

CASE STUDY

Go or No-Go? Voting on the World Bank's Proposed Legal and Judicial Reform Project in Bangladesh

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Disclaimer

This case study is based on our research into a real World Bank legal and judicial reform project in Bangladesh in the early 2000s. The case study has two components: this overview document, which provides a factual background to the Bank project; and a series of summaries outlining the interests of key individuals involved in the case. This overview document is based on the World Bank's project approval document for the project and other Bank policy documents published before the time of the project. The character summaries are based on real protagonists involved in the case, however, for teaching purposes, we have modified some of their characteristics, their names and affiliations.

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A. Appraising the Bangladesh PAD on Legal and Judicial Reform

It is 2001 and the World Bank has been developing a Project Appraisal Document (PAD) on judicial and legal reform in Bangladesh. PADs are proposals for large-scale projects that the Bank's Executive Board considers for financing. PADs should include information detailing the need and demand for the project activities from the host government, the evidence base underpinning the project and a clear way of measuring the project's outcomes. PADs are developed and presented after an extended period of consultation between prospective borrowing governments, affected stakeholders and World Bank officials. Later in this case you will be assigned a role as one of the stakeholders involved in the Bangladesh project, discussing whether to recommend the PAD for financing by the Bank's Executive Board.

To make a decision about whether to support or reject financing for the Bangladesh PAD, you will rely on the contents of the PAD, the relevant summaries and extracts of which are outlined in this case study. You will also rely on some background knowledge about the World Bank's priorities in 2001 and about the political economy of Bangladesh during the period. Below is the additional information that you know which may help you to decide about the PAD. You will also be given a shorter character summary document, in which there may be additional contextual information known by your character.

B. Country and Institutional Context to the PAD

Political and Economic Priorities in Bangladesh

A leading Bangladeshi economist, Mushtaq Khan, identifies four phases in the evolution of political development in Bangladesh: Pakistan military rule from 1958 to 1971; the dominant party rule of the Bangladeshi Awami League (BAL) from 1971 to 1975; authoritarian clientelism under military rulers operating purportedly "multi-party democracies" from 1975 to 1990; and

competitive clientelist democracy from 1990 onwards. Bangladesh's parliamentary democracy was established under its Constitution of 1972. However, Bangladesh was under constant authoritarian military rule until 1991 when the election cycle resumed as outlined in the Constitution. Under the parliamentary system, the Prime Minister is the head of the government and is selected by the party that wins government or as the lead party of a coalition. There are three major parties in Bangladesh: the BAL, the Jatiya Party and the Bangladeshi Nationalist Party (BNP).

Over the past decade, the BAL and BNP have dominated Bangladesh's political system, each winning control of the government with slim majorities or through coalitions with other smaller parties. As a consequence there have been regular changes in the country's leadership. From the last elections in 1996 until today, 2001, Sheikh Hasina Wazed of the BAL has led the government as Prime Minister. The BNP, led by Begum Khaleda Zia, currently leads the country's opposition, and formerly held government during the period between 1991 and 1996.

Bangladesh is currently one of the world's poorest, most densely populated, and least developed nations. The country has a population of around 130 million people, with a per capita GDP of \$1,570 (on a PPP basis). The latest available estimates from five years ago show that 36% of the population live below the poverty line. The infant mortality rate in the country is high, at 69.85 deaths/1,000 live births (a figure which is 10 times higher than the comparable figure in the United States). Net foreign direct investment inflows into Bangladesh in 2001 amounted to \$78.5 million, compared to \$171.8 million into Sri Lanka and \$5.1 billion into India in the same year.

Bangladesh's political and economic climate has had an impact on its judiciary. A Bank report published about Bangladesh in 1996 titled *Government that Works: Reforming the Public Sector*, suggests that Bangladesh's judiciary is overly politicized and that appointments are tightly controlled by the executive (p. 89). Influential private sector actors have also published a number of reports recently, suggesting that Bangladesh's legal and court system is unpredictable, making the country a high-risk jurisdiction for investment. These reports include anecdotes of foreign businesses that tried to invest in projects in Bangladesh, but had to withdraw because of restrictions brought on by the country's legal system.

World Bank Priorities

Article 1 of the World Bank's *Articles of Agreement* outlines the purposes of the institution. The current General Counsel of the World Bank, Ibrahim Shihata, perhaps the foremost counsel authority on interpreting the *Articles of Agreement*, has taken Article 1 to include a restriction on officers from interfering in the political affairs of any member state. Following the fall of the Berlin Wall in 1989, there was a contentious debate throughout the 1990s among Bank officials about interpretation of Article I and the appropriateness of funding projects that may have political implications.

