

“THE WORLD BANK: THE CHALLENGES AHEAD”

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Good evening.

I am extremely pleased to be here among you to deliver the keynote remarks.

I would like to thank the National Latino/a Law Student Association Conference for organizing this event and for inviting me to give to address you.

I am familiar with the National Latino/a Law Student Association Conference and the work it conducts to promote and sustain the academic success of Latina and Latino law students.

More importantly I share the ideals underlying your association. These ideals – professional excellence, justice and public service – have guided my professional career for over 30 years.

One of the reasons for my success has been the ability to work as a lawyer with both the French Civil Code and Common Law systems, in a manner that draws from their respective strengths.

- Academic background: (JD equivalent from the Universidad Católica in Peru with and LLM and an SJD from Harvard Law School
- Professional experience: led Latin American legal practices in two of the top U.S. law firms. The practices were successful largely due to having been able to integrate competent Hispanic and non-Hispanic attorneys into a common law practice.

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Now, let me briefly share with you, from the perspective of a lawyer, what the World Bank does, its mission, and what the Legal VPU does to contribute towards this mission.

Most you may already have some familiarity with the World Bank Group. Just to make sure that we are all on the same page, I'll start with a quick overview of the Bank's mission, its origins, current organization and operations. I will then provide a bird's eye view of some of the challenges we are grappling with as an institution. I will try to be brief to leave time for questions and discussion.

OUR MISSION

Our mission at the World Bank is to fight poverty with passion and professionalism for lasting results. As a sign just inside the main entrance says, “Our dream is a world free of poverty.” This is what motivates us. It’s about how to make a difference – how to work with our client countries to improve conditions there.

The Bank has had some negative press coverage, but if you have the opportunity to work with us, you’ll see Bank staff who work with real passion for the sake of development.

OUR CLIENTS

Our passion is motivated by our clients and their enormous needs.

A major contrast between the World Bank and private practice is the clientele. Of the 6 billion people in the world, our clients are the:

- 2.8 billion people who live in poverty on less than \$2 a day (more than 1/2 the population in developing countries).
- 1.1 billion who live on less than \$1 a day in what we call absolute poverty (1/5 the world’s population).
- 2 billion people (1/3) who don't have electrical power.

- 3 billion people (1/4) who don't have a safe water supply.
- over 100 million children who are not yet in school.
- 2 million children who die from vaccine-preventable diseases every year. That's 4 children each minute.
- over 40 million living with HIV/AIDS, more than 95% of whom are in developing countries.

OUR CHALLENGE

The Bank's mission as currently defined consists of the **alleviation of poverty through economic growth and social equity**. Our challenge is to fight all the elements of real poverty. It is not just the lack of physical resources. It includes governance, the fight against corruption, an effective legal and judicial system, education, health, population and sustainable development, and infrastructure. All of these issues have major legal components.

OUR ORIGINS: A VERY BRIEF HISTORY

The World Bank, formally known as the International Bank for Reconstruction and Development or IBRD, was conceived in 1944 on the eve of the end of World War II, at Bretton Woods, New Hampshire.

With the end of the war in sight, the leaders of the Allied Powers met to map out the post-war landscape.

The first order of business was reconstruction of the countries and economies devastated by the war – the bombed-out factories of France, the burned-out cities of Japan. The first World Bank loan was made to France.

The second objective, which was equally important though longer-term, was the development of the economies of the so-called Third World.

These twin objectives – reconstruction and development – are with us still, as wars and conflicts continue to plague our member countries even as they strive for economic development. These objectives are set forth in Article I of the Bank’s charter, which enumerates the Bank’s official purposes.

Bank has 184 member countries; is in over 110 countries; has done **\$350 billion** of business since its founding; and does **\$20 billion a year** in business.

OTHER WORLD BANK GROUP INSTITUTIONS

Today, IBRD is one of five institutions in the World Bank Group.

- **IBRD** focuses on reducing poverty in middle-income and creditworthy poorer countries by promoting sustainable development through loans, guarantees and technical assistance. In FY04, for example, we lent \$11.2 billion to IBRD members. As a AAA-rated investment, IBRD raises funds on the capital markets in the US, Europe and Japan.
- Our sister organization **IDA**, the International Development Association (established in 1960), is the “soft lending” side of the Bank. IDA assists the poorest countries through \$9 billion a year in 2004 in long-term, interest-free credits. IDA credits are highly subsidized with a low administrative fee in lieu of interest; a grace period of up to 10 years; and repayment periods of up to 35-40 years. IDA is funded through donor country contributions. IDA shares a staff with IBRD.
- **IFC**, the International Finance Corporation (established 1956), supports development through lending or equity investments in the private sector. In FY04, IFC funded 217 projects totaling 4.8 billion in 65 countries.
- **MIGA**, the Multilateral Investment Guarantee Agency (established 1988), encourages foreign investment in developing countries by

providing guarantees to foreign investors against losses caused by noncommercial risks such as expropriation, currency inconvertibility, and war and civil disturbances. It is a small but growing operation. In FY04, MIGA issued guarantees in excess of 1 billion

