

**LAW AND POLICY REFORM  
AT THE ASIAN DEVELOPMENT BANK**

**Report from the ADB Symposium on**

# **Challenges in Implementing Access to Justice Reforms**

**26–28 JANUARY 2005**

*This volume has been edited by a team comprising Kamal Ahmad, Christine Lao and Kirsten Weisenberger of the Law and Policy Unit of the Office of the General Counsel, Asian Development Bank.*

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**Landscapes, an art historian once noted, are often deceptive: they can hide more than they actually show. So it is with attempts to define poverty just as a function of income. True, without income, there is no escape from poverty. But to understand the predicament of the poor and their prospects for overcoming poverty, one must go beyond the metric of “dollar-a-day” existence. Poverty and its deprivations must be seen in all their bareness: lack of education, health care, nutrition, clean water, safe sanitation, income, and—ultimately—the passage of premature death. Alongside these deprivations, one must also take cognizance of citizens’ rights that are denied, the opportunities that are bypassed, the entitlements that are wasted, the public services that are not rendered, the liberties that are seized, the public resources that are plundered, the terror of vulnerability that is inflicted, and the sense of dignity that is devoured. Indeed, in articulating its 1999 Poverty Reduction Strategy, ADB acknowledged a move away from income as the sole measure of poverty and recognized these intangibles stemming from powerlessness and despair as a part of the accounting of the perniciousness of poverty.**

**—from *Law & Policy Reform in Asia and the Pacific: Ensuring Voice, Opportunity & Justice***

**Asian Development Bank, 2005**





# Foreword

## Law and Policy Reform as Poverty Reduction: Beyond Good Governance and Economic Development

The Asian Development Bank has a long-standing commitment to law and policy reform in our developing member countries (DMCs). In the past decade, we have engaged in more than 400 law and policy reform-related technical assistance and loan projects spanning virtually all of ADB's DMCs. We have focused on a range of fundamental issues such as reforming the judiciary, creating a more enabling environment for the private sector to effectively compete and prosper, enhancing bureaucratic responsiveness to public demands, promoting greater transparency in public institutions through access to information, curbing corruption, extending legal protection against exploitative practices such as bonded labor, and introducing land registration laws that permit use of the land for collateral financing.

Similar efforts have been criticized for their alleged failure to achieve their goal to mainstream good governance. Critics claim that good governance efforts remain fragmented because multilateral development banks (MDBs) that pursue economic and social development through good governance measures are unwilling to address the political roots of government failure. They claim MDBs are too preoccupied with ensuring the stability and predictability of the legal framework and focus on private law to secure property rights and enforce contracts, but fail to achieve significant success because they do not address crucial issues such as independence of the judiciary, criminal justice reforms, or reforms that have been deemed too political by MDBs.

What is lost in this debate between MDBs and their critics is that legal and judicial reforms do not merely facilitate economic growth and development by improving institutions. Legal and judicial reforms do have a direct link to poverty reduction. Studies undertaken by MDBs have found strong correlations between measures of development and measures of institutional quality.<sup>1</sup> Other studies have yielded considerable evidence of a negative correlation between citizens' perceptions of judicial unpredictability and economic growth, and between corruption and investment.<sup>2</sup> One recent study has concluded that the independence of a country's supreme court is positively correlated with economic growth.<sup>3</sup>

### ADB's Reform Initiatives

Since it identified governance as a primary concern in 1995, ADB has pursued law and policy reform activities aimed at addressing institutional and structural impediments to fight poverty. It has conducted a regional study qualitatively measuring the judicial independence of a number of its DMCs, tackling issues relating to budget autonomy and the place and role of the Supreme Court in the judicial system—issues that have previously been considered as too political for MDB involvement. ADB's largest judicial reform endeavor, its Access to Justice Program in Pakistan, has involved ADB in the process of assisting the separation of subordinate courts from the executive's control, thereby promoting judicial independence. ADB is also involved in the Philippines' Action Program for Judicial Reform, providing support to strengthen the judiciary's independence. These efforts are informed by the conviction that, without addressing judicial independence issues, other reforms undertaken in the judicial sector will yield marginal results.



Raul B. DelRosario

*Mr. Arthur M. Mitchell is one of the leading American lawyers specializing in trade, investment and financing transactions in Asia. As General Counsel of ADB, Mr. Mitchell is actively engaged in the promotion of the rule of law as a key development tool for Asian countries and is a frequent commentator on legal and regulatory issues affecting trade, investment and finance. His writings appear regularly in *The Asian Wall Street Journal*, *Nihon Keizai Shimbun* and other publications. Mr. Mitchell has dealt with matters related to Japan for more than 35 years and served in New York as head of Coudert Brothers' Japan Practice Group. Mr. Mitchell holds a B.A. degree from the University of California at Berkeley (1970) and a J.D. from the Harvard Law School (1973).*

<sup>1</sup> Daniel Kaufmann et al., *Governance Matters* (1999), available at [www.worldbank.org/wbi/governance/pubs/govmatters.pdf](http://www.worldbank.org/wbi/governance/pubs/govmatters.pdf).

<sup>2</sup> Paolo Mauro, *Corruption and Growth*, Q. J. ECON. 681-712 (1995); Paolo Mauro et al., *The Effects of Corruption on Growth, Investment & Government Expenditure: A Cross Country Analysis: in Corruption and the Global Economy* (Sept. 1996) (On file with the Joint Bank-Fund Library); J. Edgardo Campos et al., *The Impact of Corruption on Investment: Predictability Matters*, 27 *World Development* 1059-1067 (1999); Shang-Jin Wei, Address at the Brookings Institution (Mar. 12, 2003).

<sup>3</sup> Lars Feld and Stefan Voigt, *Economic Growth & Judicial Independence: Cross Country Evidence Using a New Set of Indicators*, EUR. J. POL. ECON. 497-527 (2003).

ADB is also embarking on reforms in criminal justice and police reforms. While reforms in these sectors are not usually viewed as developments that directly contribute to improving economic governance, these reforms are critical to ensuring the success of present legal, judicial, and access to justice reform efforts. Without supporting reforms in these sectors, the benefits of existing judicial reform efforts will likewise remain marginal.

Apart from its judicial reform efforts, ADB has been engaged in a variety of activities that seek to reduce poverty by addressing intangibles stemming from powerlessness and despair—human rights denied, opportunities bypassed, entitlements wasted, public services left unrendered, public resources plundered, and the terror of vulnerability inflicted—all of which are part of poverty’s perniciousness. After all, poverty should not be defined just as a function of income.

As an attempt to mainstream the concerns of vulnerable groups, ADB is supporting a region-wide project that explores the relationship between the existence of proof of legal identity, such as a birth record, and access to resources, services, and opportunities. Such lack of registration has significant economic, social, and political consequences, since unregistered persons are unable to access services available to registered citizens—education, immunization, formal employment, financial services, social security, access to justice, property rights, suffrage, marriage rights, citizens rights, and inheritance rights.

In 2000, ADB commissioned a study of how legal empowerment contributes to good governance, poverty reduction, and other development goals. The results of the Philippine component supported the conclusion that agrarian reform efforts were more successful in villages that had legal empowerment activities, as compared to villages that had none. The survey also showed that areas with legal empowerment activities enjoyed higher productivity, higher and more disposable income, and farm investments. Informed by these findings, ADB has focused on a number of law and justice reform efforts on legal empowerment—the use of the law to increase the control that disadvantaged populations exercise over their lives. For example, ADB has provided support in Cambodia not only for enacting a new land law, but also for raising public awareness of land law and increasing the people’s access to mechanisms that would help them realize their rights under the new law. A video that was widely shown and a cartoon book that was widely distributed around the country have increased public awareness of the new law, especially among the illiterate.

### **Conclusion**

The lessons learned in ADB’s decade-long involvement with law and justice reform are, in summary: First, law and justice reforms do have a positive correlation to poverty reduction. Legal and judicial reforms do result in benefits contributing to economic growth and development. The results of recent studies showing this positive relation between legal reforms and poverty reduction invite people to rethink their reluctance to address issues that are presently deemed as political constraints to governance, particularly judicial governance. After all, legal and judicial reforms that are implemented in a piecemeal fashion are bound to fail if the broader political context of governance remains unaddressed. Second, poverty reduction means more than simply economic development. Legal and judicial reforms that promote social development and expand human capability—interventions that seek to protect the vulnerable and empower the poor—are both crucial and complementary to interventions that promote pro-poor sustainable economic growth and those that promote good governance.

**—ARTHUR M. MITCHELL**

*General Counsel, Asian Development Bank*



# Chapter 1

## Law and Policy Reform: An Overview

- An Introduction to ADB's Law and Policy Reform Program
- Challenges in Law Reform

### An Introduction to ADB's Law and Policy Reform Program

HAMID L. SHARIF  
*Assistant General Counsel,  
Asian Development Bank*

The Asian Development Bank's (ADB) focus on law and policy reform raises some interesting questions. Why, as an international financial institution, charged by its Charter to be singularly devoted to economic development, do we at ADB care about justice? What price does injustice inflict on the body of an economy, even if we were blinded to the costs inflicted on its soul? How does poverty reduction, the overarching goal of this institution, fare in the face of shifting levels of justice? Where, when, and how does the seemingly intangible notion of justice become a tangible and an empowering force in the fight against poverty?

#### Law and Economic Progress

The nexus between law and economic progress is best established in the literature of new institutional economics, which calls

for government regulation and planning of the economy, and for analyzing actual economic conditions rather than applying abstract laws and principles. It empirically demonstrates that the predictability of outcomes and the efficiency in the administration of justice have a veritable impact in attracting investment and fueling economic growth as well as in improving the general management of an economy. In other words, the establishment of the rule of law, at least for resolving disputes relating to contractual or property rights, helps foster growth.

Even the indefatigable dean of free enterprise, the Nobel Laureate Milton Friedman, gave precedence to law over free enterprise. In his preface to the *Economic Freedom of the World: 2002 Annual Report*, Friedman remarked in the context of transition countries that he was actually wrong in insisting on the mantra "privatize, privatize, privatize," when in fact "the rule of law (was) probably more basic than privatization."<sup>1</sup>

Much of the recent work on legal and judicial reform has been driven by the desire to create an enabling legal environment for market economies. It is therefore not surprising that many of these projects focus on reform of commercial and business laws or systems of dispute resolution.

<sup>1</sup> Milton Friedman, *Economic Freedom Behind the Scenes: Preface to James Gwartney et al., Economic Freedom of the World: 2002 Annual Report*, at xvii, xvii (2002).

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**Hamid Sharif**  
Assistant General  
Counsel, Asian  
Development Bank

“...if you accept that human lives are both the end and the means of economic development, securing citizens and their assets in their daily environment would seem critical for any measure of economic development.”

*As Assistant General Counsel, Mr. Hamid L. Sharif heads the Office of the General Counsel's (OGC) South Asia practice group, as well as OGC's special practice group on Law and Policy Reform, which has processed, among others, a loan package of \$350 million dollars for the Access to Justice Program in Pakistan—the largest and the most comprehensive type of program in the area of judicial reform. Mr. Sharif has an LL.M. from Cambridge University and is a UK-qualified barrister.*

### Role of Criminal Justice Reforms

Paradoxically, what seems to have been less appreciated—or at least less formally acknowledged—is the link between the criminal justice system and economic development. If you accept that human lives are both the end and the means of economic development, securing citizens and their assets in their daily environment would seem critical for any measure of economic development.

Today, ADB is one of the few international financial institutions directly involved in supporting reforms in the criminal justice system and law enforcement organizations. Our experience so far emphatically reinforces the proposition that reform of the criminal justice system is fundamental to economic development.

Consider this fact: the police forces of many of ADB's developing member countries (DMCs) had inherited a system of financing from the colonial era where minimal budgets were allocated for operating police stations. For an average police station in many settings, the annual allocation for non-salary expenditures would not be much above the equivalent of \$100, while a single investigation of a major case could easily cost many times the annual budget allocation for a whole police station. In such a context, how do investigations get financed? What are the odds here that poor people can protect their entitlements and interests?

It is now widely acknowledged that unfettered discretion in the hands of public

officials fosters corrupt practices. Yet, how does one limit the scope of discretion? In Bangladesh as in Pakistan, and in many other DMCs, the only forensic capacity an average police station will have is limited to the ability to distinguish between human and animal blood—the rest belongs to the domain of judgment or what we might call discretion.

The phenomenal rise in private security forces across the region, guarding the lives and assets claimed by those who employ them, may boost the gross national product (GNP) figures but it also hints at a disturbing trend toward the conversion of public safety—an essential public good—into a private commodity. The economic costs are most severe in such circumstances among the small traders who peddle their goods on sidewalks and shops, the truck operator who must ride through the night to make his delivery, and others like them, for they meet their private toll collectors along the way and the tolls must be paid. And the cost is passed on to citizens.

### Tackling the Whole System

We in the development community often talk about entry points and emphasize the importance of the right entry point to make a difference. The choice of the entry point may vary from one context to another. But so far, ADB's experience in pursuit of judicial and legal reforms makes one thing very clear: irrespective of the particular entry point, one must tackle the whole system.

One can begin reform work with the police or the prosecution or the judiciary but, ultimately, each element of the system must mesh to make it all work. There has to be consistency in approach, purpose, and means across the system. The judiciary cannot function effectively if the state structure does not grant its independence. But an independent judiciary without commensurate accountability runs the risk of becoming irresponsible and of creating its own tyranny. Similarly, a vigorous public prosecution is less meaningful if the criminal investigation process is tainted.

### ADB's Access to Justice Program in Pakistan

ADB's flagship program in judicial reform is its continuing support to the Government of Pakistan under the Access to Justice Program (AJP). Over \$350 million has been com-

mitted for a program that, in its initial phase, addresses the needs of the whole system. It is perhaps too early to draw final conclusions but there are already some remarkable results and lessons learned.

A particularly dramatic development has been the success of delay reduction strategies introduced in pilot courts in Pakistan. While the problem of delay is still very serious, a number of courts have demonstrated that the problem can be solved. After these strategies were introduced, the number of pending criminal cases in Balochistan decreased from 5,691 in 2002 to 3,523 in 2004. In the city of Quetta, the number of pending criminal cases decreased from 3,332 in 2002 to 2,001 in 2004. In Sibi, pending criminal cases decreased from 614 in 2002 to zero in 2004.

More remarkably, the enabling environment for justice has been strengthened through:

- greater allocations of budget for the judiciary and the police;
- enhancing freedom of expression through revision of oppressive contempt of court laws;
- strengthening the rights of citizens through a new freedom of information law; and
- increased transparency regarding the judiciary through publication of annual reports.

The Government of Pakistan has also taken the bold step of dedicating \$25 mil-

lion for an access to justice development fund that is finally getting off the ground. The annual income of this fund will be available to subordinate courts for improving service delivery to citizens, and to support subfunds for legal empowerment and improving legal education.

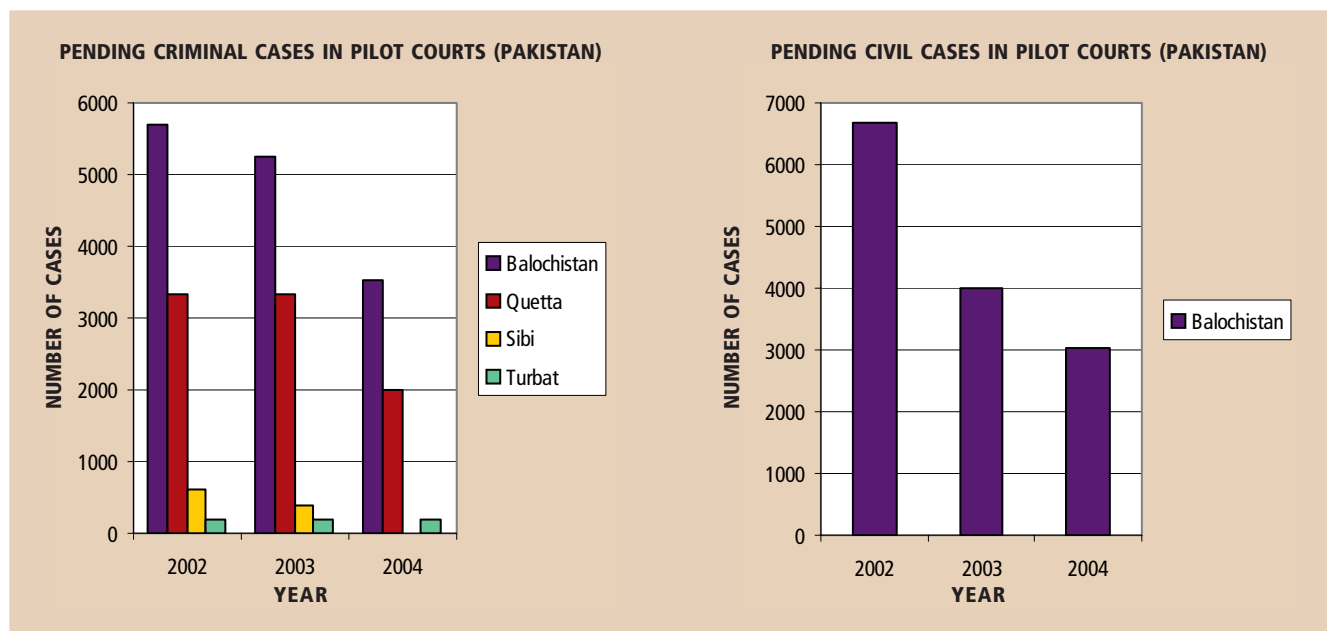
### Conclusion

Such success rarely comes easily and without considerable cost. Often, the temptation is to find options that are inexpensive and that affect large numbers of people—the oral rehydration therapy equivalent, if you will, of justice. The growing affection and even romanticism among many quarters for informal systems such as alternative dispute resolution (ADR) springs from such a perception. Yet mounting evidence suggests that it can be a dangerous remedy to a difficult problem.

Informal dispute resolution mechanisms, which are seldom subject to judicial review by the formal system, can no doubt provide speedy resolution of a dispute and at an impressively low cost. Yet ADR often fails in delivering the fundamental objective of justice. To the extent the informal dispute resolution systems are controlled by local elites, they are often inherently gender- and class-biased and sanctions they impose may not withstand the minimum expectations of human decency.

Similarly, there is the growing emphasis on enhancing systems of administrative justice so that most disputes between citi-

**ADB's flagship program in judicial reform is its continuing support to the Government of Pakistan under the Access to Justice Program. Over \$350 million has been committed for the initial phase of a program that addresses the needs of the whole system.**



Where the formal justice systems fail, we get failing states and failing economies that leave citizens, particularly the poor, vulnerable to the predatory behavior of state functionaries and powerful private interests.

zens and state functionaries can be resolved at the departmental level. This is a welcome development. Yet, just like the systems of informal justice, it can only work in the shadow of a functional and robust judicial system. Delivery of justice as a public good through the formal judicial system is the lynchpin of these alternative systems for delivering justice. Where the formal justice systems fail, there will be failing states and failing economies that leave citizens, particularly the poor, vulnerable to the predatory behavior of state functionaries and powerful private interests. Therefore, in the quest for justice, it is important to stay focused on the ultimate objective of justice and not be blinded by the mirage of rapid solutions at low cost.

## Challenges in Law Reform

**GEERT H.P.B. VAN DER LINDEN**  
*Vice President for Knowledge Management and Sustainable Development, Asian Development Bank*

The Asian Development Bank's (ADB) symposium on Challenges in Implementing Access to Justice Reforms presents many opportunities to share information and best practices on judicial, criminal law, and policy reforms. To set the stage for discussions, a broad overview of ADB's engagement in this important topic and the challenges that await are discussed below.

### Building Legal Infrastructure

One might ask: What does legal reform have to do with ADB? Why should we care? There are several answers.

First, ADB's Poverty Reduction Strategy is underpinned by three pillars: pro-poor sustainable growth, social development, and good governance. Each of these pillars, in turn, is embedded in legal and constitutional concepts. Therefore, legal frameworks have much to do with its effectiveness in carrying out its mandate.

Second, growth will only benefit all

people when everyone, including the poor, is legally empowered. Legal empowerment gives the poor a better ability to play an informed role in decisions that affect their lives. Over the longer term, mobilizing public interest and expectations can, in turn, make public institutions more accountable to the needs and rights of the poor.

Third, there is growing evidence that economic growth needs to be supported by a good legal system. The Peruvian economist Hernando de Soto, who dramatically highlighted the power of property rights in fostering economic development, has suggested that, in the absence of legal reforms, it could take several hundred years for developing countries to catch up with the rest of the world.

Finally, the rapid economic integration that is being witnessed in the Asia and Pacific region demands that countries cooperate well with each other. The world is becoming more and more globalized, with highly complex international agreements covering critical issues such as trade and the environment. Countries without legal infrastructure will find it very difficult to effectively participate in international arrangements and are likely to be left behind.

Legal and judicial reform is therefore no longer a human rights issue alone. It is also at the heart of catalyzing the full potential of our economies.

### Challenges Ahead

Over the last ten years, ADB has been increasingly mainstreaming law and policy reform through about 400 technical assistance and loan projects.

This includes the largest legal and judicial reform program on a global scale—the \$350 million Pakistan Access to Justice Program, which targets a matrix of judicial, police, administrative, and policy reforms.

While some progress on law and policy reform have been seen in many countries, there is still a great deal to be done in terms of initiating reforms and helping member countries enhance their capacity to implement and manage reforms over the long term.

For example, the most basic of human rights is the right to a legal identity. Yet, in South Asia, a shocking 63 percent of births go unregistered each year. In East Asia and the Pacific, the figure is 22 percent. It would

be reasonable to assume that the lack of a legal identity could easily go hand-in-hand with disempowerment and reduced access to resources, services, and opportunities. On the other hand, compulsory registration could open avenues for rent-seeking and misuse of information. ADB has initiated a project to study the implications of legal identity and develop a balanced approach to addressing the problem.

Another challenge is that while many countries have enacted appropriate laws and regulations, these are not necessarily being enforced or efficiently administered. For instance, many jurisdictions extend to all citizens, often through constitutional provisions, the right to legal counsel. Yet, in practice, the poor are seldom aided by legal counsel, often due to lack of information and procedural problems in the system. ADB's flagship program in Pakistan includes the establishment of a \$25 million legal aid fund to address this issue.

There are, of course, many other challenges. Looking ahead, there is much to be learned by sharing information and experiences among countries and regions. After all, the law is knowledge, and the work done to date in this area builds a knowledge base that can and should be shared among countries and institutions.

ADB recognizes that simply replicating policies or institutional arrangements found elsewhere will rarely be successful. Instead, each reform initiative must be anchored in local knowledge of institutional practices. However, the constructive experiences of many countries can inform efforts of others.

To illustrate, the People's Republic of China (PRC) is contemplating a new set of laws and regulations relating to competition. While the change in the domestic economy is driving the impetus for legal change, PRC is carefully examining the experiences from a wide range of jurisdictions to identify the most promising mod-

**"Legal and judicial reform is therefore no longer a human rights issue alone—it is also at the heart of catalyzing the full potential of our economies."**

*Mr. Geert van der Linden assumed the position of Vice President of the Asian Development Bank (ADB) for Knowledge Management and Sustainable Development in September 2003. ADB's Regional and Sustainable Development Department, Economics and Research Department, and the Office of External Relations come under his responsibility. Previously, he was Special Advisor to the President, developing ADB's role in the areas of knowledge management, policy, and strategy. He also headed ADB's response team to the region's Severe Acute Respiratory Syndrome (SARS) outbreak. In 2002, Mr. Van der Linden was Director General of ADB's East and Central Asia Department—operations coordination; infrastructure; agriculture, environment, and natural resources; social sectors; and governance, finance, and trade. He was also responsible for the ADB's resident missions in the People's Republic of China, Kazakhstan, Kyrgyz Republic, Mongolia, and Uzbekistan, as well as liaison offices in Azerbaijan, Tajikistan and Turkmenistan. Mr. van der Linden holds a Masters degree in Economics from Erasmus University in 1972. He participated in the Executive Development Program of the Harvard Business School in 1997.*



Larry Ramos

**Geert H.P.B. Van Der Linden  
Vice President for  
Knowledge Management  
and Sustainable  
Development,  
Asian Development Bank**

els. ADB has been pleased to assist PRC in this process.

### **Conclusion**

The Asia and Pacific region stands on the brink of opportunity. Growth has been strong, poverty has been reduced, and the region is well positioned to lead the global economy in the 21st century.

However, in order to reap the full benefits of sustained economic growth, countries must address long-standing issues of governance and they must strengthen their legal and institutional frameworks. This is a long-term investment and will require vision and firm determination. The long-term nature of the challenge, however, should not deter any country from grasping the reins and driving forward with change.

The challenge of change started with the move from a pre-colonial framework to a post-colonial one. The shift from one framework to another legitimately raised expectations that there would be a qualitative change in the people's lives and in the kind of environment they lived in.

# Chapter 2

## Neglecting Law Reforms: Social and Economic Costs and Consequences

- **Costs and Consequences of Neglecting Judicial Reform**
- **The Need for Judicial Reforms: A Look at India**
- **COMENT: The Role of Judicial Reform in Good Governance and the Fight Against Corruption**
- **Towards a Gender-just Rule of Law**

### Costs and Consequences of Neglecting Judicial Reform

**KAMAL HOSSAIN**

*Chairman, Advisory Council, Transparency International; Chairman, Bangladesh Institute of Law, International Affairs; and Chairman, Bangladesh Legal Aid and Services Trust*

**T**his symposium on Challenges in Implementing Access to Justice Reforms provides an opportunity for participants from different countries to share their experiences about changes in their societies. It is the challenge of change—in each country represented here and in law enforcement and judicial institutions—that we must face with renewed vigor.

Legal, judicial and academic leaders no longer have a one-dimensional view of development, justice, democracy, or the market economy. Instead, they recognize the links between these different aspects of society in order to better analyze the challenges to the realization of society's legitimate expectations for these institutions.

The challenge of confronting and undergoing change began with each country's transition from a colonial framework to a post-colonial one. The post-colonial era raised expectations that there would be a qualitative change in the people's lives and in the kind of environment they lived in: that the security of human lives and property would be increased; there would be equal access to opportunities for employment, and self advancement; and everyone would enjoy a better life.

#### **Post-Colonial Market Economy**

Post-colonial regimes in most of the South and East Asian countries have brought about economic liberalization, which has transitioned the economies from controlled, planned, and bureaucratically-man-

aged to free market economies. Reform programs continue to be driven by aspirations to move toward democracy and market economy. Alan Greenspan has noted the connection between democratic government and free market economy, stating that a “bill of rights enforced by an impartial judiciary is...what substitutes for the central planning function as the guiding mechanism of a free market economy.”<sup>1</sup>

What does it mean to have a market economy? A market economy is a competitive environment within which goods and services are distributed so that they are available for purchase at a price the consumer is willing to pay. A market economy does not promise to provide the highest profit at any cost but, rather, that consumers’ needs will be met by the best competitor on the market. In order to function effectively and efficiently, participants in market economies must be subject to the rule of law.

### Accountability and Transparency

The market must be founded on fair rules in order to level the playing field. Power, whether governmental or private, must not intervene to bend the rules of the market to give certain participants unjustified benefits. The transition to post-colonial democracy promises us a new framework of government that moves away from the arbitrary exercise of power to one where power is subject to accountability. Post-colonial democratic governments are accountable to their citizens, responsible to those who they represent, and subject to the rule of law. Accountability and transparency in public sector governance as well as private sector corporate governance are necessary for a properly functioning market economy.

At the core of the principle of accountability lies the impartial and effective implementation of the laws. A democratic constitution sets forth the framework for what the public may legitimately expect of their government and the limits of that government’s powers. A government that is accountable to its citizenry will ultimately be required by that citizenry to guarantee the constitu-

“Access to justice must be thought of not merely as a benefit for the poor and disadvantaged, but as an entitlement of all citizens, whether rich or poor. All persons must be empowered to invoke the protection of their rights by way of the judicial system.”



Larry Ramos

**Kamal Hossain**  
**Chairman, Advisory Council, Transparency International; Chairman, Bangladesh Institute of Law, International Affairs; Chairman, Bangladesh Legal Aid and Services Trust**

*Dr. Kamal Hossain is a practicing barrister, much of whose work involves international law, constitutional law, and human rights. He served the Government of Bangladesh as the country’s first ever Minister of Law (1972-1973), and then as Minister for Foreign Affairs (1973-1975), and Petroleum and Minerals (1974-1975). More recently, he has been the UN Special Rapporteur on Afghanistan (1998-2003) and is currently a Member of the UN Compensation Commission. He is Chairman, Advisory Council, Transparency International; Vice-Chairman, International Law Association; Chairman, Bangladesh Institute of Law, International Affairs; and Chairman, Bangladesh Legal Aid and Services Trust.*

tional rights to equal protection and access to justice. Power is no longer an end in itself, but can only be exercised in terms of goals which are defined through constitutionally and legislatively determined processes. Leaders of democratic governments do not espouse a Louis XIV-style attitude that “I am the state,” rather, democratic constitutional governments are of the people.

Governments must be transparent in order for the public to hold them accountable. It is now about 60 years since the process of decolonization began, but people are still struggling for freedom of information to overcome the blanket of secrecy that continues to hide the abuses of government power. Laws in many countries can still be bent in favor of privileged and powerful groups and individuals simply because information relating to those actions is not publicly available. As Justice Louis Brandeis of the United States Supreme Court famously said, “sunlight is the best disinfectant,” which in this context can be understood to mean that transparency in government proceedings will root out abuses of power. Freedom of Information Acts provide for such “sunlight” in many countries. However, legislation mandating transparency in the books does not guarantee transparency in reality. In India, for example, a Freedom

<sup>1</sup> Alan Greenspan, *Remarks at the Woodrow Wilson Award dinner of the Woodrow Wilson International Center for Scholars* (June 10, 1997) (transcript available at: [www.federalreserve.gov/boarddocs/speeches/1997/19970610.htm](http://www.federalreserve.gov/boarddocs/speeches/1997/19970610.htm)).