In this context, over the past five years, the World Bank has been keen to target its financing towards technocratic reforms of state institutions. While the Bank once strongly emphasized the role of market forces and infrastructure to achieve economic development, a new line of thinking is quickly becoming prevalent. This new line of thinking is succinctly stated in the landmark 1997 *World Development Report*:

“[D]evelopment requires an effective state, one that plays a catalytic, facilitating role, encouraging and complementing the activities of private businesses and individuals...

Without an effective state, sustainable development, both economic and social, is impossible” (p. 3).

Accordingly, the Bank has sought projects that are focused on making state institutions – including courts and legal systems – more effective and efficient (p. 31).

Additionally, after a few prominent failed projects, the Bank is starting to realize the importance of having genuine local buy-in for its institution-building projects. To this end, the Bank’s recently published strategy on *Reforming Public Institutions and Strengthening Governance* emphasizes that: “reform will proceed only when a country’s leaders are committed and in the driver’s seat” (2000, p. xiii). However, the Board needs to balance this need for local buy-in with the constant demand to issue lines of credit or loans to developing countries. The Bank remains a relevant and powerful force in the international community through issuing this financial support.

C. Overview of the Bangladesh PAD

The PAD, entitled “Project Appraisal Document on a Proposed Credit in the Amount of SDR 23.6 Million (USD \$30.6 Million Equivalent) to the People’s Republic of Bangladesh for a Legal and Judicial Capacity Building Project”, dated March 2001, focuses on improving aspects of the legal sector in Bangladesh.

Rationale for PAD

The PAD explains that the Bank carried out diagnostic work to assess the Bangladeshi legal system. The PAD notes that the:

“...current laws of Bangladesh are basically an appropriate foundation for economic activity (with some exceptions). The problem really lies with the civil justice system on which those laws depend for their interpretation, application, and enforcement... The most urgent need is

to address the weaknesses of the civil justice delivery system that applies, interprets, and enforces the laws” (p. 3).

To this end, the PAD lists the following aspects of the judicial system in Bangladesh that ought to be improved:

- (a) The civil justice system is subject to excessive delays.
- (b) The system needs to improve the capacity to plan and manage its own affairs.
- (c) The system’s transparency and accountability must be strengthened particularly in the lower courts.
- (d) The system is inequitable, as it has widened the gulf between the wealthy litigant, who can cope with the system, and the poor, women and other vulnerable litigants, who cannot.
- (e) The system limits access of litigants to information useful to their case and creates a fear of the legal system because its protocols and services are not widely known.

PAD Components

In order to address these perceived problems, the PAD notes that the GOB will use Bank’s US\$30.6 million loan for the activities detailed below (pp. 10 and 62). The figures in the description below represent the amount of money the GOB has requested for each element from the World Bank (as opposed to funding themselves).

1. Judicial Capacity Building – (\$25.44M)

This component of the project focuses on improving the physical infrastructure and human capabilities of the judiciary in Bangladesh. Specifically, the PAD outlines the following sub-components of this part of the project:

- Improvement of Court Administration – this includes improving the planning and budgeting capacity of the Supreme Court and subnational court registries.
- Improvement of Case Management – including introducing a case tracking and case classification system.
- Installation of a Court Management Information System (CMIS) and Automation – which is a technological solution for managing cases and matching them to judges.
- Provision of Training/Upgrading of Training Facilities – this includes funding for technology to augment the Judicial Administration Training Institute's (JATI) facilities.
- Provision of Other Human Resource Development Needs – this includes provision of telephony and transportation facilities to judges, access to international conferences and introduction of a code of conduct.
- Upgrading of Court Infrastructure – upgrading physical court facilities, such as redesign and construction of the court houses and other buildings. *This is the largest component of this sub-component, for which \$20.99M of Bank funding has been budgeted.*

2. Improving Access to Justice (\$3.09M)

The PAD details the following sub-components of this part of the project:

- Improvement of Access to Justice – which includes gender sensitivity training, development of an alternative dispute resolution mechanism, developing a small claims court and improving legal aid.
- Promotion of Legal Literacy and Public Awareness – supporting NGOs to train local people, training for bar associations and a national campaign regarding access to justice.

3. Legal Reform Capacity Building (\$0)

This will include strengthening of the Law Commission (LC), a legal reform advisory body in Bangladesh. Additionally, the PAD calls for strengthening of Ministry of Law's (MOL's) Legislative Drafting Wing.

4. Preparation of Future Reforms (\$0.78M)

This includes studies for further reforms.

5. Project Implementation and Related Services (\$1.29M)

The costs are related to coordination and procurement associated with the Project.

Operationalization of the PAD

The PAD states that the project will be implemented in phases. The PAD notes that:

“...case management and court administration reforms will be implemented in the five Stage I Districts during the first three years, concentrating on two of the five in the first 18 months, and then expanding to the remaining three in the next 18 months. During the final three project years, this process will be repeated in Stage II District Courts.”

