Networks on a wide range of trust fund issues. We advise on trust fund policy and procedural issues, develop model forms of trust fund



Photo: Anne-Marie Leroy

Coffee planters community, State of Rio de Janeiro, Brazil.

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.

The increasing prominence of FIFs brings to the forefront many new legal challenges. FIFs have a flexible design, often involve innovative arrangements, and their structures are heavily customized. The Bank's distinctive role across all FIFs is the provision of financial intermediary services, as trustee of the funds. In addition to its financial intermediary role, the Bank may have additional roles in FIFs, such as acting as an implementing agency, providing administrative and fund coordination support to a FIF, or acting as chair of the FIF governing body. FIFs hence require detailed and well-tailored legal

and governance agreements that articulate the different roles the Bank is assuming.

In 2011, 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 (MDTFs) and FIFs, and as contributions from "nontraditional" donors increased. By fiscal year 2011, MDTFs represented 42 percent of total active trust funds, but accounted for a significantly larger proportion of all funds held in trust. In fiscal year 2011, the Bank was receiving contributions not only from traditional OECD-DAC member countries and emerging donors, but also from private foundations, corporations and other non-profit and for profit entity donors.

HIGHLIGHTS

Green Climate Fund

In response to the invitation by the Conference of the Parties to the UNFCCC to the World Bank to serve as interim trustee for a new Green Climate Fund (GCF), the Legal VPU has been working on the design and establishment of a FIF, which would facilitate financing to support an early and effective start to the GCF, while also offering flexibility to support the medium-term funding needs of the GCF, in a cost effective manner.

Technical Assistance Facility for the Arab Finance Facility for Infrastructure

The Legal VPU recently brought the Technical Assistance Facility (TAF) of the Arab Finance Facility for Infrastructure (AFFI) into operation. The AFFI is an investment facility in partnership with the Islamic Development Bank including funds mobilized through sharia-compliant bonds and other sources designed to provide an integrated approach that will address policy, project preparation and financing challenges of infrastructure projects. The Legal VPU recently brought the AFFI's Technical Assistance Facility (TAF) into operation. TAF provides technical advisory, capacity building through strengthening national enabling environments for infrastructure Public-Private Partnerships (PPP) and raises the awareness of countries on the complex policy, legal and regulatory aspects of PPP projects.

MSME Facility

The Legal VPU played an important role in structuring, drafting and negotiating legal documentation regarding the multidonor trust fund with IFC under the Micro, Small and Medium Enterprise Facility for the Middle East and North Africa Region (MSME Facility) under the "Arab World Initiative" (described on page 14).

Delivering Trust Fund-Financed Operations: An Overview of the Legal VPU Operational Units in Trust Fund Work

A significant part of the work related to trust funds is handled by the operational units of the Legal VPU. Trust funds are established to bring together resources on matters of global interest, provide coordinated responses to crisis and emergencies and also to leverage World Bank resources to maximize the impact of its development projects.

To understand the Legal VPU operational units' involvement related to trust funds, one should look at the number of active trust funds per Region. The Africa Region (AFR) currently has around 1,290 active trust funds, the East Asia and Pacific Region (EAP) around 1,126, the Latin America and Caribbean Region (LAC) around 650, the South Asia Region (SAR) around 575, the Middle East and North Africa Region (MENA) around 420, and the Europe and Central Asia Region (ECA) around 492. In carrying out trust fund work operational lawyers and paralegals offer continuous legal support to

trust fund preparation, negotiations of administration and grant agreements, and also trust fund supervision. The following examples from three Regions (AFR, EAP and LAC) showcase critical legal contributions in facilitating trust fund work.

Africa

LEVERAGING RESOURCES TO MAXIMIZE IMPACT OF DEVELOPMENT PROJECT: MULTIDONOR TRUST FUND FOR PRODUCTIVE SAFETY NET PROJECT

Ethiopia is a country with a quite active and stable trust fund portfolio, which is actually one of the largest in the AFR with US\$642 million in commitments allocated in 68 trust funds as of June 1, 2012. Trust funds in Ethiopia complement Bank-financed projects to maximize their reach and results. A case in point is the Productive Safety Net Program (PSNP), which is structured as an Adaptable Program Loan (APL) and its overall aim is to reduce household vulnerability, improve resilience to shocks and promote sustainable community development in food insecure areas of rural Ethiopia. PSNP is currently in its third phase and in March 2012, the Bank's Board of Executive Directors approved an additional financing of US\$370 million for this third phase. The PSNP from its first phase has been also supported by a multidonor trust fund (MDTF) administered by the Bank, which brings together contributions from almost ten development partners. The role of the operational lawyer has been critical in ensuring continuous and uninterrupted support of the MDTF towards the PSNP, as the pro-

gram moved from one APL phase to another and when additional resources were made available by the Bank, through additional financings, or the development partners. This process involved numerous amendments to the legal agreements related to the MDTF, but also the device of innovative legal solutions to ensure that it is conducted in the most efficient way aimed at reducing the time required for this purpose.

East Asia and the Pacific

RESPONDING TO EMERGENCIES: JAVA RECONSTRUCTION FUND

Three major disasters in five years: a 6.2 Richter earthquake, a tsunami, and the worst volcanic eruption of the century, all happened in the same areas of Yogyakarta and Central Java, Indonesia. The response needed was one that could allow funds to flow to communities, based on their own priorities, even as they literally dug themselves out of disaster areas. In response to a series of earthquakes and a tsunami that destroyed more than 300,000 houses in 2006, the Java Reconstruction Fund (JRF) was established at the Government of Indonesia's request. The World Bank serves as Trustee and works in close cooperation with the Government of Indonesia, with a total of US\$94.1 million contributions from seven international donors. Following the 2010 eruptions of Mount Merapi volcano in Yogyakarta district, which displaced more than 350,000 people, the JRF's legal instruments proved flexible enough to be restructured and extended to allow for a focused response to victims of the eruptions.



Photo: Jonathan Pavluk

Staff of Nile Basin Initiative coordination unit for the Equatorial Lakes subbasin show World Bank staff a proposed hydropower project site located on the border of Rwanda and Tanzania.

The JRF is due to close in December 2012. All of the contribution funds will have been fully disbursed. Significant results have been achieved in the reconstruction of communities and the rehabilitation of livelihoods. The portfolio consists of three projects in the area of housing and community infrastructure and two projects addressing the recovery of livelihoods. These projects encouraged greater involvement of marginalized groups in the reconstruction of homes and community infrastructure and planning for future disasters. Over 7,300 temporary houses provided shelter while more than 15,000 seismic-resistant permanent houses were constructed alongside critical community infrastructure. More than 16,000 micro, small and medium enterprises were aided. A total of 310 villages have developed Community Settlement Plans with emphasis on disaster-risk reduction by the time the housing reconstruction project closes. The operational lawyers worked as part of the Bank team for the closing of projects and the JRF, which included a visit to the project areas with donors and representatives of the Government of Indonesia. The visit allowed the Government and donors to see the tangible results of what they have been contributing, as well as impacts that will continue to expand beyond the JRF's life.



Photo: Julio Pantoja

Latin America and the Caribbean

COORDINATING DONORS SUPPORT TO ADDRESS CLIMATE CHANGE: GUYANA REDD+ INVESTMENT FUND

The Guyana REDD+ Investment Fund (GRIF) is a multicontributor trust fund for the financing of activities identified under the Guyana's Low Carbon Development Strategy. The Low Carbon Development Strategy (LCDS) set out Guyana's approach to transition to a green economy. The GRIF was established in October 2010, with the World Bank as trustee. The World Bank, as trustee, receives payments from donors, holds them in a trust fund and then transfers them to GRIF Partner Entities responsible for implementing projects. The World Bank does not make decisions involving project funding. All funding decisions are made by the GRIF Steering Committee comprised of representatives of Norway and Guyana. The World Bank, as trustee, transfers funds to GRIF Partner Entities once projects are approved by the GRIF Steering Committee and the GRIF Partner Entities have requested the funds. The GRIF Partners are the Inter-American Development Bank (IDB), United Nations Development Programme (UNDP), and the World Bank.

On June 5, 2012, the GRIF Steering Committee approved for the first time a GRIF project with the World Bank as Partner Entity: the Cunha Canal Rehabilitation Project. Our lawyers' advice was sought to process this Project before the GRIF Steering Committee as there were no precedents to follow. After conducting appraisal and negotiations, a GRIF Grant Agreement will be executed between the World Bank, as Partner Entity, and the Ministry of Education of Guyana as Project Implementing Entity of the GRIF project. World Bank procedures will apply to the projects for which the Bank is selected as Partner Entity. Legal advice was provided during the preparation of the GRIF project to ensure compliance with Bank's policies.

Partnership Programs

The Legal VPU plays a critical supporting role with respect to the Bank's engagement in partnership programs, most of which are also supported by Bank-administered trust funds. This support comes in three principal areas:

Structural aspects: Each partnership program features critical choices to be made in terms of structure and governance arrangements (e.g., who provides what resources, who has what responsibilities and who has what decision making authority). Clear delineations and efficient governance are needed to match partner expectations, promote transparent arrangements and ensure effective development impact. We provide conceptual and practical advice based on an understanding and analysis of the specific circumstances and requirements. This advice also addresses potential reputational, associational and other risks related to the Bank's roles, particularly in those cases where the Bank is handling funds in a fiduciary capacity.

