



THE WORLD BANK

# **The World Bank Legal Review**

Volume 5

## **Fostering Development through Opportunity, Inclusion, and Equity**

*Edited by*

**Hassane Cissé**

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Editors



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*The World Bank Legal Review* is a publication for policy makers and their advisers, judges, attorneys, and other professionals engaged in the field of international development with a particular focus on law, justice, and development. It offers a combination of legal scholarship, lessons from experience, legal developments, and recent research on the many ways in which the application of the law and the improvement of justice systems promote poverty reduction, economic development, and the rule of law.

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# The World Bank Legal Review

Volume 5

## Fostering Development through Opportunity, Inclusion, and Equity

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# Foreword

JAN ELIASSON

DEPUTY SECRETARY-GENERAL OF THE UNITED NATIONS

We are at a crucial moment for shaping the world we want. The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda sets out an ambitious yet practical vision for tackling poverty and sustainable development. It reflects a growing realization that the rule of law is fundamental for responsive institutions and is a driving force for development.

This understanding was confirmed when the United Nations General Assembly held its first High-level Meeting on the rule of law in September 2012. The resulting Declaration recognizes that rule of law and development are strongly interrelated and mutually reinforcing and should be reflected in the post-2015 international development agenda. The Declaration also reaffirmed that the rule of law is indispensable for upholding peace and security, as well as respect for human rights.

*The World Bank Legal Review* highlights the breadth of reach of the rule of law and, most critically, its centrality to development. The theme, *Fostering Development through Opportunity, Inclusion, and Equity*, speaks to the holistic nature of development and its relationship to the rule of law.

Reflecting the World Bank's work to mainstream law and justice into the development process, the authors explore innovative ways in which the rule of law can be used to help achieve opportunity, inclusion, and equity. The United Nations Secretary-General has also made it a priority to mainstream the rule of law across the work of the United Nations system.

The rule of law is a concept at the very heart of development and people's daily life across the world. It is the land deed in the hands of the farmer, the entrepreneur's legitimate contract, the badge of a trusted police officer, and the birth certificate that lets a child be counted.

But the rule of law also ranges well beyond these particular matters. The World Bank rightfully applies a justice lens to the protection of the environment, anticorruption, the economy, and the empowerment of marginalized groups and communities.

This edition of *The World Bank Legal Review* is a significant contribution to scholarship on the rule of law and comes at a critical time. Our shared challenge—and obligation—is to build a future guided by the rule of law as a vehicle for people's security, rights, and economic well-being.

# Preface

ANNE-MARIE LEROY

SENIOR VICE PRESIDENT AND GROUP GENERAL COUNSEL  
THE WORLD BANK

The world is confronted by a wide array of complex challenges that demand attention. They range from fragile and conflict situations to the alarming progression of climate change, from the worrisome state of food security to the persistent inequities and societal imbalances that limit people's access to and enjoyment of public goods. In some countries, political instability is threatening the sustainability of development outcomes that have taken years of painstaking effort to achieve. Addressing these challenges is a top priority for development institutions today.

The World Bank is striving to meet the increasing needs of its member countries not only through its lending instruments but also by providing technical assistance, knowledge sharing, and advisory services. Institutionally, the change process is strategically designed to reposition the Bank to carry out its mandate more efficiently while evolving with the times. The twin goals of eradicating extreme poverty and boosting shared prosperity have also set the Bank on a path to not only secure positive outcomes in its operations, but also ensure that such outcomes translate to better lives for all, especially the poor.

The Legal Vice Presidency is actively supporting the Bank as it works to meet its obligations. With the help and expertise of its team of lawyers, legal analysts, and global partners, the Legal Vice Presidency is devising creative, viable, and sustainable legal solutions that will help transform development aspirations into reality. *The World Bank Legal Review* is one such effort. This year's volume, subtitled *Fostering Development through Opportunity, Inclusion, and Equity*, explores critical issues affecting development, emphasizing that we stand a better chance of achieving more meaningful impact when development processes are inclusive and equitable, and provide adequate opportunities for all.

Now is a time not only for action but also for reflection, as the international community strives to set the post-2015 development agenda. The peoples of the world are clamoring for a louder voice and greater participation in the process of reform at the national, regional, and international levels; and recent actions by the international community indicate a willingness to engage more actively in that process. At the same time, lessons learned over the years equip us with the tools we need to create more targeted, proactive, and, consequently, successful engagement. To realize our ambitions, law and justice



must play an enhanced and overarching role, as demonstrated by the chapters in this volume.

This, the fifth volume of *The World Bank Legal Review*, has greatly benefited from the input of seasoned development experts under the guidance of our distinguished editors: Deputy General Counsel for Knowledge and Research, Hassane Cissé; Professor N. R. Madhava Menon of the National Law School of India University (NLSIU); Dr. Marie-Claire Cordonier Segger of the International Development Law Organization (IDLO), Rome; and Professor Vincent O. Nmehielle of the University of Witwatersrand, South Africa.

I sincerely thank Jan Eliasson, the Deputy Secretary-General of the United Nations, and Irene Khan, the Director-General of IDLO, who graciously wrote this volume's foreword and afterword, respectively. Now more than ever, overcoming global challenges requires enhanced commitment and multi-stakeholder partnerships among development institutions. Jan Eliasson's and Irene Khan's valuable insights have greatly enriched this volume. I also thank all the contributors for their impressive and well-researched contributions. Their thoughts, perspectives, and recommendations are as important as they are timely. My sincere appreciation also goes to Dr. Nigel Quinney for his stellar and invaluable editorial assistance.

This volume's chapters have been organized under five main headings: law and the economy, justice and rule of law reform, environmental and natural resources law, governance and anticorruption, and empowerment and equity for diverse communities. Each of these five parts contains interesting and insightful discussions on the role of law and justice in development, offering innovative and dynamic recommendations on how a synergy among law, justice, and development can inspire and facilitate more viable and sustainable solutions to development challenges.

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