The PAD also includes information on the institutional arrangements for implementation. It notes that the Project will be implemented over six years (FY2002-08). The PAD notes the following entities which will be responsible for implementing the Project. The PAD states that each entity will implement elements of the Project under its purview:

- MOL – main coordination of the Project as a whole, including making decisions about resources for, and monitoring and reporting of, the Project. The MOL will also manage the domestic and international consultants to the Project.
- Oversight Committee – constituted by a group of high-powered members, including from the MOL, and which will provide the Court's with policy guidance on the reform process.
- Consultative Group – responsible for facilitating stakeholder consultations periodically.
- Supreme Court – responsible for overall court reforms.

- District Judges – responsible for court reforms within their district.
- JATI – responsible for the judicial capacity building elements.
- Law Commission – responsible for legislative drafting wing reform.
- Public Works Department – will assist on elements of the infrastructure projects.

On the Bank side, once the Executive Board approves a PAD, a single division within the Bank generally oversees the project. That division works with the Country Director where the Project is being implemented. In relation to the Bangladesh PAD, the lead divisions will be the Legal Department. It is common practice for these divisions to sub-contract project implementation work to third-party contractors. In this case, a development contractor based out of a US university won the contract to be project implementer.

Measurement and Evaluation of the PAD

The PAD notes that it will carry out a “baseline” survey of conditions in Bangladesh within the first two years of implementation. This baseline will then be used to measure the results of the project. In addition, a Mid-Term Review will occur within the first three years of the project, during which recommendations will be made on project implementation.

Risks of the Project

Finally, the PAD notes that the GOB may face a number of risks in implementing the Project (p. 30-32). The PAD marks the proposed project as a “Substantial” risk, with the potential for “capacity constraint in Supreme Court, MOL, the Law Commission, and JATI” to cause the Project to fail. It also marks as a substantial risk, the “lack of acceptability of the reform measures, especially those related to case management and court administration by the Judges, lawyers and the court administrative staff.” You will have to weigh these risks against the fact that the project seems to be advancing the Bank’s current priorities, as well as some of the interests listed on your character description.

D. Decision Making Process

Ordinarily, PADs are advanced to the Executive Board from the division within the Bank that developed them. On this occasion, as this is one of the largest judicial reform projects the Bank has ever considered investing in, a number of stakeholders involved in developing the PAD will consider as a committee whether to advance it to the Board for approval. This is consistent with the recently established Poverty Reduction and Economic Management Network (PREM), which is designed to encourage various members of the Bank to work together on evaluating and designing projects. There are eight parties in the committee deciding whether or not to approve the PAD. The names, characteristics and affiliations of the characters listed below have been altered for pedagogical purposes, but are based on real protagonists involved in and with the Bank at the time of the PAD:

- Akbar - the World Bank Project Officer in Legal Department responsible for developing and drafting the PAD. If the Project gets approved, Akbar will be responsible for managing it.
- Baker – a relatively new World Bank Project Officer in the Independent Evaluation Group, who has previously worked on judicial reform in Bangladesh. He will have no role in the Project’s implementation if it is approved.
- Chowdry – a member of the Bank’s Executive Board, selected by the Indian Government, with twelve months left of her term.
- Das – the Minister of Law and Justice in Bangladesh from the BAL Party. The Minister will be the main point of contact in the GOB for managing the Project.
- Evans – the Head of Bloom Consulting’s Judicial Reform Team and the main point of contact on the contract due to implement the main components of the project.

- Fontaine– the current Bank Country Director for Bangladesh. Fontaine will have some minor oversight roles in the Project, but his term as Country Director will soon expire.
- Gianopulos – an American consultant, affiliated with the international development consulting firm CJH Advisors, a competitor to Bloom Consulting. She is expected to assist on judicial capacity building elements of the PAD.
- Hamzah – the Chief Justice of the Supreme Court of Bangladesh. As stated in the PAD, the Chief Justice will have responsibility for implementation of the Supreme Court elements of the Project.

Your Role

You will take on the role of one of these eight decision makers (see your assigned character handout) on the committee. At that committee meeting you will be asked to deliberate on whether the PAD should be advanced to the Executive Board for approval. Based on your notes from reviewing the PAD, you think the following will be contentious issues during the discussion:

- The scope of this Project, which seems much broader than other Bank proposals you have seen in the past. Will the Project really do all the things it says it will?
- The GOB’s demand for the judicial reform process. Are all aspects of the Project needed?
- Are the GOB’s interests aligned? Do the judiciary and the Ministry of Law agree on all aspects of the Project?
- The political situation in Bangladesh. Will the government continue beyond the next election in ten months?

Once you have been assigned your character, you should feel free to start communicating with others on your committee. Please come prepared to talk about these issues, and also to decide whether to support the PAD or not.