Implementation work: While the early implementation phase involves the sui generis development of constitutive documents, continuing legal support is often needed for structural shifts, policy issues and even trouble shooting (especially in connection with reputational and other risks). From a legal perspective, where the Bank houses the secretariat, it assumes the role of custodian of the partnership, accordingly putting a premium on clear

Given the great variety of partnership programs, the Legal VPU has had to be proactive and creative in highlighting and handling any number of policy-related areas affecting the Bank's engagement in partnership programs.

governance terms, clear governing body approvals and clear contract terms, all of which we help put in place.

Policy advice: Because the policy framework directed specifically at partnership programs is minimal, there is somewhat of an art to knowing which Bank policies apply directly to partnership programs and which other Bank policies may indirectly inform partnership program treatment. In this context, legal support can provide a broader analytical understanding within a nuanced, risk-based approach to the Bank's work. Given the great variety of partnership programs, the Legal VPU has had to be proactive and creative in highlighting and handling any number of policy-related areas affecting the Bank's engagement in partnership programs.



Photo: Anne-Marie Leroy

Primary Education for Disadvantaged Children Project, Vietnam.

HIGHLIGHTS

Global Partnership for Education

The Legal VPU has provided legal support to the restructuring of this partnership and its trust fund arrangements, replacing five different trust funds with a single umbrella governance structure and one trust fund.

Global Partnership for Social Accountability

The Legal VPU helped design and structure the Global Partnership for Social Accountability (GPSA), a partnership of a broad range of development actors committed to enhancing social accountability to increase development effectiveness. The GPSA aims to contribute to country-level governance reforms and improved service delivery by: (a) strengthening the capacity of civil society on social accountability, through knowledge generation and financing; (b) helping to improve coordination of social accountability work at the country level; (c) supporting country teams and development partners in strengthening the links and complementarities between supply-side and demand-side interventions; and (d) working with external partners to scale up social accountability.

Consultative Group on International Agricultural Research's Intellectual Assets Policy

The Legal VPU, spent countless hours negotiating with stakeholders across the newly reformed Consultative Group on International Agricultural Research's (CGIAR) agricultural/food research partnership, including country and NGO donors, research centers, representatives of CGIAR leadership and their counsel to reach the successful adoption of the first system-wide Intellectual Assets/Intellectual Property policy governing access to the results of the groundbreaking research carried out by the CGIAR for the benefit of the most vulnerable.

Enabling the Global Partnership for Disaster Reduction and Recovery Support to South Sudan

The Legal VPU has provided assistance enabling the Global Partnership for Disaster Reduction and Recovery (GFDRR) to give crucial support to the new country of South Sudan, where crop cultivation had been disrupted by conflict with Sudan.

The Legal VPU and the Bank's Corporate Governance



Photo: Salwa M. Saleh

Supporting the Bank's Finance Complex

The Legal VPU supports the Bank's Treasury, Controller, 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.
- Provides legal and governance advice on IDA matters, including serving as counsel for periodic IDA replenishments.

To respond to the development needs of its clients who are most susceptible to natural disasters, the World Bank has developed a broad menu of solutions in its overall framework for disaster response and risk management.

- Creates innovative financing solutions using capital markets and structured finance techniques to provide highly desirable development outcomes that would not be available under more traditional donor arrangements.



Photo: Nugroho Nurdikiawan Sunjoyo

Rebuilding a road after eruption of Mount Merapi. Yogyakarta, Indonesia.

HIGHLIGHTS

Providing Market-Based Solutions for Disaster Risk Mitigation and Financing

Natural disasters disproportionately affect the World Bank's client countries, with some 3.3 million deaths and \$2.3 trillion worth of property damage caused by droughts, earthquakes, storms and floods in the period from 1970 to 2010. Disasters negatively impact both the economy of an affected region or country and the health and well-being of the people impacted by the hazards. To respond to the development needs of its clients who are most susceptible to natural disasters, the World Bank has developed a broad menu of solutions in its overall framework for disaster response and risk management, spanning risk assessment, capacity building, investment in disaster preparedness, sovereign disaster risk financing and postdisaster response and reconstruction.

The primary channel for providing the disaster risk financing solutions offered by the World Bank has been through lending, grant or budget support instruments that have a direct financial impact on its balance sheets. However, not all natural disasters or World Bank clients are the same, and the complexity and diversity of clients needs, hazards, risks and priorities, particularly in the area of disaster risk financing, has demanded flexibility and customization. In 2008, the World Bank began to offer innovative market-based financial solutions to its client countries that leverage private sector participation in disaster mitigation, reduction and recovery needs with the common objective of providing immediate liquidity to governments in the event of a natural disaster. To this end, the Legal VPU has provided support to the Treasury, Concessional Finance and Global Partnerships, Sustainable Development Network and Africa Vice Presidencies for a series of weather derivatives transactions for Malawi that provide coverage against the risk of severe drought during the critical rainfall season from October 1 to April 30 of each year. The weather derivatives transactions have been based on a weather index that incorporates the Malawi Meteorological Service's national maize yield assessment model which uses daily rainfall to predict maize yields and therefore production throughout the country.

The World Bank's involvement in providing natural disaster risk intermediation services to its client countries has demonstrated that clients value the World Bank's role which can help overcome some of the major constraints to wider use of market-based solutions, particularly those related to market access and capacity. To further broaden the range of natural disaster risk intermediation solutions offered by the World Bank, the Legal VPU has worked with the Finance Complex to obtain the authorization of the Executive Directors for the offer of natural disaster products that will cover geological events (e.g., earthquakes) — in addition to already-covered meteorological events (such as wind and precipitation) — to client countries, subnational entities and regional and international organizations. Following the grant of this authorization by the Executive Directors on October 5, 2012, the Legal VPU is providing support to the Finance Complex, Finance and Private Sector Development and East Asia and Pacific Vice Presidencies on the execution of a catastrophe derivative that will cover earthquake (including, for the first time ever for a transaction of this type, tsunami) risk and tropical cyclone risk for five island countries in the South Pacific. The Legal VPU is also providing support to Treasury Vice Presidency on a proposed weather derivative transaction for Uruguay's state-owned public electric company, *Administración Nacional de Usinas y Trasmisiones Eléctricas* (UTE), that is designed to mitigate the impact of drought on UTE and Uruguay's energy needs, of which more than 80% is provided by hydropower plants.

Extending Conversion Options to IBRD Loans with a Variable Spread

IBRD has offered, since 1999, a fixed spread loan product that contains embedded options designed to assist developing countries manage financial risks and implement their asset-liability management strategies as part of their overall sovereign debt management process.

The introduction of the conversion options was predicated on pricing the loans at a fixed spread relative to a market reference rate (e.g., LIBOR), which facilitated management by the Bank of the associated risks and allowed it to pass on the benefits of the Bank's comparative funding advantage in the capital markets. The Bank bears the refinancing risk that flows from rising interest rates as the fixed spread reflects the Bank's projected (rather than actual) cost of borrowings. By contrast, the variable spread loan offers an interest rate based on LIBOR but with a variable spread that adjusts every six months to reflect the Bank's cost of borrowings and on which the clients bear the risk of rising interest rates.

At the outset, the difference between the interest rate on fixed spread loans and that on variable spread loans was relatively modest and, in the period between 1999 and 2008, amounted—on average—to only about 0.11%, with a low of 0.06% in 2005 (*Fig. 1 shows the differential in basis points between the fixed spread and the variable*

spread over the last 12 years). The cost to a borrower of opting for a fixed spread loan—or moving from a variable spread loan to a fixed spread loan—in order to take advantage of the conversion options that were otherwise not available to variable spread loans was, therefore, modest and this was reflected in the rapid uptake of the fixed spread loan which accounted, at its peak in 2007, for 70% of all Bank loans outstanding (*Fig. 2 shows the number of fixed spread loans outstanding as a percentage of total IBRD loans over the past 12 years*).

