



Asia Pacific Judicial Reform Forum

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Newsletter

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From the Chair



Welcome to the third edition of the *Asia Pacific Judicial Reform Forum Newsletter*.

The APJRF Round Table Meeting in Kuala Lumpur, Malaysia in May 2007 provided an outstanding opportunity for representatives of member countries to get together and discuss judicial reform issues. My personal thanks, and the thanks of all who attended, go to the Chief Justice of Malaysia and the Federal Court of Malaysia for organising such a successful conference.

The conference was well attended: 56 representatives from 21 APJRF member countries took advantage of the opportunity to discuss important judicial reform issues. The presentations highlighted a number of critical reform issues and the resulting discussions provided a valuable interchange of experiences and knowledge. This issue of the newsletter contains brief summaries of the presentations which I am sure you will find interesting.

The success of the Malaysia meeting highlights the importance of the APJRF as a forum to explore solutions to common problems facing the judiciaries of our region. The meeting provided a unique opportunity for discussions and informal chats between delegates about their experiences of judicial reform.

The Malaysian meeting also provided the first opportunity for the *Judicial Reform Handbook* Project Board to meet. Chaired by the Honourable Justice Antonio Carpio of the Supreme Court of the Philippines, the Project Board is responsible for overseeing the handbook's development. The handbook is the current focus of the APJRF's work. It is progressing and draft chapters should soon be available on the APJRF's website.

The handbook is intended to reflect the experiences and needs of member countries. It is therefore encouraging that the authors are from a wide variety of countries, including Nepal, Philippines, Cambodia, India, Indonesia and Vanuatu. I urge you all to provide comments on the draft chapters as they are posted on the website.

Justice Kenneth Hayne AC
High Court of Australia
November 2007

Round Table Meeting, Palace of Justice, Putrajaya, Malaysia



The Right Honourable Dr Ahmad Fairuz Bin Dato' Sheikh Abdul Halim, the then Chief Justice of Malaysia, opened the Round Table Meeting in Kuala Lumpur.

Judicial Reform Presentations at the Round Table Meeting in Malaysia 27–30 May 2007

The Round Table Meeting featured presentations on a number of key judicial reform topics. Representatives from seven countries shared their experiences in implementing judicial reform programs. As these may be of interest to many people who did not attend the meeting, short summaries of the presentations are provided below. Further details, including some papers, are available at www.apjrf.com.

Judicial Reform Presentation 1

“Towards Enhancing Efficiency in the Malaysian Courts”, presented by the then Chief Justice of Malaysia, Dr Ahmad Fairuz

In recent times the Malaysian courts have been challenged by the need to ensure swift disposal of ever-increasing case loads without sacrificing justice. In response, the judiciary set an ideal time frame of disposing of criminal matters within six months and civil matters within 12 months. In order that these time frames could be implemented, a ‘pre-2000’ cases campaign was launched to clear the heavy backlog of cases. The campaign involved issuing directives which limited the reasons for which a case could be adjourned, giving priority to listing old criminal cases, and calling up old civil cases for case management. Following the campaign’s success, these strategies were applied to pre-2004 cases.

Other strategies considered or trialed by the Malaysian judiciary to help reduce the case backlog include:

- amending the pre-trial case management rules to provide for mediation and settlement conferences
- limiting appeals on interlocutory applications
- fast tracking interlocutory applications
- new trial procedures
- use of technology to monitor case management
- uptake of video and teleconferencing in appropriate circumstances
- implementation of a night court to enhance access to justice.



The 56 delegates at the Round Table Meeting came from 21 APJRF member countries comprising Afghanistan, Australia, Bangladesh, Brunei, the People’s Republic of China, Cambodia, India, Indonesia, Kazakhstan, Laos, Malaysia, Nepal, Pakistan, the Philippines, Singapore, the Solomon Islands, Thailand, Timor-Leste, Tonga, Vanuatu and Vietnam. Representatives from the UNDP and the World Bank also attended.