**In order to remain independent and politically neutral, judicial systems must receive adequate financial and human resources, so that they can enjoy sufficient salaries, equipment, and reasonable working conditions.**

of Information Act was passed in December 2002, but was not implemented.<sup>2</sup>

### **Political Neutrality**

Effective law enforcement and judicial systems deliver justice by treating each case neutrally with respect to the individual parties and with respect to political considerations. Court judgments are reasoned decisions that are subject to appeal within the court system and scrutiny by society at large. A judicial system only enjoys the confidence of its citizenry if it can show impartial fairness in adjudicating cases that is shared by the community as a whole. The community does not want a court that bends with the winds of political change in favor of one powerful group or another. If the judiciary becomes a part of the executive branch, it is bound to be subject to political pressure: then impartial application of justice is impossible. In order to remain independent and politically neutral, judicial systems must receive adequate financial and human resources, so that they can enjoy sufficient salaries, equipment, and reasonable working conditions.

The police force must also be immune from political influence if law enforcement is to be impartial. The police protect the citizens' rights. However, the community must provide the police force with the necessary resources the same way that it must provide for the needs of the judicial system. The police needs the confidence of the community and must not be subjected to political interference, so that it perceives itself to be acting on behalf of the community and not for its own personal gain or as a servant of the privileged and powerful.

Without impartial application of the laws, there will be no rule of law. Without the rule of law, there will be no guarantee of security for persons or property. Increasing the accountability, transparency and neutrality of governments, and especially

of judiciaries and police forces, will contribute towards ensuring the impartiality of justice within our democracies.

### **Equality Under the Law**

During the colonial order, there was no equality among citizens or equal protection under the law. There was discrimination by the privileged against the disadvantaged. Constitutional democracies, however, guarantee equality under the law and access to justice. Access to justice must be thought of not merely as a benefit for the poor and disadvantaged, but as an entitlement of all citizens, whether rich or poor. All persons must be empowered to invoke the protection of their rights by way of the judicial system. Every citizen must know that she is entitled to equal protection of the law, and that she may assert her rights and have those rights recognized and vindicated, regardless of gender, economic status, caste, religion, or political affiliation. Our reform efforts must develop an enabling environment for access to justice and, to that end, promote transparency, accountability, ultimately the rule of law.

### **Conclusion**

Access to justice is understood as a necessary precondition for fulfilling the potential of democratic governments and market economies to be accountable, transparent and politically neutral. When democratic institutions work and public power is accountable to the citizens, economic and social development is encouraged, and cannot be obstructed, impeded, or prevented by the powerful and privileged.

The rule of law, which fosters economic growth in this way, is founded on the principle that everyone, including political and social leaders, is subject to impartial and neutral application of the law. If we can achieve such impartiality and access to justice for all, the market economies we are engaged in building will contribute towards sustainable social and economic development.

Anamul Haque Anam



**Sixty years after the process of decolonization began, judges in Bangladesh confront issues relating to its courts head-on.**

<sup>2</sup> Two years later, in December 2004, a new Right of Information Bill was enacted.



# The Need for Judicial Reforms: A Look at India

ARNAB KUMAR HAZRA

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**A** good judicial system produces many economic, political, and social benefits. An effective judicial system is necessary to check abuses of government power, enforce property rights, and enable exchanges between private parties. A fair, efficient, affordable, and accessible justice delivery system aids in market development; supports investment, including foreign direct investment; and stimulates economic growth.

Of the three branches of government, the judiciary is “in a unique position to support sustainable development by holding the other two branches accountable for their decisions and underpinning the credibility of the overall business and political environment.”<sup>1</sup> The political environment of a country depends on its rule of law.<sup>2</sup> Both the procedural and institutional characteristics of a country’s legal system are central to the rule of law. The rule of law requires at minimum that the government acts accord-

ing to the law produced by the legislature and respects the civil rights of its citizens, and citizens can resort to a judicial body that treats each case neutrally and fairly.<sup>3</sup> While there are no fixed criteria that a legal system must possess in order to establish that the jurisdiction governed by that system is under the rule of law, it is useful to know that the following are common indicators used to measure rule of law: an independent and impartial judiciary; laws that are publicly accessible and apply to citizens and government alike; and the absence of retroactive laws.<sup>4</sup>

## The Costs of Neglecting Judicial Reform

Neglecting judicial reforms has related social costs. Justice forms the basis of lasting social order. In a just social order, citizens feel empowered to invoke that rule of law for their own benefit. Legal empowerment reduces poverty, builds civil society, encourages development, and promotes human rights. Access to legal services and complementary non-legal services should empower citizens to use the law to improve their lives.

Neglecting judicial reforms also has an economic cost. The overall level of confidence in government institutions, including the judicial system, correlates positively with the level of investment and other measures of economic performance. Efficient and transparent legal systems reduce transaction costs for economic actors and thus encourage investment, especially foreign investment.

An inefficient legal system—one that is characterized by a huge backlog of cases—undermines the effectiveness of legal reforms. Inefficiency in the judicial system leads to an increase in litigation, as people who are aware of the slow pace of justice within the court system begin to file cases primarily to harass the other party. Such cases crowd out genuine litigants who are forced to seek solutions elsewhere.

Judicial reforms are aimed, in part, at lowering the transaction costs of litigation. In civil cases, parties go to court in order to resolve a dispute, which they have not been able to resolve privately. In other words, the cost of settling the dispute privately between the parties is very high.<sup>5</sup> All things being equal, cases are litigated only when the legal cost is lower than the bargaining

**20 million**

The number of cases pending in the lower courts of India.

**20 years**

The length of time a contested termination dispute can take in court.

**2.7**

The average number of judges per 100,000 inhabitants in India.

**6.38**

The average number of judges per 100,000 inhabitants in 30 selected countries.

<sup>1</sup> WORLD BANK, WORLD DEVELOPMENT REPORT: THE STATE IN A CHANGING WORLD (1997) 100.

<sup>2</sup> In *The Rule of Law Revival*, 77 Foreign Af., Mar.–Apr. 1998, at 95, Thomas Carothers defines “rule of law” as

...[A] system in which the laws are of public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most importantly, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.

<sup>3</sup> Richard Bilder and Brian Z. Tamanaha, *Law and Development*, 89 AM. J. INT’L. L. 470, 484 (1995).

<sup>4</sup> Ronald J. Daniels, Michael Trebilcock and Joshua Rosensweig, *The Political Economy of Rule of Law Reform in Developing Countries* (2004) at [www.wdi.bus.umich.edu/global\\_conf/papers/revise/Trebilcock\\_Michael.pdf](http://www.wdi.bus.umich.edu/global_conf/papers/revise/Trebilcock_Michael.pdf)

<sup>5</sup> This cost is called the “bargaining cost” while the cost of taking a dispute to court is the “legal cost” of dispute settlement.

**Legal empowerment reduces poverty, builds civil society, encourages development, and promotes human rights. Access to legal services and complementary non-legal services should empower citizens to use the law to improve their lives.**

cost.<sup>6</sup> If the legal cost were higher than the bargaining cost, then the parties would not go to courts.

In India, resolving disputes through the courts is generally not the cheaper option. The poorest members of society and firms unaffiliated with large business groups are most likely to be adversely affected by inaccessible, corrupt, or inefficient courts. The poor who find themselves defendants in criminal cases often do not have the resources to obtain bail. Moreover, when the defendant is the family breadwinner and cannot pay bail, his or her family loses its source of income.

### The Link Between Justice Reform and Economic Growth

A number of cross-country econometric studies provide compelling evidence that the establishment of rule of law facilitates economic growth. In particular, protecting private property rights have been found to facilitate and enforce long-term contracts, which are essential for raising investment levels. The World Bank study, *Governance Matters*,<sup>7</sup> found that measures of good institutions have a strong correlation with indicators of economic development. Other studies using fewer measures of institutional quality and focusing exclusively on measures of economic development support these results.<sup>8</sup> There is also strong evidence of a negative correlation between residents' perceptions of judicial unpredictability and growth and investment.<sup>9</sup> Some studies also show that the overall level of confidence in the judiciary and other government institutions correlates positively with the level of investment and measures of economic performance and the lack of legislative and institutional reform is a significant barrier to retaining such investment, which gives rise to economic growth.<sup>10</sup> All these support the conclusion that there is a causal relationship between the rule of law and economic development.

### Law Reform and Poverty

Invariably, the poor are at the receiving end of inefficiencies in court procedures and management. Such inefficiencies provide opportunities for rent seeking by attorneys, judges, and judicial support personnel.<sup>11</sup> In most developing countries, where land titles are poorly recorded, the poor find it almost

impossible to establish their claims and struggle through the judicial processes because of their limited resources.

The poor are particularly worse off when dealing with criminal cases. India has a large jail population of prisoners under trial ("undertrials"). In Tihar Jail in Delhi, more than 85 percent of the prisoners have been reported to be undertrials.<sup>12</sup> Many undertrials are detained because they have no money to make bail or hire a lawyer to assist them.<sup>13</sup> Undertrials are detained in order to ensure their appearance in court during the trial. Thousands of them, arrested on suspicion of committing petty crimes, languish in jails. Due to court congestion, many remain in jail for a much longer period than the maximum punishment under the law for the crime committed.

### Court Congestion in India

Large backlogs of cases and delays may affect both the fairness and the efficiency of the judicial system. In India, the workload of the courts is huge. There are about 20

<sup>6</sup> It follows that resorting to the law is unnecessary and undesirable when bargaining succeeds, and resorting to the law is necessary and desirable when bargaining fails. The special circumstances that define the limits of law are specified in a remarkable proposition called the Coase Theorem, formulated by economist Ronald Coase. See Ronald H. Coase, *The Problem of Social Cost*, 3 J. of Law and Econ. 1-44 (1960).

<sup>7</sup> DANIEL KAUFMANN, AART KRAAY AND PABLO ZOIDO-LOBATON, WORLD BANK, *GOVERNANCE MATTERS* (1999), available at [www.worldbank.org/wbi/governance/pubs/govmatters.pdf](http://www.worldbank.org/wbi/governance/pubs/govmatters.pdf). The aggregate governance indicators for 1996-2002 which supersede the previously posted indicators, was made available in May 2005 at [www.worldbank.org/wbi/governance/pdf/govmatters%20IV20main.pdf](http://www.worldbank.org/wbi/governance/pdf/govmatters%20IV20main.pdf). Other World Bank papers on Governance Indicators include *AGGREGATING GOVERNANCE INDICATORS* (1999) at [www.worldbank.org/wbi/governance/pubs/aggindicators.html](http://www.worldbank.org/wbi/governance/pubs/aggindicators.html); *GROWTH WITHOUT GOVERNANCE* (2002) at [www.worldbank.org/wbi/governance/pubs/growthgov.html](http://www.worldbank.org/wbi/governance/pubs/growthgov.html) and *Governance Matters III* (2003) at [www.worldbank.org/wbi/governance/pubs/govmatters3.html](http://www.worldbank.org/wbi/governance/pubs/govmatters3.html)

<sup>8</sup> Daniels and Trebilcock, *supra* note 4.  
<sup>9</sup> Aymo Brunetti et al., *Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector*, 12 (3) World Bank Econ. Rev. 353 (1998).

<sup>10</sup> John Hewko, *Foreign Direct Investment: Does the Rule of Law Matter?* (2002) (unpublished manuscript, on file with the Rule of Law Series).

<sup>11</sup> Rick Messick, *Judicial Reform and Economic Development: A Survey of the Issues*, 14(1) The World Bank Res. Observer, 117, 120 (1999).

<sup>12</sup> Government of India, (1997), Report of the Committee on Rationalization of Classification of Prisoners in Tihar Jail, New Delhi.

<sup>13</sup> Table 1: Indicators on Crime for the Year 2000 and 2002.

Heads / Categories		2000	2002
Persons as	Under IPC Crimes	10,532,307	10,726,760
	Under SLL Crimes	4,724,623	4,893,407
Undertrials	Total no. of undertrials	15,256,930	15,620,167

Source: *Crime in India (2000)*, and *Crime in India (2002)*, National Crime Records Bureau (Ministry of Home Affairs), Government of India.

million cases pending in lower courts and another 3.2 million cases in high courts. A termination dispute that is contested all the way can take up to 20 years.<sup>14</sup> In the Principal Labor Court in Bangalore, 90 percent of termination disputes are not disposed of within a year. Writ petitions in high courts take about 8 to 10 years and in some courts nearly 20 years. The dockets of civil cases are overcrowded and it may take years to get a trial on the merits.<sup>15</sup>

Protracted case processing times and overburdened administrative staff may lead to resource-privileged individuals dominating the court's time to the detriment of those who have fewer resources with which to exert influence. Those with limited access to justice may resort to extralegal or illegal means of resolving conflict such as coercion or physical violence.

A lack of judges has generally been cited as the main reason for court congestion and delays.<sup>16</sup> Indeed, the number of judges in India per capita has been low compared to other countries. For instance, data on 30 selected countries from the World Bank *Justice Sector at a Glance* database<sup>17</sup> indicate that in 2000, the average number of judges per 100,000 inhabitants was 6.38.<sup>18</sup> The corresponding number for India is about 2.7 judges.

Court productivity, as measured by docket clearance rates, has a significant and negative effect on both caseloads and congestion rates and seems to be crucial for the

"Inefficiency in the judicial system leads to an increase in litigation, as people who are aware of the slow pace of justice within the court system begin to file cases primarily to harass the other party."



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effectiveness of congestion-reduction programs. Judiciaries with lower litigation rates display a relatively better performance with respect to current caseloads, but are not efficient in addressing the "real" backlogs of cases pending for more than a year.

However, a study by Micevska and Hazra<sup>19</sup> reveals that simple supply side solutions such as increasing the number of judges might not entirely solve the problem. Improving efficiency of the judiciary is also important in decreasing court congestion. A major function of the judiciary and the courts is to assist in the efficient and timely resolution of disputes.<sup>20</sup> Once a court has been established, its efficiency is defined in terms of the speed, cost, and fairness with which judicial decisions are made and the access that aggrieved citizens have to the court.

### Police and Prison Reforms in India

If there is to be any attempt for a meaningful revamp of the criminal justice system, the issue of police and prison reforms should be part of judicial reform.<sup>21</sup> The National Police Commission has pointed out that 60 percent of all arrests in India are either unnecessary or unjustified. This has resulted in overcrowding of jails and accounts for more than 40 percent of the expenditure of jails. Police restraint is of utmost importance, especially since a majority of the people arrested are poor and languish in jail simply because of their inability

<sup>14</sup> V. Nagaraj, *Labor Laws*, in M. MENON, N.R. AND B. DEBROY (EDS.) LEGAL DIMENSIONS OF ECONOMIC REFORMS (1991) 31–80.

<sup>15</sup> For a detailed analysis on the problem of court congestion, see Arnab Kumar Hazra and Maja B. Micevska, *The Problem of Court Congestion: Evidence From Indian Lower Courts* (2004), available at [www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf](http://www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf).

<sup>16</sup> The number of judges per 100,000 inhabitants ranged from 0.13 in Canada to 23.21 in the Slovak Republic, not showing significant correlation with GDP per capita. It should be noted, however, that for some of the countries the statistics covered only the federal court system (excluding the state or provincial court systems).

<sup>17</sup> Available at: [www4.worldbank.org/legal/database/Justice](http://www4.worldbank.org/legal/database/Justice)

<sup>18</sup> The actual number of judges is even lower since the calculation is based on the sanctioned judge strength, not accounting for vacancies.

<sup>19</sup> Arnab Kumar Hazra and Maja B. Micevska, *The Problem of Court Congestion: Evidence From Indian Lower Courts* (2004), available at [www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf](http://www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf).

<sup>20</sup> Maria Dakolias, *Court Performance Around the World: A Comparative Perspective* (1999) available at: [www-wds.worldbank.org/servlet/WDS\\_IBank\\_Servlet?pcont=details&eid=000094946\\_99090805303789](http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000094946_99090805303789).

<sup>21</sup> Arnab Kumar Hazra, (2004), *Institutional Reforms in the Enforcement of Criminal Justice in India*, in BIBEK DEBROY (EDS.), AGENDA FOR IMPROVING GOVERNANCE (2004).

**The Philippines recognizes and agrees with the reform concerns and initiatives outlined by Mr. Hazra. Indeed, our courts, especially the Sandiganbayan, suffer many of the same problems as the courts in India.**

to procure bail. Many of the persons who are in prison are not dangerous or violent. However, if these people stay in prison for long periods of time, they may be subjected to substantial psychological harm and become more prone to commit crimes. This is a serious problem, considering the large number of undertrials lodged in various Indian jails.

#### **Conclusion**

Developing countries need judicial reforms. Neglecting judicial reforms leads to lack of property rights enforcement and abuse of government powers. These may ultimately force people to operate outside the legal system, and impair the rule of law. This could affect a nation's credibility to do business and result in lower investments and economic growth. In the long run, this could impair the reduction of poverty and creating long lasting social order.

India's experience has shown that the poor are usually the ones who suffer most under a non-functioning criminal justice system. An inefficient judiciary encourages rent-seeking activities and makes access to justice by the poor particularly difficult. Thus, while efficiency-enhancing efforts are small steps in the right direction, more substantive judicial reforms—including police and prison reforms—should lie at the core of any effort by policymakers.

## **COMMENT: The Role of Judicial Reform in Good Governance and the Fight Against Corruption**

**SIMEON V. MARCELO**

*Ombudsman of the Republic of the Philippines*

It cannot be doubted, as Mr. Arnab Kumar Hazra has suggested, that “besides promoting law and order, a balanced, swift, affordable and accessible, and fair justice delivery system (a) aids in market development; (b) generates investment, including foreign direct investment; and (c) stimulates economic growth and therefore helps in alleviating poverty.” Unfortunately, however, while the delivery of justice should be a singular concern of the government, the truth is, the government itself is composed of different branches that do not necessarily take a unified approach to delivery of justice. Different offices within the government may even compete, if not for public approval, then for the limited resources available to the government as a whole.

In the Philippines, governance, access to justice, and the provision of basic services are the concern of the legislature, the executive, the judiciary, and the constitutional bodies, both cooperatively and independently. Overlapping of functions and duties is common in the Philippine bureaucracy. Thus, while cooperation may have been the intention behind such overlap of jurisdiction, the exact opposite may occur as different agencies lobby for different agenda in what is perceived to be a contest of competing interests.

We agree with Mr. Hazra that there are debates on “whether law reform should facilitate market transactions or the emphasis should be on promoting good governance and alleviating poverty.” While there is broad consensus that judicial efficiency and reforms support economic growth, as

**The Philippine Supreme Court in session.**



Courtesy of the Philippine Supreme Court

Mr. Hazra correctly pointed out, there are debates on perceived competing interests with respect to the ways in which legal and judicial reform should be pursued.

There is a similar debate in the Philippines surrounding the problem of poverty and corruption. Corruption is one of the most pressing problems of the Philippines today. It is considered as one of the most difficult stumbling blocks to economic development and the eradication of poverty. In fact, The World Development Report for 2004<sup>1</sup> published by the World Bank reported that corruption is the top investment constraint in the Philippines.<sup>2</sup> This is further supported by the 2004 Corporate Performance Survey conducted by the Wallace Business Forum, which reported that corruption is the most serious disadvantage to investing in the Philippines.<sup>3</sup>

For good reason, however, budget officials and bureaucratic fund managers invariably channel available resources to poverty alleviation projects, instead of allocating more resources for anti-corruption programs. We all understand that our government is caught in a dilemma, considering the Philippines' very limited resources, difficult fiscal position, and the gravity of the problems the government has to address.

### **Anti-Corruption: A Unifying Reform for the Poor**

The Office of the Ombudsman in the Philippines, however, advances the view that, in reality, choosing to fight either poverty or corruption is not a dilemma at all. Recent studies have shown that corruption has a direct and positive correlation with poverty. A working paper of the International Monetary Fund, entitled "Does Corruption Affect Income Inequality and Poverty?",<sup>4</sup> con-

cluded that there is statistical evidence to "establish the existence of a statistically significant *positive association* between corruption and poverty."<sup>5</sup> Thus, it is our position that by investing substantial funds in the anti-corruption campaign, the government is, in effect, effectively helping in alleviating poverty.

For example, corruption in infrastructure projects can result in substandard roads leading from farms to markets—making them perhaps impassable sooner than expected and causing an altogether negative impact on the livelihood and productivity of the people. Further, if corruption is substantially eradicated at the revenue-generating agencies, tax collection could increase drastically, thereby providing additional badly needed funds for anti-poverty programs.

In its 2004 Common Country Assessment, the United Nations Development Programme reported that about P100 Billion, or 13 percent of the P781 Billion Philippine national budget, was at risk of being lost to corruption.<sup>6</sup> However, it was estimated that the greatest loss (in terms of uncollected revenue) happens at the revenue generation agencies: the Bureau of Internal Revenue and the Bureau of Customs.

Senator Joker Arroyo explains that only 12 percent of the entire budget is used for capital expenditures and, is, therefore, susceptible to graft and corruption. According to this theory, only about 3.6 percent of the budget is vulnerable to graft. He concluded that the greatest loss due to corruption can be attributed to uncollected revenues. He posits that, assuming that what is due the government in revenues is P700 billion, the failure to collect just 15 percent of that amount already translates into a P105 billion "loss" to government in uncollected revenues.<sup>7</sup>

Senator Arroyo's conclusion was confirmed by a study on smuggling by the Philippine Center for Investigative Journalism. According to that study, "the total revenue loss for the government could reach as much as P200 billion."<sup>8</sup>

Thus, if an adequately funded anti-corruption initiative is able to substantially reduce such budgetary leaks and help increase revenue collection, the immediate effect will be the accrual of "savings" and

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<sup>1</sup> WORLD BANK, WORLD DEVELOPMENT REPORT 2004: MAKING SERVICES WORK FOR POOR PEOPLE (2004), available at [http://wdsbeta.worldbank.org/external/default/WDSContentServer/1W3P/IB/2003/10/07/000090341\\_20031007150121/Rendered/PDF/268950PAPER0WDR02004.pdf](http://wdsbeta.worldbank.org/external/default/WDSContentServer/1W3P/IB/2003/10/07/000090341_20031007150121/Rendered/PDF/268950PAPER0WDR02004.pdf)

<sup>2</sup> BUSINESS WORLD, Sept. 29, 2004.

<sup>3</sup> *Id.*, at 21.

<sup>4</sup> Sanjeev Gupta et al., "Does Corruption Affect Income Inequality and Poverty," (May 1998), available at <http://www.imf.org/external/pubs/ft/wp/wp9876.pdf>

<sup>5</sup> *Id.* at 21.

<sup>6</sup> See Cai Ordinario, *P100B Lost to Corruption*, THE MANILA TIMES, July 31, 2004, at 1.

<sup>7</sup> See Belinda Olivares-Cunanan, *Mercy Missions Can Be Done Here*, PHILIPPINE DAILY INQUIRER, Aug. 9, 2004, at A15.

<sup>8</sup> See Tess Bacalla, *Smuggled Goods, Flood Walls, Markets*, THE PHILIPPINE STAR, Oct. 25, 2004, at 10.



**Simeon V. Marcelo**  
Ombudsman of the  
Philippines

**“If we intend to make significant progress in our fight against graft and corruption despite our many limitations, the speedy disposition of high-profile cases involving higher government officials and bigger amounts of money should be made a priority in the trial schedule of our courts.”**

*Ombudsman Simeon V. Marcelo was appointed as Solicitor General of the Republic of the Philippines in February 2001. As Solicitor General, he successfully handled the recovery of former Philippine President Marcos’ ill-gotten wealth worth US\$680 Million lodged in Swiss bank accounts. In October 2002, he was appointed as the Ombudsman, the youngest person ever appointed to the position. As Ombudsman, he heads the panel of government lawyers prosecuting major graft cases before the Sandiganbayan, the Philippines’ Anti-Graft Court. His office is now focusing on investigating alleged widespread corruption activities in the Philippine military and revenue-generating government agencies.*

income for the government, which can, in turn, be used for poverty-alleviation projects. Moreover, reduced graft and corruption increases investor confidence, which translates to more investments and employment for the people.

Therefore, the Office of the Ombudsman posits the view that a massively funded anti-corruption campaign should be seen as an investment with extraordinary high returns and not as an expense, where the primary beneficiaries are the poor and the marginalized sectors of society, and where the direct and immediate effect is the alleviation of poverty in our country.

### **Judicial Reform and the Sandiganbayan**

It should be emphasized that in order for an effective campaign against corruption to be implemented, reforms at the courts handling corruption cases are indispensable.

The Philippines recognizes and agrees with the reform concerns and initiatives outlined by Mr. Hazra. Indeed, our courts, especially the Sandiganbayan, suffer many of the same problems as the courts in India. The Philippine Supreme Court, under the watch of Chief Justice Hilario G. Davide, Jr., advocates governance reforms. According to the Chief Justice:

*Any effort...to promote development in a country is deeply rooted in governance. This is like...a*

*fruit-bearing tree with governance as the roots and development as the fruit. To harvest bountiful fruits of good quality, the tree must be cared for from the roots, giving it ample water, fertilizer, etc. Otherwise, no plentiful harvest, much more [sic] high quality harvest, can be expected. Remember the old wise saying, “one reaps what one sows.” Poor governance means underdevelopment or no development at all. Good governance means flourishing development, progress, prosperity, stability and peace.<sup>9</sup>*

Despite apparent competing interests in other areas, our national leaders and the stakeholders have come together in a unified front for good governance. In December 2004, the heads of offices of various government agencies and branches launched the Good Governance Festival. There were ten thematic areas of governance reforms chosen to highlight the critical domains that need to be addressed by the government in cooperation with the private sector and civil society:

1. electoral and political reforms;
2. justice reforms;
3. anti-corruption;
4. local governance reforms;
5. human rights and gender;
6. media reforms;
7. public administration reforms;
8. environmental governance;
9. anti-poverty; and
10. peace and development.<sup>10</sup>

For its part, the judiciary, under the direction of Chief Justice Davide, adopted the Action Program for Judicial Reform (APJR)<sup>11</sup>—a comprehensive reform package for the judiciary. Its components seek to fulfill our vision of a judiciary that is independent, effective, efficient, and worthy of the people’s trust and confidence. It also seeks to ensure that the legal profession pro-

<sup>9</sup> According to Chief Justice Davide, “Good governance consists, at the minimum, of institutions that are democratic and accountable and that protect the Rule of Law at all times; and rules that are transparent, participatory, responsive and effective, and which are geared towards the full development of the human person and the building of a just and humane society.” Chief Justice Hilario G. Davide, Jr., Keynote Address delivered on the Human Rights Week Commemoration, 10 to 10 Dekada ng Reporma Milestone Event (Dec. 8, 2004).

<sup>10</sup> *Id.*

<sup>11</sup> A summary of the APJR is provided by the Philippine Supreme Court Program Management Office Director, Evelyn T. Dum Dum, on page 62.

vides quality, ethical, accessible, and cost-effective legal service to the people and is willing and able to answer the call to public service.

One of the components of the APJR is access to justice by the poor. A specific goal of this component is to reform each of the five pillars of the criminal justice system to develop a system that is responsive and accessible to the poor and disadvantaged. Various activities were conducted to underscore the urgent need to join forces in ensuring access to justice, culminating in the National Forum on Access to Justice through the Five Pillars of the Criminal Justice System, held late last year.

While good governance, access to justice, and rule of law, must be addressed by multi-institutional cooperation, in order to fully understand the parallels between our experience and that of India, it is necessary to highlight the role of one institution in the Philippine judiciary—the Sandiganbayan. The Sandiganbayan is the Anti-Graft Court of the Philippines established to hear, try, and decide cases against high-ranking public officials, i.e., those belonging to Salary Grade “27” and above. The Sandiganbayan has 15 justices in five divisions of three justices each. For 2004, it had an operational budget (personnel services, maintenance and other operating expenses) of almost P115 million.

Studies recently conducted by the Office of the Ombudsman involving Sandiganbayan cases resolved in 2003 revealed that it took an average of six years and ten months for one case to be fully resolved. In fact, there are some cases involving high-ranking government officials that have been pending in the Sandiganbayan for more than ten years now.

In mid-2004, due to the heavy volume of cases being heard by the divisions of the Sandiganbayan, in many instances only two hearings for every case were conducted every two months. Another study conducted by the Office of the Ombudsman, on the thirty high-profile cases presently pending with the Sandiganbayan, revealed that towards the end of last year, there was an alarming interval of an average of four

months between scheduled hearings in every case.

The high-profile “Tax Credit Scam” illustrates the above-mentioned situation. In that case, the accused was supposed to be arraigned on 30 September 2004. The scheduled arraignment was postponed and rescheduled to 01 March 2005, an interval of almost five months. Other high-profile cases were not scheduled for follow-up hearings until four and five months later after the initial hearings.

The Sandiganbayan justices cannot be blamed for this problem. In fact, they should be commended for their diligence and perseverance. They are doing their best to complete the proceedings and resolve their cases at the earliest possible time, but the sheer volume of cases makes it impossible to promptly dispose of every case.