This all changed in 2008. The financial crisis precipitated by the near-collapse of AIG and failure of Lehman Brothers led to an increase in borrowing costs for all issuers, including the Bank. In order to mitigate its refinancing risk on fixed spread loans, the Bank increased the fixed spread to reflect its projected cost of funding and the increased market risk. There was also an increase in the variable spread due to an increase in the Bank's actual cost of funding, but this increase was not as steep and the differential between the fixed spread and the variable spread widened to as much as 0.93% in 2010. The Bank's clients balked at the idea of paying the significantly higher price for the fixed spread loan and the number of outstanding fixed spread loans declined sharply and now stands at 10% of the loan portfolio. As borrowers understandably retreated to the seemingly cheaper variable spread loan, they also gave up the ability to manage

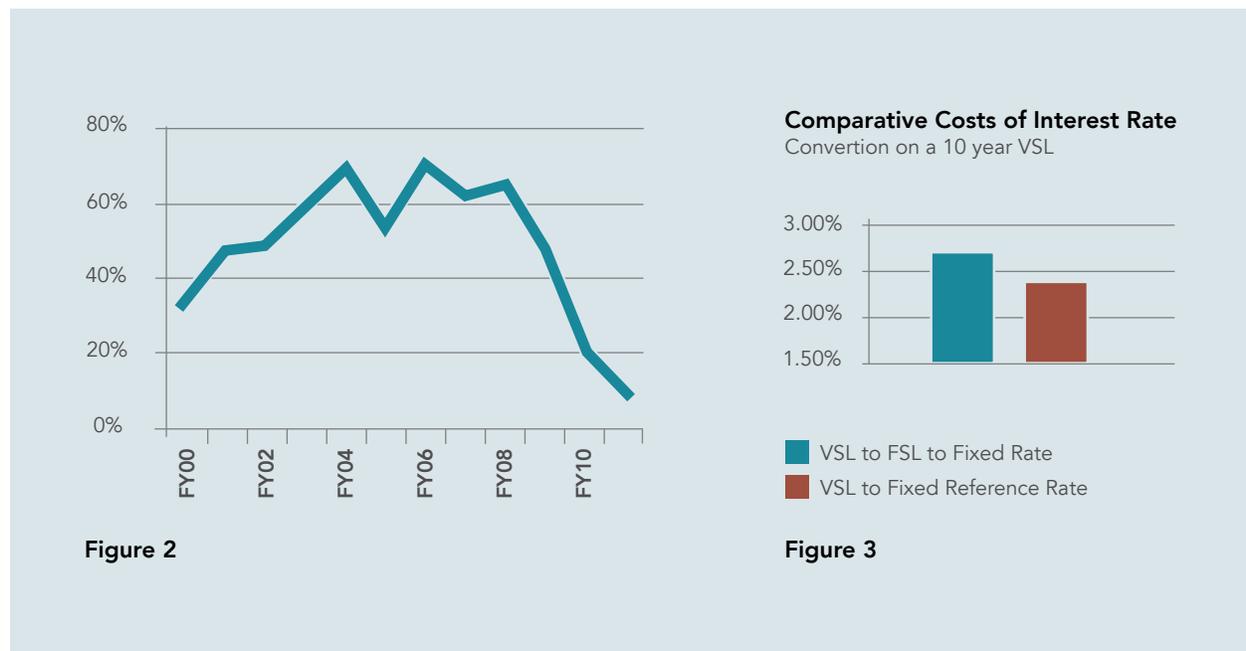


Figure 1

their financial risks as the conversion options embedded in the loans could only be exercised by first converting the variable spread into a fixed spread. A move from a variable spread to a higher fixed spread, furthermore, attracted a transaction fee which pushed the resulting interest rate even higher than that payable on loans that started life with a fixed spread.

With a growing number of borrowers requesting a solution to this disparity in treatment between variable spread and fixed spread loans, the Executive Directors approved, on March 12, 2012, a proposal to offer for variable spread loans the same conversion options offered on fixed spread loans without requiring borrowers to first fix the variable spread. The Legal VPU was intimately involved in this process and provided legal and governance advice and support to the Bank's Finance Complex in the conception, design, approval and implementa-

tion of these new options for variable spread loans. The potential benefits of extending the conversion options to variable spread loans are clear; it will allow borrowers to reduce their exposure to financial shocks from interest and exchange rate movements on a cost-effective basis while ensuring the equitable treatment of variable spread and fixed spread loans (*Fig. 3 illustrates the savings on converting the interest rate on a 10 year variable spread loan without first fixing the spread*). Offering better access to these conversion options will, consequently, reduce the Bank's own risks, as its clients will be better placed to implement their asset-liability management strategies and improve their ability to service their debt to the Bank. The Legal VPU will continue to provide ongoing support to the Finance Complex and the Regions as these new conversion options for variable spread loans are rolled out and taken up by the Bank's clients.



Institutional Affairs

The Legal VPU provides active support to OPCS 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-

The Legal VPU makes contributions to various initiatives designed to strengthen the Bank's governance and accountability.

wide management committees (Governance Council, International Development Fund Committee, State- and Peace-Building Fund Committee, etc.).

Finally, the Legal VPU makes contributions to various initiatives designed to strengthen the Bank's governance and accountability.



Photo: Simone D. McCourtie

HIGHLIGHTS

Accountability and Decision-Making Framework (see also Part II)

The Legal VPU developed a framework for consistent assignment of accountability and clear decision-making. The framework defines basic delegation of authority concepts and specifies roles for participants in the decision-making process. It also requires managers to articulate with greater precision the scope of authority and responsibility of staff members who come together from different parts of the matrix to execute the most important business decisions made in the Bank. Greater precision ensures that the right people are involved, the right information is considered, and decisions are made as quickly as possible.

Policy and Procedure Framework

The Legal VPU began work on a new approach to manage the Bank's governing documents. The goal of this project is to:

- Develop an efficient system for development and dissemination of policies and procedures that set out the ground rules for conducting business.
- Create an efficient system to distribute internal knowledge about policies and procedures to staff at all levels and in all locations, and present that knowledge in a reliable and user-friendly manner.
- Promote accountability by giving better instructions and guidance to staff on how to conduct the Bank's business.
- Increase openness by making policies, procedures and guidance more understandable and accessible to stakeholders.

New Calculation of Basic Votes

Amendment to IBRD and IFC Articles of Agreement—Effective June 27, 2012, Article V Section 3(a) of the IBRD Articles of Agreement and Article IV Section 3(a) of the IFC Articles of Agreement were amended to reflect a new calculation for basic votes.

Basic votes were introduced at the founding of each institution to maintain relative voting power for smaller members, with the number of basic votes fixed at 250 votes per member. With the increased level of membership and various capital increases, the protection provided to smaller members by the 250 basic votes has diminished. This amendment was proposed during

voice reform and subsequently approved by the Boards of Governors of the Bank and IFC. As of June 27, 2012, basic votes of each member will be the number of votes that results from equal distribution among all members of 5.55% of the total voting power of all members. The Legal VPU provided advice and support during the amendment process.

Leading the Opening-Up of the Sanctions System

Following on from the package of reforms passed by the Boards of IBRD, IDA, IFC and MIGA in November 2010, this year has seen an impressive opening-up of the Bank's sanctions system. The system has been made increasingly transparent and the measures of accountability have been revealed and bolstered:

- In January 2011, the Bank's Sanctioning Guidelines, which seek to afford clarity and predictability about the imposition of sanctions and to offer guidance to INT in its negotiation of settlements, were updated and made public.
- In November 2011, the Bank released, for the first time, a detailed Information Note, written by the Legal VPU, describing the entire sanctions regime. This Note gives the public an understanding of the system as a whole, making known the system's internal relations and operations, information which was previously largely unknowable to outsiders.
- In May 2011, the undisputed first-tier determinations of the Evaluation and Suspension Officer (EO) were published. In addition, in December 2011 the appellate decisions of the Sanctions Board, which are fully reasoned and include relevant facts and the applied legal reasoning, were first published in the Sanctions Board Law Digest.
- In April 2012, the Legal VPU coordinated the redrafting and updating of the Sanctions Procedures, which were released to the public with notes on those changes. Among other things, this update clarified the alignment of the impact of suspensions and debarments. Moreover, the Sanctions Board was given the power to call hearing on its own authority, rather than on request.

These developments are all the more dramatic given that the sanctions system has been excepted from the 2010 World Bank Group-wide Access to Information Policy. For the sake of the deliberative process, confidentiality is maintained throughout the sanctions process.

In the sanctions system, the Legal VPU plays an objective role, offering support for specific legal questions, generally about the state of the law in the Bank's system, while refraining from weighing in on the specifics of any one case. The Legal VPU continues to actively review the functionality of the sanctions regime, especially in light of all of the above mentioned developments, paying particular attention to the regime's institutional aspects and how the various actors can be brought together with increased facility. The Legal VPU also has been working on developing reforms that would increase the efficiency, effectiveness, and transparency of the entire sanctions process.

Managing Inter-institutional Business Conflicts of Interest

In accordance with the restructuring of institutional arrangements for managing inter-institutional business conflicts of interest by the Conflicts of Interest Council (chaired by the World Bank Group General Counsel), a World Bank Office of Interinstitutional Business Conflicts of Interest (WB CoIO) was established and housed in the Legal VPU and a new head of the office appointed, effective January 1, 2012. The head of the WB CoIO reports to the World Bank Group General Counsel and liaises with counterpart officers in IFC and MIGA who report to their respective General Counsel. The WB CoIO is advisory in nature, and undertook approximately a dozen cases in the second half of the fiscal year. The head of the office also, inter alia, participated in a number of institutional reviews, began conducting training which will continue throughout the upcoming fiscal year and began the establishment of the office, including developing a database for tracking cases and building a body of knowledge around managing inter-institutional business conflicts of interest.

Access to Information

The Legal VPU, through its Information Policy unit, manages the Bank's Access to Information Policy (AI Policy), which is a central element of the Bank's modernization and Open Development agenda. The AI Policy has enabled the Bank to fully commit to the concept of Open Development by actively working to make the Bank's operations, data and research more accessible, transparent and accountable, including opening up the way the Bank develops its research and knowledge. The goal of the AI Policy is to make the Bank an even more effective partner to developing countries, other international development institutions, and civil society organizations.