Participants at the Round Table Meeting had the opportunity to explore a range of judicial reform issues and learn from the experiences of other judiciaries in the region.

Judicial Reform Presentation 2

“New Developments in the Reform of China’s Judicial Procedures”, presented by Justice Jing Hanchao, Supreme People’s Court of the People’s Republic of China

China’s judicial reform program aims to preserve social order and enhance social harmony through the development of an efficient, fair and authoritative socialist system of justice. The Supreme People’s Court developed five-year reform plans for 1999–2003 and 2004–2008 to guide the reform process. Specific measures adopted by the Court to reform judicial procedures include:

- improving the system of open trials to ensure greater transparency
- improving the ability of litigants to test evidence requiring greater explanation of judgments from the bench
- greater use of technology to increase public access to decisions made by the judiciary
- reducing the cost of litigation and establishing a system of legal relief for impoverished parties
- provision of legal assistance for parties unable to fund litigation
- publishing rules in relation to procedural matters for taking a matter to court
- improving the system of mediation; in civil disputes mediation is actively pursued and is proving beneficial in relation to family law matters
- implementing new case handling measures at the local village level with administrative disputes being managed by local committees.

Judicial Reform Presentation 3

“Case Management and Backlog Reduction Project”, presented by Justice Paulus Lotulong, Junior Chief Justice, Supreme Court of Indonesia

Case management and backlog reduction are important aims of the Supreme Court of Indonesia. Backlog in the court is significant given the size of the Indonesian population (220 million) and the breadth of matters heard by the court’s four jurisdictions: general and ordinary (civil and criminal); religious or syariah; military; and administrative. The court receives approximately 7,500 cases per year: by 2006 this meant that there were 12,000 cases pending in the court.

The Case Management and Backlog Reduction Project aims to obtain accurate data on case distribution; reduce the case backlog; and develop a better case management system for the court. The Action Plan to date has identified the need to provide a more definitive definition of what is a ‘backlog’ case; install a new case tracking system; improve classification of cases; implement a decision template; and improve e-version judgment productivity by establishing performance standards and procedures. The reforms implemented by the court saw a reduction in the backlog and improvements in case management.



The conference dinners provided delegates with an opportunity to informally exchange information and ideas, and interact with their international colleagues.

Judicial Reform Presentation 4

“Case Management Reform — Experience of the Supreme Court of India and Lessons Learned”, presented by Justice P.K. Balasubramanyan, Supreme Court of India

The Supreme Court of India has original, appellate and “supervisory” jurisdiction. Consequently it has a massive annual caseload that requires constant attention to ensure the efficient administration of justice. For example, as at 1 April 2006 there were 35,201 cases pending in the Supreme Court.

Technology is being used in innovative ways to manage the caseload burden with e-filing of cases and resort to video conferencing in certain circumstances.

Cases are also classified under 26 heads for more efficient disposal. Matters that are similar are also considered conjointly so that the principle that is determined relating to the common legal issue can be applied to more than one matter thus increasing the rate of case disposal. Additional sitting days have also assisted in addressing the case backlog, along with changes to the Rules of Procedure which allowed Registrars to hear matters.

Judicial Reform Presentation 5

“Self Administration — The Vanuatu Experience”, presented by Chief Justice Vincent Lunabek, Republic of Vanuatu

Vanuatu became an independent state in 1980, with a Constitution as its supreme law. The Constitution vested the administration of justice in the judiciary and created a Judicial Services Commission to provide advice to the President of the Republic of Vanuatu regarding the nomination, transfer and removal of members of the judiciary.

In 1986 the Parliament enacted the *Courts Act 1986*. As the Act did not contain specific provisions relating to court administration, the courts were administered by the Public Service Commission between 1980 and 2000. From the late 1990s the courts explored options for self-administration. This culminated in the *Judicial Services and Courts Act 2000* which gave responsibility for court administration to the judiciary, led by the Chief Justice, with the assistance of a Chief Registrar. The model has led to a need to expand the registry to take up the central management role outlined in the Act.