At the beginning of 2004, the Sandiganbayan had 2,304 cases pending.<sup>12</sup> As of 31 October 2004, the Sandiganbayan had a total of 1,792 **active** cases (with three cases yet to be raffled), divided as follows:

ACTIVE CASES IN THE SANDIGANBAYAN	
1 <sup>st</sup> Division .....	185
2 <sup>nd</sup> Division .....	470
3 <sup>rd</sup> Division .....	356
4 <sup>th</sup> Division .....	387
5 <sup>th</sup> Division .....	388
Special Division .....	3
<b>TOTAL</b> .....	<b>1,792</b>

However, the total number of cases (actual caseload) pending in the Sandiganbayan within a given year, which includes both active and non-active cases, is far larger than the above-stated numbers. A study jointly sponsored by the Supreme Court and the World Bank entitled “Philippines: Formulation of Case Decongestion and Delay Reduction Strategy Project-Phase I (Final Report December 2003)”<sup>13</sup> stated:

*The average workload of 441 cases per justice is heavy. Since Sandiganbayan justices work in divisions, each division effectively handles more than 1,000 cases per year. A reasonable amount of workload per justice should be established . . .*

The delay in the disposition of cases in the Sandiganbayan is a natural conse-

**Remember the old wise saying, “one reaps what one sows.” Poor governance means under-development or no development at all. Good governance means flourishing development, progress, prosperity, stability and peace.**

—CHIEF JUSTICE

HILARIO G.

DAVIDE, JR.



<sup>12</sup> Sandiganbayan Statistics on Cases Filed, Pending and Disposed of as of Nov. 30, 2004.  
<sup>13</sup> Available at [www.apjr-sc-phil.org/article/articleview/8/1/2](http://www.apjr-sc-phil.org/article/articleview/8/1/2)

**The delay in the disposition of cases in the Sandiganbayan is a natural consequence of a heavily congested docket—a problem that plagues all Philippine courts today.**

quence of a heavily congested docket—a problem that plagues all Philippine courts today. However, due to the unique and usually complex character of graft and corruption cases, and the extremely heavy caseload distributed among a small number of courts (five divisions), the problem of delay is extremely grave at the Sandiganbayan.

It must be emphasized that the Sandiganbayan plays a critical role in fighting graft and corruption committed by high-ranking public officials. A survey on caseload funded by the World Bank showed that the median time for the processing of cases (from filing to closure) is 6.6 years; the minimum duration was 1.6 years and maximum 11 years. The trial phase of each case took the longest time, with a median trial duration of 2.4 years. The second longest phase was that of the decision making itself, with a median duration of eight months.<sup>14</sup>

We have showcased the Sandiganbayan primarily due to its importance to the campaign against graft and corruption and the great positive impact the swift administration of justice has on deterring corruption. Corrupt public officials can be expected to respond only to reasonably certain swift or immediate punishment, whether it is administrative or criminal. The heavily clogged dockets and the limited number of justices and judges cause the trial of allegedly corrupt public officials to drag on for years. During this time, the trials and cases fall out of the sphere of public interest, concern, and knowledge and end as old news relegated to history, which seems irrelevant and inconsequential to the everyday lives of our people. The corruption courts no longer have a deterrent effect when cases take years to resolve. The search for a solution to this critical problem of congested dockets requires recourse to drastic but creative and economical measures.

### **Alternative Reform Measures**

The ideal and most logical solution to this predicament is to at least qua-

druple the number of justices and/or divisions in the Sandiganbayan. However, such a solution will require an additional budget of at least P400 million, which likely exceeds the resources available to the national government at this time.

### **RATIONALIZATION OF JURISDICTION**

Based on another study conducted last year by the Office of the Ombudsman, of the more than 2,000 cases pending before the Sandiganbayan, around 793 cases involve municipal mayors and other officials with salary grades of 27 or 28 and the alleged amount of injury or bribes received was P1 million or less.<sup>15</sup> These cases comprise approximately 40 percent of all pending cases in the Sandiganbayan. If the more important cases with larger amounts at stake could be prioritized, the over-burdened calendar of the Sandiganbayan could be lightened, allowing the justices more time to focus on cases that will produce a greater impact in the war against graft and corruption. This can be done by transferring the lower priority cases to the regular courts, allowing the Sandiganbayan to concentrate on the very cases it was originally intended to try—those involving the senior officials of the country and those involving large amounts of money.

The Office of the Ombudsman had sent to the Senate, through Senator Mar Roxas III, its proposed legislation to modify the jurisdiction of the Sandiganbayan to allow more expeditious resolution of cases involving high-ranking officials and those involving large amounts of money. It is proposed that cases involving local and national officials with salary grade 27 and 28 should be transferred to regional trial courts if one of the following two conditions is met: (a) the case does not involve damages or bribes or such damages remain unquantified or are unquantifiable; or (b) said damages or bribes are no more than P1 million.<sup>16</sup> As ear-

Courtesy of the Philippine Supreme Court



**Thousands of case files awaiting disposition by the courts.**

<sup>14</sup> OMB Medium-Term Anti-Corruption Plan and Public Investment Program, at 2-30.

<sup>15</sup> Among the cases involving municipal mayors, 254 involve an amount of P 25,000 or less; 50 involve an amount P 50,000 or less; and 68 involve P 100,000 or less.

<sup>16</sup> There are 952 Regional Trial Court branches throughout the Philippines, 761 of which were filled as of 30 November 2004. The transfer of these 793 cases from the Sandiganbayan may not be too burdensome considering the fact that, with a few exceptions, only 1 case need be assigned to each of these Regional Trial Courts.



lier stated, there are about 793 cases that fall under these classifications. It was further proposed that the remaining cases, which involve damages or bribes that are less than P5 Million, should be tried and resolved by individual justices, leaving the more complicated ones for the division of three justices.<sup>17</sup>

A better response to this problem is to drastically increase the number of justices in the Sandiganbayan. Adding five more divisions to the Sandiganbayan, together with the above-discussed modification of the Sandiganbayan's jurisdiction, will substantially remedy the problem of delay. This, of course, will require an additional operating budget of about P115 million and the enactment of further legislation. The additional funding of P115 million should not, however, seem that much in terms of the enhanced capacity that this funding will create for the Sandiganbayan to deter further acts of graft and corruption, which could potentially save our country billions of pesos.

#### PRIORITIZATION OF CASES

It should be emphasized that increasing the number of justices and divisions in the Sandiganbayan and modifying its jurisdiction will take some time proceeding through the legislature before the same can be implemented. While the legislature is deliberating on these measures, the Supreme Court could adopt a radical temporary solution to address the problem of case delay in the Sandiganbayan. The Supreme Court could order a suspension of the proceedings in all cases in the Sandiganbayan, except for the forty most important high-profile cases, as determined by the Supreme Court, on the recommendation of the Sandiganbayan and the Office of the Special Prosecutor. Further, those cases should then be tried immediately and continuously on a weekly basis.

At present, each division of the Sandiganbayan conducts hearings for three-and-a-half hours every day, Mondays through Thursdays. Friday is designated as "motion day." Under this proposal, each division of

the Sandiganbayan will ideally have only eight cases on its docket at a given time. Therefore, from Monday to Thursday, the Sandiganbayan will be able to hear two cases daily, so that each case will be heard every week. The respective divisions will be able to maintain a continuous trial for each case devoting one hearing day per week, from Monday to Thursday, with each trial day lasting for at least an hour and a half per case.

This practical proposal optimally utilizes the court's meager resources. We recognize that the extremely slow pace in the disposition of cases undermines the integrity of our justice system, particularly in graft and corruption cases. However, considering the administrative and human limitations of our courts, it is highly impractical to require continuous trial on all cases pending in the Sandiganbayan. Thus, if we intend to make significant progress in our fight against graft and corruption despite our many limitations, the speedy disposition of high-profile cases involving higher government officials and bigger amounts of money should be made a priority in the trial schedule of our courts. Hopefully, the speedy disposition of these cases involving higher-ranking officials will restore the people's faith in our courts and likewise discourage lower-ranking officials from committing acts of corruption.

While we concede that justice does not discriminate between big and small cases, the exigency of the times, coupled with the severe lack of human resources in the Sandiganbayan, should compel the courts to employ a more radical and strategic approach to fight graft and corruption by prioritizing the disposition of the forty most important high-profile cases. **It is better to find a way to address the problem, even if only a part of it, rather than simply distribute the misfortune of delay equally.**

As previously stated, our study of thirty high-profile cases presently pending at the Sandiganbayan showed that towards the end of last year, there was an alarming average interval of over four months between scheduled hearings. A continuous trial of the 40 most important high profile cases is, therefore, a practical and reasonable interim proposal.<sup>18</sup>

There are other advantages to proceeding with continuous trials for the forty most

### 6.6 years

The median time for the processing of cases (from filing to closure) in the Sandiganbayan (Philippines).

### 2.4 years

The median trial duration time in the Sandiganbayan.

### 441

The number of cases handled by each justice.

### 2,304

The number of cases pending as of 31 October 2004.

### 1.792

The number of active cases as of 31 October 2004.

<sup>17</sup> Of the 14 incumbent justices, 10 were former regional trial court judges who already have vast experience in trying and resolving cases involving amounts higher than P5 Million. The other 4 justices were veteran lawyers before their appointment.

<sup>18</sup> Cases involving detention prisoners should be included in the list of the 40 most important high-profile cases.

As we develop and implement reform programs for the police and the judiciary, we must keep women's issues with respect to these aspects of law enforcement in mind. Police and judicial reforms must support justice for women in order to support justice for society as a whole.

important high-profile cases. The previously-mentioned World Bank study entitled "Philippines: Formulation of Case Decongestion and Delay Reduction Strategy Project-Phase I (Final Report December 2003)" stated that continuous trials "would require greater preparation by prosecutors and defense counsel at the outset . . . but would reduce the amount of time taken for the trial, and also reduce the possibility of fading memories on the part of witnesses, and the opportunity for interference with evidence."

Prosecutors observed that the delay in the disposition of cases compounds other problems, such as the difficulty in preserving the evidence of the prosecution. Witness' memories also become less accurate over time. It also becomes more difficult to locate witnesses if the case drags on for a very long time, perhaps because of loss of interest on the part of the witnesses. Given these circumstances, it is extremely difficult for the prosecution to secure convictions even in meritorious cases if there is excessive delay in the proceedings. Instituting continuous trials should alleviate, if not completely remedy, these problems.

Moreover, the proposal vindicates defendant's constitutional right to speedy trial by guaranteeing continuous trials for those facing the gravest charges.

### Conclusion

In sum, the cooperative and synchronized efforts among all offices of the government and stakeholders in crafting and realizing the reforms needed for good governance is indispensable. While preliminary reform efforts have been undertaken, much remains to be desired and done in terms of success in this endeavor. To quote Chief Justice Davide:

*This candid admission is the first necessary step for our country to be on its way to vigorously advance in governance and to realize its development goals. There is nothing embarrassing or even shameful in this admission or confession. A confession purifies the spirit, expresses the nobility of the heart, and demonstrates courage. In connection with good governance, it is a mark of patriotism and a commitment to serve others with selfless love.<sup>19</sup>*

<sup>19</sup> Davide, *supra*.

## Toward a Gender-Just Rule of Law

JASODHARA BAGCHI

Chairperson,  
West Bengal Commission for Women

There is much inequality in the world. Discrimination against members of several social categories has upheld the hierarchical world order and supports entrenched unequal treatment. These categories include class, caste, ethnicity, race, and religion, but the overarching, oldest category is gender. Internationally, nationally, and locally, gender cuts across all the other social categories upon which discrimination is based.

This symposium focuses on two elements of government that has been traditionally associated with the male gender—the police and the judiciary. It is significant that the year we choose to deliberate these issues also marks 10th anniversary of the World Conference on Women held in Beijing. In India this is also the year during which both the government and non-government organizations (NGOs) are preparing the second report for the CEDAW Committee in the United Nations. CEDAW stands for the International Convention on the Elimination of All Forms of Discrimination Against Women, which was adopted by the UN General Assembly in 1979. This Convention defines women's rights as human rights.

### History of Women's Rights and Law Reform

The history of women's rights can be traced through women's status, privileges, and protections under the law over time. Women's rights have not always been considered part of human rights generally. The French Revolution's Declaration of the Rights of Man and Citizens, one of the seminal early rule of law documents, did not concede that women were citizens. The Frenchmen had few qualms about guillotining their female comrades-in-arms for advocating women's rights. Olympe de Gouges was killed for supporting the Declaration of the Rights of Women, which was considered transgres-

sive as women were thought to be unfit to be brought within the folds of citizenry.

The complete history of women's struggles for recognition as citizens remains unmapped, and women's role in law and governance has escaped the attention it deserves. Whatever the scholarly explanations for this may be, feminist common sense simply observes that gender divisions within social spheres has deprived women of equal access to the justice system. Laws and legal institutions often reflect larger societal discrimination against women. In many countries, the legal machinery and the law enforcement agencies are meant to belong to the "public" sphere, while women are identified as belonging to the "private" sphere. The Indian colonial legacy has even further complicated the public-private distinction, rendering it even more intensively gendered. For example, within the public legal sphere, there are "personal laws." Personal laws govern the specifics of communities, including women's lives and legal issues.

In India many of the large gains of the women's movement have been achieved through legal reforms. In 1829, the colonial government passed the anti-*suttee daho* legislation, which outlawed the killing of widows on their husband's pyres and in which Ram Mohan Rai, the great Indian social reformer, played a significant role. In 1856, Iswar Chandra Vidyasagar, the Bengali writer and social reformer, lobbied for colonial legislation that would allow widows to remarry and the Widow Remarriage Act XV was passed. Law reform has, therefore, been an important tool in furthering the women's movement, strengthening women's rights, and improving women's quality of life in India for nearly 200 years.

### **The Need for Gender-Just Rule of Law**

Just as law reform has played an important role in furthering women's rights in the past, it will continue to do so in the future. As we develop and implement reform programs for the police and the judiciary, we must keep women's issues with respect to these aspects of law enforcement in mind. Police and judicial reforms must support justice for women in order to support justice for society as a whole. My experience in India has impressed upon me the fact that gender issues must be navigated very delicately in the context of law and governance. This

"In India many of the large gains of the women's movement have been achieved through legal reforms. In 1829, the colonial government passed the anti-*suttee daho* legislation, which outlawed the killing of widows on their husband's pyres."



**Jasodhara Bagchi**  
Chairperson,  
West Bengal Commission  
for Women

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does not detract, however, from the importance of considering the perspectives of women and men in legal reforms.

I serve on the Women's Commission in West Bengal, which was established by a statutory act in 1992, at approximately the same time as the National Commission for Women was established in Delhi. We are, however, independent from the Delhi Commission and operate within the purview of our state. Our work to this point has been addressing the ways in which law enforcement and the police are not serving women's needs. Primarily, we have dealt with the police.

Despite concerted attempts at making the police more gender-sensitive, the police in our society still suffer from the hangover of colonial authoritarianism. From time to time, the police in India have not only failed to protect women from harm, but have inflicted harm on women themselves, either by rape or other abuse. Historically, high-profile police rape cases led to reforms in criminal laws governing the offense. The laws were amended, for example, to include custodial rape as one of the worst offenses. There were two cases that prompted these reforms, the Rameeza Bee and Mathura cases. In the Rameeza Bee case in 1978, a woman was raped by several policemen, and her husband was murdered because he had protested. In response to massive protests, the President of the Republic of India set up a commission of enquiry. This commis-

**63%**

Increase in the crime of importation of girls from 1999 to 2000, India.

**24.5%**

Increase in the crime of sexual harassment from 1999 to 2000.

**6.6%**

Increase in rapes from 1999 to 2000.

**6.1%**

Decrease in offenses under the Dowry Prohibition Act from 1999 to 2000.

Source: 2003 Report by the Committee on Reforms of Criminal Justice, Government of India.

sion found that the policemen were guilty. They were nonetheless acquitted in court. In the Mathura case, two years later in 1980, an under-aged *dalit*<sup>1</sup> girl was raped by two policemen within the vicinity of the police station. The lower court held that since she had eloped and was married at the time of the incident, she must have been habituated to sex and could not have been raped. The high court rejected the lower court's holding and convicted the policemen. Ultimately, the Supreme Court reversed, stating that since Mathura had not raised any alarm and since there were no visible marks of injury on her body, the act must have happened with her consent. The rape laws that were passed or amended in the wake of these cases and the public outrage they induced did much to protect women from such brutal acts.

Our Commission has, however, found that women who are compelled to go to the police stations are still perceived by policemen there to be "available," and that women in police custody are frequently seen as the property of law enforcement authorities. These attitudes are part of a greater social trend of the exploitation of women, exemplified, for example, by the sex trade documented in the recent book, *Guilty Without Trial: Women in the Sex Trade in Calcutta*,<sup>2</sup> which explored the harassment, economic insecurity, health hazards, and stigmatization that sex workers face in India.

Our Commission has also been concerned with declining ratio of women to men in India. As documented by Professor Amartya Sen, there are millions of "missing women" in India.<sup>3</sup> According to the 2001 census, the ratio of surviving female children to male children among children aged 0–6 years has declined at an alarming rate. Prosperous states, including Punjab, Haryana, parts of Himachal Pradesh, and the prosperous districts of Calcutta, have evidenced the declining ratio, supporting the theory that the trend can be attributed, not to infant mortality, but to sex-selective abortions conducted using ultra-sonogram and other medical equipment. Therefore, we successfully lobbied for legislation forbidding this practice, and the Pre-Natal Diagnostic Technique Act (PNDT Act) was passed in 1994. The PNDT Act provides for the regulation of the use of pre-natal diagnostic techniques and forbids use of such techniques for the

purpose of pre-natal sex determination leading to abortion of female fetuses. We are now in need of public interest litigation to promote women's rights under the PNDT Act. We must promote judicial activism in enforcing the new law in order for it to fulfill its preventative goals.

Women's rights are also prejudiced by workings of the judicial system itself. One of India's great judges, Justice Krishna Iyer, who also made important recommendations on prison reform, noted that the systemic case delays in the Indian courts tend to affect women more adversely than men. His recommendation in this regard was to establish specialized courts to dispense justice separately and speedily to women. Such a mechanism was already available to women, under the Family Court Act of 1984. However, Justice Iyer's recommendations addressed additional provisions to regulate the presence of lawyers and witnesses in the family court and would expand the court's jurisdiction to include all cases pertaining to women, whether as plaintiffs, respondents, or victims. It is my hope that the family courts will be able to provide women with quick resolution of their legal matters, and that the rest of the judicial system will follow the pattern of speedy delivery of justice. I do not favor widespread use of alternative dispute resolution (ADR), because I believe one of the most important factors in providing justice for women is speedy resolution of cases and because I am skeptical of the ability of ADR to resolve cases quickly.

## Conclusion

Many of the positive developments in the women's movement in India have been, and continue to be, closely related to law and legal institution reform. Further legislation to protect women's rights and security is currently in development. For example, the *Vishaka*<sup>4</sup> guidelines on the resolution and

<sup>1</sup> In South Asia's caste system, a *dalit*—formerly known as untouchable—is a person outside and subordinate to the four castes.

<sup>2</sup> CAROLYN SLEIGHTHOLME AND INDRANI SINHA, *WOMEN IN THE SEX TRADE IN CALCUTTA* (1996).

<sup>3</sup> Amartya Sen, *More than 100 Million are Missing*, New York Review of Books, Vol. 37, No. 20, December 20, 1990.

<sup>4</sup> On August 13, 1997, the Supreme Court of India issued a judgment against sexual harassment at the workplace, which has come to be known as the Vishaka judgment. It laid down the definition of sexual harassment, preventive measures and redress mechanisms. It stipulated a mandatory complaint committee on sexual harassment at all workplaces.

prevention of sexual harassment, first issued by the Supreme Court, have become the template for the current bill on Sexual Harassment in the Workplace. The government is working with various women's groups on a Domestic Violence Bill that is intended to be a comprehensive law addressing every aspect of women's experience of violence in the home.

Women are able to gain access to justice throughout India by way of free legal aid services. West Bengal has a particularly proactive Legal Services Authority that extends to the sub-divisional level in each state district.

The impact of patriliney on women's lives must not be underestimated. After a woman is displaced from her parent's home, her rights become fraught with insecurity, and she is subject to incipient violence. Once she is outside the safe boundaries of a family, a woman's grasp on her life is so uncertain that she may not have the resources

with which to conduct the long drawn-out battle for justice when she becomes victim to violence or injustice. If she succumbs, culture-specific terminology, such as dowry death, is used to describe her demise. We must realize, as activist lawyer Flavia Agnes once put it, that women succumb because they have nowhere to go. Help lines, shelters, and government- or NGO-run homes are merely short-term remedies that are part of the web surrounding women's lives in our patriarchal societies. In considering the issues of police and judiciary reform, we must remain cognizant of the underlying gender issues and work to improve the protection of women's rights within our legal system.

It is not enough to think about justice in terms of the law and law enforcement. We must remember the social complication of gender roles. Rule of law must ultimately include gender justice if it is going to provide any justice at all.

**Help lines, shelters, and government- or NGO-run homes are merely short-term remedies that are part of the web surrounding women's lives in our patriarchal societies.**



ADB File Photo

**Law reform has been an important tool in furthering the women's movement, strengthening women's rights, and improving women's quality of life in India for nearly 200 years.**

- In 1829, the colonial government passed the anti-*suttee daho* legislation, which outlawed the killing of widows on their husband's pyres and in which Ram Mohan Rai, the great Indian social reformer, played a significant role.
- In 1856, Iswar Chandra Vidyasagar, the Bengali writer and social reformer, lobbied for colonial legislation that would allow widows to remarry and the Widow Remarriage Act XV was passed.

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## AT THE SYMPOSIUM



**“Law and policy reform provides the fulcrum to achieve sustainable economic development. Investments in economic development or social progress are unlikely to be as effective or efficient or even enduring in the absence of an optimal mix of legal, institutional, and policy structures. Indeed, law and policy reform is now an integral part of ADB’s poverty reduction approaches.”**

**—from *Law & Policy Reform in Asia and the Pacific: Ensuring Voice, Opportunity & Justice*  
Asian Development Bank, 2005**

# Chapter 3

## International Collaborations in Judicial Reform

- EBRD's Role in Judicial Reform and Training
- IDB's Efforts in Legal and Judicial Reforms

### EBRD's Role in Judicial Reform and Training

EMMANUEL MAURICE

*General Counsel, European Bank for Reconstruction and Development (EBRD)*

The European Bank for Reconstruction and Development (EBRD) and ADB have similarities and differences with respect to their structures, members, mandates, and projects. EBRD, like ADB, has supported legal and judicial reform.

EBRD is similar to ADB in so far as its charter was modeled largely after the ADB charter. Because EBRD services the countries of Central and Eastern Europe and the former Soviet Union, it shares a number of recipient countries with the ADB, specifically the Central Asian countries that were formerly part of the Soviet Union.

EBRD differs from the ADB in that EBRD is not directly involved in the alleviation of poverty. Instead, EBRD's mission is to foster the transition of central and eastern European countries from command economies (i.e. economies that are planned and controlled by a central administration) to open

market economies and to promote private and entrepreneurial initiative in the new economies. Thus, EBRD refers to itself as a transition bank, rather than a development bank.

Another difference between the two institutions is that EBRD has an openly political mandate. Article 1 of EBRD's charter<sup>1</sup> provides that it may only lend to countries that are committed to, and apply the principles of, multi-party democracy, pluralism and market economics. These guiding principles have led the EBRD to reduce its involvement in certain countries that have not fully recognized these principles, particularly Belarus and Turkmenistan.

Both EBRD and ADB are involved in financing and managing projects in the public and private sectors. However, the EBRD charter provides that at least 60 percent of its resources are allocated for the private sector. Private sector loans serve EBRD's mission to facilitate the transition of state-owned enterprises to private ownership and control, to help enterprises operating competitively in the market-oriented economy. EBRD exceeded its private sector funding target last year when it directed 80 percent of its financing to the private sector.

<sup>1</sup> Agreement Establishing the European Bank for Reconstruction and Development found at [www.ebrd.com/about/basics](http://www.ebrd.com/about/basics)

EBRD [European Bank for Reconstruction and Development] and ADB both have a legal reform program, and EBRD has a limited judicial reform program. Ten years ago, the EBRD started its legal reform program, called the Legal Transition Program, in keeping with the Bank's mandate.



**Emmanuel Maurice**  
General Counsel  
European Bank for  
Reconstruction and  
Development (EBRD)

**“The EBRD law reform program focuses on remedying the implementation gaps by ensuring that authorities effectively understand, apply, and enforce the new laws.”**

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EBRD and ADB both have a legal reform program, and EBRD has a limited judicial reform program. Ten years ago, the EBRD started its legal reform program, called the Legal Transition Program, in keeping with the Bank's mandate. Due to EBRD's involvement in private sector activities, its transition program focuses on reform of commercial laws that are directly relevant to the activities of investors and financiers in Central Asia and Eastern Europe, including the laws of capital markets and corporate governance, concessions, insolvency and bankruptcy, secured transactions, and telecommunications regulatory reform.

For each sector, EBRD engages in the following methodology. First, it identifies the international standards or best practices for compliance. Second, it assesses the laws of the recipient countries against those international standards. Third, it develops and implements technical assistance projects to support local authorities to establish investor friendly laws and sound institutions. Finally, it advances legal reform through outreach activities including legal roundtable discussions, and the legal journal Law in Transition.

EBRD's assessment of laws focuses on two aspects: 1) the extensiveness of the laws, or the extent to which the law on the books comply with international standards; and 2) the effectiveness of the laws, or the extent to which the authorities in charge of enforcement effectively apply the laws. This dual analysis has led EBRD to identify what it calls the “implementation gap” which is essentially the measure of the effectiveness of the laws. EBRD has found that there is

usually an implementation gap in every sector of every country.

The EBRD law reform program focuses on remedying the implementation gaps by ensuring that authorities effectively understand, apply, and enforce the new laws. In certain cases, this can be accomplished by simply helping a country assemble a computerized registry of the laws. Remedying implementation gaps can also involve participation in training sessions to help judges understand the new laws and apply them in the most effective manner. EBRD has assisted with judicial training programs to implement the New Secured Transactions Law in the Slovak Republic and the new Insolvency Law in Poland.

In 2004, the EBRD decided to go beyond that limited approach and focus on judicial capacity building on a larger scale. In launching initiatives in this area, it applied the four-part legal reform methodology described above. It first determined that there were myriad international standards that defined the parameters of an efficient and independent judiciary. It identified the United Nations Basic Principles on Independence of the Judiciary, adopted in 1985, and the related United Nations Procedures, adopted in 1989, as most relevant international standards. The Council of Europe's Recommendations No. R(92)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, adopted in 1994, and the Council of Europe's European Charter on the Statute for Judges, adopted in 1998, were also considered. With respect to judicial behavior, EBRD relied on the Bangalore Principles of Judicial Conduct of 2002, which had recently been adopted by the United Nations.

To compare the judiciaries in recipient countries against these international principles, the EBRD relied on work done by the American Bar Association and Central European and Eurasian Law Initiative (CEELI). Those organizations designed a judicial reform index and surveyed fourteen of EBRD's twenty-seven countries of operation.<sup>2</sup> The surveys confirmed that the judiciary is

<sup>2</sup> EBRD's countries of operations are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, FYR Macedonia, Moldova, Poland, Romania, Russia, Serbia and Montenegro, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.



quite weak in many of these countries. The weakest judiciaries were identified as those of Armenia, Bosnia, Kurdish Republic, Serbia, Montenegro, and Uzbekistan. The specific shortcomings identified were related to judicial efficiency, accountability, and transparency, and lack of structural safeguards and financial resources available to judiciaries.

Based on these assessments, EBRD decided to help countries launch an initiative to train their judges in commercial law matters. Fortunately, many countries in Central and Eastern Europe were independently beginning to establish judicial training centers to train new judges and provide judges with continuing education. EBRD has cooperated with these training centers, which are usually placed under the authority of the minister of justice. The first EBRD commercial law training project will take place in the Kyrgyz Republic with the cooperation of International Development Law Organization (IDLO) in Rome, an organization which has been involved in training initiatives for lawyers and judges around the globe.

In sum, the EBRD's mission to develop the private sector and market-based economies, while different from ADB's emphasis on public sector development, nevertheless requires legal and judicial reform to create a legal environment that is conducive to investment, entrepreneurship, and economic growth. To this end, EBRD has sponsored and will continue to sponsor legal and judicial reform programs.

## **IDB's Efforts in Legal and Judicial Reforms**

**JAMES SPINNER**

*General Counsel, Inter-American Development Bank (IDB)*

**T**he Inter-American Development Bank (IDB)<sup>1</sup> is an institution very similar to ADB. It is a regional development bank with forty-seven shareholders from the countries of the Americas, Europe, Ja-

pan, and Israel.<sup>2</sup> Similar to ADB, IDB's institutional goal is to further the economic and social development of its twenty-six borrowing member countries<sup>3</sup> in Latin America and the Caribbean. Roughly 95 percent of the IDB's lending program goes to public sector borrowers, i.e., to national and local governments and government entities that enjoy the full faith and credit of the national government. It also has a mandate to lend to the private sector up to 10 percent of its resources. Private sector lending supports infrastructure projects, local capital market development, and trade finance. The Bank expects private sector lending to increase in the next few years.

IDB loans, whether public or private, are primarily for investment projects. It also provides policy-based loans, which entitle countries to disbursements for completion of specified changes to country policy. IDB also provides technical assistance.

Since 1994, one of IDB's main goals has been to support efforts by its borrowing member countries in the area of the modernization the state. A new model of governance is needed in order for the state to fulfill its new role. To support these necessary governance reforms, IDB supports executive, legislative, and judicial reforms geared towards the modernization of the state. IDB's efforts are strongly supported by civil society in its member countries, the free press, and the governments themselves. These efforts are reflected in IDB's Modernization of the State strategy, approved by its Board of Executive Directors.