The Information Policy unit contributes to this goal by providing AI Policy advice to management and staff Bank-wide on the application and implementation of the AI Policy to all information created or held by the Bank. Our advisory services include working closely with all front-line units responsible for implementing the AI Policy, such as External Affairs and the World Bank Group's Archives unit, to ensure effective management of all public access information cases. This unit also provides ongoing AI Policy advice to the institution's Access to Information Committee (AIC), an internal administrative body represented by members of Operations Policy and Country Services (OPCS), General Services Department (GSD), Legal VPU, External Affairs (EXT), Information Management and Technology (IMT), Corporate Secretariat (SEC), and one Region, that broadly oversees the implementation of the AI Policy. In addition, the unit advises SEC in various matters arising from the AI Policy concerning the Board and its Committees, the Board of Governors, and individual Executive Director's offices. In this advisory capacity, our lawyers have served as counsel to the AIC Chair and SEC in presenting AI Policy related matters to the Committee on Governance and Executive Directors' Administrative Matters (CO-GAM), and has advised SEC and the Board in respect to the Board's authority to exercise the Bank's prerogatives to restrict and disclose information under the AI Policy.

In fiscal year 2012, the Information Policy unit also continued to manage the Bank's AI Focal Point program consisting of a roster of more than 180 staff members across the Bank, who serve as AI champions through their support of colleagues in the implementation of AI Policy matters. As part of its management of the AI

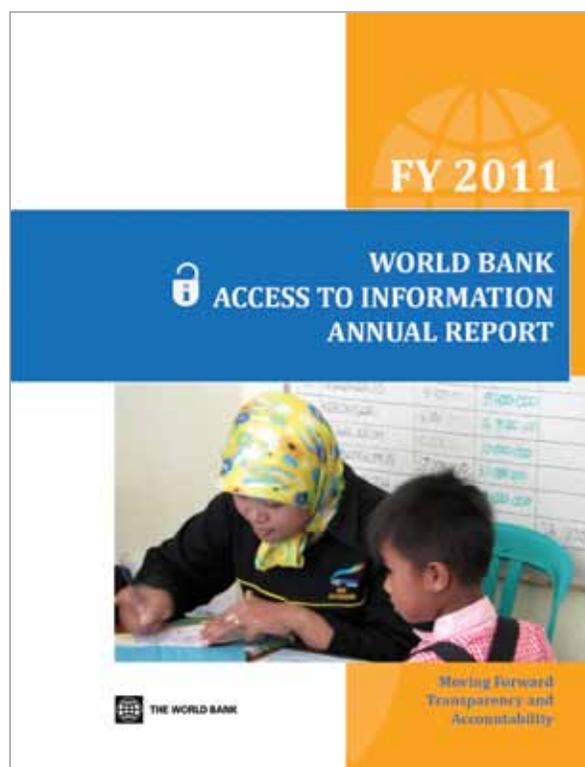
Focal Point program, the unit provides AI Policy support to AI Focal Points. It also uses the AI Focal Points as a mechanism to disseminate Bank-wide AI Policy related updates and information, through the unit's preparation and issuance of AI Focal Points Newsletters, which communicate, inter alia, AI Policy updates, AIC interpretations on the AI Policy, and Frequently Asked Questions. In fiscal year 2012, the unit published a series of six AI Focal Point Newsletters.

As part of its responsibilities as the anchor unit for the AI Policy, our team monitors and reports to management and the Board on the implementation of the AI Policy. As part of this mandate, in fiscal year 2012, we provided management and the Board with two reports on the AI Policy's implementation: a progress report, issued in July 2011, and the Bank's first Access to Information Annual Report (AI Annual Report), issued in February 2012. All reports prepared by the Information Policy unit were also made available to the public. In FY12, as part of its monitoring and reporting activities, the unit also developed and carried out the Bank's first Access to Information public survey. Data gathered through the AI survey were reported to management, and relevant results were included in the AI Annual Report. In fiscal year 2012, the Information Policy unit also began its preparation of an AI Policy implementation report to the Board. This report covers the first 18 months of the AI Policy's implementation (i.e., July 1, 2010, through December 31, 2011), and aims at providing the Board with a comprehensive 18-month overview of the Bank's experience in implementing the AI Policy; this report will be presented to the Board in early fiscal year 2013.

In addition to its role as the institution's AI Policy anchor, the Information Policy unit serves as the secretariat to the AIC and the Access to Information (AI) Appeals Board, an impartial body of outside experts appointed to consider second level appeals filed under the AI Policy. The mandate of the AIC includes the authority to exercise the Bank's prerogative to disclose certain restricted information, to interpret the AI Policy, and to decide on the first level appeals filed against the Bank's decisions to deny the public's access to information. Our lawyers provide ongoing support to the AIC on all AIC deliverables. As part of this support, our lawyers prepare and

present to the AIC, on a bi-weekly basis, the considerations and analysis of the underlying materials and information related to the cases and issues before the AIC for consideration, and carries out all necessary consultations with management and relevant business units. In view of the end of the two-year appointment of the first members of the AI Appeals Board in June 2012, our team has also supported the President's office in searching and selecting new members for the AI Appeals Board.

The Information Policy unit also promotes AI Policy understanding and dissemination with, civil society organizations, client countries and other international development institutions. In fiscal year 2012, our team delivered multiple presentations on the AI Policy to external groups, including to a global audience of civil society organizations at a civil society forum held during the Bank-IMF Spring Meetings. The unit also continued to advise the Inter American Development Bank, the Asian Development Bank, and the African Development Bank, in the development of their respective access to information policies.



First Annual Report on Access to Information released in February 2012.

Administrative Matters

The Legal VPU's role as the World 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 World Bank. It also involves the development of internal policies and procedures as well as the preparation of contracts and agreements that aim to prevent disputes and develop understandings between the World Bank and the parties with which it deals.

The World 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 World Bank.



Photo: Deborah Campos

World Bank Headquarters

HIGHLIGHTS

Representing the Bank before the Administrative Tribunal

The Legal VPU represents the Respondent in cases filed with the Administrative Tribunal. This representation involves the preparation of briefs, as well as participation in hearings. The Applications before the Tribunal impugn administrative decisions and disciplinary actions against staff, alleging nonobservance of contracts of employment, and terms of appointment. These Applications deal with issues such as misconduct, unsatisfactory performance, discrimination, retaliation, termination of employment, nonrenewal of appointment, amongst others.

Advising on Legal Aspects of Human Resources

Our lawyers provide legal advice to the Human Resources Vice Presidency 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 involved Bank staff. Pursuant to a services contract with IFC, the Legal VPU also provided legal assistance to IFC's Human Resources department.

Advising the Ethics and Business Conduct Vice Presidency and the Integrity Vice Presidency

The Legal VPU provides legal advice to both the Integrity Vice Presidency (INT) and the Ethics and Business Conduct Vice Presidency (EBC) on matters that fall within their respect mandates under the staff rules. In advising EBC and INT, the goal of the Legal Vice Presidency is to endeavor or ensure that the interests of the institution are protected and the rights of staff are respected.

Providing Legal Support to the Regions and Country Offices

The Legal VPU assists the Regions and Country Offices on a host of institutional and administrative law matters, such as negotiating and drafting Establishment Agreements and Real Estate Agreements. We prepare Establishment Agreements 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.



Photo: Salwa M. Saleh

Members of the Institutional Administration team.

Managing the Bank's Real Estate Transactions at Headquarters

Negotiating and drafting agreements for the lease or purchase of real estate property, and advising on related transactions at World Bank Headquarters.

Coordinating Outside Litigation

The Legal VPU provides legal advice in outside litigation involving the institution, and coordinates with outside counsel to defend the institution and protect its interest.

Resolving Tax Issues

We provide legal advice and handles matters implicating the tax immunity of the institution and its staff.

Advising on the Legal Dimensions of New Information Technology and Intellectual Property

The Legal VPU provides legal advice on the Bank's social media strategy and practices, as well as on privacy policies and terms of use for websites and platforms and on matters relating to intellectual property rights.

The Legal VPU's Contribution to Knowledge and Learning



Photo: Salwa M. Saleh

Judge Sang-Hyun Song, President of the International Criminal Court,
Keynote Speaker at Law, Justice and Development Week 2011

Knowledge and Learning

“Lasting peace and prosperity in the post-conflict societies can only be achieved if development challenges and justice enforcement are addressed in a coordinated manner”

*Judge Sang-Hyun Song
Keynote Speaker at Law,
Justice and Development Week 2011*

The Legal Vice Presidency has a long tradition of contributing to the Bank’s knowledge agenda, spanning from interventions, including regular peer reviews on the Bank knowledge products, contribution and development of substantial portions of major Bank products and the generation of the Legal VPU’s own knowledge products.

However, the development and dissemination of innovative legal knowledge undertaken during fiscal year 2012 has raised the profile of the Legal VPU’s knowledge and learning agenda. Initiatives were launched for the first time, many of which were set to become our flagships, and included the Legal Vice Presidency Annual Report, the Law, Justice and Development Week organized for the first time by the legal departments of the World Bank, IFC, MIGA and ICSID, and the Global Forum on Law, Justice and Development, an initiative launched last year and already embraced by an impressive base of partners that keeps expanding.