His Honour Judge Richard Magnus, Senior District Judge, Subordinate Courts of Singapore and Dr Ahmad Fairuz, the then Chief Justice of Malaysia.

The establishment of self-administering courts in Vanuatu was prompted by the belief that they provide independence and accountability among the judiciary which ensures a greater emphasis on and willingness of the judiciary itself to contribute to the effective and efficient operation of the courts.

Judicial Reform Presentation 6

“Access to Justice Initiatives — Implementation of Reforms in the Philippines”, presented by Justice Angelina Sandoval-Gutierrez, Supreme Court of the Philippines

In the Philippines access to justice is hindered by delays in proceedings, erroneous decisions by inferior courts, prohibitive costs of litigation and asymmetry of information pertaining to the legal system. The Action Program for Judicial Reform is making headway in addressing these hindrances and is specifically focusing on access to justice by providing legal assistance to marginalised persons. Additional component areas to the Action Plan include:

- system and procedural reform
- institutional and human resource development
- strengthening infrastructure
- reform of support systems.

Projects which have contributed to the reform process include:

- participatory research with inmates to determine issues impacting on access to justice for marginalised persons
- examination of affordability constraints for the poor in relation to accessing justice
- institutional strengthening for the Shari’a justice system
- addressing jail congestion for overstaying prisoners by providing training to judicial officers to help increase their capacity to respond to these inmates and filing petitions with the aim of effecting the release of overstaying prisoners.

Judicial Reform Presentation 7

“Court and Tribunal Administrative Reform”, presented by Justice Phattarasak Vannasaeng, Secretary-General to the President of the Supreme Court on Court and Tribunal Administrative Reform, Thailand

The advent of the 1997 Constitution of Thailand saw the implementation of a new administrative structure for the Courts of Justice. The Constitution detached the structure of the judiciary from the executive thus guaranteeing decisional, individual and institutional independence of the courts and judiciary.

The Judicial Commission also plays an essential role in ensuring judicial independence by supervising and monitoring judicial selection, appointment, transfer, promotion, removal and disciplinary action. The Judicial Commission is complemented by the Judicial Administration Commission (JAC) which is chaired by the President of the Supreme Court and is composed of five additional Commissioners who are elected from judges at all levels of the Courts of Justice. The JAC oversees the judicial administration of the courts. The Commission for Judicial Service is the third Commission which contributes to the transparency of Justice in Thailand and is responsible for the appointment, transfer, promotion and discipline of judicial service officers.



Participants at the APJRF Round Table Meeting in Malaysia in May 2007.

Judicial Education, Judicial Reform and Reforms in Judicial Education

On the final day of the Round Table Meeting, Madam Ameurfina A. Melencio Herrera, Chancellor, Philippine Judicial Academy, Supreme Court of the Philippines, presented a plenary session on the role of judicial education in judicial reform.

Madam Herrera detailed the pivotal role the Philippine Judicial Academy plays in the provision of continuing judicial education for justices, judges, court personnel and lawyers in the Philippines. The aim of judicial reform which the Academy promotes through its provision of continuing legal education is the creation of a more credible, competent, impartial and independent judiciary leading to a more satisfactory and efficient resolution of disputes and improved access to justice. Judicial reform through education is achieved by more than just the infusion of knowledge, it is achieved through the introduction of new paradigms influencing the formation of appropriate judicial values and ethical conduct.

Reforms in judicial education include the formation of a new code of judicial conduct for the Philippine judiciary; encouraging an understanding of the underlying philosophy of the law; and cultivating the acquisition of new judicial skills through pilot testing caseload management, increasing the use of technology in the courts, and greater use of alternative dispute resolution. Judicial education is the common supporting thread that runs through judicial reform in the Philippines and is evidence of strong and healthy judicial institutions.