In reforming the executive branch, IDB seeks to promote the responsiveness of governments' audit capacity and strengthen their controller capacity. IDB advocates transparency in the budget process and control mechanism. In legislative reform,

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<sup>1</sup> The Agreement establishing the Inter-American Development Bank is found at [www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf](http://www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf)

<sup>2</sup> IDB's non-borrowing member countries are: Austria, Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Israel, Italy, Japan, Korea, Netherlands, Norway, Portugal, Spain, Slovenia, Sweden, Switzerland, United Kingdom, and the United States.

<sup>3</sup> IDB's borrowing member countries are, according to IDB's percentage of project financing for the country: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.



**James Spinner**  
General Counsel  
Inter-American  
Development Bank

**"IDB's mandate now goes beyond simply creating an enabling environment for investments. The IDB now counts poverty reduction, encouragement of social equity, and environmentally sustainable economic growth among its goals."**

*Mr. J. James Spinner is General Counsel of the Inter-American Development Bank (IDB). His career in IDB's Legal Department included assignments in the Operational Division, working with Central America; the Institutional Office, working on the Bank's procurement of goods and services, tax matters, and issues related to the Bank's privileges and immunities; the Financial Office, working on IDB's issuance of securities in capital markets around the world, its financial operations, and its periodic capital increases; and as Deputy General Counsel. Before joining IDB, Mr. Spinner practiced law in Washington, D.C. He holds a J.D. from the Georgetown University Law Center and a Bachelor of Arts degree, with highest honors, in History from Lehigh University.*

IDB's activities frequently concentrate on ensuring transparency in the legislative process, encouraging the participation of civil society, and strengthening the links between federal and state legislative entities.

### **Legal and Judicial Reform at IDB**

IDB's Modernization of the State mandate includes support of judicial reform and law reforms. IDB's programs identified different areas of the law where reform was needed and worked with international standards and methods to increase the competitiveness of its member countries in these areas. Most of the countries in Latin America have legal systems based on French or Spanish civil law systems. There is a move underway in many of these countries to move from their traditional systems to ones that include common-law-like characteristics. Examples include a move towards oral hearings and towards an accusatory system, rather than a system where judge is both prosecutor and adjudicator.

IDB's judicial reform agenda includes court reform. To ensure the efficiency of court systems, IDB has funded, among other things, the establishment of administrative systems to support existing judiciary institutions, speed up processes, and ensure that judges dedicate their time to their caseloads. Other programs have trained judges in international standards and provided education on the national law of other

states. Judicial reform projects have also provided courts with equipment, facilities, and administrative support for case load management and to support judicial independence.

In its initial efforts, IDB deliberately did not involve itself in any element of criminal law. Traditional thinking at the time was that criminal law reform did not directly support economic and social development. As IDB's funds were available exclusively for purposes of economic development, criminal law reform was deemed to fall outside IDB's mandate.

However, IDB policy on criminal law reform has changed over the last few years. IDB has acknowledged that in order to develop a modern society where there is economic and social equality for all, the criminal law system, criminal law procedures, the police, the prosecutors and the penal system must be reformed as well. Changing the criminal justice system, defining the role of the police, and providing individuals with access to courts are all reforms that are critical to achieving economic and social development. IDB has expanded its efforts to improve criminal justice even further to support a program to prevent community violence, specifically violence among teenagers and in the streets, as well as domestic violence. The program consists of establishing community centers, training programs, and community police organizations to bring communities together to prevent violence and crime. Criminal law reforms and community action programs are a necessary element in today's holistic view of the ways in which economic development can be supported.

It has also invested in improving public information about the law, ensuring access to the courts, and promoting public understanding of the function and financing of legal systems. IDB has provided support for alternative dispute resolution mechanisms and other methods for achieving resolution of disputes that do not depend on the courts.

### **Lessons Learned**

IDB has learned several lessons from its experiences with legal reform. First, legal reform is never easy. Second, it is not always agreed that legal reform is a priority to be placed on the financing agenda by a borrowing member country. Third, in develop-

ing reform programs, one size does not fit all. Fourth, legal reform is insufficient by itself, and must be accompanied by other reforms that strengthen the state's role.

Legal and judicial reform is no longer merely aimed at providing a legal environment that could support foreign and domestic investments. Judicial reform is an integral part of IDB's modernization of the state, with poverty reduction, encouragement of social equity, and environmentally sustainable economic growth among its goals.

Capacity building and legal and judicial reform must go beyond simply providing judges with computers and other technical equipment. While computer systems are necessary to keep good records and manage case flow, the computers are useless without staff trained to use them. Judges

need administrative support and training to ensure their independence and to maintain the public's respect in the courts.

Meaningful legal and judicial reform does not come quickly. It is important to take a multi-lateral approach that involves chambers of commerce, governments, and for civil society to play an active role and provide an oversight for the government's tasks. ADR mechanisms should be developed to alleviate the congestion in the courts. It should be kept in mind that certain of these are quick fixes, less than ideal solutions implemented because the basic underlying structure is not working. In order to support conditions conducive for economic and social development our efforts must provide long-term sustainable reforms as well as immediate solutions.

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# Chapter 4

## Improving the Police's Role and Performance in Protecting Human and Economic Security

### ■ Ideas in Police Reform: General Overview

- Police Reform: The Indonesian Context
- Police Reform: A Bangladesh Context
- Looking Back, Moving Forward: A Brief History of Ideas and Events Relevant to Pakistan's Police System

### ■ Police Effectiveness and Accountability: Ideas to Launch Police Reform

- The Philippine National Police: Transformation and Reform
- Implementation of Police Reforms
- Access to Justice and the Urgency of Police Reform: Bangladesh Perspectives

## Ideas in Police Reform: General Overview

### Police Reform: The Indonesian Context

**ADRIANUS E. MELIALA**

*Adviser to the Chief, Indonesian National Police, and to the Security Police Reform Program of the Partnership for Governance Reform*

**T**he Indonesian police force, with approximately 300,000 personnel, is one of the biggest police organizations in the world. The police force is currently under the control of the President of the Republic, as the police transitions from its former status as a branch of the military to executive control.

### Historical Background

During the era of President Suharto, from approximately 1967 to 1997, the police was a branch of the military. They were deployed to conflict areas and could be killed as combatants. They were deployed to prevent uprisings in communities. The police were known to abuse their power and there was much corruption. Consequently, public perception of the police was very negative. At the end of the Suharto era, there were internal and external factors pushing for police reform. Many young officers wanted the police force to be separated from the military, because they felt that they were discriminated against within the military. Also, the public wanted a better and more dependable police, primarily because they were looking for alternatives to the military.

### Initial Reforms

In 1999, the Indonesian National Police began a reform program, which addressed the structural, ethical (referred to as “instru-

mental”), and cultural aspects of the police force. The police organization was removed from the military and placed under the President’s control. The ethics and code of conduct were rewritten to capture the new civilian mission. The reforms attempted to change the culture of the organization from one that was perceived to be arrogant, violent, and trigger-happy, to an organization that is focused on service to the community.

The reform efforts, though necessary, were not sufficient. Accountability and budgetary control, for example, were not addressed at all. It was unclear whether the reforms would actually lead to professionalism and police responsiveness to public demands. These were the issues that the press and non-government organizations (NGOs) wanted answered.

### **Catalysts and Obstacles to Police Reform**

Strong leadership within the police that is supportive of reform is essential to implementing any reform program. Indonesia is fortunate to have two police chiefs who are pro-reform. Political will is also critical, as reforms depend on increased spending and supportive legislation. During recent years, the President and the Parliament have increased the police budget by 300 to 400 percent, which not only finances the reform effort, but also boosts the confidence and morale of the police. External pressures from the media, NGOs, and university students, particularly with respect to police violence and corruption, strengthens incentives for reform.

There are many obstacles to implementing any reform agenda. The military has made attempts to draw the police back into its former functions. Without a comprehensive reform plan and with staff and leadership turnover, there is inconsistency of approach. It is difficult to promote consistent and comprehensive reforms because of the uneven dispersal of resources across the system. For example, the police-to-population ratio in Bali is 1 to 300, but in Kalimantan, it is 1 to 2,500. Accountability mechanisms are still not fully in place. From 1999 up to the present, at least 40 foreign parties and international organizations have donated to police reform, with the number of donors doubling after the Bali bombing in 2003. However, these foreign donors do not

closely examine the Indonesian National Police (INP) agenda. The concern is that if the police are free to set their own reform agenda, they will use the funding to increase their salaries and power, but will be reluctant promote police accountability, oversight, and police ethics.

### **The Reform Agenda**

Indonesia started its police reform process five years ago. It is pursuing strategies to enhance the effectiveness and accountability of the INP. These are: (a) developing internal capacity; (b) providing professional support and technical assistance; (c) using the partnership model of policing; (d) providing more external controls; (e) auditing police finances; (f) establishing the National Police Commission; and (g) establishing a local police complaint board.

### **Improving Accountability**

There has been a new movement to evaluate the effectiveness and accountability of the Indonesian police force by analogizing it to a private corporation. Corporations and the police are similar to the extent that when we invest in them, we expect something in return. Increased accountability means holding the police responsible for delivering better results and maintaining high standards. In a democratic system, the public invests in the police force that then serves the public. The police force must be not only fiscally accountable, but it must be accountable for behaviorist deeds as well. To this end, the police force should have a dialogue with the community so as to be most responsive to community needs.

### **Developing Internal Capacity**

The INP has been developing internal capacity by developing new laws, codes of conduct, budgetary systems, internal control mechanisms, and modes of action, particularly in handling riots. Indonesian scholars have also conducted research on how the Indonesian paramilitary police developed techniques to control demonstrations. The INP has adopted universal standards and procedures for internal investigations, which incorporate human rights values.

### **Providing Support and Technical Assistance**

International and multilateral donors play an important role in providing financial sup-

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**Adrianus E. Meliala**  
Adviser to the Chief,  
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“There has been a new movement to evaluate the effectiveness and accountability of the Indonesian police force by analogizing it to a private corporation....Increased accountability means holding the police responsible for delivering better results.”

*Dr. Adrianus E. Meliala is an adviser of the Chief of the Indonesian National Police and adviser of the Security Police Reform Program of the Partnership for Governance Reform in Indonesia. Dr. Meliala lectures at the Institute of Police Science and is part of the academic staff at Faculty of Social and Political Sciences University of Indonesia, Jakarta. Mr. Meliala has a Ph.D. from the University of Queensland, Australia. He has published several articles in international policing journals as well as Indonesian-language books on policing.*

port and technical assistance to INP. Through technical assistance, INP gains access to consultants and advisers who bring to INP the international best practices in policing. Support and technical assistance should be structured with a focus on creating sustainable solutions. Donors must realize that addressing police reform requires more than just providing technical assistance and funding. They need to ensure that the police are held to account for the resources and technology provided to them.

### **Engaging the Public through the Partnership Model**

Despite significant accomplishments toward police reform, the INP suffers from low public trust. We need to continue with our reform program in order to regain the support and confidence of the public. The partnership model to enhance police effectiveness and accountability has been promoted by the Partnership for Governance Reform in Indonesia and the United Nations Development Fund (UNDP). The idea is to promote partnership and cooperation between the public and the police so that there is less public resistance to police action. Sensitive issues such as corruption can be dealt with more effectively if the police and the public are partners in the enforcement process.

### **Establishing External Control**

The police need external control to ensure effectiveness and accountability. The police is surrounded by many institutions that monitor its performance. We have an Ombudsman, but that office has not involved itself with police operations. The parliament exercises political control, and the Ministry of Finance and the Bureau of Auditing exercises budgetary control over the police. The Bureau of Auditing monitors police expenditures to help the police manage their resources and prevent abuse.

The press, non-government organizations (NGOs), and the private sector, particularly students, also exercise significant informal control on police power, because they act as whistle-blowers for police misconduct, violence, and other inappropriate police actions. The local government, the business sector, and donor agencies like the Asian Development Bank (ADB) also serve as external controls over the police.

The existing formal and informal controls, while necessary and helpful, are insufficient. We need a local police complaint board that will have power to oversee the police's execution of their duties and their internal disciplinary proceedings. Also, a National Police Commission has been proposed to provide further political oversight and high-level managerial control. However, the bill creating the Commission, which is still awaiting the President's signature, limits the Commission's role to that of an advisory body to the President.

### **Conclusion**

The Indonesian National Police has come a long way from its days as a paramilitary organization under the Suharto regime. The reforms that have been undertaken have improved the system, but there are still further reforms to be implemented. Future reforms must focus on increasing the effectiveness and accountability of the police. Sustainable reforms can only take place with political and public support and with the help of the international community. Together, we will modernize the Indonesia National Police to provide security for our citizens and create an environment that will promote economic growth.

## Police Reform: A Bangladesh Concept

ASM SHAHJAHAN

Former Inspector General of Police,  
Bangladesh

Every government is expected to provide a safe and secure environment. Every community needs an efficient and effective police force. Every citizen wants quick police response and easy access to justice.

The United Nations Development Programme (UNDP) has reported on Bangladesh twice, noting the importance of human security generally and the lack of human security in Bangladesh. According to a 1996 report on “Human Development in Bangladesh: A Pro-poor Agenda”:

*Human Security, achieved through the establishment of law and order, enables people to exercise their choices safely and freely, and with the confidence that opportunities they have today are not totally lost tomorrow... Clear laws, enforced justly, transparently, and efficiently, are necessary to create an enabling, predictable, and secure living and working environment... This, in turn, requires (a) that the laws are known; (b) that they are enforced in an equitable and timely manner; (c) that an independent and credible judiciary operates to resolve conflicts and make binding decisions; and (d) that laws can be revised if/when they cease to serve the purpose for which they were intended.<sup>1</sup>*

In a September 2002 report, “Human Security in Bangladesh—In Search of Justice and Dignity,” UNDP observed that “Bangladesh today is weighed down by a significant level of human insecurity.”<sup>2</sup>

Human insecurity does not stem from a single sector of the community. The problem cannot be solved by the government or the criminal justice system alone. Every sector of society must work together effectively to solve the problem. However, the police have a direct responsibility for ensuring

physical security. Police reform should improve the efficiency and effectiveness with which the police fulfills its constitutional mandate to promote respect for fundamental human rights, ensure equitable access to justice, and observe the rule of law.

### Police History

Bangladesh’s colonial history continues to impact the attitude, behavior, and culture of the police force. Bangladesh’s police law and regulations, as well as major criminal laws like the Penal Code, Evidence Act, and Criminal Procedure Code, are products of the 19th century colonial era. The Bangladesh police force was created by the Police Act of 1861, three years after the Sepoy Mutiny or first serious rebellion against British rule. It has not been changed, despite the changing needs of society. It emphasizes the exercise of authority rather than accountability. It does not conceive of the concept of policing as a service or as a profession. The Police Act of 1861 was designed for a colony, and does not meet the needs of an independent democracy in the 21st century. Even after independence, the police has continued to be used in the colonial fashion. Successive governments required the police to perform functions that, for decades, earned them the hostility of the community. Gradually, mistrust and suspicion developed between the police and the community. Police success substantially depends on a supportive community with respect for the law, so that a central part of any reform agenda must be reinvigorating public trust for and confidence in the police.

### Resource Constraints

Police efficacy is constrained by lack of financial, technological and human resources. Government funding for the police is completely inadequate. In Bangladesh, per capita spending on police service is approximately 95 taka (less than \$1.50 US dollars) a year. The police budget is less than 3 percent of the national budget. The police budget itself does not allocate resources well. Only 0.19 percent of the police budget is spent on training, and almost nothing is allocated to research. Insufficient funding results in insufficient technological resources. Police weapons and equipment are outdated, and there are too few transport vehicles at the police station level. The qual-

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Anamul Haque Anam

<sup>1</sup> United Nations Development Programme, *1996 Report on “Human Development in Bangladesh: A Pro-poor Agenda”* (1996), available at [www.un-bd.org/undp/info/hsr/Preface.pdf](http://www.un-bd.org/undp/info/hsr/Preface.pdf)

<sup>2</sup> United Nations Development Programme, *Human Security in Bangladesh: In Search of Justice and Dignity* (2002), available at [www.un-bd.org/undp/Human%20Security](http://www.un-bd.org/undp/Human%20Security)



**ASM Shahjahan**  
Former Inspector General  
of Police, Bangladesh

“Police reform should improve the efficiency and effectiveness with which the police fulfills its constitutional mandate to promote respect for fundamental human rights, ensure equitable access to justice, and observe the rule of law.”

*Mr. ASM Shahjahan is a former Inspector General of Police of Bangladesh with a career in the police service spanning almost four decades. As Inspector General, Mr. Shahjahan oversaw 100,000 police officers and was responsible for maintaining the internal security and law and order in Bangladesh. Mr. Shahjahan also served as an adviser to the Non-Party Caretaker Government of Bangladesh in 2001, and was in charge of the Ministries of Education, Primary and Mass Education Division, Science and Technology, and Youth and Sports. Mr. Shahjahan has a Master of Commerce Degree from the University of Dhaka.*

ity of investigations is poor, partly because there are no facilities for forensic and scientific analysis. The police also lack human resources. They are overworked and understaffed. The national police to population ratio is only 1:1300, and at the sub-district level it is as low as 1:8000. Most police officers are required to work thirteen to fourteen hours a day and on weekends and holidays.

**Reform Attempts**

Since the country’s liberation in 1971, over a half dozen committees and commissions have been formed to diagnose the police ills and to come up with specific recommendations. These initiatives have been fruitful to the extent that the reports were compiled, but unfortunately the recommendations they carried have not been implemented. Scarce resources, mixed incentives and vested interests prevented the reform agenda from being implemented.

**Reform Agenda**

Government agencies that spend taxpayers’ money, such as the police, are considered service providers. Money is spent to produce an output, in this case police services in preventing and investigating crime, and this output must be directed to the needs of the community that provided the funding for the service (see Figure 1).

The police organization exists to deliver services to the community. Any reform agenda must go beyond transforming the

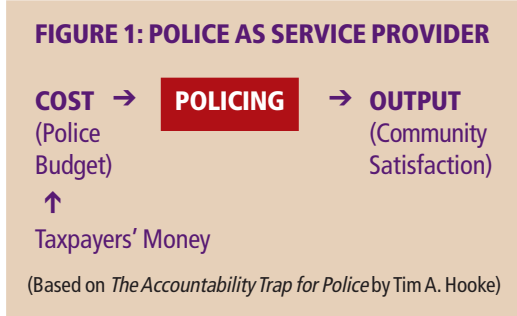
police alone. It also has to create a vision that will provide the community with value for their money. The community wants to see their police as a source of visible reassurance. Police reform mechanisms should emphasize those factors that make them responsive to the community and accountable for their actions. These reforms should consider the following aspects:

**A. ORGANIZATIONAL REFORMS**

- *Removal of organizational constraints.* The police has inherited political and organizational constraints over the decades. Management should value and empower its personnel, encourage staff initiative and teamwork, allow committed leadership to reward good work, and punish lazy and ineffective personnel appropriately. All efforts should be made to promote organizational development.
- *Competent leadership.* In a labor-intensive institution like the police, leadership plays an important role, so that competent police leadership must be fostered.
- *Status improvement.* It is necessary to improve the social, economic, and official status of the police, especially the constables. The criteria for the selection of police officers should be transparent and merit-based.
- *Culture of quality.* Conservative, cautious, and authoritarian management styles must be replaced with the concept of Total Quality Management (TQM).
- *Morale boosting measures.* A police force that is competent, courageous, and confident will be more efficient and effective than one with low morale.

**B. STRUCTURAL REFORMS**

- *Coping with increased demands.* The demands on the police increase every day





with the increasing complexities of society. Reform efforts must determine which core functions fall within the exclusive responsibility of the police and which should be contracted out or taken up by the private security industry.

- *New training philosophy.* The Bangladesh police need to be exposed to new training philosophies, procedures, practices, and methodologies. In order to fully discard the remnants of the colonial system, supervisory leaders as well as subordinate ranks need to unlearn many things while trying modern ideas.
- *Research.* Adequate funding should be made available for research. Every major police unit should have a research branch to help it develop effective methods of policing and adopt new technologies. Experts and resource persons, in addition to standard police personnel, should also be utilized.

#### C. COMMUNITY RELATIONSHIP

- Strengthening police-community partnerships. The police culture should be based on mutual support and trust within the organization and with members of the community. The police should work with the community to prevent crime and to solve problems that adversely affect the safety and security of the community.
- Improvement in police response time. An effective emergency response system must exist so the police could respond to community needs in a timely manner.

#### Latest Reform Initiatives

In November 2003, the UNDP submitted a Needs Assessment Report for reforming the Bangladesh police with a view to strengthening human security.

Now, a project titled “Strengthening Bangladesh Police” has been launched to improve police efficiency, effectiveness, and accountability. This three-year project is in collaboration with the Ministry of Home Affairs (MOHA), UNDP, and the UK Department of International Development (DFID), with the initial phase costing US \$13 million. The project aims to facilitate access to justice for the vulnerable groups (women, children, the poor) and focuses on:

- police professionalism;
- promoting interaction with community

for crime prevention;

- improved scientific investigation;
- better use of resources;
- human resource management;
- due emphasis on modern training procedures and methodologies;
- anti-corruption; and
- performance measurement and oversight.

#### Sustaining Police Reform

The success of an essential national issue like police reform depends on uniform support at the highest levels. In a multi-party democracy, the consensus of leading political parties and leaders is crucial to the success of a project. Mere political will or intention is not enough to guarantee implementation. The sustained implementation of reforms across electoral cycles is extremely important to the success of any reform initiative. Political differences between outgoing and incoming governments must not in adversely affect reform actions pursued by the outgoing government nor should they slow down the continued implementation process pursued by the incoming government.

Creating a sense of ownership over a reform program is vital. All reform processes should be participatory with a clear sense of strategic direction. Reforms must ensure the operational independence of the police and involve the community in the discharge of its services.

#### Conclusion

Reforming a century-old police organization is not an easy venture. Any reform agenda is likely to encounter resistance because people with vested interests will be disadvantaged by the reform effort. Even after a reform agenda is launched, immediate results should not be expected because changing the institutional culture of the police simply takes time. Further, sustainable reform cannot be achieved without continuous allocation of adequate funds. Notwithstanding, funding should also be accompanied by appropriate performance measurements to ensure satisfactory value for the investment.

Promoting human security must go beyond reforming the police’s services to the public. If we intend to secure improved fundamental human rights of people, we must

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**The origins of the Pakistani police system lie in a system created by the East India Company that placed overwhelming primacy on the office of the district collector. ...The collector was armed with both police and magisterial powers. Police powers allowed the collector to obtain revenue by subjecting “natives” to untold atrocities.**

respect the rights of the police themselves. Police reforms, therefore, should include increasing salaries and assuring that the police enjoy reasonable living and working conditions. These benefits should be promoted in conjunction with strict discipline, accountability, and oversight. Benefits for police personnel should be implemented without sacrificing resources which should be allocated to ensuring adequate funds for sustained reform initiatives, enhancing supervisory and managerial competencies, instituting morale boosting measures, removing opportunities for corruption and abuse of power, and ensuring operational freedom.

The police force in Bangladesh has much to learn from its colonial origins, but must take care to not to become entrenched in the past. Police reforms should focus on increasing effectiveness, efficiency, and economy while maintaining the notion of police as public service.

### **Looking Back, Moving Forward: A Brief History of Ideas and Events Relevant to Pakistan’s Police System**

**DR. MUHAMMAD SHOAIB SUDDLE**  
*Director General, National Police Bureau  
Ministry of Interior & Narcotics Control  
Islamabad, Pakistan*

#### **1765–1947**

**T**he origins of the Pakistani police system lie in a system created by the East India Company that placed overwhelming primacy on the office of the district collector. In this system, the collector was armed with both police and magisterial powers. Police powers allowed the collector to obtain revenue by subjecting “unwilling natives” to untold atrocities. Since the collector held magisterial powers as well, no other body checked the collector’s abuses. The collector’s oppressive practice of obtaining revenue from people by torture attracted the notice of the British House of Commons. A commission created to examine allegations of torture (the “Torture Commission”) was convened in Madras in 1855. It recommended to the British House of Commons the creation of a district police organization that was independent from the

revenue administration system.

In Calcutta, Bombay and Madras, where a majority of the British in India lived, the city police forces were reorganized and patterned after the London Metropolitan Police. The police forces were separated from the district collector’s office. The Torture Commission’s recommendations triggered the enactment of a new police law in Madras—the Madras District Police Act of 1859, which recognized the principle of separation of the judiciary from the executive. However, in the aftermath of the “mutiny” of 1857, the Madras District Police Act was not accepted as a model law for the rest of British India. The Police Commission of 1860, overturning the Torture Commission’s recommendations, supported “temporary” continuation of police and judicial powers in the hands of the district collectors. As a result, the Police Act of 1861 was enacted instead.

The Police Act of 1861 placed the district police under the general direction and control of the district collector-magistrate. This arrangement created a “junction of the thief-catcher with the judge,” and was widely criticized. It elevated the district magistrate into a “local governor empowered to use the police and courts at will for the maintenance of the British rule.” Sir James Stephen, law member of the Governor-General’s Council (1870–71), propounded the philosophy of the district administration in the following words:

*The administration of justice is not in a satisfactory state in any part of the Empire but the first principle to be borne in mind is that the maintenance of the position of District Officers is absolutely essential to the maintenance of British rule in India and that any diminution in their influence and authority over the natives shall be dearly purchased even by an improvement in the administration of justice.*

The Police Commission of 1902 grappled with the problems inherent in the dual role played by the district magistrate. It observed that “there is no necessity for the dual control and undue interference of the district magistrate.” However, the Commission fell short of recommending any amendment to the Police Act of 1861.

#### **1947–1999**

After Pakistan gained independence in 1947,

a bill filed in the Legislative Assembly passed a bill on 7 February 1948 that aimed to transform the police in Karachi from an instrument to keep citizens on a tight leash into a public-friendly agency staffed by professionals tasked with preventing and detecting crime and enforcing the law with justice and impartiality. However, this bill was never authenticated by the governors general.<sup>1</sup> The same—powerful—vested interests ensured that subsequent police reform initiatives were unsuccessful. In 1951, a committee headed by Sir Oliver Gilbert Grace, then Inspector General of Police of the North Western Frontier Province (NWFP), recommended that the organization of the police in Karachi should be fundamentally changed. However, no headway could be made because of strong opposition by the bureaucratic elite. The Pakistan Police (Constantine) Commission of 1960–61 specifically went to India to study metropolitan police system for Karachi, but the commissioners chose not to make any recommendation in this regard.<sup>2</sup> The Pay & Services Re-organisation Committee (1961–62), headed by Justice Cornelius, recommended in clear terms the introduction of metropolitan system of policing for cities like Karachi and Lahore, but the recommendation was not accepted. The issue was again taken up by yet another Police Commission (1969–70), headed by Major General Mitha. The commission concluded:

*The need is for establishing clearly and unmistakably the fact that the Superintendent of Police in a district is the undisputed head of the police force in his district and that the district magistrate must not interfere in the day to day or internal administration of the police force.*

In 1985, the Police Committee<sup>3</sup> was mandated to examine whether the existing police system based on Police Act of 1861 was

capable of meeting the growing law and order challenges, especially in Pakistan’s major urban centers. The committee recommended that the fundamental restructuring of the existing system, especially for capital cities and major towns with a population of over 500,000. A Ministerial Committee approved the recommendation. However, it was decided instead to send a delegation consisting of a Member/Secretary of the Ministerial Committee and the Additional Secretary of the Ministry of Interior to India and Bangladesh to study the reforms proposed by the Police Committee.<sup>4</sup> The delegation returned convinced that the Police Committee’s proposal merited implementation in Karachi, Lahore and Islamabad on priority basis. However, before any headway could be made in this regard, the prime minister was dismissed in May 1988, and police organizational reform suffered a serious setback yet again. After the new elected government was installed in 1989, the prime minister announced that the old police system would be reorganized on an experimental basis in selected cities of Pakistan. Another delegation,<sup>5</sup> headed by the Interior Secretary, was sent to India and Bangladesh preparatory to the proposed reform. The delegation returned with a definite recommendation to amend the Police Act of 1861.

Several foreign missions to Pakistan also echoed the need for police reforms in Pakistan. A British delegation headed by Sir Richard Barrat, the Chief Inspector of Constabulary of the United Kingdom, which visited Pakistan from 21 to 26 January 1990, recommended that the entire philosophy of policing in Pakistan needed to be changed in the manner suggested by the Police Committee of 1985. The delegation observed:

*The central problem surrounding police...in Pakistan is that the present system was created many years ago under colonial rule and has not been refined or evaluated to keep pace with the changing face of the country in the last decade of the twentieth century....Police...throughout Pakistan have clung to the role envisaged by the Police Act of 1861, in which the main functions were the maintenance of law and order and preservation of the status quo by methods of suppression and control.*

A UN Mission led by Vincent M. Del

## 1985

The year the Police Committee in Pakistan was mandated to examine whether the existing police system based on the Police Act of 1861 was capable of meeting the growing law and order challenges, especially in Pakistan’s major urban centers.



Muhammad Bilal

<sup>1</sup> The governor-general’s office returned the bill apparently for rectification of certain typographical errors, but it seems that this was a ploy to gain time, as the governor-general’s fast deteriorating health was making it increasingly impossible for him to attend to his official duties.

<sup>2</sup> They felt that as, by then, Karachi had ceased to be the capital of Pakistan, the issue was no longer relevant.

<sup>3</sup> The author was a member/secretary of the 1985 Police Committee.