Photo: Salwa Mohamed Saleh

Ana-Mita Betancourt, Director and General Counsel, MIGA, Meg Kinnear, Secretary-General, ICSID, Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel, and Rachel Robbins, Vice President and General Counsel, IFC.
Law, Justice and Development Week 2011

Other notable initiatives included the reinstatement of our key annual flagship publication, the World Bank Legal Review, the formal publication of our sector work as World Bank Studies, *New Directions in Justice Reform*, *Legal Note on Bank Involvement in the Criminal Justice Sector*, the continued production of a compendium of Legal publications and reports of the World Bank Group on a CD-ROM as part of our ongoing efforts to increase the accessibility of our knowledge and resources, and the development of training components and legal databases.

Our progress and continuing efforts during fiscal year 2012 only confirmed our determination to make knowledge and learning a key priority and the trend towards a stronger knowledge sharing mechanism keeps growing.



Photo courtesy of the Supremo Tribunal Federal, Brazil

Hassane Cisse, Deputy General Counsel, Knowledge and Research, World Bank, meets with Minister Cezar Peluso, President, Federal Supreme Court of Brazil, to discuss the Global Forum on Law, Justice and Development Initiative.

“The ability of the World Bank to have attracted the subject matter expertise across several informational tracks was nonpareil. The content of the presentations all were immediately useful to our office professionally. My own sense of professional development was rewarded; as the depth of the information was educational, thought-provoking, insightful and practical. Aside from the agenda, it was very well done in terms of affording ample opportunities for networking and forming project-based alliances. In addition to my own experiences, I witnessed many other small groups forming throughout the conference period based upon common challenges and the desire to make connections for skills not core to their own organizations. The degree and diversity of participation was a huge factor in the utility of the event.”

Testimonial on Law, Justice and Development Week 2011

HIGHLIGHTS

First Annual Report of the Legal Vice Presidency

As part of our efforts to increase and sustain communication across the institution, we published the first annual report of the Legal Vice Presidency to provide a review of significant legal challenges facing the Bank and possible recommendations for changes or reforms to the Bank's legal or policy framework. The annual report offered a detailed retrospective of our milestones and contributions to the work of the World Bank as well as a knowledge piece about "Strengthening the Bank's Internal Rule of Law", an intellectual contribution to significant legal issues of importance to the Bank and the development community.

Law, Justice and Development Week 2011

The Law, Justice and Development (LJD) Week, held on November 14-17, 2011, was organized for the first time by the legal departments of the World Bank, IFC, MIGA and ICSID, and in collaboration with partners including American Bankruptcy Institute, American Bar Association, American Bar Association Section of International Law, George Washington University Law School, Harvard Law School, International Development Law Organization, Ministério Público do Estado de Minas Gerais, Syracuse University, and Tsinghua University School of Law.

With a combination of 44 plenary and parallel sessions, the event explored how legal innovation and empowerment contributed to development and addressed: **global issues**, including the role of intellectual property in innovation, financing women entrepreneurs and political risk management; **regional challenges**, including legal harmonization as a tool for regional integration, the Organization for the Harmonization of Business Law in Africa (OHADA) experience, and financing carbon-efficient investments in civil law vs. common law jurisdictions; and **country cases**, including opportunities and challenges for law and development in China, and perspectives from various Middle East and North Africa countries on the rule of law, governance and development. The event brought together legal practitioners, judges, justice officials, academics, and general counsel and staff of international organizations who built a strong vision and collaboration through active exchanges.

At the opening of the event, keynote speaker Judge Sang-Hyun Song, President of the International Criminal Court, spoke about the fundamental connection between justice, peace and development and invited development experts to think of international criminal justice and equitable development as being essential to secure stability, security and prosperity in the world.



Signing of Letter of Endorsement of the Global Forum on Law, Justice and Development.

The roles of law and justice are critical in the fight of poverty and the opportunities to discuss them are valuable. The LJD Week 2011 not only demonstrated the World Bank Group leadership but also showed that it is a global convener and connector of law and development practitioners and experts. At the LJD Week 2011, partici-

pants, speakers, and organizers shared the same commitment, exchanged a variety of perspectives and ideas and brought legal solutions to development challenges.

Law, Justice and Development Week 2011

Achievements

- World Bank Group leadership and global convener role on Law, Justice and Development issues.
- Major learning and knowledge exchange for World Bank Group staff and external audience with wide participation of partners from around the world.
- Agreement among participants to develop better integration of law and justice considerations in the development agenda.
- Launch of the Global Forum on Law, Justice and Development as permanent knowledge sharing partnership supported by an information and communication technology platform.

Some Numbers on the Success of LJD Week 2011

- A 5-day event
- 44 sessions offered
- 9 external partners
- 176 panelists/moderators (including 18 General Counsel, 6 World Bank Vice Presidents, 3 World Bank Managing Directors, and previous World Bank President James Wolfensohn)
- 838 external participants
- 1,474 World Bank Group/IMF staff



Photo: Salwa M. Saleh

Law, Justice and Development Week 2011. The General Counsel Round Table was attended by 18 General Counsel.

Global Forum on Law, Justice and Development

The Global Forum on Law, Justice and Development (GFLJD) is a permanent global forum that seeks to connect experts and stakeholders from around the world, and provides a mechanism for continual and efficient knowledge exchange and for the cogeneration of innovative solutions to development challenges based on efficiency, equity and justice.

The GFLJD was officially launched during the World Bank Group Law, Justice and Development Week in November 2011, where GFLJD partners attended the signing ceremony of the letters of endorsement. Initiated and supported by the World Bank Legal Vice Presidency, the GFLJD has already attracted a broad spectrum of intellectual development partners made up of think-tanks, regional and international organizations, international financial institutions, governments, judiciaries, the private sector, and civil society organizations. The base of GFLJD partners, which counted 101 at the time this report was published, keeps expanding.

In its first year, the GFLJD activities focused on five formal Thematic Working Groups (TWGs) and two subgroups which were created based on the areas of interest expressed by the GFLJD Partners. The TWGs and subgroups provide the platform for cogeneration of legal knowledge and products. They are co-led by intellectual partners who are accountable for the management and outputs of the overall working group. A number of high-level events already took place at the end of fiscal year 2012, including a Colloquium on Bankruptcy Treatment of Financial Contracts in Maryland, USA, a Training Program in Bankruptcy Law for Chinese Judges in Beidaihe, China, and an E-discussion on Access to Justice for Persons with Disabilities. A week-long event is planned for December 10-14, 2012 with dedicated sessions of each GFLJD TWG.

Global Forum on Law, Justice and Development

Generating Innovative Legal Solutions to Development Challenges

Key Objectives

- Strengthen and promote a better understanding of the role of law and justice for a sustainable development through structured North-South and South-South dialogue.
- Better integrate legal and judicial institutions in the development process to increase development effectiveness.
- Encourage the cogeneration of innovative legal solutions to development issues.
- Support knowledge dissemination by a free access, use and sharing of legal solutions to development challenges.

Activities

- Carrying out research and assessment of regulations/legislations and legal and policy analysis.
- Providing guidance and precedents.
- Carrying out data collection and action research.
- Institutional analysis.
- Database of experts, peer reviewers, practitioners.
- Training materials and capacity building.

Thematic Working Groups as of June 2012

- Empowerment and Equity for Diverse Communities.
- Environmental and National Resources Law.
- Governance and Anticorruption.
- Justice and Rule of Law Reform.
- Law and the Economy.

Subgroups as of June 2012

- Access to Justice for Persons with Disabilities.
- Suspension and Debarment.



Law, Justice and Development Compendium of Publications and Reports

In our ongoing efforts to increase the accessibility of our knowledge and resources, we continued the tradition of producing a compendium of publications and reports on a CD-ROM to be disseminated during the Law, Justice and Development Week 2011 and to law libraries around the world upon specific requests. The 2011 CD-ROM contained 101 publications and reports covering a wide range of topics such as environmental and natural resources law, justice reform, and private sector development, finance and infrastructure.

A presentation of World Bank Group recent knowledge products took place at a luncheon event on November 15 with opening remarks by Mahmoud Mohieldin, Managing Director, World Bank, and included the first Legal Vice Presidency Annual Report, the Legal Review on Law, International Financial Institutions and Global Legal Governance (Volume 3), as well as other significant publications.

Web-based Knowledge Products

Legal staff's efforts to design knowledge products that make an impact on the issues they address can hardly be achieved without strategic dissemination and the enhanced use of information technology systems, either for external or internal audiences. Our effort in this area was significantly expanded with databases developed under the leadership of our lawyers. For example, the Public-Private Partnership (PPP) Resource Center for contracts, laws and regulation continued to be a valuable resource for sample legal materials and practical toolkits, checklists, and guidance for evaluating projects. Many Internal web-based tools developed to support the sharing of information by lawyers to help ensure that our mandate was achieved, included the newly launched Safeguards Guidance that provides sample text taken from actual investment lending operations to assist our lawyers with the drafting safeguards-related definitions.