- Finally, **ICSID**, the International Centre for Settlement of Investment Disputes (established 1966), encourages foreign investment by providing international facilities for conciliation and arbitration of investment disputes. The number of cases handled by ICSID has grown dramatically in recent years. Indeed, the number of the pending ICSID cases has increased from 5 in February 1995 to 85 in February 2005. More significant than the number of cases is the volume of international investment covered by ICSID clauses. The total amounts in dispute in the pending ICSID proceedings have risen in the last ten years from US\$5 million to over US\$20 billion.

OUR CHANGING PORTFOLIO

Over time, the World Bank's lending portfolio has changed dramatically.

- From big infrastructure projects (such as dams) to a focus on the “soft” sectors (education, health, development of the private sector environment).
 - o 30 years ago, infrastructure accounted for 58% of portfolio; Agriculture (20%); finance and private sector development (15%) and human development was very small.
 - o Today, HD is the single largest sector (30%). Infrastructure has shrunk to 22% - though it is now on the upswing again. Law and public administration – a category not even shown 30 years ago – is another 27.76% of the entire portfolio. Agriculture and rural development are now only 7%.
- Decline in lending to MICs
 - o Investment lending to MICs has been cut nearly in half over the last decade, from \$12.2 billion to \$6.6 billion.
 - o The Bank is too slow and too expensive. Non-financial costs equal the financial costs. As a result, the Bank has lost ground

among these borrowers, which can access other sources of financing from Wall Street.

IMPACT ON LEG

This evolution – from hard to soft and our shrinking portfolio among MICs -
- has impacted what we do in the Legal VPU.

- Previously, we tended to hire primarily transactional lawyers from the private sector who specialized in infrastructure projects. Now, we need not only transactional lawyers, but also lawyers who can advise on regulatory frameworks (e.g., for utilities, telecom, insolvency, judicial reform, etc.).
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- Anti-corruption is another area of greater focus in recent years. Lawyers are needed to assist countries in strengthening their anti-corruption systems. Internally, lawyers also play a key role in working against fraud and corruption at the staff level and by firms or individuals involved in Bank-financed projects.
- To meet the challenges presented by our changing – and declining portfolio – I have identified four strategic priorities where LEG needs to aggressively pursue to reestablish LEG’s relevance and make it more responsive to the Bank’s needs. These four areas, which I will discuss in detail later, are:
 - Operational responsiveness

- Realigning our advisory services
- Simplification and modernization
- Decentralization

But first, let me give you some general background regarding the LEGAL VPU.

LEGAL PRACTICE AREAS WITHIN THE WORLD BANK

As you can see, the World Bank Group covers a lot of ground – public sector and private sector, lending, guarantees, and dispute resolution. Even within the IBRD/World Bank alone, we have a wide range of legal practice areas.

The World Bank Legal Vice Presidency has about 180 lawyers from around the world, representing about 60 different nationalities (including Oman, Nepal, Brazil, China, Turkey, Eritrea, etc.).

Our lawyers are divided into a 13 legal practice groups, which fall into 3 major divisions, all overseen by the Office of the General Counsel:

- **Five geographically-based Regional Practice Groups** handle the legal aspects of the Bank's lending and grant operations. These lawyers advise on the legal and policy aspects of Bank-financed operations, including project preparation and implementation; drafting and negotiation of legal documents for each project; analysis of country legislation; and participation in projects for legal and judicial reform.

- **Cross-regional Advisory Practice Groups** provide specialized advice and services:

- The Environmentally and Socially Sustainable Development and International Law practice group advises on environment and natural resources issues such as climate change, biodiversity, industrial pollution, international waters; social issues such as indigenous peoples and resettlement; and international law issues governing our relationships with other entities.

- The Judicial Reform practice group is dedicated to a priority area that I am keen on expanding. The objectives are to strengthen judicial systems and related institutions, and enhance access to justice in the Bank's borrower countries. Activities include legal education, legal services, court administration, case management, judicial training and independence, access to justice, and alternative dispute resolution. We work with the judiciary, bar associations, and other partners.

- The Finance, Private Sector and Infrastructure Practice practice group is responsible for handling legal aspects of the Bank's activities that relate to private sector, finance sector and infrastructure development. Includes advice on: privatization and private sector development; financial sector reforms, including insolvency and creditor rights; banking law issues; corporate governance; capital markets; telecommunications and the Bank's e-strategy; and regulatory frameworks for infrastructure, including water and other utilities.

- The Human Development practice group, which is an area that we are trying to develop to meet the Bank's changing needs. This practice group includes areas as diverse as education, health, the rights of HIV patients, etc.