<sup>4</sup> It is worth recalling that Bangladesh—which was East Pakistan until 1971—had already changed the 1861 system of policing in Dhaka (1976), Chittagong (1978) and Khulna (1987).

<sup>5</sup> The author was part of this delegation.



**Dr. Muhammad Shoaib Suddle**  
**Director General**  
**National Police Bureau**  
**Ministry of Interior**  
**& Narcotics Control**  
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**“People perceived the police as agents of the powerful, not as members of an organization publicly maintained to enforce rule of law. The police needed to be reorganized into a modern, contemporary organization capable of policing free societies.”**

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Buono, UN’s Interregional Advisor for Crime Prevention and Criminal Justice, which visited Pakistan from 26 March to 10 April 1995, made a number of observations including the following:

*Since 1960, there have been eleven separate committees or commissions established by governments in Pakistan and four international missions requested by the Government of Pakistan which have recommended major reforms of policing in Pakistan. These have for the most part been ignored and the remedies suggested have been unimplemented. Had the proposed reforms been undertaken, much of the present crisis could have been avoided....The present police system, which has been allowed to deteriorate so badly by successive governments and been so abused for political patronage, has not yet completely broken down due to the dedication, integrity, initiative and professionalism of a large number of individual officers and constables. In spite of their best efforts, policing will collapse not only in Karachi but also in other parts of the country unless law enforcement institutions are strengthened immediately.*

It recommended that Pakistan’s political leadership should declare, as fundamental policy, that an effective, viable, independent but publicly accountable police was crucial to the development of stable democratic government institutions.

A team of experts from the Japanese police, which visited Pakistan in April 1996, recommended that the police should envisage itself as a public service institution. It also recommended that police reforms in Pakistan should focus on building trust between citizens and the police. It identified the following action areas to be crucial in building trust between citizens and the police: (1) the creation of institutional structures that ensure political neutrality and democratic control of the police; (2) the proper sharing of responsibilities between the federal government and the provincial governments; (3) the adoption of unified chain of command; and (4) the establishment of recruitment and selection system of personnel based on merit.

Based on the Japanese team’s report, Pakistan’s Good Governance Group of the 2010 Programme recommended that Pakistan’s police forces be depoliticized, and their recruitment, postings, transfers, training and career development, ensured on merit.

A team of experts from Colombia emphasized the urgency of these and similar reforms. It observed in a report on Sustainable Peace in Karachi (1999): “If a professionally competent, politically neutral and democratically controlled Karachi Metropolitan Police Force is not formed, there will probably be no police reform or reconstruction of the public sector, both of which are essential elements for sustainable peace.”

### **1999–Present**

In November 1999, the government decided to set up the Focal Group on Police Reforms.<sup>6</sup> It asked the Focal Group to suggest how to restructure the police. The Focal Group submitted its recommendations in February 2000. These were enthusiastically received and intensely debated by members of civil society as well as the media.

The National Reconstruction Bureau (NRB), which was set up with the mandate to, among other things, recommend measures for ensuring good governance and depoliticization of state institutions, deliberated on various aspects of the Focal Group’s blue print of police reforms and formed a Think Tank on Police Reforms that con-

<sup>6</sup> The author was a member of the Focal Group on Police Reforms.

sulted with the police and stakeholders from the government, private sector and civil society.<sup>7</sup>

While deliberating on the Focal Group's recommendations, the Think Tank noted that Pakistan's police had increasingly been called upon to act as agents of the political executive rather than of a democratic state. Selective application of law against opponents, whether due to political expediency or at the behest of persons of influence, became the norm rather than an exception. Political and personal vendettas were waged and won through manipulation of the instruments of state. Whatever safeguards existed against the floodgates of pressure, inducement or threat from criminals or ethnic, sectarian or other powerful elements were virtually obliterated. As a result, people perceived the police as agents of the powerful, not as members of an organisation publicly maintained to enforce rule of law. The police needed to be reorganized into a modern, contemporary organization capable of policing free societies, not *natives*.

Key issues debated by the Think Tank included: (1) How should the Pakistan Police be organized in order to best meet the law and order challenges of the 21st century? (2) What model would be most suited in bringing about a radical change in the high level of police-public estrangement? (3) How can we “police the police”—that is, subject the organization to effective democratic control, and yet ensure its opera-

tional neutrality, among other things?

As a result of its members' discussions, the Think Tank identified the following critical steps toward police reform:

1. The police hierarchy needs to be made responsible not only for the organization and the administration of the police force, but also for other matters connected with maintenance of law and order. The fractured chain of command will need to be fully restored so that policing operations could no longer be subjected to extra-departmental partisan influences.
2. The police needs to be insulated from political interference, and apolitical public safety commissions at the national, provincial and district levels could meet this objective. These independent bodies would be assigned to oversee critical aspects of police functioning—approve the annual plan of the police and monitor delivery of performance targets. They would also be involved in selecting police chiefs.<sup>8</sup>
3. It is crucial to bring police under a system of external accountability that enjoys public confidence. This could be achieved by establishing an independent statutory body called the Police Complaints Authority. All serious complaints against police should fall within the purview of this authority.
4. The role, duties and responsibilities of the police need to be redefined so that public service takes precedence over all other considerations, and the prevention and detection of crime is carried out in view of its social purpose. The voluntary support and cooperation of citizens in preventing and detecting crime was recognized, and the police would do well to act proactively in ushering an era of community policing in Pakistan.
5. Police professionalism needs to be enhanced through the introduction of functional specialization, in separating the police's investigative and “watch and ward” functions. This would ensure quality investigations by a cadre of spe-

**“Putting the customer first” and responding to public expectations of what a good police force would be like will improve public confidence in the police.**



Muhammad Bilal

**Police professionalism can be enhanced through training programs and performance audits.**

<sup>7</sup> The NRB's Think Tank on Police Reforms comprised senior police administrators who knew the police best—what worked, what didn't, and how police reforms should be launched. The Think Tank sought the view of the judiciary, and experts of other criminal justice subsystems. It held discussions with top business leaders who had used innovative management practices to turn their organizations into successful enterprises. It consulted public administration experts who knew how best to apply the principles of reinventing public sector organizations to improve police services. The author was a member of the Think Tank.

<sup>8</sup> The proposed independent bodies would be patterned after the Japanese public safety commissions. Commenting on the improvement in police behaviour that resulted after the introduction in 1947 of the public safety commission system in Japan, David Bayley, a noted social scientist and police historian thus observes:

*The fact is that a transformation did occur in police behaviour in Japan in a relatively short period of time immediately after World War II. It is associated with democratization and in one of the most prized developments of the post war period. Japan's contemporary record of excellence with respect to police behaviour is striking not only in relation to the United States but also in relation to its own past.*

**Law enforcement modernization is one of the greatest challenges confronting us, a challenge that can and must be met. There are no short cuts, and no easy answers.**

cialist investigators. The measure will also be a major step toward introducing modern technologies in police work and establishing standard criminal investigation practices.

6. An independent inspectorate of inspections tasked with conducting performance audits of the police should be established. This would enable the government and other stakeholders to receive an independent assessment of police performance.
7. "Putting the customer first" and responding to public expectations of what a good police force would be like will improve public confidence in the police. Historically, senior officers in the police hierarchy have been reluctant to recognize the need to view police forces as organizations that are fundamentally no different from any other enterprise or business. In particular, they have tended to not push for internationally accepted compensation levels, and have not actively sought to change oppressive working conditions, which are a common excuse for poor police performance.

These steps were considered while drafting the new Police Order of 2002.<sup>9</sup> Although not all principles were entirely accepted, the reforms in the new Police Order

will, if properly implemented, enable police to function in a new environment, free from the debilitating effects of old outmoded colonial system of policing designed in 1861 to control the "natives." However, the implementation process is inseparably tied to changes in the wider institutions of society as well as the provision of adequate manpower and financial resources, especially at the level of police stations. Without a realistic police structure, adequate compensation and benefits<sup>10</sup> and adoption of effective accountability and other measures, the outcome of any structural reforms will remain elusive.

Law enforcement modernisation is one of the greatest challenges confronting us, a challenge that can and must be met. There are no short cuts, and no easy answers. Like an old Chinese saying, a journey of a thousand miles begins with the first step. Let us take the first steps with commitment and determination and complete the journey. There is not a moment to lose.

<sup>9</sup> Under the new law, various public safety commissions will evaluate police performance for the delivery of targets, while also acting as "sounding boards for local opinion." There would be a system of independent performance audit of police performance. The head of the police would be operationally independent, but would be accountable to the community. The investigation of criminal cases will be the responsibility of a distinct cadre of specialist investigators. The external oversight of serious complaints of police excesses will lay the foundation of eventual transformation of police from a coercive arm to an accountable and responsive service enjoying confidence and trust of the people.

<sup>3</sup> These would include allowances, provision of accommodation, an eight-hour workday and a day off each week.

## Organization and Administration of Pakistan Police

Each of Pakistan's provinces has control over its police forces. Although the federal government exercises no direct control over the provincial police forces, it can take over the administration of a province (and therefore, control over the provincial police) in situations of grave emergency. In cases of internal disturbances that are beyond the provincial government's control, the federal government also exercises its authority.

At the provincial level, the inspector-general serves as chief of the police forces. He or she is assisted by such number of additional inspectors-general, deputy inspectors-general and assistant inspectors-general of police as the provincial government may determine as necessary.<sup>1</sup> Police forces under the district level are answerable to the inspector-general and his or her deputies. For convenient administration, three to four districts have been grouped into a police "range." Each range is placed under the control of a deputy inspector general of police.

At the district level, the district superintendent is the head of the police forces. Each district has been divided into three to four sub-divisions, and each sub-division has been placed under the charge of a sub-divisional police officer (SDPO). An SDPO,

who is either an Assistant Superintendent of Police or a Deputy Superintendent of Police, supervises police stations located within the jurisdiction of a sub-division and is directly responsible to the district superintendent of police.

Each police station is under the charge of a police officer with the rank of inspector, known as the Station House Officer. Under each Station House Officer are sub-inspectors, assistant sub-inspectors, head constables and constables. Among the district police's functions is the investigation of criminal cases. The district police retain a prosecution branch that prosecutes cases in courts of magistrates.<sup>2</sup> In some districts, however, government attorneys have been appointed to prosecute such cases. —DR. MUHAMMAD SHOAIB SUDDLE

<sup>1</sup> Until recently, each village in a rural police station had one or more village watchmen who assisted the police in performance of law and order duties. Today, the village police is practically defunct.

<sup>2</sup> There are sessions courts and courts of magistrates that try criminal cases within each district. A district and session judge heads the district judiciary, but a district magistrate controls executive magistrates that try cases punishable up to three years' imprisonment. Criminal cases in sessions courts are prosecuted by public prosecutors, and not by the district police.

# OPEN FORUM

## On Improving the Police's Role and Performance in Protecting Human and Economic Security: Ideas in Police Reform



Larry Ramos

Participants consider how community involvement in police reforms translate into concrete benefits to police forces and society.

### Approaches to Police Reform

There are several models that may be used to approach police reform:

- *Criticism of the Police*: Criticizing the police and demanding reforms is generally not an effective approach and may breed backlash from the closely-knit police organization.
- *The "Santa Claus" Model*: Under this approach, the police are given funding for equipment and other resources so that they can perform better. This model frequently fails to reform the underlying structure of the police and the existing problems continue to persist once the donations stop.
- *Engaging the Police*: This model seeks to bring a non-threatening reform agenda to the police, which empowers them to pursue reforms by providing them with appropriate information and incentives.

### Depoliticization of the Police

- Police reform cannot be left entirely to the police, nor should it be left entirely to the politicians. The best approach involves both politicians and the police working together. The community must also be involved in critical decision-making about police reforms.
- Police appointments should not be politically controlled, but should be delegated to an independent board or commission, which either has representation from multiple parties, or is completely apolitical boards.
- Police chiefs must be given fixed tenure. It is important that the chief feels that he is secure in his position, otherwise he will focus on maintaining his position and will not be motivated to pursue reforms. For example, in an effort to curry favor with his political superiors, he may recruit personnel based on social considerations and recommendations, instead of based on merit.
- The intervention of civil society to stop political influence on the police is important. Foreign-funded NGOs can play an important role, but domestic civil society must also be involved in order for police reforms to be sustainable. Community involvement in human rights activism can also support police reforms.

### Levels of police accountability

There must be two levels of police accountability: internal and external.

- An independent internal accountability mechanism, such as a police complaint authority, should be accessible to both the police and the community.
- Other branches of the criminal justice system, including the prosecution and the judiciary, must be reformed so that these institutions can act in concert as an external accountability mechanism.



# Police Effectiveness and Accountability: Ideas to Launch Police Reform

## The Philippine National Police: Transformation and Reform

GEN. EDGARDO AGLIPAY

*Director General, Philippine National Police*

When I began my career, the police was part of the Department of National Defense. On 13 December 1990, Congress passed into law Republic Act No. 6975, “An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for other Purposes,” which made the PNP a civilian entity under the Department of the Interior and Local Government (DILG). The law created a police force national in scope and civilian in character, which was administered and controlled by the National Police Commission.

The primary duty of the police force is to serve and protect members of the community. The community and the police force have reciprocal rights and obligations. The community has the right and privilege to demand that the police provide a safe and secure environment. On the other hand, the community has the responsibility to support and assist the police in many ways. Most crimes are solved only with the cooperation of the community, as it provides the information that guides the investigation process and leads to the solution of the crime. But, of course, the community can perform its role effectively if a credible police force exists. One of the primary goals of our reform agenda is to establish and foster the collaboration of the professional police force with the community.

### Transforming the PNP

The PNP reform program is now in its diagnostic and program formulation phase. With technical assistance from the United Nations Development Programme (UNDP) Governance Portfolio, we have embarked on a

comprehensive diagnostic study and formulation of a multi-year PNP transformation and public investment program. We envision this program to be in keeping with the PNP’s vision of a professional, dynamic, and highly motivated police force working in partnership with a responsive community towards the attainment of a safe place to live, work, and invest in.

Last year, we conducted several focus group discussions where our police officers and civilian stakeholders worked together to identify and analyze the issues and problems confronting the PNP and to identify workable solutions to these problems. This exercise provided us with diagnostic material based on the experience, perception, and perspective of the stakeholders and claim holders. For example, there is a tension between high community expectations of the police and the resources available to meet those expectations. Currently, our police to population ratio is 1:1400, which is far too low to meet the demands place on the police. Thirty percent of our policemen do not have firearms. Also, we have only fulfilled 9 percent of our communication needs and 60 percent of our mobility needs. In order to meet community expectations for police performance, we must provide the police with increased resources.

A multi-stage technical assistance project will assess precisely what reforms are necessary. The project will undertake a holistic assessment of the PNP institutional framework, operating system, and its human, physical, technological, and financial resources, and conduct a SWOT (Strengths Weaknesses Opportunities Threats) analysis of the PNP. On the basis of these assessments, the technical assistance project will then define the direction and focus of the PNP transformation program. In keeping with articulated direction and focus, the project will identify and define the various reforms that will achieve the PNP vision, and ensure that the PNP transformation program complements the reforms to the other pillars of the criminal justice system.<sup>1</sup>

The technical assistance project will produce (a) a diagnostic study of the PNP transformation program, and (b) a pilot

<sup>1</sup> In the Philippines, the pillars of the criminal justice system include the community, the police, the prosecutors, the courts, and the penal system.

**1:1,400**

The Philippine police to population ratio.

**30%**

The percentage of Philippine policemen who do not have firearms.

**9%**

The percentage of communication needs that have been fulfilled.

**-36%**

The approval rating of the Philippine National Police.



project called “Safer Philippine Cities and Communities” for implementation in selected cities before its national implementation.

The PNP transformation program adopts a holistic and seamlessly integrated approach that: (a) addresses policy and legislative reforms by updating law and criminal law enforcement; (b) rationalizes the government’s law enforcement institutional framework relevant to the PNP’s functions; (c) undertakes a comprehensive reengineering of the PNP’s organizational structure, staffing, operating systems, technologies, and resources; and (d) builds capabilities of the PNP personnel and institutes appropriate reforms to the motivational, integrity, and competence systems to ensure the recruitment and maintenance of quality police manpower. The program will implement reforms to improve the PNP’s resource base and resource management system, reduce resource-related politicization, and improve resource generation and management. It will considerably upgrade criminal management technologies, both in relation to the crime information management system and police equipment.

As earlier noted, one of the specific initiatives of the transformation program is the “Safer Philippine Cities and Communities” pilot project. This project will test a preparatory and coordinated approach in the city and community levels to maintain a culture of peace and to prevent and combat crime. Some of the project’s core components are crime mapping, community crime analysis, and environmental design. It adopts a location-specific community layout plan to prevent crime. This will include measures such as street lighting, increased police presence, and converting dark unused places into well-lit parks.

Other project initiatives include the adoption of a community economic development program to mobilize the business sector, the local government, and the national government agencies to improve employment, encourage entrepreneurship and manage credit. We will implement mecha-

“One of the primary goals of our reform agenda is to establish and foster the collaboration of the professional police force with the community.”



LARRY RAMOS

**Gen. Edgardo Aglipay**  
**Director General**  
**Philippine National Police**

*General Edgardo Aglipay is the chief of the Philippine National Police. He entered and graduated from the Philippine Military Academy. He earned a degree in military arts and sciences from the U.S. Army Command and General Staff College at Fort Leavenworth, Kansas, U.S.A. He went on to obtain an M.A. in Business Administration from the University of the Philippines and an LL.B. from the Ateneo de Manila. As a young lieutenant, he was awarded the Gold Cross Medal. He was adjudged the best sector commander of the Metropolitan Command for four consecutive years. Under his leadership, the Laguna PC/INP Command was adjudged the best provincial command in the Philippines in 1989. He was also adjudged as the best provincial director in 1991. Under his command, the special action force was awarded the best national operational unit in 1994. As regional director, he was commended for successfully securing the Asia Pacific Economic Council Summit in Subic, Olongapo as Subic Task Force Commander in 1996.*

nisms to address social issues such as providing drug rehabilitation services and community counseling for youth offenders. The project will also focus on providing adequate policing and surveillance, using collaborative policing with the community to ensure a 24-hour police patrol for the entire community. We will encourage community participation and initiate a community-based information dissemination program in parishes, schools, community organizations, and *barangays*.<sup>2</sup> We will request local governments to enact regulations to create an environment conducive to peace. Our project will require the participation of various stakeholders: the business sector, local government units, schools, civil society groups, and the community partners of the PNP.

### **Police Initiatives**

The PNP chiefs have initiated independent projects to improve the police force. In my capacity as the Police Director General, I decided to adopt the strategic goals set by my predecessor, former Police Director General Hermogenes E. Ebdane, Jr. for organizational reform, neighborhood partnership, education, and training. I decided to adopt his program after reviewing a survey conducted by the Ordoñez Commission<sup>3</sup> which found that the people want their policemen to be

<sup>2</sup> A *barangay* is the smallest local government unit in the Philippines and is very similar to a village. Municipalities and cities are composed of *barangays*.

<sup>3</sup> The Philippine National Police Reform Commission, chaired by former Justice Secretary Sedfrey Ordoñez, was created in 2003 to address major grievances in the police force.

**Most of the members of the PNP, especially the supervisors and leaders, were former military men who began their service during the Philippine Martial Law years. Our goal is to change the mindset of the police, to make them feel that they are servants of the people and not the other way around.**

friendly and humble, visible, effective, and law-abiding. Currently the PNP has a bad public approval rating, -36 percent, as compared to -27 percent approval rating for Congress.

To address these concerns, I have come up with a project called **CARE**, which stands for **Courtesy, Action, Results, and Example**. *Courtesy* means every policeman must show respect and basic courtesy to every citizen, especially the common man. *Action* requires visible policemen enforcing the law to the fullest. Every policeman is accountable for any failure in the delivery of police services to the people in his area of responsibility. *Results* require all police stations to make an inventory of unsolved cases, including the list of criminal syndicates and wanted persons. Each police station must resolve at least five percent of unsolved cases per month. The police are no longer rated on the basis of how good their crime statistics are. Instead, they are rated on how well they comply with the requirement that, every month, they apprehend 5 of every 100 wanted persons, solve 5 unsolved cases, and imprison or otherwise render 5 out of every 100 criminals incapable of committing crimes. Finally, the police chiefs lead the organization by example. PNP Commanders should be exemplars of what a policeman should be physically, mentally, and morally. We must embrace humble public service as an example to our police force and avoid wasting police resources by, for example, using unnecessary motorcycle escorts. Most of the members of the PNP, especially the supervisors and leaders, were former military men who began their service during the Philippine Martial Law years. Our goal is to change the mindset of the police, to make them feel that they are servants of the people and not the other way around. Therefore, its leaders must lead not by rule but by example and by maintaining good relationships with the people.

### **Conclusion**

This is just the beginning of the PNP's transformation program and we are committed to implementing the next stage. While many reform efforts have been implemented in the past, this is the first well-planned, well-designed, and well-sequenced series of reforms that will achieve our vision to provide our people with a safe and secure environment.

## **Implementation of Police Reforms in Bangladesh**

**ASM SHAHJAHAN**

*Former Inspector General of Police, Bangladesh*

**O**ne of the most important issues for police reform and other law reform efforts is implementation. Once the reform programs have been formulated, once the laws have been rewritten, how can we ensure that the reforms take effect?

Many of our laws as they currently stand, if followed, would constitute reforms in effect. Our constitution emphasizes that everyone should be treated equally and that all decisions should be made without fear or favor. If this could be achieved, we would be halfway to achieving the reforms we desire. However, the laws and regulations are full of exceptions and loopholes so that, to the extent that they are enforced at all, discretion becomes the rule. There are several ways in which the implementation of our laws as they currently exist as well as future reform efforts can be strengthened:

- *Community Involvement:* Successful police reform programs promote a sense of community ownership and participation by those affected by reforms. The police and the community must consult with one another and work together in order to achieve effective reform. The demand for access to justice must spring from the people affected.
- *Transparency:* In order for the community and the police to work together and have mutual respect, police recruitment and interim review must be transparent and merit-based.
- *Political Neutrality:* The police must be insulated from political pressures and other influences of those with vested interests.
- *Accountability:* The police must be held strictly accountable for any breach in their code of conduct. Accountability and oversight mechanisms must be applied to all ranks of the police force.

- *Adequate Resources:* The police need adequate financial and technical resources and improved working conditions to provide them with a functional environment. We should focus not on the conditions of the high-ranking officers but those of the police stations. The police officers cannot perform their jobs effectively if they do not have a good working environment with the necessary supplies and equipment.

Any change in the police force or in society at large affects morale, but we must not let this discourage us. Instead, we should encourage changes in attitude and continue to move forward. We should strengthen our police force by ensuring transparency, consulting with the community, and remaining consistent and committed to our program of reform.

### **Access to Justice and the Urgency of Police Reform: A View from Bangladesh**

**MD. ASHRAFUL HUDA, PPM**

*Inspector General of Police, Bangladesh*

One challenge confronting the police force in Bangladesh is its lack of adequate resources. This lack of resources hampers police performance. It is hard to expect a poor policeman to chase a criminal and apprehend him using only a .303 mm rifle and a worn-out jeep, which, until recently, were used by the Bangladesh police. The present democratic government has provided the police with improved weapons and vehicles in spite of limited resources available. Modern automatic and semi-automatic weapons have replaced the .303 mm rifles that were first issued during the Second World War, and a huge fleet of new cars has replaced our worn-out vehicles. But many other reforms are needed.

Crime investigations are so expensive that the cost to investigate a single crime frequently exceeds the entire annual budget allocation for a police station. Under these conditions, the economic and personal interests of poor people are less likely to be protected than those of the rich. Cor-

rupt practices are encouraged. In response to these problems, more funds have been made available to all the police stations in the country for criminal investigations. The government has also addressed the lack of access to justice for the poor by passing the Legal Aid Services Act in 2000.

The police force in Bangladesh is not only under-funded but also understaffed. Other developing countries with socio-economic conditions similar to those in Bangladesh have a police-to-population ratio of 1:600 and 1:700, yet the police-to-population ratio in Bangladesh is 1:1300. I would be the happiest man if we achieve a police-to-population ratio of at least 1:1000.

Despite these shortcomings, the Bangladesh police has recovered from its public image crisis. We, as a public-service-minded organization, are trying to be more responsive to citizen complainants, to pay special attention to the rights and privileges of women and children, and to deal with offenses committed against women and children more carefully. In order to do this, we try to motivate our members and develop pride in the profession. We recognize that to ensure the success of this endeavor, we will need a good working environment, logistical support, the latest technology, a minimum means of subsistence, and training.

One area of reform that is close to my heart is the development of better relations between the police and the media. The police needs to improve its relationship with the media because media can play a significant role in bringing the police and public closer. It is unfortunate that the press may at times misinterpret the police's views. Nonetheless, it is worth the effort to bridge the gap between the police and the public.

I believe that a free and civilized country must guarantee the rights of its citizens. This requires democratic policing based on human rights, transparency, equality, accountability, and clarity. The police must continue to become more pro-active, people-friendly, motivated, dependable and most especially, sensitive to the needs of women, children, and senior citizens. We need to improve our response time, apprehend convicts, acquire skills for effective investigations, and prosecute criminals before the courts of law. We need to reorient our legal, structural, and organizational fo-

**The police must continue to become more pro-active, people-friendly, motivated, dependable and most especially, sensitive to the needs of women, children, and senior citizens.**



Anamul Haque Anam

**Sensitivity to the needs of children is one major requirement from the police.**



**Md. Ashraful Huda, PPM**  
Inspector General of  
Police, Bangladesh

“One area of reform that is close to my heart is the development of better relations between the police and the media. The police needs to improve its relationship with the media because media can play a significant role in bringing the police and public closer.”

*Md. Ashraful Huda, PPM is the Inspector General of Police of Bangladesh.*

cus from the colonial premises to modern democratic norms and concepts. This large-scale reform requires funding, expertise, time, and uncompromising political commitment. These are the areas where we can benefit from assistance and cooperation

from friendly nations, development partners, and donor agencies. The Asian Development Bank (ADB) is positioned to play a leading role in this process.

We must appreciate that in today’s global era, policing is no longer merely a national issue. In this age of the information superhighway, free trade, open economies, free borders, and increasing regionalism and internationalism, present-day policing must also take advantage of opportunities for global cooperation. I can assure you that we are eagerly looking forward to such cooperative efforts.

The government of Bangladesh and the police force seek to ensure a crime-free society for the whole nation. Given adequate support, the continued commitment of the government, and the efforts by the individual members of the police, we will be able to face the challenges to implementing police reforms.

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## OPEN FORUM

# On Enhancing Police Effectiveness and Accountability: Ideas to Launch Police Reform

### Challenges to Police Reform

- Police reform is an integral part of wider public sector reforms. It should be considered a developmental investment and a necessary complement to other public service reforms. The goal for police reform, as for other public sector reforms, should be to render the institution effective and efficient.
- Police reform should not focus exclusively on increasing the size of the police force. There is no direct correlation between a larger police force and better law enforcement.
- A balance between appropriate respect for police authority and trust in the police force must be struck in order for the police to be able to effectively enforce the law. The public should be mindful of the fact that the police will enforce the law impartially. The public should not, however, fear abuse in the hands of the police.
- Police testimony needs to be accepted as credible in court. One of the reasons why the criminal conviction rate in Pakistan has been very low, is that police testimony had low credibility. In the Philippines, the Philippine National Police (PNP) addressed a similar credibility problem by creating a separate unit called the Scene of the Crime Operations (SOCO), composed of criminology graduates. The local police would be responsible for cordoning off the scene of the crime, while the gathering of evidence and taking of witness statements would be delegated to the SOCO. The investigator and the SOCO would then collaborate in preparing the case with the prosecutor.

### Strategies for Community Policing and Involvement

- Community Policing means partnership between the community and the police, with the understanding that it is the joint responsibility of the police and the community to maintain safety and security. The community has the duty to support the police and the police have the duty to listen to the community. There

must be mechanisms in place so that members of the community can communicate with the police. The police must understand and appreciate that safety and security can be more effectively maintained in cooperation with the community.

- In the Philippines, the PNP law gives the local leaders the authority to choose their policemen and even chiefs from a selection provided by the PNP. Community participation is fostered by local peace and order councils, which have representatives from civil society as well as government offices, and operate at every level, from the municipalities through the national government.

The PNP works with religious leaders and ecclesiastical communities to educate the people on the ill effects of criminality and drugs. The PNP has also requested that citizens report the presence of criminals. Community leaders have been trained on how to disseminate information, how to prevent crime in their community, how to identify what information is useful to the police, and how to gather and transmit this information to the PNP.

### **Civilian Oversight**

- Former and current chiefs of police both emphasized the need for effective internal and external oversight mechanisms and civilian oversight bodies. In certain developed countries, the chiefs of police have not been supportive of civilian oversight bodies and have been active and effective in getting rid of them.

Donor organizations should be aware that civilian oversight bodies are a very controversial issue. The police is effected whenever a civilian oversight body exposes police misconduct such as torture or custodial deaths. Police frequently do not like civilians telling them what to do, as they believe that they have superior knowledge and specialization in the field.

- Civilian oversight is an important factor to support police accountability, but should be limited to the policy level and the prioritization of programs. It should not include providing input on operational procedures, which should be left to the professional judgment of the police themselves.

### **National Police Commissions**

#### **THE PHILIPPINES**

- The National Police Commission is a collegial body composed of a Chairman and four regular commissioners. The powers of the Commission include:
  - a. Exercising administrative control over the Philippine National Police;
  - b. Developing policies, rules, and procedures to improve police services;
  - c. Establishing, examining, and auditing the standards for performance, activities, and facilities of police agencies throughout the country;
  - d. Preparing a police manual prescribing rules and regulations for efficient organization, administration, and operation, including recruitment, selection, promotion and retirement; and
  - e. Establishing a system of uniform crime reporting.