PPP in Infrastructure Resource Center for Contracts, Laws and Regulations (www.worldbank.org/ppp)

The Legal VPU's initiative to provide free public guidance and resources on PPPs and the contractual and legal issues relating to them continues to expand and increase readership. The site is now receiving approximately 13,000 hits per month from all over the world (13% of traffic coming from Sub-Saharan Africa) and is supported by IFC, Public Private Infrastructure Advisory Facility (PPIAF) and Norad (Norwegian Agency for



Development Cooperation), as well as the IADB. It has developed new pages this fiscal year on PPPs in renewable energy, solid waste, rural water and sanitation and irrigation and also financing pages that provide guidance on project finance and include links to risk mitigation products such as the Bank's partial risk and credit guarantees and MIGA political risk products.

Insolvency and Banking

The Legal VPU 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.

Our staff also participated in the organization of the INSOL—World Bank Group Africa Roundtable on insolvency law (ART) held in Cape Town, on September 16-17, 2011. The conference focused on value-preservation strategies in Africa and brought together an ample representation of public and private sector representatives from the whole African continent.

In addition, the Legal VPU had a leading role in the organization of the Forum on Asian Insolvency Reform (FAIR), the most important and consolidated regional forum on insolvency matters. The Eighth FAIR was held in Kuala Lumpur on November 30 and December 1, 2011. For this event the Malaysian Authorities—the Malaysia Department of Insolvency and Bank Negara—joined efforts with the Bank and its international partners, UNCITRAL, OECD, and INSOL. The Legal VPU holds the chair and the secretariat of the steering committee for the FAIR, and was therefore involved in all stages of the process. The conference program included sessions on Islamic Finance and Insolvency, the treatment of insolvency of SMEs in Asian countries, and

one of the first public debates on the Financial Stability Board (FSB) Key Attributes for the resolution of systemic financial institutions. The program was highly valued by the attendants, who included policy makers from all major Asian economies.

The Legal VPU published a study in 2011 on out-of-court restructuring mechanisms, based on the ICR standard and the experience accumulated over the years in the Insolvency Initiative in the formulation and assessment of informal and hybrid restructuring approaches to situations of corporate debt distress. The publication condenses, in an accessible way, the lessons learned in the work done by the Legal VPU and other departments of the World Bank in different countries around the world.

TRAINING PROGRAM ON BANKRUPTCY LAW TO CHINESE JUDGES

A team from the Legal VPU, reinforced with international specialists, delivered a training program in bankruptcy law to Chinese judges (Beidaihe, China, June 2012). The program was organized in partnership with the International Developmental Law Organization (IDLO) and with the National Judges' College of China. The training was delivered to 162 judges coming from all Chinese provinces, and was based on the premise that the judges would benefit from a comparative and functional perspective, providing them with specific examples of how to solve complex issues that typically arise in insolvency cases, and illustrating practically the economic and social impact of judicial decision-making in the bankruptcy context.

The training was supported by a complete set of materials produced in English and in Chinese. The program was time-intensive, and was rewarded with the active engagement of the Chinese judges. In particular, the sessions based on role-playing and practical exercises were extremely well received by the trainees, and helped them to see many bankruptcy issues in a new light. The National Judges' College conducted the evaluations of the educational program, and these evaluations have evidenced a very high level of satisfaction with the training received. The training program opened possibilities for further cooperation with the Chinese judiciary, and also assisted the World Bank in gathering information about the application of the Chinese Enterprise Bankruptcy Law 2006. For the World Bank Insolvency and Creditor/Debtor Regimes Initiative, the training served as a very valuable pilot, and proved that similar programs could be very useful in many client countries.



Photo: Wanfei Zhao

Training of Chinese Judges in Bankruptcy Law (Beidaihe, June 2012). From left to right: US Judge Charles Case, Yawei Cao, three Chinese judges from different provinces, Jose Garrido and Xin Liu (Legal Vice Presidency).

Global Lawyer Course, University of Melbourne Law School

For the second year in a row, the Legal VPU hosted students from the University of Melbourne Law School in Australia for a short training session as part of their Global Lawyer course. The course examines the various roles played by lawyers within the international legal realm, including as advisers, advocates, negotiators, settlers of disputes, and drafters of legislation, contracts and treaties. Through this course, students explore the complex functions and responsibilities of “international

lawyers”, including lawyers at the World Bank and IMF. The session this year was opened by the World Bank Group General Counsel and was presented by three lawyers in the Legal VPU, each covering different areas of the Bank’s work. The session was a great way for the Legal VPU to demonstrate the role it plays in the development arena and an opportunity to engage with law students who will go on to become future leaders, development experts or work in other areas that the Bank is engaged in.



Photo courtesy of Andrew Mitchell, Professor, Melbourne Law School

University of Melbourne students visit the World Bank in July 2012.

The Five Pillars of the Legal VPU's Knowledge and Learning Agenda in FY 2011

PILLAR 1. Intellectual Leadership through Research and Publications

- The World Bank Legal Review: Law, International Financial Institutions and Global Legal Governance, Volume 3, 2011.
- Forty-one articles/monographs by the Legal VPU staff were published.
- A compendium of legal publications, with 101 reports and papers from the Legal VPU was made available on mini CD and internet.
- The quarterly Law, Justice and Development E-Newsletter was disseminated, reaching 5,764 readers.

PILLAR 2. The Law at your Fingertips

- The Legal VPU continued to strengthen and expand the provision of specialized knowledge through online databases for internal users (procurement, safeguards, negative pledge, sanctions, governance and anticorruption) and external users (PPP Resource Center, Global Insolvency Law Database, General Conditions, Justice for the Poor, etc.)

PILLAR 3. Law, Justice and Development University

- The annual New Lawyers Training was conducted in September/October 2011, led by experienced World Bank lawyers. The training addressed the full spectrum of issues covered by the Legal VPU's various practice groups, including 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. As in FY2011, participants were asked to provide feedback which was considered for improving the training in subsequent years.
- Continued support to facilitate requests for funding external learning activities for staff and to provide career guidance to junior staff through mentoring.
- The Legal VPU hosted or cosponsored over 20 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, and regional integration, among others.

PILLAR 4. Partnership

- The Legal VPU's commitment to global convening and partnership was epitomized in fiscal year 2012 by the Law, Justice and Development Week and the Global Forum on Law, Justice and Development.

PILLAR 5. Outreach and Communication

- During the year, Legal VPU senior management participated in a wide range of international fora including:
 - The Role of Legal Counsel in International Economic Law, University of Manchester, London Comparative Perspective of the Statistical Indicators of the Judicial Power in the World, National Council of Justice Seminar, Justice in Numbers, Brazil
 - The Limits of Regulation, 15th Forum 2000 Conference, Prague
 - Presenting Global Forum, Presenting Institute, Cambridge
 - The World Bank and Human Rights, Canadian Council of International Law's 2011 Conference, Ottawa
 - Rodney Lecture, African Studies Center, Boston
 - Howard University, Washington DC
 - GFLJD and Justice Reform, Nairobi
 - GFLJD and Justice Reform, Abuja
 - GFLJD and Justice Reform, Abidjan
 - Administrative Tribunals and their Implications for the Immunity of International Organizations, University of Pretoria
 - Global Education Forum, Harvard
 - Role of Law in Economic Development: Catalyst? Or Inhibitor?, Harvard African Development Conference
 - Opting Against International Law in International Financial Regulation, American Society of International Law, Georgetown University
 - Lecture on Political Prohibition Provision in the World Bank Articles, George Mason University
 - Legal Advisers of the United Nations System, Paris
 - Innovating Justice Forum, Hague Institute for the Internationalisation of Law, the Hague
 - Conference on the Impact of Foreign and International Law on National Legal Systems: Comparisons in Legal Development, Lausanne
 - Meeting with Professor Mark Pieth, Basel Institute
 - Meeting with Director General on the Law, Justice and Development Week, Development and Cooperation - EuropeAid, Brussels
 - Union Internationale des Huissiers de Justice, Cape Town
 - Qatar Law Forum
 - Legal Aspects of International Financial Institutions, Joint Vienna Institute Seminar, International Monetary Fund
 - United Nations General Assembly, New York
 - Legal Risk Conference, European Investment Bank, Luxembourg

Law Resource Center

The Law Resource Center (LRC) is comprised of the Law Library, Legal Help Desk, Legal Records Center and Official Documents Desk. Throughout 2012, LRC 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. Providing customized reference and research in response to individuals' specific information needs, and using our weekly email newsletter, we surfaced content and provided current awareness, highlighting relevant databases, new books, and articles.

In response to training needs of clients, LRC staff conducted over 100 in person orientations and training sessions. LRC staff also provided hands on WBDocs (the Bank's document management system) training sessions for staff in the Legal VPU. To facilitate knowledge sharing, staff created three orientation videos on Law Library and Legal Records services. Posted on the LRC website, these videos may be accessed by staff in Washington and field offices.

Focus on training and digitization to increase researcher independence.

The Law Library continued increasing access to electronic resources, including Ebooks, while selectively reducing the size of the print collection. Through subscriptions managed by the LRC, Legal VPU staff has desktop access to LexisNexis, HeinOnline, Oxford law and other databases for efficient researching. Legal Records staff liaised with the Information Management and Technology (IMT) unit to migrate legal documents from the Institutional Records and Information System (IRIS) to the new WBDocs platform. They also assisted with the final steps in the digitization process of the microfiche collection, making older lending documents publicly available. The overall impact of these initiatives was increased "self service" availability of information.