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- **Corporate Practice Groups** provide advice on corporate financial, administrative, and institutional matters for the Bank, including legal aspects of the Bank’s own borrowings and investments, financial terms of the Bank’s lending products, and disclosure and financial policy issues; litigation, fraud and corruption, intellectual property, employment law, and the Bank’s privileges and immunities; and procurement and debarment.

LEG’s STRATEGY TO MEET THE CHALLENGES AHEAD

As I mentioned earlier, my strategy for making the LEGAL VPU more relevant and better positioned to meet the needs of the Bank, is based on four strategic priorities:

- **Operational Responsiveness: “From Why Not to How To”**
 - Change our attitude. From “why not” to “how to.”
 - We cannot just be policemen, blindly enforcing the rules. We need to go beyond that and provide proactive, value-added to our clients.
 - Client Survey
 - Legal Associates Program (LLMs)

- **Advisory Services**
 - Strengthen advisory skills to adequately serve the “Knowledge” side of the Bank.
 - Focus on strategic growth areas for the Bank ESSD, FPSI, PREM, including LJR activities, and HD (*i.e.*, public health policy, education, and labor issues).
 - LMI Strategy
 - “HINGE” Lawyers
 - Must provide one-stop shop for the legal services required by the Knowledge Bank.
 - Re-launched the Editorial Board of the Legal VPU

- **Simplification & Streamlining**

We operate in an outmoded policy environment. Area where LEG is particularly proactive. Our efforts concentrate in 4 fronts:

- POLICIES (Expenditure Eligibility, Disclosure Policy)
- PROCEDURES (LAC pilot)

- DOCUMENT MANAGEMENT (retained Hildebrandt to improve our service standards and procedures)

- LEGAL DOCUMENTATION

- Simplified model legal agreements (e.g, by moving more standard provisions to the General Conditions)

- Electronic drafting system, and Harmonization with other MDBs

- **Decentralization**

- Crucial component to recover the market share IBRD has lost in the MICs. Closer contact of our lawyers with clients, both internal and external, should prove quite useful to improve LEG's responsiveness. We are implementing an aggressive decentralization strategy that will allow us to have 20 lawyers in the field by the end of the FY.

LEG'S External Contributions

In addition to the “bread and butter” transactional projects, LEG has been substantively involved in a very significant group of major policy and legal areas.

- Indigenous Peoples

- Sanctions Committee
- Voluntary Disclosure Program
- Sub-sovereign lending
- Anti-Money Laundering
- Human Rights
- Extractive Industry Review
- Disclosure Policy
- Iraq

Allow me to give you a flavor of the issues we will be dealing with on these major policy initiatives.

HARMONIZATION & SIMPLIFICATION

In order to meet the MDGs and address the particular needs of the MICs, the World Bank must become a more nimble organization, working in close collaboration with development partners to help deliver results on the ground. That is why **Simplification and Harmonization** are among the top priorities for the World Bank and its development partners.

At the recent **High Level Forum on Aid Effectiveness held in Paris¹**, delegates reaffirmed the commitments made in Rome and Marrakech² to harmonize and align aid delivery. In Paris, it was evident that there is a **strong sense of urgency** to make aid more effective as we look ahead to the UN five-year review of the Millennium Declaration and the Millennium Development Goals (MDGs) in September this year.

- Key among the commitments made in Paris are:
 - Increasing alignment of aid with partner countries' priorities, systems and procedures and helping strengthen their capacities;

¹ February 28-March 2, 2005.

² High-Level Forum on Harmonization in Rome (February 2003) and the Marrakech Roundtable on Managing for Development Results (February 2004)

- Eliminating duplication of efforts and rationalizing donor activities to make them as cost effective as possible; and
- Reforming and simplifying donor policies and procedures to encourage collaborative behavior and progressive alignment with partner countries' priorities, systems and procedures.

What this translates into at the World Bank is **ensuring that our policies, procedures and processes are simplified, streamlined and harmonized with the policies, procedures and processes of other donor agencies.** It also means that in delivering development assistance, we will progressively depend on partner countries own systems and provide capacity building support to improve these systems.

This is why the Legal Vice Presidency of the World Bank, has included simplification as part one of the key elements of its **strategy.** **Our lawyers have played an active role as part of the teams that have developed, drafted and rolled out the simplified and modernized policies and procedures.** Most notably, we were a vital part of the teams that prepared and rolled out the Expenditure Eligibility policy, the Development Policy Lending policy, and the recently approved Country Systems policy.