#### **PAKISTAN**

- A National Commission is composed of twelve members, six of which are members of the Parliament, with both political parties equally represented. The bipartisan approach sends a message that policing is not a politically driven issue. A three-member selection panel comprised of the president, the prime minister, and lead by the chief justice of the supreme court, selects the remaining six. The president nominates one member of the Commission, the prime minister nominates another, and the panel must to agree unanimously on the nominees.

Police or public safety commissions are one element of a police reform program, but even constitutional bodies like the Philippine National Police Commission have not been fully effective in providing services to the people. Such commissions may be more flexible and effective if they were bodies created by statute rather than by the Constitution, as it is easier for the legislature to amend the law, than it is to amend the Constitution. However, given the power and independence of the police, a commission may not provide a sufficiently direct check on the police's power to maintain administrative control of the police force.

### **Political Pressure and Public Accountability**

- Political pressure is a problem faced by the police of many countries, particularly Bangladesh, Indonesia, Pakistan and the Philippines. While the Philippine National Police Commission supervises the administrative

and the operational aspects of the PNP in order to minimize political influence, the fact is the Commission itself is made up of politicians who select the police force leadership. To minimize the effects of political involvement, the PNP engages in community dialogue and strives for transparent operations. These mechanisms keep the issues in the open and encourage the public to engage in dialogue with the police, thus preventing politicians from exerting unchecked influence over the police.

Political interference with police investigations prevents effective deliverance of justice, as shown by a UNDP study. Political interference takes several forms. For example, in Bangladesh police First Information Reports (FIR) detailing crimes are not accepted in any police station without political clearance. This allows politicians to prevent the investigation of certain crimes.

### **Protection of Vulnerable Groups**

- Women, children and the poor make up the groups most vulnerable to the deficiencies in the police institutions. For example, in Bangladesh, between eight- and nine-hundred women and children have been imprisoned despite insufficient evidence, simply because they did not have adequate representation and the resources to defend their rights.
- Several countries have taken these vulnerable groups into consideration when launching or implementing reforms:
  - a. In the Philippines, the PNP established a women's and children's desk ten years ago. Investigations of women and children are now conducted in a separate room by specially trained police officers. There have also been changes in the procedure of examining rape victims, so that the police now utilize a system supported by the United Nations.
  - b. In Indonesia, the INP established a special council inside the police investigation office to provide services to vulnerable groups, including women, children, and the elderly. All female officers are required to undergo special training to deal with female victims. Over 4,000 male officers have also undergone sensitivity training to better process crimes involving victims who are members of vulnerable groups.

### **Donor Involvement**

- Donors are involved in police reform efforts in various ways in many countries. Donations are not always as beneficial as they should be. Lack of donor coordination with the local government, competition among donors, and self-interested donor agendas can impair the efficacy of donor support. There are few evaluations of donor support for police reform. Without comprehensive follow-up evaluation, donor agencies and the recipient countries are vulnerable to repeating mistakes or renewing ineffective programs.
- For example, the Organization for Security and Co-operation in Europe (OSCE) started a large-scale police reform program three years ago, in which Kyrgyzstan, an ADB DMC, was the host of the flagship program. The program was poorly designed and within a few months' of its launch triggered a vehement protest by civil society and non-governmental organizations against the program. Reform programs will be much more successful if they build on past experiences and lessons learned by previous reform efforts.

ADB emphasizes the connection between law enforcement the reduction of poverty and economic development. The study of lessons learned in effecting police reform in Pakistan, Bangladesh, and other countries will be crucial in designing and implementing future reform programs in these countries and elsewhere.



# Chapter 5

## Enhancing the Effectiveness and Accountability of the Judiciary

- Access to Justice in the Philippines: A Prerequisite to Prosperity
- Challenges in Implementing Access to Justice Reforms in Bangladesh
- Challenges in Implementing Access to Justice Reforms in Pakistan
- Judicial Reform in Indonesia

### Access to Justice in the Philippines: A Prerequisite to Prosperity

HON. ARTEMIO V. PANGANIBAN  
*Associate Justice*  
*Supreme Court of the Philippines*

In the distant past, the highest court in the Philippines (and in many parts of the world) was shrouded in mystery. Its processes were secretive, its sessions private, and its members shielded from public scrutiny. It has been described as a fortress, a Mount Olympus where the gods were unapproachable and untouchable.

Despite its sometimes mysterious ways, the Philippine Supreme Court is treated as a coequal of the Executive Branch and Congress. It is vested by the Constitution with the solemn duty to nullify any act of any branch of government—including those of the President and of Congress—on the

ground of “grave abuse of discretion.”<sup>1</sup> Pursuant to such plenary authority, the Court has, on many occasions, struck down laws that contravened the Constitution,<sup>2</sup> executive and administrative orders issued without lawful authority,<sup>3</sup> and mega contracts entered into with grave abuse of discretion by the officials concerned.<sup>4</sup>

Indeed, the judiciary has a vital role in the development of the country; it reaches not only the traditional domains of peace and order, but almost every aspect of national and community life—be it social, economic, political or humanitarian. Moreover, the judiciary stands as the last bulwark of democracy and the ultimate recourse of the people in redressing grievances not attended to or, worse, committed by other agencies of government.

#### The Need for Transparency in Judicial Processes

Because of the all-encompassing and metamorphosing effect of the judiciary on the lives of our people, there has been an ever-growing call for more transparency on its part. In response, the doors of the judicial fortress have been partially lifted and the

Because of the all-encompassing and metamorphosing effect of the judiciary on the lives of our people, there has been an ever-growing call for more transparency on its part. In response, the doors of the judicial fortress have been partially lifted and the gods have become a bit more accessible. Both their persons and their work have been subjected to more rigid public scrutiny.

\* See endnotes on page 58.



**Hon. Artemio V. Panganiban**  
Associate Justice  
Supreme Court of the  
Philippines

“Since I oppose the death penalty, I personally welcomed the *Mateo* ruling. It gives death convicts an intermediate layer of review to ensure an error-free judgment. Death convicts must be given the same opportunity for multiple review as those convicted of lesser crimes.”

*Justice Artemio V. Panganiban chairs the Third Division of the Supreme Court of the Philippines. Concurrently, he is chairman of the House of Representatives Electoral Tribunal (HRET). He also heads seven major committees tasked mainly with the implementation of the Judicial Reform Program initiated by Chief Justice Hilario G. Davide Jr. (Computerization; Public Information; Judicial Excellence; Legislative-Executive Relations; Raffle for Division Cases; Justice for All Through Education; and Access to Justice for the Poor.) At the same time, he is also a consultant of the Judicial and Bar Council (JBC). Justice Panganiban served as vice president of the Philippine Chamber of Commerce and Industry, Governor of the Management Association of the Philippines, and president of the Tourism Organization of the Philippines. He also served as president of the Philippine Daily Inquirer, the country’s most widely circulated newspaper and of the Rotary Club of Manila, the first and largest civic club in Asia. Justice Panganiban completed his associate in arts with highest honors and his law degree cum laude aside from being named “most outstanding student.” He placed sixth among 4,216 examinees in the bar examinations of 1960.*

gods have become a bit more accessible. Both their persons and their work have been subjected to more rigid public scrutiny.

Verily, the judicial enclave has been invaded by the transparency requirements of the Constitution,<sup>5</sup> the Ethical Standards Law,<sup>6</sup> the Canons of Judicial Ethics<sup>7</sup> and the New Code of Judicial Conduct for the Philippine Judiciary.<sup>8</sup> The democratic space and libertarian spirit that the Supreme Court has repeatedly espoused in its judgments of other government institutions have seeped into its own functions and activities.

Indeed, the information revolution has permeated the judiciary. Our people no longer accept judicial doctrines they do not understand. Neither do they blindly defer to judgments that do not explain their rationale. For its part, media has persistently knocked on the ramparts of the judicial fortifications and climbed the steep gorges of Mount Olympus. “[T]he invasive power and influence of media have penetrated the thick walls of the judicial fortress.”<sup>9</sup>

Because of its vital role in the life of the nation, the judiciary has become the focus of many credible developmental agencies

like the World Bank (WB) and the ADB. They realize that stability in the rule of law and predictability in the rendition of decisions are indispensable to investor confidence and economic development, and ultimately to good governance.

Today, there is growing interest in how the judiciary can show its pro-people orientation—how it dispenses justice to the marginalized and the disadvantaged. Indeed, access to justice especially by the poor is as essential to good governance, as investor confidence is to the economy.

### **The Pro-Poor Bias of our Constitution and Laws**

The Philippine Constitution is pro-poor, pro-labor and pro-human rights. Having arisen from the ashes of an authoritarian regime, our 1987 Constitution is a document that is international in outlook,<sup>10</sup> promotes social justice,<sup>11</sup> respects human rights,<sup>12</sup> responds to the role of women,<sup>13</sup> protects labor,<sup>14</sup> and is cognizant of the rights of indigenous cultural communities.<sup>15</sup>

This Constitution spells out in neat detail the rights of persons accused of crimes<sup>16</sup> and assures them of free access to the courts and adequate legal assistance, which “shall not be denied to any person by reason of poverty.”<sup>17</sup> Furthermore, it clearly provides what are known as the *Miranda* rights of accused persons.<sup>18</sup> In all criminal prosecutions, due process and the right to “competent and independent counsel” are guaranteed.<sup>19</sup>

Furthermore, social justice is given high priority in our constitutional hierarchy.<sup>20</sup>

To implement these pro-poor constitutional mandates, Congress has passed several laws, among which are those that aim to do the following:

- a. define the rights of persons arrested or detained;<sup>21</sup>
- b. protect women and children from domestic violence;<sup>22</sup>
- c. protect children from abuse, exploitation and discrimination;<sup>23</sup>
- d. penalize violations of basic human rights;<sup>24</sup>
- e. settle disputes amicably at the barangay level;<sup>25</sup>
- f. enhance the capability of law-income groups to acquire low-cost housing;<sup>26</sup>
- g. develop agriculture and to empower small farmers;<sup>27</sup> and
- h. accord protection to labor.<sup>28</sup>



## The Supreme Court's Role in Fostering Social Justice

The Supreme Court has played a direct role in fostering social justice by opening the justice system to indigents through these measures:

- a. exempting them from the payment of docket and other fees and transcripts of stenographic notes;<sup>29</sup>
- b. providing protection to and enforcement of the constitutional rights of the accused;<sup>30</sup>
- c. granting free legal counsel to indigents;<sup>31</sup> and
- d. requiring lawyers to provide free representation to poor litigants.<sup>32</sup>

In addition, *pro bono* legal services are provided by several non-governmental groups, like (a) the Integrated Bar of the Philippines, to which the Supreme Court gives an annual grant to fund its Free Legal Aid Program; and (b) the Free Legal Assistance Group (FLAG), which focuses on public, rather than private, issues.

To attend to Muslim Filipinos, the Supreme Court had authorized the organization of the Shari'ah Appellate Court,<sup>33</sup> which was established by Rep. Act No. 6734, the Organic Act for the Autonomous Region in Muslim Mindanao. Of late, the establishment of a Shari'ah court in Metro Manila is being considered to serve the growing Muslim population.

In a long line of decisions, the Supreme Court has been unabashedly pro-poor, pro-labor and pro-human rights.

In *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*,<sup>34</sup> the Supreme Court held that the Filipino-style party-list system is reserved for the poor and the marginalized. In the decision that I had the honor to write, the Court observed:

*It is ironic...that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted—to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those*

*marginalized and underrepresented in the past—the farm hands, the fisherfolk, the urban poor, even those in the underground movement—to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.*

Nowhere is the protection of the Court for the weak clearer than in its labor law decisions. Under its watchful eyes and steady hands thrived and bloomed the seeds sown in 1940 by *Calalang v. Williams*.<sup>35</sup> For sure, some of the battles<sup>36</sup> that have been waged in this front still rage to this day. Thus, the Court has steadfastly ruled that:

- a. workers may be dismissed from work only upon (1) either a *valid* or *authorized* cause, and (2) upon observance of due process;<sup>37</sup>
- b. illegally dismissed workers are entitled to reinstatement, damages and back wages;<sup>38</sup>
- c. strict technical legal requirements may be disregarded whenever they are used to deny substantial justice to workers;<sup>39</sup>
- d. employees, though dismissed for a just cause, may be awarded separation pay on the grounds of equity and social justice, except when they have been dismissed for serious misconduct or some other cause reflecting on their moral character;<sup>40</sup>
- e. workers' quitclaims and waivers are generally not binding and should not bar employees from claiming what is legally due them under the law;<sup>41</sup>
- f. employees in the private sector can, subject to reasonable restrictions, picket and strike to protect themselves against exploitation and to seek better conditions of employment;<sup>42</sup>
- g. local recruitment companies may be liable for violation of the labor contracts of overseas Filipino workers;<sup>43</sup> and
- h. labor doctrines are extended to civil servants who have been dismissed from the service when less punitive penalties would have sufficed.<sup>44</sup>

The foregoing discussion is by no means exhaustive.

The magnitude and viciousness of human rights violations in our recent history

**The information revolution has permeated the judiciary. Our people no longer accept judicial doctrines they do not understand. Neither do they blindly defer to judgments that do not explain their rationale. For its part, media has persistently knocked on the ramparts of the judicial fortifications and climbed the steep gorges of Mount Olympus.**

**Our judiciary has steadfastly maintained its social justice orientation, because our Constitution and laws require it, and because an opposite policy would alienate the marginalized. If denied access to the democratic institutions of justice, they may be tempted to take the law into their own hands.**

enthused the Court to strengthen the protection of our people's fundamental rights. It has been uncompromising in (a) penalizing judges who failed to inform uneducated accused persons of their rights to counsel,<sup>45</sup> (b) annulling lower court judgments in which the judge failed to conduct a "searching inquiry" whenever the accused had waived their right to be heard and plead guilty to the charge against them,<sup>46</sup> (c) voiding judgments that do not conform with the constitutional standards as to form and substance<sup>47</sup> and (d) extending the protection of the Universal Declaration of Human Rights to everyone, including aliens.<sup>48</sup> Restoration of the Death Penalty

Notwithstanding the restoration of the death penalty,<sup>49</sup> which the Court declared to be constitutional<sup>50</sup>—despite my unyielding personal opinion that it is not<sup>51</sup>—the Court has been strict in reviewing the death sentences imposed by lower courts. As a result, less than one third of such judgments have been affirmed.<sup>52</sup> Recently in *People v. Mateo*,<sup>53</sup> the Supreme Court has held it "wise and compelling" to have the Court of Appeals review all death and life sentences before they are elevated to the Supreme Court.

Consistent with *Mateo*, the Court amended certain portions<sup>54</sup> of the Revised Rules of Criminal Procedure to simplify the appeal of capital offenses by requiring a notice of appeal to the Court of Appeals.

Since I oppose the death penalty, I personally welcomed the *Mateo* ruling. It gives death convicts an intermediate layer of review to ensure an error-free judgment. Death convicts must be given the same opportunity for multiple review as those convicted of lesser crimes.

Because of the Supreme Court's many decisions favoring the poor, the oppressed and the disadvantaged, it has oftentimes been criticized. Guilty parties are sometimes acquitted because of the stringent requirements of evidence to convict—proof beyond reasonable doubt—and because of the inadmissibility in Philippine courts of illegally obtained evidence. I remember the lament of a foreign diplomat who wryly commented that in his country—unlike in ours—no guilty person, whether rich or poor, had ever been acquitted on a mere technicality of the law.

Also because of our labor laws, many businessmen complain that they are ham-

pered in disciplining erring employees who could harass them through never-ending strikes, pickets, media attacks, or complaints to the National Labor Relations Commission.

Despite these occasional laments, our judiciary has steadfastly maintained its social justice orientation, because our Constitution and laws require it, and because an opposite policy would alienate the marginalized. If denied access to the democratic institutions of justice, they may be tempted to take the law into their own hands.

### Conclusion

To sum up the balancing role of the judiciary in our government, may I quote my recent book, *Leveling the Playing Field*:<sup>55</sup>

The Supreme Court safeguards not only food but also freedom; not only jobs but also justice; not only indulgences but also integrity; not only development but also democracy; not only prosperity but also peace.

Indeed, there can be no prosperity or progress without affording justice and peace to all, especially to the underprivileged and the disadvantaged.

### Endnotes

<sup>1</sup> CONST. art. VIII, sec. 1. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

<sup>2</sup> The Court nullified Rep. Act No. 8180 (1996), "Downstream Oil Industry Deregulation Act of 1996," the first oil deregulation law, because it violated the Constitution. Specifically, it found that three provisions of the law obstructed the entry of new oil companies into the Philippines, thereby perpetuating a monopoly of the so-called Big Three Oil companies—Petron, Shell and Caltex. *Tatad v. Secretary of Energy*, 346 Phil. 321 (1997).

The Court voided sec. 26 and sec. 31 of Rep. Act No. 6975 (1990), "Local Government Act of 1990," which empowered the Commission on Appointments to confirm the appointments of public officials whose appointments were not required by the Constitution to be confirmed. *Manalo v. Sistoza*, 371 Phil. 165 (1999).

Several portions of Rep. Act No. 9189 (2003), "The Overseas Absentee Voting Act of 2003," were declared unconstitutional for being repugnant to sec. 1, Art. IX-A of the Constitution, mandating the independence of constitutional commissions; such as the Commission on Elections. *Macalintal v. Comelec*, G.R. No. 157013, 10 July 2003, 405 SCRA 614.

Stressing that the determination of just compensation was a judicial function, the Court voided Pres. Dec. No. 1533, which eliminated the Court's discretion to appoint commissioners, pursuant to the then Rule 67 of the Rules of Court. The provisions of Pres. Dec. Nos. 76, 464 and 794 regarding executive determination of just compensation were also nullified. *Export Processing Zone Authority v. Dulay*, G.R. No. L-59603, 29 April 1987, 149 SCRA 305.

<sup>3</sup> Exec. Order No. 284 (1987), which allowed government officials to hold multiple positions in government was declared

unconstitutional for being contrary to sec. 13, art. VII of the Constitution. *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, 22 Feb. 1991, 194 SCRA 317.

Adm. Order No. 308, which established a “National Computerized Identification Reference System” or national ID system, was declared void because it (a) involved a subject that was not appropriate to be covered by a mere administrative order, but by a law enacted by Congress; and (b) placed the right to privacy in clear and present danger. *Ople v. Torres*, G.R. No. 127685, 23 July 1998, 293 SCRA 141.

The Court struck down COMELEC Resolution No. 2347, which prohibited the use of campaign decals and stickers on privately owned cars, because the restriction was so broad that it encompassed even the citizen’s private property; no substantial governmental interest justified the restriction. *Adiong v. Commission on Elections*, G.R. No. 103956, 31 March 1992, 207 SCRA 712.

Dept. Order No. 119, creating the Marawi Sub-District, Engineering Office which had jurisdiction over infrastructure projects within Marawi City and Lanao del Sur, was declared void for being violative of the provisions of E.O. No. 426. *Disomangcop v. Secretary of the Department of Public Works and Highways (DPWH)*, GR No. 149848, 25 Nov. 2004.

4 Some recently voided contracts include the following:

*The AMARI Contract.* The Court ruled that the Joint Venture Agreement between the Public Estates Authority (PEA) and the Amari Coastal Bay and Development Corporation for the reclamation of certain portions of Manila Bay violated the constitutional ban against the sale of reclaimed foreshore lands to and the reclamation of still submerged foreshore lands by a private corporation. *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002); G.R. No. 133250, 6 May 2003, 403 SCRA 1; and G.R. No. 133250, 11 Nov. 2003, 415 SCRA 403.

*The PIATCO Contract.* It was held that the “Build-Operate-and-Transfer” Contract for the construction and operation of Terminal III of the Ninoy Aquino International Airport (a) violated the anti-monopoly provisions of the Constitution because it gave the Philippine International Air Terminals Company, Inc. (PIATCO) the exclusive right to operate a commercial passenger terminal within the island of Luzon; and (b) transgressed the fair competition essence of the law in granting PIATCO substantially more benefits than those allowed by the bidding rules. *Agan v. PIATCO*, G.R. No. 155001, 5 May 2003, 402 SCRA 612 and Jan. 21, 2004.

*The MEGA PACIFIC Contract.* In setting aside the contract for the supply of automated counting machines for the elections, the Court held, among others, that it had been awarded in contravention of the bidding rules laid down by the awarding agency itself, the Commission on Elections. *Information Technology Foundation v. COMELEC*, G.R. No. 159139, 13 Jan. 2004, 419 SCRA 317.

*The SAGE Contract.* The contract granting a private company, the Sports and Games and Entertainment Corporation (SAGE), authority to operate on-line Internet gambling was voided because the charter of the government-owned Philippine Amusement and Gaming Corporation (PAGCOR) prohibited it from delegating its franchise to other entities. *Jaworski v. Pagcor*, G.R. No. 144463, 14 Jan. 2004, 419 SCRA 317.

5 The Constitution provides as follows:

CONST. art. II, sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

CONST. art. III, sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

CONST. art. XI, sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

6 Rep. Act No. 6713 (1989), “Code of Conduct and Ethical Standards for Public Officials and Employees.”

7 CANONS OF JUDICIAL ETHICS, Canon 30. It is not necessary to the proper performance of judicial duty that judges live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interest in or appearance at meetings of members of the bar.

8 A. M. No. 03-05-01-SC (1 June 2004). The Code is based on the universal declaration of standards for ethical conduct embodied in the Bangalore Draft as revised during the Round Table Conference of Chief Justices at The Hague. It stresses independence (Canon 1), impartiality (Canon 2), integrity (Canon 3), propriety (Canon 4), equality (Canon 5), and competence and diligence (Canon 6). A Code of Conduct for Court Personnel (AM No. 03-06-13-SC) was also instituted effective June 1, 2004.

9 PANGANIBAN, TRANSPARENCY, UNANIMITY & DIVERSITY 57 (2000).

10 CONST. art II, sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part

of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

11 CONST. art II, sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

CONST. art. II, sec. 10. The State shall promote social justice in all phases of national development.

12 CONST. art. II, sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

13 CONST. art. II, sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

14 The 1987 Constitution is replete with state policies favoring labor. These include: CONST. art. II, sec. 9. *supra*; CONST. art. II, sec. 10. *supra*; and CONST. art. II, sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Sec. 3 of art. XIII (Social Justice) of the Constitution likewise provides that “The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of opportunities for all.

“It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

15 CONST. art. II, sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

16 CONST. art. III, sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

17 CONST. art. III, sec. 11.

18 CONST. art. III, sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. ...

19 CONST. art. II, sec. 14, *supra*, and CONST. art. III, sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

20 CONST. art. XIII, sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.

Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance. Sec. 3. *supra*.

Sec. 4. The State shall, by law, undertake an agrarian reform program

founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof ...

Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Sec. 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems. ...

Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation. ...

Sec. 17. (1) There is hereby created an independent office called Commission on Human Rights. ...

Sec. 18. The Commission on Human Rights shall have the following powers and functions: ...

(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection; ...

<sup>21</sup> Rep. Act No. 7438 (1992), "An Act defining certain rights of person arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers, and providing penalties for violations thereof."

<sup>22</sup> Rep. Act No. 9262 (2004), "Anti-Violence Against Women and Their Children Act of 2004."

<sup>23</sup> Rep. Act No. 7610 (1992), "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act." See also, Rep. Act No. 8353 (1997), "Anti-Rape Law of 1997"; Rep. Act. No. 9231 (2003) "An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, amending for this purpose Republic Act No. 7610;" and Rep. Act No. 9208 (2003), "Anti-Trafficking in Persons Act of 2003."

<sup>24</sup> REV. PEN. CODE, Book II, Chap. One, Title II (Crimes Against Fundamental Laws of the State), Arts. 124—133. Specifically, the crimes punished are arbitrary detention; delay in the delivery of detained persons to the proper judicial authorities; delaying release; expulsion; violation of domicile; malicious procurement of search warrants and abuse in the service of those legally obtained; searching domicile without witnesses; prohibition, interruption and dissolution of peaceful meetings; interruption of religious worship; and offending religious feelings. See also, Rep. Act No. 7438 (1992), *supra*, and Rep. Act No. 9262 (2004), *supra*.

<sup>25</sup> Rep. Act No. 7160 (1991), "The Local Government Code" and Pres. Dec. 1508, "The Katarungan Pambarangay Law."

<sup>26</sup> Rep. Act No. 7835 (1994), "The Comprehensive and Integrated Shelter Financing Act"; Rep. Act No. 6846 (1990), "The Social Housing Support Fund Act;" and Rep. Act No. 7279 (1992), "The Urban Development and Housing Act of 1992."

<sup>27</sup> Rep. Act No. 7607 (1992), "An Act Providing a Magna Carta for Small Farmers."

<sup>28</sup> Pres. Dec. 442, as amended (1974), "The Labor Code" and Rep. Act No. 8042 (1995), "The Migrant Workers and Overseas Filipinos Act of 1995."

<sup>29</sup> RULES OF COURT, rule 3, sec. 21 and AM No. 04-2-04-SC.

<sup>30</sup> RULES OF COURT, rules 112-127.

<sup>31</sup> RULES OF COURT, rule 116, sec. 7, rule 122, sec. 13, and rule 124, sec. 2. The Court also appoints the Public Attorney's Office to represent the poor in all relevant litigations.

<sup>32</sup> CODE OF PROFESSIONAL RESPONSIBILITY. Canon 2. A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

Rule 2.01 A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

Rule 2.02 In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

Canon 14 of the same Code states "A lawyer shall not refuse his services to the needy."

Rule 14.01 A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.

Rule 14.02 A lawyer shall not decline, except for serious and sufficient cause, an appointment as counsel *de officio* or as amicus curiae or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

Rule 14.03 A lawyer may not refuse to accept representation of an indigent client unless:

(a) he is not in a position to carry out the work effectively or competently; or

(b) he labors under a conflict of interest between him and the prospective client, or between a present client and the prospective client.

Rule 14.04 A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients."

<sup>33</sup> AM No. 99-4-06-SC, June 8, 1999.

<sup>34</sup> 412 PHIL. 308 (2001).

<sup>35</sup> 70 PHIL. 726 (1940). The case laid down the definition of "social justice," which is immortalized in countless decisions. Said the Court:

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. xxx"

<sup>36</sup> In Chap. VIII of my book BATTLES IN THE SUPREME COURT (1998), I narrated my efforts to accord greater benefits to workers whose services had been terminated for cause but without due process.

<sup>37</sup> *Bolinao Security and Investigation Service, Inc. v. Toston*, GR No. 139135, 29 Jan. 2004, 421 SCRA 406; *Mendoza v. NLRC*, G.R. No. 131405, 20 July 1999, 310 SCRA 846; *Pascua v. NLRC*, 351 PHIL. 48 (1998); and *Pacific Maritime Services, Inc. v. Ranay*, 341 PHIL. 716 (1997).

<sup>38</sup> *Paguio Transport Corporation v. NLRC*, 356 PHIL. 158 (1998); *Mabuhay Development Industries v. NLRC*, 351 PHIL. 227 (1998); *Magcalas v. NLRC*, 336 PHIL. 433 (1997); and *AHS/Philippines, Inc. v. Court of Appeals*, 327 PHIL. 129 (1996).

<sup>39</sup> *Tanjuan v. Philippine Postal Savings Bank, Inc.*, G.R. No. 155278, 16 Sept. 2003, 411 SCRA 168; *Philimare Shipping & Equipment Supply, Inc. v. NLRC*, 378 PHIL. 1131 (1999); *Samar II Electric Cooperative Inc. v. NLRC*, 337 PHIL. 24 (1997); *Aurora Land Projects Corp. v. NLRC*, 334 PHIL. 44 (1997); *The New Valley Times Press v. NLRC*, G.R. No. 100482, 15 July 1992, 211 SCRA 509.

<sup>40</sup> This rule was laid down by the Court en banc in *Philippine Long Distance Telephone Co. v. NLRC*, G.R. No. L-80609, 23 Aug. 1988, 164 SCRA 671. See also *Gabuay v. Oversea Paper Supply, Inc.*, GR No. 148837, 13 Aug. 2004, 436 SCRA 514; *Philippine National Construction Corporation v. NLRC*, 366 PHIL. 678 (1999); *United South Dockhandlers, Inc. v. NLRC*, 335 PHIL. 76 (1997); and *Del Castillo, Jr. v. NLRC*, G.R. No. 75413, 10 Aug. 1989, 176 SCRA 229.

<sup>41</sup> *Emco Plywood Corp. v. Abelgas*, GR No. 148532, 14 April 2004, 427 SCRA 496; *Anino v. NLRC*, 352 PHIL. 1098 (1998); *Alcosero v. NLRC*, G.R. No. 116884, 26 March 1998, 288 SCRA 129; *Agoy v. NLRC*, 322 PHIL. 636 (1996); *Cariño v. ACCFA*, 124 PHIL. 782 (1966).

<sup>42</sup> *Pasvil/Pascual Liner, Inc. Workers Union v. NLRC*, 370 PHIL. 473 (1999); *National Federation of Sugar Workers v. Ovejera*, 199 PHIL. 537 (1982).

<sup>43</sup> *ABD Overseas Manpower Corporation v. NLRC*, 350 PHIL. 92 (1998); *PI Manpower Placements Inc. v. NLRC*, 342 PHIL. 414 (1997); *Zurbano Sr. v. NLRC*, G.R. No. 103679, 17 Dec. 1993, 228 SCRA 556.