Photo: Kim Rhodes

Law Library staff conduct LexisNexis training, World Bank Law Resource Center.

II. Clear Accountability and Effective Decision-Making: An Essay

By Anne-Marie Leroy, Senior Vice President
and World Bank Group General Counsel

The Bank has been undergoing comprehensive reforms to strengthen its governance and accountability and to improve efficiency and effectiveness of its operations. As part of this initiative, the Legal VPU was asked to review the methods of assigning authority and responsibility within management and develop a new framework to strengthen accountability within the institution.

I. Review

Information gathered during the review revealed that the authority of the Bank's managers to take action on internal matters is specified or implied in numerous documents, rules and manuals, as well as electronic systems, announcements and emails. These modes of assigning accountability have evolved over time to accommodate organizational changes without a systematic approach. Lack of a comprehensive framework has resulted in common issues across the Bank, which can be grouped into five categories:

- Absence of systematic delegations starting with the President and flowing down the management stream leads to blurred lines of authority, responsibility and accountability in certain areas.
- Definition of delegation terms, such as *authority*, *accountability* and *responsibility*, is not always consistent across the Bank.
- Definitions of roles performed by team members in the decision-making process, such as recommendation, clearance, advice, and decision, tend to vary. Persons who play the advisory and the clearance role are sometimes uncertain as to the scope of their authority and responsibility. Situations arise where it is difficult for a decision-maker to determine when advice must be followed and when it can be considered and rejected. It is sometimes unclear who the decision-maker is because of group decision-making and other mechanisms that obfuscate responsibility. Those in the recommendation role are occasionally under the impression that they are in the decision role when in reality they are not. Also, different terms are used to refer to the same roles. Besides recommendation, clearance, advice and decision, words such as *proposal*, *endorsement*, *concurrence*, *comment*, *input*, *consultation*, *approval*, *no objection*, and *agreement* are also in use across the institution to denote similar concepts. Absence of clarity engenders much discussion among staff about the scope of their functions and results in considerable "churning" before a decision is made.

- Few institutional tools exist to manage delegations in an orderly and efficient manner. This makes it difficult for managers to delegate and take risks.
- Some delegations can be hard to find because they are not centrally recorded. As a result, staff struggle to navigate through the Bank's decision-making processes and determine the scope of their own responsibility and of their colleagues and managers.

II. Challenges Presented by the Matrix

The above-described challenges are not unique to the Bank. Large matrix organizations face similar issues³. In the last 30 years, the Bank and many other institutions, transformed from centralized hierarchies to much looser matrix structures, with multiple centers of power. In a hierarchy, only a handful of managers participated in decisions, making it easy to coordinate, come to agreement on a desired outcome, and ensure accountability. In a matrix, participants in key business decisions report to different managers, play specialized roles, and are often dispersed around the globe. Transaction volume and complexity have increased. Advances in information technology have accelerated expected response time. The accountability and decision mechanisms that worked in a centralized structure are no longer adequate. In a matrix environment, different methods are needed to manage complex work programs and facilitate collaboration across organizational boundaries and geographical locations.

Some companies have managed these challenges by concentrating on decisions that are central to their business and implementing corporate policies that reinforce effective decision-making⁴. Fixing organizational problems and improving functioning of the matrix is important, but unless an organization is good at having different parts of the matrix come together to execute decisions that matter most, results suffer⁵. The connection between organizational performance and effective decision-making is obvious⁶.

3 Thomas Malone, *The Future of Work*, (Boston, MA: Harvard Business School Press, 2004); and Blenko, Mankins and Rodgers, *Decide and Deliver*, (Boston, MA: Harvard Business Review Press, 2010).

4 Blenko, *et al.*

5 *Id.*

6 *Id.*

III. Link with Other Accountability and Modernization Initiatives

Parts of the Bank have developed decision-making protocols in an effort to ensure accountability and improve corporate performance. Regional project processing procedures are an example of such decision tools. Other reforms deal with distribution of responsibilities in the institution as well. The Matrix Leadership Team (MLT) has conducted a review of substantive accountabilities within the Regions and the Networks. OPCS, the Regions and the Networks are making efforts to streamline and modernize business processes, and revamp the Operations Manual. Human Resources has standardized and automated routine actions.

The accountability solutions adopted by various units are not uniform and often partial, however. The issues noted above are the result of such partial solutions. Lack of uniformity creates needless friction when different parts of the matrix have to collaborate and make key business decisions collectively. Also, the various initiatives did not address systemic issues created by lack of consistent delegation of authority and assignment of accountability from the President down the management chain.

At the end of Bank-wide consultations conducted during the review, it became apparent that a corporate policy was necessary to fill these gaps by providing more predictability in the system, promote quality business decisions, informed risk-taking, and faster action.

IV. Accountability and Decision-Making Policy

Working with a team of staff from various parts of the Bank, the Legal VPU developed a framework for consistent assignment of accountability and clear decision-making within management entitled the Accountability and Decision-Making Policy (ADM Policy or Policy). The ADM Policy defines basic delegation of authority concepts and specifies roles for participants in the decision-making process. It also requires managers to articulate with greater precision the scope of authority and responsibility of staff members who come together from different parts of the matrix to execute the most important business decisions made in the Bank. Greater precision ensures that the right people are involved, the right information is considered, and decisions are made as quickly as possible. It is important to note that the ADM Policy does not prescribe where authority should rest, what decisions ought to be made, or by whom.

Those determinations are for management to make. Nor does it make fundamental changes to the manner in which the Bank makes decisions. Rather, it codifies, clarifies and fills gaps in current practice. These relatively minor shifts in definitions and approach could potentially have a profound impact on the business culture of the Bank. The basic elements of the new approach are described in more detail below.

Consistent Delegation. The ADM Policy requires more methodical delegation of authority and assignment of accountability starting with the President and cascading to line-managers. The purpose of this aspect of the Policy is to clarify and focus on the functions of each organizational unit, limit overlapping mandates, and align work programs more closely with institutional goals and budgetary resources.

Definition of Basic Delegation Concepts. The ADM Policy also defines basic delegation concepts. The operative terms are:

- *Authority*, which means the legal power to make decisions and take action⁷.
- *Responsibility*, which means performing assigned tasks. A person with responsibility has a duty to complete a task and is accountable to his or her manager for results.
- *Accountability*, which means being answerable for decisions and activities. A manager who has delegated responsibility to a subordinate is no longer performing a task, but is accountable for it.

The distinction between *delegation of authority* and *assignment of tasks* is often misunderstood. The legal principles underlying delegation of authority are based on principal-agent concepts. The principal transfers legal power to the agent and enables the agent to act on the principal's behalf. Thus, in delegating a manager: (a) assigns responsibility, (b) establishes accountability, and (c) transfers authority. The subordinate has discretion to carry out his or her responsibilities independently within limits prescribed by the delegation. While a delegation transfers the responsibility and authority for a task to a subordinate, it does not transfer accountability. Both the manager and the subordinate remain accountable for results to their respective managers.

⁷ Staff with delegated authority is required to exercise it in accordance with all applicable Bank policies, and directions of their managers.

In contrast, assignment of tasks by a manager to subordinates within a team is based on an employer-employee relationship. The manager: (a) assigns responsibility and (b) establishes accountability, but does not transfer authority. While the team members are obligated to perform the assigned responsibilities and are accountable for the results jointly with the manager, they have limited discretion, and are directed entirely by the manager.

The review revealed instances where managers in an effort to produce good results withheld authority. This occurs when a subordinate is given the responsibility to make certain decisions, but the manager continues to approve those decisions. The manager has not delegated authority in this situation, but merely given an assignment and reserved the power to authorize each transaction. Ensuring quality through review of each transaction has drawbacks. The volume of work faced by the Bank's managers makes meaningful scrutiny of all transactions impossible. This can result in a layer of review, which contributes little value but adds to transaction costs and slows processing. The ADM Policy provides managers guidance on when it is appropriate to delegate authority and when it is appropriate to assign tasks.

Clear Roles in the Decision-Making Process. Another group of concepts defined in the new Policy deals with roles of team members in business decisions. After looking at many different types of decisions routinely made in the Bank, it became clear that staff members perform the following five functions, regardless of decision type: *recommendation, clearance, advice, concurrence, and decision.* Again, while these roles are generally understood, there are variations in definitions. Consistent terminology minimizes debates about the scope of each role, increases efficiency and lower transaction costs. Although different terms can be chosen to refer to the five roles played in business decisions, the ADM Policy uses the ones that are most widely accepted in the Bank:

- *Advice.* Persons in the advisory role provide input in their area of responsibility. They are important because they contribute knowledge and guidance that underpin good decisions. Advisers are often staff with high levels of experience, such as sector specialists and other experts. The decision-maker is required to consider their advice, but has the discretion to accept or reject it. An example of this role in operations is a peer reviewer.
- *Clearance.* Persons who are required to provide a clearance attest that essential standards in their area of responsibility have been met. This role should

be reserved for compliance and technical functions such as Legal, Operational Procurement, Finance and Safeguards that typically review only a portion of a proposal that falls within their area. Without a sign off from a clearer, a proposal cannot be forwarded to the decision-maker. In addition to ensuring compliance with technical requirements, persons in the clearance role provide advice. As is the case with other advice, this portion of the clearer's contribution is not binding on the decision-maker. Clearers are required to specify whether their contributions fall into the essential clearance or the advice categories to inform the decision-maker and the team about the nature of their input⁸.