In addition to this, the Legal VPU is spearheading efforts to make project processing faster and easier for both regional staff and client countries. Specifically, we are undertaking a huge effort to **simplify all legal agreements** that the Bank enters into with client countries. In all we are working on about 18 products, including: (i) the General Conditions; (ii) model Loan, Credit, Grant and Financing agreements; (iii) related model guarantee and project agreements; (iv) model trust fund grant agreements; (v) commentaries on the General Conditions; and (vi) drafting manuals for the model agreements. This is a major effort that has included extensive consultation other Multi-lateral Development Banks, with a view to, one, drawing on their own simplification experiences, and, two, eventually harmonizing all legal agreements in both format and substance so as to make things easier on our client countries. This effort also involves consultations with our member countries as well as with staff of the World Bank.

ANTICORRUPTION

The fight against corruption by the World Bank was launched by President Wolfensohn in 1996. Since then, much has been accomplished within the Bank and by its Borrowers in tackling the underlying issues. Support for the Bank's anticorruption efforts has grown, as the fight against corruption has become recognized as central to the fight against poverty - to ensure that development expenditures actually go to help the poor and that an efficient private sector is able to contribute to poverty reduction.

Attacking corruption, therefore, is essential to the Bank's overarching mission of poverty reduction. In fact, the Bank was the first multilateral institution to place the issue of corruption on the international agenda.

- The Bank's anticorruption strategy calls for action on 4 key points:
 - Providing assistance that ask for help in curbing corruption;
 - ◆ since 1996, the Bank has launched more than 600 anti-corruption programs in nearly 100 countries.

- Making anti-corruption efforts a key focus of the Bank's analysis and lending decisions for a country;
- Contributing to international corruption-fighting efforts, and;
- Striving to prevent fraud and corruption in Bank-financed projects.
- In terms of combating corruption in Bank projects, to date, more than 250 companies and individuals have been debarred from doing business with the Bank.
- The critical components of the Bank's efforts in this field are:
 - the Department of Institutional Integrity, which is responsible for investigating allegations of fraud and corruption, and the LEGAL VPU;
 - the Sanctions Committee; and the
 - Voluntary Disclosure Program.

HUMAN RIGHTS

- **Legal Framework**
 - purposes,
 - political prohibitions, and
 - decisions based only on economic considerations.

- What constitutes economic considerations for these purposes?
 - As a **financial institution** we must rely upon an analysis of *all* the factors that can affect the investment of our limited public resources.
 - ◆ Must go beyond issues of **governance**

 - ◆ Lack of respect for human rights can seriously affect the economic rate of return or even the viability of investment projects.

 - Where human rights may have economic consequences, they form a necessary and legitimate part of our considerations.

 - Human rights gradually becoming a more explicit part of the Bank's agenda (analogous to environment and anticorruption).

- **The Way Forward**
 - Human rights have **direct economic ramifications**, and as such, impose themselves on our decision-making as a **financial institution**.

 - Bank should gradually begin to make explicit the “**human rights content**” of its projects.

 - Positive influence of the Bank -- **sensitive and selective engagement**.

- **No double punishment** - further the realization of human rights.
- The Bank is **neither an adjudicative body nor an enforcement agency.**
- The way forward must be consistent with the mission of the Bank, that is to say, poverty alleviation through economic growth and social equity.
- **Current Activities in the Area of Human Rights**
 - Work on developing the legal framework applicable to human rights in the work of the World Bank.
 - Examine how to integrate relevant human rights considerations, whether through our work on governance or analytical instruments such as the **Country Policy and Institutional Assessment.**
 - Matrix of Bank activities which have relevance for the promotion of human rights, mapping Bank policies and activities to substantive provisions of the International Bill of Rights.

JUDICIAL REFORM

Judicial reform is a pillar of the Bank's work and sustainable development.

What has the Bank done until now:

- 1300 Bank-financed projects related to LJR
 - 16 active “freestanding” LJR projects in 4 regions, with 7 more in pipeline (judicial reform in Ecuador, access to justice in Indonesia, etc.)

The way forward: LMI

- Context:
 - Democracy, social, economic and political rights cannot be fully established if there is no access to justice for all, as well as effective enforcement.
 - **Need for assistance** with judicial reform in our members countries is much larger than the Bank's resources
 - Judicial reform is also **too important and too complex** to leave in hands of only lawyers.
 - Successful judicial reform efforts require a **multidisciplinary, flexible and integrated approach**
- Progress to date:
 - Steering Committee formed by Regional VPs, PREM & WBI
 - Regional (bottom-up) approach
 - Regional action plans were completed and integrated into a Bank-wide Action Plan

- Greatest challenges for the Bank in this area:
 - Moving beyond our fragmented approach in the delivery of the justice reform services. Approach must be multidisciplinary and cross-sectoral.
 - Focus on areas where Bank has a comparative advantage (i.e., case management, legal education, infrastructure, working with civil society)
 - Expanding into selected new areas such as criminal justice reform, including institutional reforms for law enforcement, but only if we can provide “value-added”

CLOSING

With this I would like to leave time for questions and discussion.

Thank you.