<sup>44</sup> *Neeland v. Villanueva Jr.*, AM No. P. 99-1316, 31 Aug. 2001, 364 SCRA 204.

<sup>45</sup> *Gamas v. Oco*, AM No. MTJ-99-1231, 17 March 2004, 425 SCRA 588.

<sup>46</sup> *People v. Besonia*, GR Nos. 151284-85, 5 Feb. 2004, 422 SCRA 210; *People v. Bodoso*, G.R. Nos. 149382-83, 5 March 2003, 398 SCRA 64; *People v. Aranzado*, G.R. Nos. 132442-44, 24 Sept. 2001, 365 SCRA 649; *People v. Durango*, 386 PHIL. 202 (2000); *People v. Nadera Jr.*, 381 PHIL. 484 (2000); *People v. Abapo*, 385 PHIL. 1175 (2000); *People v. Tizon*, 375 PHIL. 1096 (1999); and *People v. Bello*, 375 PHIL. 277 (1999). The Court stressed that the accused must be properly

accorded their fundamental right to be informed of the precise nature of the accusation against them and of the consequences of pleading guilty thereto, which is an integral aspect of the due process clause under the Constitution.

<sup>47</sup> *Velarde v. Social Justice Society*, GR No. 159357, 28 April 2004, 428 SCRA 283; *People v. Ferrer*, G.R. No. 148821, 18 July 2003, 406 SCRA 658; *Yao v. Court of Appeals*, G.R. No. 132428, 24 Oct. 2000, 344 SCRA 202; *People v. Dumaguing*, G.R. No. 135516, 20 Sept. 2000, 340 SCRA 701; *Madrid v. Court of Appeals*, 388 PHIL. 366 (2000); *People v. Bugarin*, 339 PHIL. 570 (1997). CONST. art. VIII, sec. 14 states that “[no] decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.”

<sup>48</sup> *Domingo v. Scheer*, GR 154745, 29 Jan. 2004, 421 SCRA 468.

<sup>49</sup> Rep. Act No. 7659 (1993), “An act to impose the death penalty on certain heinous crimes, amending for that purpose the Revised Penal Code, as amended, other special penal laws, and for other purposes.”

<sup>50</sup> *People v. Echegaray* 335 Phil. 343 (1997).

<sup>51</sup> In my Dissenting Opinion in *People v. Echegaray*, I argued passionately that based on the age, language and socio-economic profiles of convicts then in death row, Rep. Act No. 7659 had militated against the poor and the powerless in society.

<sup>52</sup> This has been consistently shown by court statistics as reported in several of my books. See Chap. 21, *LEVELING THE PLAYING FIELD* (2004); Chap. 14, *THE BIO-AGE DAWNS ON THE JUDICIARY* (2003); Chap. 22, *REFORMING THE JUDICIARY* (2002), Chap. 14, *A CENTENARY OF JUSTICE* (2001); Chap. 16, *TRANSPARENCY, UNANIMITY AND DIVERSITY* (2000); Chap. 6, *LEADERSHIP BY EXAMPLE* (1999) and Chap. 4, *BATTLES IN THE SUPREME COURT* (1998).

<sup>53</sup> *People v. Mateo*, GR Nos. 147678-87, 24 July 7, 2004, 433 SCRA 640.

<sup>54</sup> Sections 3(d), 3(d) and 10 of Rule 122 and Sections 12 and 13 of Rule 124, as follows:

RULES OF COURT, rule 122, sec. 3(c), as amended, now reads: Sec. (c). The appeal in cases where the penalty imposed by the Regional Trial court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the *Court of Appeals* in accordance with paragraph (a) of this Rule (emphasis supplied);

RULES OF COURT, rule 122, sec. 3(c), as amended, now reads: Sec. (c). The appeal in cases where the penalty imposed by the Regional Trial court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the *Court of Appeals* in accordance with paragraph (a) of this Rule (emphasis supplied);

RULES OF COURT, rule 122, sec. 3(d), as amended, now reads: Sec. 3(d). No notice of appeal is necessary where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule;

RULES OF COURT, rule 122, sec. 3(d), as amended, now reads: Sec. 3(d). No notice of appeal is necessary where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule;

RULES OF COURT, rule 122, sec. 10, as amended, now reads: Sec. 10. *Transmission of records in case of death penalty.* - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter;

RULES OF COURT, rule 122, sec. 10, as amended, now reads: Sec. 10. *Transmission of records in case of death penalty.* - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter;

RULES OF COURT, rule 124, sec. 12 reads: Sec. 12. *Power to receive evidence.*—The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three months, unless extended by the Chief Justice;

RULES OF COURT, rule 124, sec. 13 provides: Sec. 13. *Certification or appeal of case to the Supreme Court.*—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review; (b) Where the judgment also imposed a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed and the accused appeals, the appeals shall be included in the case certified for review to the Supreme Court; (c) In cases where the Court of Appeals imposed *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals;

RULES OF COURT, rule 124, sec. 13 provides: Sec. 13. *Certification or appeal of case to the Supreme Court.*—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review; (b) Where the judgment also imposed a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed and the accused appeals, the appeals shall be included in the case certified for review to the Supreme Court; (c) In cases where the Court of Appeals imposed *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

<sup>55</sup> PANGANIBAN, *supra* note 36, at 59.

# Philippine Action Program for Judicial Reform

EVELYN DUMDUM

*Program Director, Action Program for Judicial Reform (APJR)*

**815,431**

cases are pending at all levels of the judiciary in the Philippines, as of 31 July 2004.

**0.88%**

The portion of the national budget allocated to the judiciary.

**222,000**

Pesos are spent per year for each employee of the judiciary, as opposed to the P332,520 spent per employee per year in the executive branch, and the P641,000 spent per employee in the legislative branch.

The Philippine judiciary faces many obstacles to its efficient performance. The Action Program for Judicial Reform has taken concrete steps to establish a strong foundation for its long-term reform and development.

## Structure of the Philippine Judiciary

Under the Philippine Constitution, the judiciary is the third branch of government. The Philippine court system has four levels: The first level is composed of metropolitan and municipal trial courts. The second level is composed of regional trial courts, which have general original jurisdiction as well as appellate jurisdiction over the lower courts. The court of appeals has jurisdiction to review cases from both tiers of lower courts. The Supreme Court is the highest court in the country.

The municipal and regional trial courts include 950 regional trial courts, 1,124 municipal level courts, 51 circuit courts, and five Shari'a (Islamic law) district courts. The Court of Appeals currently has sixty-three associate justices and one presiding justice.

The Philippine Supreme Court is composed of fifteen justices; a chief justice and fourteen associate justices. They decide cases *en banc*, with five justices presiding simultaneously. The Supreme Court exercises adjudicatory, disciplinary, and rule-making powers. While its chief function is to adjudicate civil and criminal actions and special proceedings, it also has administrative supervision over all courts and personnel, including the power to discipline lawyers for violations of the Code of Professional Responsibility. The Supreme Court also has the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged.

## Challenges Facing the Philippine Judiciary

The Philippine judiciary suffers from two overriding problems: court congestion and limited financial resources.

Case congestion and delay have always been and continue to be a matter of great import for the court, because the degree of delay in disposing of cases reflects the efficiency or inefficiency of the administration of justice. As of 31 July 2004, an astounding 815,431 cases were pending at all levels of the judiciary. The regional trial courts, with approximately 343,875 cases pending before them, accounted for the largest portion of these pending cases.

The limited financial resources available to the judiciary prevent it from opening new courts and hiring competent and highly qualified individuals for the bench. Even the courts that have been provided for by Congress have not all been established due to lack of funding. Whereas Congress provided for 2,153 first- and second-level courts, only 2,064 have been organized. As of September 2004, nearly 33 percent of the total judicial positions were vacant. All but one of these vacancies are in the first- and second- level courts. There are simply too few judges. There are 18 justices or judges for every 1 million Filipinos. In Australia, there are 41 judges per million, in the UK there are 51, in Canada there are 75, and in the United States there are 107 judges for every million citizens.

Not only is the Philippine Judiciary under-funded, but it receives proportionately much less government funding than the other branches of government. For the last six years, the Philippine Judiciary's share in the national government budget has been continually declining. In 2000, the judiciary budget accounted for just over 1 percent of the total national budget, and in 2005, it accounted for only 0.88 percent. For the period 1998–2003, the national government has spent an average of 222,000 pesos per year for each employee of the judiciary. During this time, it spent 332,520 pesos per employee of the executive branch, approximately 150 percent of the amount spent per employee in the judiciary. In the sharpest contrast, the government spent 641,000 pesos per employee of the legislative branch, almost three times the spending per employee for the judiciary. The discrepancy also permeates the budgetary support for

maintenance and operating expenses. The budgets of both the executive and legislative branches of the government have grown much faster than that of the judiciary over the last five years.

Beside these two pervasive problems, several other problems must be addressed in order to maximize judicial efficiency: (a) outdated court technologies and facilities; (b) lack of human resource development, particularly for the non-judicial personnel; (c) perceived corruption in the judiciary, which brings into question its integrity and quality of decisions; (d) perceived limited access to justice by the poor and marginalized sectors of society; and (e) institutional deficiencies which are best characterized by the highly centralized operation of administrative and financial transactions in the Supreme Court.

### **Action Program for Judicial Reform**

The Action Program for Judicial Reform (APJR) has adopted various strategies and identified specific programs, projects, and activities to address the challenges faced by the Philippine judiciary and to improve delivery of judicial services. The APJR is founded on the vision and mission espoused by Chief Justice Hilario G. Davide Jr. This a vision for a judiciary that is independent, effective, efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible, and cost-effective legal service to our people, and is willing and able to answer the call to public service. The program addresses six areas: (1) Judicial Systems and Procedure; (2) Institutions Development; (3) Human Resource Development; (4) Institutional Integrity Development; (5) Access to Justice by the Poor; and (6) Reform Support Systems.

The APJR builds on previous reform efforts by the Supreme Court, including the technical assistance on justice and development programs funded by the United Nations Development Fund (UNDF), which produced the blueprint of action for the judiciary, as described above. Diagnostic studies, funded by the World Bank, provided the data which formed the basis for the development of specific reform programs. The APJR is the product of extensive consultations over the last years with stakeholders, not just within the judicial sector, but also

with representatives from the legal community, civil society, academia, private sector, and the media.

The APJR seeks to achieve the following goals:

- a. impartiality, access to, and speed of judicial systems;
- b. judicial autonomy and self-governance;
- c. streamlined institutional structure and operations;
- d. decentralization;
- e. information systems-based operations, planning, performance, management and decision-making;
- f. competitive and equitable remuneration;
- g. continuing capability improvement;
- h. transparency and accountability in appointments to the Bench; and
- i. consensus-building and collaboration with civil society.

### **Factors Influencing the Success of Reforms**

The success or failure of a reform program rests on the foundation on which it is built. Reform programs must begin with a comprehensive diagnosis that sets the parameters for effective management of program. In the case of the Philippine Supreme Court, it undertook a comprehensive review of the present state of the Philippine judicial system with the help of judiciary officials and external experts. They assessed the judiciary's institutional capacity to effect and absorb change, and analyzed its strengths, weaknesses, opportunities, and challenges to reforms. The diagnostic studies undertaken by the Supreme Court included (a) an assessment of past judicial reforms; (b) a review of the criminal justice system; (c) a review of the alternative dispute resolution mechanisms; and (d) an assessment of the impact of judicial education and directions for change and development. These diagnostic studies revealed the nature, causes, and impact of strengths and weaknesses on the judicial system. They also established the foundation for the development of concrete projects and activities to realize the judiciary's vision.

A successful reform program must involve participation by the stakeholders. From the very beginning, Chief Justice Davide, whose leadership and political will largely made the reform program possible, insisted that the success of the program de-

## **The Action**

### **Program for**

### **Judicial Reform**

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**Evelyn Dum Dum**  
Program Director,  
Action Program for  
Judicial Reform (APJR)

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*Evelyn Toledo-Dum Dum is the program director of the Philippine Supreme Court's Action Program for Judicial Reform. Previously, she was a consultant to the World Bank. Ms. Dum Dum has two master's degrees in management from the University of the Philippines. She has two bachelor's degrees (A.B. Social Science and B.S. Foreign Service) both from the University of the Philippines.*

pendent on how the Court could manage, combine, and synchronize the efforts of the judiciary and its stakeholders.

The success of judicial reforms depends partly on the perception of the public and the legal community. The Court conducted perception surveys that gauged how judges, court personnel, and external stakeholders viewed the gravity of the problems with the judiciary. These surveys included: (a) a survey of private legal practitioners to monitor access to justice by the disadvantaged; (b) the 2003 assessment of the public attorney's office; (c) the national survey on inmates and institutional assessment; and (d) a survey on the state of the legal profession and the state of the judiciary.

In order to make the most of technical assistance and funding donations for judicial reforms, the reform program must effectively coordinate with and manage contributions from donors. Many donor institutions assist the Supreme Court in implementing its reform projects. These include the Asian Development Bank, World Bank, United Nations Development Programme, Canadian International Development Agency, Australian Agency for International

Development, US Agency for International Development, and The Asia Foundation.

There must be a global perspective to implementing reform programs. A comparative analysis of the successful reform programs of other countries helped the Philippine Supreme Court develop its own program. The Court also avoided costly reform pitfalls by drawing lessons from relevant international experiences and practices.

The APJR articulates certain considerations that should guide program implementation to best achieve the programs goals. The factors identified are as follows:

- a. Reforms must restore public trust and confidence in the justice system;
- b. Reforms will require significant resources, but will be implemented and pursued within the context of severe national government resource constraints;
- c. Judicial independence will be pursued in a traditionally centralized environment;
- d. The judiciary must take the lead in pursuing, synchronizing, and sustaining the various reforms, several of which will require administrative cooperation with other departments and sectors;
- e. Reform implementation must be programmed in accordance with the capacity for change by the judiciary and its stakeholders;
- f. The judiciary must ensure continuous development and the institutionalization of capacities in order to sustain the gains made by the reforms; and
- g. Reforms will require top-level support and commitment within a political environment where achieving broad and continuing consensus require persistent efforts and where there is inadequate appreciation of the role of the justice system in socioeconomic development.

The implementation of judicial reforms is expected to lead to a well-functioning judicial system, which is efficient and fair, accessible and transparent, and independent and autonomous. In turn, this is expected to lead to a socioeconomic environment that is stable and predictable, which are the basic requisites for both domestic and foreign investors to invest in the Philippines. The comprehensive approach taken by the



APJR and the support of many of our leading justices form a solid foundation for systematic reform of the judicial system in the Philippines.

## Challenges in Implementing Access to Justice Reforms in Bangladesh

MOUDUD AHMED

*Minister of Law, Justice and Parliamentary Affairs, Bangladesh*

**T**here is a nexus between an effective and meaningful legal system and a country's economic growth. One cannot speak of good governance without the rule of law, and one cannot speak of the rule of law without having an effective legal system. Bangladesh has seen many significant judicial reforms and has successfully dealt with some of the challenges facing those reforms. The backlog of cases has become smaller and cases are being processed more quickly, but there is still much work to be done to improve the criminal justice system and increase judicial independence and accountability.

### Speedy Implementation of Justice

In Bangladesh, there are about one million cases pending for resolution. Of these, about 550,000 are criminal and 450,000 are civil cases. Ninety percent of the total cases are pending in the subordinate courts while the remaining ten percent are pending before the either the High Court or the Appellate Division of the Supreme Court.

Formerly, criminals were not deterred by the possibility of punishment because investigations and trials were lengthy and not certain to result in convictions. This perception no longer exists, due to newly introduced speedy trial courts for minor offenses, and speedy trial tribunals for major

offenses such as murder, rape, drugs, illegal arms, and explosives. In the last eighteen months, these tribunals have disposed of 500 cases and 186 people were sentenced to death. The average length of time needed to dispose of a case has been reduced from five to seven years to five to seven months. This represents a fantastic success.

The success of the efforts to speed resolution of criminal cases was due to an accountability program and to the formation of special courts to systematically process specific types of cases. The judicial accountability program requires a judge to report in writing to the Supreme Court every time he does not dispose of a case within a time frame provided. Similarly, the prosecution and the investigating officers must answer to their superiors if they are unable to prepare a case to be tried before the court in keeping with the schedule. The new criminal courts for minor and major offenses do not handle any other cases. As opposed to traditional district level courts, in which a judge tries all kinds of cases, these specialized courts only try a particular type of case so that they can systematize their processes for greater efficiency. In addition, unlike the typical lower courts that enjoy a one-month vacation in December, these tribunals remain open and continue to try cases throughout the year.

### Focus for Further Reforms

Despite the progress the judiciary has made in processing the backlog of cases and speeding up the litigation process for new cases, there are many reforms that still remain to be implemented, including improving prosecution for criminal trials and improving judicial independence and accountability.

### IMPROVING CRIMINAL JUSTICE DELIVERY

The criminal justice system in Bangladesh requires reform in four major areas: investigation, witness protection, prosecution, and trial. Criminal investigations should not be the responsibility of the already overburdened police force, but should be allocated to a separate, independent and professionally trained investigation department. Members of this department may come from the police force but would not be assigned routine police work. These investigators would be able to focus all their time on assembling

**Lawyers in Bangladesh were originally resistant to the introduction of alternative dispute resolution (ADR) mechanisms in family courts; however, after months of workshops and seminars, they began to accept the new mechanisms.**



Anamul Haque Arnan

**After ADR was successfully introduced in the family courts, it was introduced in the civil courts.**



**Moudud Ahmed**  
Minister of Law, Justice  
and Parliamentary  
Affairs, Bangladesh

**“Despite the progress the judiciary has made in processing the backlog of cases and speeding up the litigation process for new cases, there are many reforms that still remain to be implemented, including improving prosecution for criminal trials and improving judicial independence and accountability.”**

*Barrister Moudud Ahmed, M.P. is the Minister of Law, Justice and Parliamentary Affairs of the Government of Bangladesh. He was elected a Member of the Parliament five times (1979, 1986, 1988, 1991 and 2001). He has previously served as Vice President from 1989-1990, and Prime Minister and Leader of the House from 1988-1989 in Bangladesh. As Minister, he has held the following portfolios: Industries; Planning; Law, Justice and Parliamentary Affairs; Special Affairs; Energy, Water Resources, and Flood Control; Communication-Railways, Roads and Highways; and Post, Telegraph and Telephones. He was a Fellow at Queen Elizabeth House, Oxford University (1983); Harvard University Center for International Affairs, (1980-1981); Fairbank Asia Center (1988); and South Asian Institute, Heidelberg University (1976, 1980 and 1996). He has a B.A. (Hons.) and an M.A. from Dhaka University and is a Barrister-at-Law, Lincoln's Inn, England.*

evidence and completely thorough investigations. Witness protection programs are currently inadequate and must be expanded so that investigators and prosecutors can process cases more efficiently. The quality of prosecutors and trial judges must also be improved. In Bangladesh, the prosecutors are all politically appointed, so that new prosecutors are appointed every time there is a change of government. Hence, there is no continuity in service. The prosecutors have neither the necessary skills and training, nor the requisite accountability. A system in which prosecutors were permanent public servants that were educated, well-trained, and accountable to the system would provide better prosecutorial services than the current political-appointee system. Finally, trial judges would be better positioned to provide justice if they were independent from political influence.

Currently, the executive branch has influence magistrates exercising judicial functions.

**JUDICIAL INDEPENDENCE AND ACCOUNTABILITY**  
Although in Bangladesh magistrates exercising judicial functions currently belong

to the executive branch of government, the judiciary is otherwise fully independent from executive control. To ensure the separation of the judiciary from the executive, control of these magistrates must be transferred to the judiciary.

Independence of the courts does not mean, however, that the courts must answer to no one. Reform efforts must focus on promoting judicial accountability in order to check judicial independence. Article 102 of the Constitution gives the High Court the power to interfere in actions of the other branches of government. The judges of the High Court are subject to disciplinary action taken by a Supreme Judicial Council consisting of the Chief Justice and the next two senior judges. However, in the last 34 years, only one judge has been removed from office. An effective accountability mechanism must be composed of members outside of the judiciary itself.

### **Challenges to Implementing Reforms**

The judiciary is particularly difficult to reform because it is one of the Bangladesh's most conservative institutions. There will always be a people who do not want change that might compromise their vested interests. Education of interested parties can often ease transitions to new systems. Lawyers in Bangladesh were originally resistant to the introduction of alternative dispute resolution (ADR) mechanisms in family courts, however after months of workshops and seminars, they began to accept the new mechanisms. After successful introduction of ADR in the family courts, it was introduced in the civil courts. It is also important to build positive public opinion before a law is introduced or amended. Consulting with stakeholders including lawyers, judges, civil societies, and non-governmental organizations involved with the justice system can be helpful for building widespread support.

In implementing new laws and reforms, it is important to remain open to suggestions and feedback from the judiciary and the legal community. For example, the Civil Procedure Code was amended to impose penalties on litigants who unnecessarily delayed cases by filing frivolous papers and pursuing empty allegations. Much of the time it takes to resolve a case is spent on interlocutory orders. The penalties were

## **One million**

The number of cases in Bangladesh that are pending for resolution.

## **500**

The number of cases have been disposed of in the last 18 months. The average length of time needed to dispose of a case has been reduced from five to seven years to five to seven months.

imposed to reduce interlocutory litigation and speed resolution of the primary suit. A penalty of 100,000 taka was imposed on a party found to have made false allegations based on falsified documents. A penalty of 50,000 taka was imposed on a party that obtained an injunction on a baseless claim, in addition to the defendant's right to sue for damages. Initially, critics of the new penalties maintained that they would frustrate justice. After the amendment was passed, the Ministry of Law held meetings and seminars with the district bar presidents, secretaries, and Supreme Court association presidents. While the discussions resulted in a reduction in the amounts of the penalties, the original principles were retained.

Legal reform always depends on the individual judges and lawyers for effective implementation. There must be support for the reforms from within the system if reforms are to succeed. The leadership of every district judge who has to implement a particular new law is important. System reform never brings quick results. A stable government that provides continuity of governance facilitates the process, and the longer the reforms are allowed to entrench themselves in the system, the more positive the net effects will be. The legal reform programs currently being implemented in Bangladesh aim to ensure access to justice: easy, inexpensive, and speedy justice in the courts.

## Challenges in Implementing Access to Justice Reforms in Pakistan

HON. SHAFIUR RAHMAN

*Former Justice, Supreme Court of Pakistan*

**L**aw reform in Pakistan has been a continuing process, which began long before the country's independence in 1947. The reform efforts can be divided into three phases: the pre-independence period (pre-1947), and two post-independence periods, distinguished by the amount of funding that

was available for legal reforms. From 1947–1997 funding for legal reforms was scarce, but after 1997 period substantial funds for legal reforms became available, culminating ultimately in the Access to Justice Program funded by the Asian Development Bank.

Before Pakistan's independence, the only significant law reform effort was the establishment of the Civil Justice Committee, headed by Justice George Clause Rankin, in 1923. Despite the Committee's report and the limited reforms that followed, the judiciary remained inefficient because the reforms were unable to speed the processing of cases to alleviate congestion in the courts. For the first fifty years after the nation's independence, funding for the judiciary was severely limited resulting in an inadequate number of judges, courthouses, and other support facilities. Large-scale reforms began only after 1997, when funding started to become more available. Initially, the reforms focused on the commercial sector, then they moved to the civil judiciary, before finally being consolidated in the comprehensive Access to Justice Program (AJP) that affects nearly every aspect of the judiciary.

### Retention of the Positive Elements from the Colonial System

Although the statutes and systems that were established during colonial rule are generally discredited, there are some good practices that should be preserved in our reform efforts. Part of the reform program should be to implement those positive aspects of the colonial statutes that have not previously been enforced. For example:

- *Inspections of the District Courts by High Court judges.* Despite the fact that existing law provides for regular court inspection, there are district courts that have not been inspected for over ten years. Although sporadic inspections sometimes take place, they are no substitute for regular inspections, which afford a High Court judge the opportunity to interact with the subordinate judiciary, the bar, the litigants, and the district bureaucracy.
- *Inspections of the courts by the presiding officer.* The current court rules require that in the year in which the High Court judge does not inspect the courts, the head of district judiciary, *i.e.*, the dis-

**Large-scale reforms began only after 1997, when funding started to become more available. Initially, the reforms focused on the commercial sector, then they moved to the civil judiciary, before finally being consolidated in the comprehensive Access to Justice Program.**



Muhammad Bilal

**Lawyers in Pakistan stand to benefit from the reforms under the Access to Justice Program.**



**Hon. Shafiur Rahman**  
Former Justice, Supreme  
Court of Pakistan

"Certain measures can be taken to ensure successful implementation of law reform, including providing secure tenure for judges, building capacity through training, improving public awareness, and improving internal accountability measures."

*Justice Shafiur Rahman served as Justice of the Supreme Court of Pakistan from 1979-1994 and Justice of the High Court of West Pakistan/Punjab from 1969-1979. His career in the civil service and the judiciary, which spans over five decades, includes stints as deputy secretary of the Home Department and Social Welfare Department of West Pakistan, registrar of West Pakistan's High Court, law secretary of West Pakistan, acting Wafaqi Mohtasib (federal ombudsman), member of the Pakistan Law Commission, and chairman of the Commission on Corporate Laws and Labor Laws of Pakistan. He has served as consultant to the Asia Foundation and the Asian Development Bank for technical assistance on legal and judicial reforms and the Access to Justice Program in Pakistan.*

strict and sessions judge, shall inspect each of the courts in the district in a similar fashion. In addition, the judge of each court in the district is required to inspect his court once in a quarter and submit a report to his superior.

- *Submission of statistical reports on court performance.* The abstract order sheet of all civil and criminal cases pending for over one year must be submitted by each court. Criminal cases that are pending for over four months have to be reported to the next higher authority. These statistics must be collected accurately and reported in the prescribed form in time to facilitate preparation of annual reports. These annual reports had ceased to be published after 1973 and were revived as part of the Access to Justice Program.

### **Challenges to Successful Implementation of Reforms**

Law reform involves more than simply passing new laws. However, the Pakistani attitude is that laws take effect immediately upon their placement in the statute books. Pakistanis often believe that after the law is changed on the books, nothing more must be done to ensure implementation, so that even statutory rules and regulations are unnecessary. In addition, it is believed that the

harsher the law, the more effective it will be in achieving its objectives.

These notions are, of course, mistaken. New and reformed laws are not automatically implemented. There are several reasons for this. First, the financial implications of new laws are frequently not thought through at the time the laws are drafted, and provisions are not made for the funds needed to implement the law. The department responsible for administering the law has to in all likelihood make do with insufficient resources, so that without additional funding, new laws will simply be ignored. Also, inadequate and poorly trained human resources prevent laws from being properly implemented. There is the lack of capacity to plan and utilize funds for the most optimal value. There is no scheme at either the federal level or at the provincial level to address the requirement of recruiting judges and staff and providing adequate working conditions for the subordinate judiciary. None of the courts have any recruitment policy extending beyond the next five to ten years.

Successful implementation of laws requires monitoring, evaluation, and performance review. However, no annual reports on the subject are published and no effort is made to elicit public opinion on law reforms.

The success of law reforms depends on consistency of vision within political leadership. However, neither federal nor provincial leadership has provided such a collective vision. Disparate incentives and institutional goals cause the head of each governmental body to pursue his own designs and priorities without coordinating with other governmental bodies. Furthermore, changes in office frequently mean changes in the vision of the political leadership. Accordingly, there is little continuity or consistency in the pursuit of reform programs and the prudent management of reform funding.

Nor has political leadership consistently supported reform efforts at all. Retired Chief Justice of Pakistan Ajmal Mian, in his book *A Judge Speaks Out*, noted his experience of political opposition to judicial reforms:

*On the basis of more than twenty-one years of experience as a member of the superior judiciary, I can say without any fear of contradiction that **none of the governments in Pakistan during my tenure wanted an independent judiciary...***

had asked the President and the Prime Minister to refer cases of judicial misconduct against the judges who did not enjoy a good reputation, but there was no response. It is, therefore, imperative to confer on the Supreme Judicial Council the power to initiate misconduct proceedings suo moto upon an application from an aggrieved party, provided the application is bona fide and is supported by reliable material, so that the judges of the superior courts may become accountable.<sup>1</sup>

Interference from the military has also impeded judicial reform efforts. For example, the military coerced resignations from a judge of High Court and from the Chief Justice of the same High Court, instead of seeking the appropriate institutional actions against them through the constitutionally established Supreme Judicial Council.

### **Suggestions for Successful Implementation of Reforms**

Notwithstanding the serious issues facing the judiciary in Pakistan, certain measures can be taken to ensure successful implementation of law reform, including providing secure tenure for judges, building capacity through training, improving public awareness, and improving internal accountability measures.

Judges, particularly of judges of superior courts, should be granted secure tenure. If judges are confident that they will retain their jobs, they will be more willing to implement reforms even in the face of opposition.

Capacity building is essential to sustainable law reform. Training and technical assistance by highly qualified and experienced professionals is required for (a) fund management of the Law and Justice Commission; (b) curriculum and training of the Federal Judicial Academy; (c) operational efficiency of the website set up by the Ministry of Law; (d) court management techniques; and (e) record keeping and automation.

In order to build public support for reforms and public confidence in the judicial system, the performance of the judiciary should be periodically disclosed to the public. These performance reports will encourage the judiciary's accountability to society. If a petition for review has remained

pending, unattended, in the highest court of the country for over 10 years, that fact should be disclosed to the public. Similarly, the judiciary should be placed under a statutory obligation to hold annual conferences and to publish periodic reports with regard to the accomplishments of and problems facing the law reform agenda, as well as the demands and working conditions of the judiciary. Dialogue among the members of the judiciary as well as between the judiciary and the public is necessary for a cooperative and efficient reform effort.