- *Recommendation.* Persons performing the recommendation role are tasked with gathering facts, analyzing information and preparing a proposal for the decision-maker's consideration. In developing the proposal, they obtain the required advice, clearances and concurrences; and evaluate options and alternative approaches. The recommender's judgment about what to include and exclude from the recommendation has considerable impact on the quality of the final decision. These individuals serve a key coordination function in the decision-making process. An example of this role is a task team leader.
- *Concurrence.* Persons that concur in a recommendation review and attest to the soundness of the entire proposal. Examples of this role would be Sector staff, Regional quality control staff, and other persons who conduct an assessment of the recommendation before it proceeds to the decision-maker. Without an agreement from the person in the concurrence role, the proposal cannot move to a decision.
- *Decision.* Persons in this role have the authority and responsibility for all aspects of the decision. It is essential that the function is performed by one individual to ensure accountability. If a decision is made by a committee, it should be clear how the group makes decisions, i.e., by majority or unanimously⁹.

8 In some areas it may be difficult to distinguish between input that falls into the clearance and the advice categories, but in most instances the differentiation can be readily made.

9 Further work is needed on the substantive responsibilities of the persons in the decision, recommendation, advisory, clearance and concurrence roles, as this defines what they are accountable for. Many units in the Bank have implemented standards and best practice guidelines, but more can be done to set out professional expectations and even out technical contributions at critical points. It is important to note that the ADM Policy does not prescribe such standards. Instead, the work needs to be undertaken separately by organizational units in their area of expertise.

Resolving Different Views Among Participants in the Decision-Making Process. Much time is spent on resolving differences of opinion among participants in key business decisions. Some staff indicated that it can be difficult to have their issues heard and considered early while the proposal is being formulated. As a result, the same issues resurface late in the decision process causing delays. To facilitate faster resolution, the ADM Policy includes basic protocols for addressing situations where persons in the recommendation, advisory, clearance and concurrence roles disagree. The recommender is responsible for addressing disagreements among team members. If the disagreements cannot be resolved at the team level, the recommender is required to escalate the issues to the decision-maker. The decision-maker is tasked with either resolving the matter or escalating it further up the management chain.

Balance between Prescribing Rules and Ensuring Flexibility. It is essential to strike the right balance between prescribing basic rules to promote accountability and disciplined decision-making, and at the same time maintain flexibility so the ADM Policy does not become a bureaucratic burden. To this end, each delegation of authority contains:

- a *general delegation* from a manager to a subordinate about the broad scope of the subordinate's authority and responsibility, and
- a *specific delegation* to make significant decisions.

It is expected that at higher management levels the delegations will be more general, with a limited number of specific delegations that list the most important decisions made at those levels. The number of specific delegations will likely increase at the line-manager level as the work becomes more specialized.

Specific delegations should be reserved for *most significant business decisions* where a delegation framework adds value (i.e., decision that are made repeatedly and require contributions from several units and multiple staff). It would be a mistake to try to capture too many decisions in a delegation scheme. That would make a delegation system unmanageable.

In making *specific delegations*, a manager designates the person in the decision role. If the manager would like other staff to be involved in the decision-making process, those in the recommendation, clearance, advisory and concurrence roles have to be listed as well. While typically there should be only one recommender to ensure clarity, it is up to the delegating manager to decide who

and how many staff should provide clearance, advice and concurrence. The composition of the participants in the process can vary depending on the decision, and is generally left to the delegating manager in order to maintain flexibility. Careful selection of key players in business decisions with clear responsibilities ensures that the appropriate mix of people is involved and that all relevant information is considered before a decision is executed. It also discourages over-inclusion of staff in the decision-making process with vague roles, which often adds little value but results in cumbersome and slow decisions.

Although providing managers with flexibility in selecting the participants in business decisions is important, in certain areas, such as Operations, Resource Management and Human Resources, it is desirable to prescribe who ought to participate in standard decisions and require consistency across the institution. The ADM Policy provides a vehicle for ensuring such consistency when needed.

Other Delegation Ground Rules. The Policy includes a number of additional ground rules to promote consistent and efficient decision-making within the institution. These rules cover withdrawal of authority, acting assignments, subdelegation, and group decision-making.

V. Implementation

The President approved the Accountability and Decision-Making Policy for Bank-wide implementation in May 2012. The details and timing of implementation were left to the Managing Directors and the Chief Financial Officer. A team of staff is currently working on a plan for rollout across the institution.

Implementation will present a number of challenges. In the culture of the Bank, decisions are often made by consensus. More defined accountability and more disciplined decision-making will require not only a change in policy, but also a change in organizational behavior. Management of such cultural change must be undertaken with care to ensure success. During the review stage of this exercise, some staff reacted to the idea of institutionally prescribed accountability and decision-making policies with some suspicion, arguing that corporate rules add another layer of bureaucracy, limit flexibility and stifle innovation. As the Bank implements the ADM Policy, it is essential that the new protocols are agile, help business process run more smoothly, and do not become overly prescriptive. The operative principles should be speed, efficiency and cost-savings. The multitude of documents, policies and procedures that address the ac-

accountability and decision-making in the Bank will have to be reviewed and revised to adhere to the new policy. This will be an extensive and time consuming effort. To make the process manageable, policy revisions should be phased. Finally, further thought is needed on how the new accountability and decision-making approach will be reflected in the Bank's information technology architecture and in existing systems.

Once implemented, however, the ADM Policy will bring a number of benefits. At a basic level it will make accountability and decision-making more transparent. This should improve the quality and speed of key business decisions. The new framework will also provide a vehicle for managing work programs and staff in a matrix structure, and aid staff, especially in Country Offices, in navigating through the Bank's decision-making processes. Finally, the Policy is expected to encourage managers to hand more authority to their subordinates and take more informed risks.

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Abbreviations and Acronyms

ACS	Administrative and Client Support	IFC	International Finance Corporation
AfDB	African Development Bank	IFI	International Financial Institution
AFR	Africa Vice Presidency	IMF	International Monetary Fund
AIC	Access to Information Committee	IMT	Information Management and Technology Vice Presidency
AIG	American International Group, Inc.	INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
BDEAC	Banque de Développement des Etats de l’Afrique centrale	J4P	Justice for the Poor
CARCIP	Caribbean Regional Communications Infrastructure Program	LAC	Latin America and the Caribbean Vice Presidency
CGIAR	Consultative Group on International Agricultural Research	MENA	Middle East and North Africa Vice Presidency
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora	MIGA	Multilateral Investment Guarantee Agency
CJRG	Criminal Justice Resource Group	MTR	Mid-Term Review
CKLN	Caribbean Knowledge and Learning Network	OECD	Organisation for Economic Co-operation and Development
CODE	Committee on Development Effectiveness	OHADA	Organization for the Harmonization of Business Law in Africa
COGAM	Committee on Governance and Executive Directors’ Administrative Matters	OPCS	Operations Policy and Country Services Vice Presidency
CSP	Concentrated Solar Power	PEIR	Public Expenditure and Institutional Review
CTF	Clean Technology Fund	PPP	Public-Private Partnership
CTU	Caribbean Regional Communications Union	PROFOR	Program on Forests
ECA	Europe and Central Asia Vice Presidency	PREM	Poverty Reduction and Economic Management Vice Presidency
ECTEL	Eastern Caribbean Telecommunications Authority	REDD	Reducing Emissions from Deforestation and Forest Degradation
EIB	European Investment Bank	SDN	Sustainable Development Vice Presidency
EJSSP	Enhanced Justice Sector Services Project	SEC	Corporate Secretariat
EPC	Engineering, Procurement and Construction	SME	Small and Medium Enterprise
ESSA	Environmental and Social System Assessment	TWG	Thematic Working Group
EXT	External Affairs Vice Presidency	UN	United Nations
FAO	Food and Agriculture Organization	UNCITRAL	United Nations Commission on International Trade Law
FCPF	Forest Carbon Partnership Facility	UNDP	United Nations Development Programme
FCS	Fragile and Conflict-Affected Societies	UNEP	United Nations Environment Programme
FHCI	Free Health Care Initiative	UNFCCC	United Nations Framework Convention on Climate Change
FMO	Netherlands Development Finance Company	UNIDROIT	Institut International pour L’Unification du Droit Privé (International Institute for the Unification of Private Law)
FSAP	Financial Sector Assessment Program	VPU	Vice Presidency Unit
GAC	Governance and Anticorruption	WAPP	West African Power Pool
GEF	Global Environment Facility	WBG	World Bank Group
GFDRR	Global Partnership for Disaster Reduction and Recovery	WDR	World Development Report
GFLJD	Global Forum on Law, Justice and Development	WSP	Water and Sanitation Program
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)		
GPO	Global Partnership for Oceans		
GSD	General Services Department		
IADB	Inter-American Development Bank		
IBRD	International Bank for Reconstruction and Development		
ICCWC	International Consortium on Combating Wildlife Crime		
ICR	Insolvency and Creditor Rights		
ICT	Information and Communication Technology		
IDA	International Development Association		
IDLO	International Developmental Law Organization		



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