Madam Herrera encouraged the APJRF to include judicial education as part of its judicial reform efforts, and to facilitate information sharing amongst member countries on the challenges, issues and constraints of implementing judicial education programs.

Judicial Reform Handbook Update

The Round Table Meeting in Kuala Lumpur in May 2007 was a critical step in the development of the *Judicial Reform Handbook*. It provided an opportunity to:

- discuss the handbook and define its aims, scope and target
- promote discussions on regional judicial reform needs, priorities and strategies
- hold the first Project Board meeting to formalise the project's management
- launch the APJRF website (www.apjrf.com).

The principal outcome of the Round Table Meeting was to finalise the focus and scope of the handbook. Participants prioritised judicial reform areas and provided feedback on substantive sub-topic areas. The finalised chapter topics are:

- implementation of judicial reforms
- access to justice
- ethics, integrity and judicial accountability
- judicial education and skills development
- case management reform.

The members of the Project Board overseeing the development of the handbook are:

- Justice Antonio T Carpio, Supreme Court of the Philippines (Chair)
- Chief Justice Vincent Lunabek, Supreme Court of Vanuatu
- Senior Judge Zhang Genda, Supreme People's Court of China
- Justice Phattarasak Vannasaeng, Supreme Court of Thailand
- Justice Kenneth Hayne, High Court of Australia
- Dr Faqir Hussain, Secretary, Law and Justice Commission of Pakistan.

Project activities are now focusing on the handbook drafting process. Nine chapter authors have been selected and contracted. The tendering process undertaken across the region was very comprehensive, and the Secretariat and Project Board appreciates the support of our networking partners, without which it would not have been possible to achieve such comprehensive coverage.

The Chapter Authors' Inception Workshop was held in Bangkok on 31 October and 1–2 November to initiate the

drafting process. The workshop was critical in focusing the activity by providing a forum for chapter authors to further develop the strategic objectives, structure, content and focus of the handbook, as well as the practical drafting approach and the authors' role in the handbook's development.

Chapter authors identified a number of core concepts underpinning the handbook and informing their involvement based on the philosophy articulated in the Manila Declaration. These are that the handbook is to:

- promote *standards of justice* established in international instruments
- contribute to developing a *shared vision* across the region
- empower and *enable reform actors* throughout the justice system
- create a *practical tool* for exchanging learning and use by each other
- describe our actual *experiences of common challenges*.

An "issues-based" approach to drafting was developed to ensure that chapters are focused around selected key messages informed by the chapter authors' practical reform experience and the core concepts identified.

The inception workshop was the first step in the process of developing the *Judicial Reform Handbook*. It was, however, more than that — it was the initiation of a process to contribute to a shared vision within the region of what judicial reform aims to achieve.

We strongly encourage members, therefore, to become involved in shaping the handbook by providing their feedback on chapter drafts as they are posted on the website.

As an extension of the drafting process, and as part of the project's networking activities, chapter drafts will be available on the APJRF website (<http://www.apjrf.com/discussion>) for comment and feedback. First drafts of chapters will be posted on the web site prior to Christmas 2007 — we strongly encourage members to provide their feedback once this occurs.

For further information, contact Lorenz Metzner, Network Facilitator, at lorenzmetzner@lycos.com.au.



Asia Pacific Judicial Reform Forum

Secretariat Contact Details

The APJRF Secretariat is chaired by the Honourable Justice Kenneth Hayne AC. It consists of representatives from Australia, the Supreme Court of the Philippines, and the UNDP Regional Centre in Bangkok.

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Call for Articles

This newsletter is intended to be a source of information on the activities of the APJRF and on the topic of judicial reform. APJRF Members are invited to submit **short** articles (maximum 600 words) on judicial reform for publication in future newsletters, subject to space considerations.