Finally, an effective internal grievance redress system should be instituted as part of the governance structure of the country. An accountability mechanism must be implemented both in the judicial sector and the rest of the bureaucracy to supplement public awareness and provide for public participation in the judicial reform process.

When these reforms are instituted, Pakistan will be much closer towards a smooth, well-functioning, effective and efficient judiciary.

## **Judicial Reform in Indonesia**

**HON. MARIANNA SUTADI**  
*Vice Chief Justice*  
*Supreme Court of Indonesia*

**T**he law enforcement system in Indonesia, from the police to the prosecutor to the courts, is perceived to be unjust and there is little public confidence in the legal system. In order to promote justice and public and investor confidence in the legal system, further judicial reforms must focus on strengthening judicial independence and accountability and improving trial procedures.

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Judges must uphold and exemplify the principles of judicial independence in both their individual and institutional capacities. The Bangalore Principles of Judicial Conduct<sup>1</sup> provides that judicial independence can be achieved by applying the following principles:

**The Supreme Court and civil society organizations (CSOs) have formulated "blueprints" for reform, which are supported by various donors, which are intended to facilitate implementation of the one-roof system within the judiciary.**

<sup>1</sup> AJMAL MIAN, A JUDGE SPEAKS OUT 347 (2004) (emphasis added).

**20,000**

The number of cases that are in the backlog of Indonesia's Supreme Court.

**80%**

The percentage of backlog that is made up of civil cases.

Measures to reduce the backlog include regulations on class actions and court affiliated alternative dispute resolution (ADR) that will provide other channels of adjudication to litigants to reduce crowding of the court dockets.

- A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason;
- A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate;
- A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom;
- A judge shall make decisions independent from influences of his judicial colleagues;
- A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary;
- A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, with the understanding that public confidence is a fundamental goal of judicial independence.

### Legislation Furthering Legal Reform

Legislation has been passed since 1999 to address 1) judicial independence, 2) trial procedures, and 3) corruption. In 1999, Law No. 35 was passed to amend Law No. 14 of 1970 on the Principal Provisions on Judicial Authority. This amendment established a "one roof" policy: resulting in the judiciary being removed from the control of the executive branch and placed under the authority of the Supreme Court. Even this transfer of authority, by itself, has been insufficient to restore public confidence in the judiciary.

Legislation has also been passed to promote access to justice by providing for improved trial procedures. Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP) and Law No. 35 of 1999 replaced legislation from 1970 and provide that the trial process must be conducted in a quick, simple, low-cost, open, honest, and impartial manner in all levels of trials.

Anti-corruption legislation has been passed as well. The Corruption Eradication Commission (KPK) proposed Law No. 30 in 2002, which mandated the establishment of the Anti-Corruption Court. This body specially designed to hear corruption cases handled by the Anti-Corruption Commission. The court has recently begun proceedings on alleged corruption in the procurement of military equipment. Other anti-corruption programs that have been implemented include: (a) training in anti-corruption techniques for the Anti-Corruption Court judges, prosecutors, and support staff; (b) the development of a recruitment system for Anti-Corruption Court ad-hoc judges; and (c) the preparation of a manual on the administration of the Anti-Corruption Court.

In order to increase public and investor confidence in the Indonesian legal system, judicial independence must be increased, trials must be made efficient and accessible, and corruption must be mitigated. The legislation passed in recent years is the first step, however. Further reform programs have been formulated and are in the process of being implemented.

### Implementation of Reforms

The Supreme Court and civil society organizations (CSOs) have formulated "blueprints" for reform, which are supported by various donors, which are intended to facilitate implementation of the one-roof system within the judiciary. These reforms address personnel issues, case management, and judicial accountability. The Supreme Court has established a secretariat and a judicial reform team responsible for coordinating and monitoring the implementation of the Supreme Court's comprehensive reform agenda. A Donor Consultation Forum acts to ensure that programs sponsored by international and multi-lateral organizations are coordinated with each other and the Supreme Court reform agenda.

The Supreme Court agenda on court and judicial personnel reforms addresses personnel organization, functions, recruitment, promotion and rotation, and judicial supervision, evaluation and discipline. The Asia

<sup>1</sup> THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002), available at [www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

Foundation and the Danish Government are supporting a program to develop a system of recruitment, promotion, and reallocation of judges.

The reform agenda addresses measures to promote access to justice by reducing the Supreme Court's backlog of 20,000 cases (80 percent of which are civil). These measures include regulations on class actions and court-affiliated alternative dispute resolution (ADR) that will provide other channels of adjudication to litigants to reduce crowding of the court dockets. Measures to improve the efficiency of the courts themselves include funding and support infrastructure, case management, and information management of the Court. To this end, the Asia Foundation and Asian Development Bank (ADB) are supporting the Supreme Court's efforts to establish an information management system for handling cases and to establish a managerial system for legal cases as they travel through the courts of first instance, appellate courts, and the Supreme Court.

The Supreme Court has strengthened internal and external oversight of individual judges' performance as well as institutional performance generally in order to improve accountability and transparency. Partnership for Governance Reform in Indonesia is supporting the development of an external control system for improvement of the supervision and control of the Supreme Court, as the policy was adopted through Law No. 22 of 2004.

### Challenges to Reform

The reform programs have internal and external support. The Chief Justice Bagir Manan has been effective in mobilizing stakeholders' support for judiciary reform within the judiciary. The strong partnership with CSOs to define and implement the reform agenda through the blueprints has consolidated support for reforms outside the judiciary.

Despite widespread support, the reform effort faces many challenges. The inertia of institutional culture, limited human resources, and the tsunami have all posed challenges to the speedy implementation of judicial reforms. The culture of reform within the judiciary has not been internalized. An important aspect of implementing reforms is to expose the judiciary to reform-

"Despite widespread support, the reform effort faces many challenges. The inertia of institutional culture, limited human resources, and the tsunami have all posed challenges to the speedy implementation of judicial reforms."



Hon. Marianna Sutadi  
Vice Chief Justice  
Supreme Court  
of Indonesia

LARRY RAMOS

*Ms. Justice Marianna Sutadi is the Vice Chief Justice of the Supreme Court of Indonesia. She began her 40-year career in the judiciary as a judge at the Jakarta Special District Court in 1964. She was promoted to Assistant Justice of the Supreme Court in 1981, and served as High Court Judge at the Tanjungkarang and Jakarta High Courts. She was appointed as Vice Chief of the Central Kalimantan High Court in 1993, and of the Tanjungkarang High Court in 1994. She was appointed Justice of the Supreme Court in October 1995. Justice Sutadi graduated from the Faculty of Law of the University of Indonesia in 1964.*

ist ideas and initiatives by disseminating information on all ongoing and planned reform activities to members of the judiciary. Lack of human resources and inadequate infrastructure limits the courts' capacity to implement the reform agenda. This constraint can only be resolved through continuing training for judges and other judicial staff tailored to meet the demands imposed by the reforms. Finally, the tsunami disaster on 26 December 2005 in Aceh has further slowed judicial reform efforts. Now, in addition to the nationwide reform programs, the judiciary must divert extra resources to Aceh, where the court system must be completely rebuilt. The Supreme Court has taken initial steps towards addressing this urgent problem, stretching the already limited resources of the judicial system even thinner.

Reorganization and reformation of the judicial infrastructure takes time. The implementation of the one-roof system, which was initiated in 1999, took five years. We cannot expect changes to happen quickly, and must persevere with the reform agenda even if we do not experience immediate results.

### Conclusion

The pursuit of the goals set forth in the Supreme Court's blueprints is an essential first step in achieving an independent, modern, ethical, transparent, and participative judicial framework. In implementing the blue-

**First, corruption within the Attorney General's Office (AGO) must be eliminated, because such internal corruption renders law enforcement ineffective. Second, the AGO must be mobilized to fight corruption throughout the country, and bring to justice the worst offenders.**

prints, priority should be given to those goals that will have an immediate effect on the development of an independent and impartial court. This can be best achieved by the establishment of an external supervisory mechanism, as is currently being pursued by the Partnership for Governance Reform. The Supreme Court should also continue to partner with CSOs and reform-minded academic circles so they can consolidate their expertise and experience in implementing the reform agenda.

## **Reform Developments in the Attorney General's Office of Indonesia**

**MAS ACHMAD SANTOSA**

*Adviser, Partnership for Governance Reform in Indonesia*

**P**ublic expectations for Indonesia's public prosecutor's office Attorney General's Office (AGO), are focused on the elimination of corruption on two fronts. First, corruption within the AGO must be eliminated, because such internal corruption renders law enforcement ineffective. Second, the AGO must be mobilized to fight corruption throughout the country, and bring to justice the worst offenders, who have embezzled government funds and adversely affected the image of the Republic.

The AGO has four plans of action to meet these public expectations:

- a. To intensify the investigation and prosecution of corruption cases throughout Indonesia;
- b. To review all cases that have ended in an order to stop the investigation or prosecution and expedite the enforcement of all cases that have attracted public attention;
- c. To promote internal reform within the AGO; and
- d. To push forward the establishment of

the independent prosecutorial commission as a part of the effort to develop an external control mechanism for the AGO.

Internal reforms in the AGO will address public demands to establish an ethical, transparent, participatory, and accountable public prosecutor. The ADB-funded Governance Audit of the Public Prosecution Service, as well as the National Development Planning Agency's national plan of action for combating corruption, will provide findings and recommendations that will form the basis for AGO reforms.

A prosecutorial commission has been proposed. If the President establishes the Commission, it will act as an external oversight body that will supervise and enhance the AGO's performance. The Commission will monitor and evaluate organizational conditions within the AGO. It will supervise and evaluate prosecutors' conduct and make recommendations for reforms.

The AGO has involved independent legal experts and CSOs in two task forces: the task force handling corruption cases and the task force for internal reform agenda. There are also plans to include CSO members and independent experts in the selection committee of the Prosecutorial Commission. This multi-lateral strategy is similar to Chief Justice Manan's approach to defining and implementing the judicial reform agenda with the involvement of non-governmental organizations (NGOs).

NGOs working on the judiciary reforms formed a coalition called NGOs' Coalition on Judiciary Monitoring. The NGOs' involvement in the reform agenda included: (a) providing technical assistance, including consulting service; (b) drafting Supreme Court regulations and developing blueprints for reform; (c) compiling comparative research on certain legal issues such as class action suits and court-affiliated ADR; and (d) participating in the selection process of justices. For example, there is a civil society representative in the selection committee of *ad hoc* judges for the Anti-Corruption Court. The NGOs also act as watchdogs by examining court decisions that trigger public controversies and investigating candidates for appointment as justices or as members of the judicial commission. In sum, NGOs have had a significant role in promot-



ing judicial reforms and supplementing the pro-active role and leadership of the Supreme Court. The involvement of independent experts and CSOs in the AGO reforms should likewise promote the efficacy and sustainability of the reform projects.

The multi-tiered AGO reform agenda, in conjunction with the proposed prosecutorial commission, will do much to combat both corruption that is internal to the AGO and corruption in the rest of the government. Reforms that can make strides against corruption and improve the law enforcement conditions in Indonesia will succeed in responding to public demands and meet public expectations for the AGO and law enforcement in Indonesia generally.

“The Attorney General’s Office has involved independent legal experts and CSOs in two task forces: the task force handling corruption cases and the task force for internal reform agenda.”



Larry Ramos

**Mas Achmad Santosa**  
Adviser, Partnership for  
Governance Reform in  
Indonesia

*Mas Achmad Santosa is an Adviser for Legal and Judicial Reform in the Partnership for Governance Reform in Indonesia, a non-governmental organization set up by the government of Indonesia and the United Nations Development Program (UNDP), which is mandated to promote governance reform in Indonesia. He is involved as an advisor in various efforts to reform the Supreme Court (Mahkamah Agung) and the Attorney-General’s Office (AGO). Besides his teaching activities in the Law School at the University of Indonesia, he is also involved in various NGOS, working for legal and judicial reform as founder and senior researcher in the Indonesian Centre for Environmental Law (ICEL), as well as the Indonesian Institute for Independence of Judiciary (LeIP), the National Consortium on Legal Reform (KRHN) and the Indonesian Institute for Conflict Transformation (IICT). He is also currently a member of the Governing Board of the Indonesia-Australia Legal Development Facility (IALDF).*

## OPEN FORUM

# On Enhancing the Effectiveness and Accountability of the Judiciary

### Judicial Independence and Accountability

#### REGION-WIDE OBSERVATIONS:

- The general public has little or no confidence in the judiciary.
- Even well-connected investors are extremely frustrated with unpredictable investment climates caused by the unpredictable and inefficient judicial system.
- Developing countries cannot achieve sustainable economic growth, which is the key to poverty eradication, without a well-functioning, efficient, and honest judiciary.
- Increasing judicial independence and accountability can transform judicial systems and provide the foundation for sustainable economic growth.

#### CHALLENGES TO INCREASING JUDICIAL INDEPENDENCE AND ACCOUNTABILITY:

- Analytical studies and recommendations alone do not guarantee implementation of reforms.
- Without a stable, democratic, and clean political system, it is hard for the judiciary in any country to avoid government interference.
- Judicial independence requires:
  - o **strong leadership** within the judiciary to overcome day-to-day interference from outside forces and withstand the onslaught of vested interests;
  - o **financial independence** in order to avoid improper political influence and manipulation achieved through budgetary pressure; and
  - o **administrative support** to maintain functional independence from the other branches of government.
- Members of the judiciary must be held accountable to an entity within the democratic institution, for example: the parliament or civil society.
- A judicial ombudsman could be established to monitor the justices, as an alternative or supplemental

accountability mechanism. There are, however, in certain jurisdictions, constitutional provisions that ensure the independence of the judiciary, which may limit the scope or prohibit such establishment entirely.

### **Networking among Regional Judiciaries**

- The Philippine Supreme Court, in cooperation with the World Bank and ADB, is organizing a regional conference for members of the judiciaries, law professionals, and heads of judicial academies. The conference aims to facilitate the sharing of information and experiences about judicial reforms among the various judicial systems and jurisdictions. The conference presupposes that:
  - o a functional and efficient judiciary is a necessary component of good governance and a precondition for sustainable economic development, and
  - o the participating countries are all engaged in efforts to reform their judiciaries and legal systems with the same guiding principles in mind.



**Networking among regional judiciaries results in the identification of strategies for increased judicial effectiveness and accountability.**

# Chapter 6

## Operational Challenges in Judicial Reform

### ■ Plenary Report

- Funding the Judiciary and Judicial Reform
- Judicial Ethics and Competence

### ■ Case and Case Flow Management

- Case and Case Flow Management in Islamabad
- Peshawar Solutions to Case and Case Flow Management
- East Karachi Operational Practices and Procedures to Case and Case Flow Management
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### ■ Improving Court Registries and Process Service

- Challenges to Improving Court Registries: The Peshawar Context
- East Karachi Strategies for Improving Court Registries
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## Plenary Report on Operational Challenges in Judicial Reform

### A. Funding the Judiciary and Judicial Reforms

- Participants shared individual country experiences in judiciary funding and reform; identified common practices and issues related to judicial funding and judicial reform financing; discussed reform goals, objectives and priority reform areas; and agreed on a set of shared principles and approaches that could guide country-specific reform initiatives.
- Participants highlighted the ways in which judiciaries are currently funded; the mechanisms that determine funding levels and structures; the institutional processes by which funds are remitted to or collected by the judiciary; the accounting and reporting of judicial funds; the factors that influence judicial independence, both institutional and individual, including: integrity, vulnerability, accountability, and efficiency of internal resource management; and sources of funding for the judiciary, including: budget from the national or local governments and grants or loans from donor or lending institutions.
- They also discussed matters relating to national and local judicial budgets.
  - o In most countries, the judiciary's budget is proposed by the national or local executive department, and approved by national or local legislature, respectively.
  - o Different budgets are allocated for the superior or high courts and the lower or district courts.
  - o Funds are released by the finance department of the relevant country or province.

Participants shared individual country experiences in judiciary funding and reform; identified common practices and issues related to judicial funding and judicial reform financing; discussed reform goals, objectives and priority reform areas; and agreed on a set of shared principles and approaches that could guide country-specific reform initiatives.

### **Challenge: Dependence of the Judiciary on the Executive**

If the judiciary is not a high priority for the government, dependence of the judiciary on the executive can cause the judiciary to be under-funded.

- Some countries have adopted judicial budget laws that allow courts to submit their own budget independent of the executive department.
- A supreme court budget council, including both finance and justice ministers, discuss budget proposal and settle on the appropriate judicial funding and allocation.
- The judiciary's direct participation in the drafting of its proposed budget has resulted in improved funding for the courts.
- International donations as supplemental judicial funding:
  - o Funds are not given directly to the courts, but to the implementing partner agency, usually a civil society organization.
  - o Donated funding is frequently earmarked for programs that have not been allocated money in the government budget.
  - o Lack of coordination between the governments, donor institutions, and the judiciary can result in inefficient funding decisions. In some cases, certain judicial programs can receive budgetary allocations and grants that overlap, while other programs remain under-funded.
  - o There needs to be better communication between governments, donor institutions, and the judiciary regarding the precise funding needs of the judiciary.
- The auditor general periodically audits funds that have been released to the judiciary and reports on excess resources and irregularities. Both governmental funding and donor funding which is processed through government channels, as was ADB's Access to Justice Program in Pakistan, are also subject to the same audit procedures.
- The highest court has fiscal independence, in some countries. Therefore, the chief justice is entitled to reallocate the funds as needed, in accordance with the needs of the judicial districts, its leaders, and the allocated budget. However, in practice, the delays in processing reallocation requests can result in delayed release of funds.
- Under-funding of judicial efforts is a major concern among the participating countries. The governments of the participating countries frequently do not fully appreciate the link between the judiciary and economic development, so that they do not consider funding judicial reforms as part of a long-term development agenda.
- Funding is not the only factor—political will and proper incentives within the judiciary are equally important to ensure the success of a judicial reform program.
- In discussing strategies to reform judiciary finance, the country representatives (a) defined the reform goals and objectives; (b) discussed guiding principles; (c) addressed reform directions; and (d) discussed areas for reform.

### **Proposed Solutions**

- The judicial budget should be made a priority for development funding. Additionally, higher budgetary allocations for the judiciary should be granted so it has the resources to better address the problems of case congestion and delay by increasing the number of courts and judges. To ensure that governmental funding for the judiciary is released regularly, the adoption of automatic remittance mechanisms was suggested.
- Loans intended for the judiciary should be released to the beneficiaries efficiently and there should be no unnecessary intervention by government bureaucracy.
- The judiciary should be allowed to retain, for its own use, legal fees and charges paid by litigants as a way to provide courts with an independent source of funding.
- Coordination between donor institutions and state budget ministries should be facilitated to avoid the difficulties arising from conflicts between the government's fiscal year and the donor's project schedule.
- The judiciary should be granted control over its budget proposal and approval process.
- Executive discretion in determining the judicial funding and distribution of resources within the judiciary should be removed.
- A separate and independent judiciary should be established, both for purposes of case adjudication and also for internal affairs management.
- The judiciary's resource management, capacity, and efficiency should be improved.
- The support of the local governments for judicial reform programs should be obtained.
- The increasing case load of courts should be managed.
- Public access to the courts should be increased, particularly for disadvantaged and vulnerable groups.
- Bar associations, business organizations, non-government organizations, and the media should be involved in efforts toward judicial reforms.

## **B. Judicial Ethics and Competence**

- The session aimed to discover, compare, and evaluate current judicial practices and reform programs; provide suggestions for improvement; and identify best practices in the region.
- Participants tackled the recruitment and selection of judges; improvement of court services; corruption; and grievance mechanisms citizens can access to report unethical judicial behavior.
- It was noted that judicial systems across the region shared common issues:
  - A large number of vacant judgeships in the courts existed in many jurisdictions.
  - Internal resistance to assessment and evaluation was also common.
  - There is a lack of standardized qualifications and competencies for judges, as well as a merit-based system for the assignment and promotion of judicial officers.
  - Delegation of judicial authority to unqualified subordinates was common, as was corruption in the handling of cases. Moreover, consultations with stakeholders were marred by political interests across the region.

### **Proposed Solutions**

- A fair, competitive examination conducted by supreme courts, judicial organizations or bar associations should be institutionalized. This would promote a transparent and merit-based selection and recruitment process at the foundation of the legal system.
- A regular and rigorous evaluation system for judges and court personnel to evaluate their fitness for service based on competence, intellectual ability, behavior, and attitude was also recommended.
- Best practices need to be identified and modified for each jurisdiction's respective situation.
- Intensive training should be given to court personnel upon recruitment.
- Judges and court personnel should be provided with continuing education, training, and exposure to conferences, symposia and opportunities to dialogue with judicial officers of other countries so that they can be informed of new laws and procedures and become familiar with best practices.
- Merit-based promotions should be institutionalized.
- The delegation of authority to unqualified subordinates should be avoided.

**At the time of our assessment, there were certain judiciary districts where each judge had 300 to 400 cases pending before him, while there were other districts where each judge had as many as 900 cases on his docket.**

**In Pakistan, effective case and caseload management strategies have successfully reduced cases pending before the courts.**

Muhammad Bilal



## Case and Case Flow Management

### Case and Case Flow Management in Islamabad

HON. MIAN SHAKIRULLAH JAN  
*Judge, Supreme Court, Islamabad*

**W**hen I was a practicing attorney, I represented litigants who complained about the long delays of their cases. I resolved that if I ever had the opportunity, I would improve case flow management in the courts to alleviate these unnecessary delays. In January 2002, around the same time that the Asian Development Bank (ADB) sponsored its Access to Justice Program in Pakistan, I was appointed Chief Justice of the North-West Frontier Province. As Chief Justice and with generous resources from ADB, I had just the opportunity to make a difference by helping to solve the problems with case flow management in the Pakistani court system. Our efforts at case flow management, including the establishment of specialized courts to adjudicate specific types of cases, resulted in a reduced caseload across the courts in Pakistan.

### Analysis of Case Load and Allocation of Resources

At the time of our assessment, there were certain judiciary districts where each judge had 300 to 400 cases pending before him, while there were other districts where each judge had as many as 900 cases on his docket. This unequal distribution of cases could not be resolved by transferring cases from one district to another; so we transferred judicial officers from one district to another.

Based on the Law Commission's target caseload of a maximum of 450 cases per judge, we calculated the number of additional judges needed to cope with the current caseload based on the current number of judges and cases pending. We found that there were thirty va-

cant posts for judicial officers available in the provincial judiciary that could be leveraged to decrease some of the case backlog in the district courts. Following the proper procedure for the appointment of judicial officers, we approached the Provincial Public Service Commission to request that the posts be filled but we were informed that it would take about two to four years to fill all the vacancies. In view of the huge number of pending cases, the court system could not afford to wait. However, just at that time ADB released the Access to Justice Project funds to the federal government and subsequently to the provincial government. These funds enabled the creation of approximately fifty new civil judgeships and fifty-seven additional session judgeships. Every appointment was made according to established procedures and the process was transparent.

With the understanding that judicial officers alone cannot change the system, we focused on ensuring the quality of ministerial and administrative staff. Our work began with framing recruitment rules for the ministerial staff. According to the rules, the selection committee was to be composed of the (a) district judge as the appointing authority, (b) one of his nominees, and (c) one nominee of the high court.

Although it was not possible for us to create many new ministerial posts with the allocated budget, we were able to post one officer as additional Member Inspection Team (MIT). We upgraded some ministerial staff posts in the High Court and transferred competent judicial officers to the MIT.

In addition to the redistribution and increases in staffing resources, we supplemented facilities and technical equipment. We provided the district judiciary with equipment, such as computers, air conditioners, furniture, fax machines, and photocopiers, all of which was procured with funds provided by ADB. We also established fully-equipped district libraries and conference rooms in various districts.

### Incentives and Performance Review

In an effort to foster involvement by the individuals in the reform process, we conducted provincial judicial conferences and workshops. We attended district judicial conferences and spoke with judicial officers the problems they face in their courts

and actions they have already taken to solve them. These interactions show respect for judicial officers, who in turn take a greater interest in the reforms they feel they are helping to shape. In a similar vein, we constituted a district criminal justice coordination committee, the citizen liaison committee, and the bench-and-bar committees. These committees enable cooperative efforts in reducing case delays.

A rewards program was drafted with awards, certificates, and pay increases given to judicial officers who have performed well. At the same time, we lobbied for increased compensation for judicial officers across the board. It was proposed that the salary of a civil judge, which averaged approximately 27,000 Pakistani Rupees (PKR) in 2002, be raised to a *minimum* of PKR 27,000. There were certain objections to this proposal because the maximum salary for a district judge was about PKR 40,000 or PKR 50,000. There was fear that other civil servants of the same grade would also demand the salary increase. A proposal to change the grade of judicial officers was made, but rejected because the change in grading system would effect other allowances that the judicial officers are entitled to. Ultimately, it was decided that a monthly judicial allowance be allocated to the judicial officers, in addition to the allowance to which they are already entitled as civil servants. We also established a judicial welfare fund and are now planning a retirement system for judicial officers.

Incentives and rewards for good performance must be accompanied by accountability for poor performance. In order to improve performance review and accountability, we strengthened the office of the MIT. The MIT monitors court performance by conducting confidential annual reviews of judges and investigating complaints from the public against judicial officers. Procedures for a grievance committee to address such complaints were drawn up. We also launched a monitoring and evaluation system whereby all the judicial officers are expected to report their compliance and follow-up actions with respect to the implementation of reforms.

### Uniform Policies

Judicial officers and administrative support staff need uniform policies to implement

“As Chief Justice and with generous resources from ADB, I had the opportunity to make a difference by helping to solve the problems with case flow management in the Pakistani court system. Our efforts at case flow management, including the establishment of specialized courts to adjudicate specific types of cases, resulted in a reduced caseload across the courts in Pakistan.”



Hon. Mian Shakirullah Jan  
Judge, Supreme Court  
Islamabad

Larry Ramos

*Justice Mian Shakirullah Jan was appointed as Chief Justice of North West Frontier Province (NWFP) High Court of Pakistan on 10 January 2002 and was elevated as Judge of the Supreme Court of Pakistan on 31 July 2004. He was an Advocate of the Lower Courts in 1973; an Advocate of the High Court in 1975 and an Advocate of the Supreme Court in 1980. He was a Member of the Executive Committee, Supreme Court Bar Association of Pakistan in 1993-94 (elected unanimously); member of the Provincial Bar Council, NWFP, Peshawar for the period 1989 to 1993 and Chairman of Free Legal Aid Committee of the Council for 1990 (elected unanimously). He was Additional Advocate General NWFP from July 1993 until his elevation as an Additional Judge of Peshawar High Court on December 13, 1993. He graduated from Islamia College, Peshawar and obtained a Law Degree from the Khyber Law College, Peshawar University in 1972.*

reforms consistently. During our inspection, we found that while there was a policy governing the handling of civil cases, there was no counterpart policy for criminal cases. We framed and revised a policy on the procedural aspects of criminal cases. At the same time, we also issued a schedule for a program to reduce case delays. According to this policy, the oldest cases will be given priority, and hearings will proceed two days a week in order to speed the resolution of older cases.

### Results

At the end of my first year as Chief Justice, the number of appeals pending before the High Court was reduced from about one hundred to just fourteen. The remaining cases were left unresolved because they were not procedurally situated for disposition. We launched cooperative efforts for reform, made good use of the funds made available by ADB to increase human resources and facilities, and analyzed the case

One of the challenges to effective case management in the Peshawar District, specifically, is the weak institutional framework of the court system. Unlike Australian or American courts, there are no statutes or consolidated, institutionalized rules that regulate case and case flow management.

backlog with a view to reducing every court's caseload and maintaining lower caseloads in the future. Most importantly, we began efforts to reform the ways in which judges, court staff, and attorneys think about case flow management and set up the incentives and accountability mechanisms necessary to ensure the sustainability of our other reform efforts.

### **Peshawar Solutions to Case Flow Management**

**MUHAMMAD SHER SHAH**

*Registrar, Peshawar High Court, Pakistan*

**E**ffective case flow management is crucial to the reducing delays of particular cases, facilitating the expeditious disposal of cases on the court's docket, and streamlining court administration and judicial processes. Improved case and case flow management is important to fulfill the Pakistan constitutional requirement that the State shall ensure expeditious and inexpensive justice.

Part of Pakistan's Access to Justice Program (AJP) focuses on reducing delays in the processing of cases. Case delays can be mitigated by eliminating the backlog of pending cases and by reducing the case load of each court to a manageable size.

#### **Challenges to Case Flow Management**

One of the challenges to effective case management is the weak institutional framework of the court system. Unlike Australian or American courts, there are no statutes or consolidated, institutionalized rules that regulate case and case flow management. There are few rules that limit the amount of time allowable for each stage of a litigation, for example, the rule that witness lists must be submitted within a determinate number of days after the filing of written statements. There is no systematic docket, and in each case at the High Court level, the assigned docket number changes with every hearing.

Another challenge to effective case management is the need to strike a balance between the Court's speedy resolution of cases in order to meet their targets set by the High Court, and the need to enable litigants to

pursue their cases with the full assistance of their lawyers. There are an inadequate number of judges to dispose of the number of cases, but the quality of adjudication in each case must not be sacrificed simply to increase the number of cases processed.

The Code of Criminal Procedure (Amendment) Ordinance 2001 (Ordinance XXXVII of 2001) abolished the system of executive magistrates (officers of the executive branch who heard and decided cases in a quasi-judicial capacity). All cases pending before the courts of the executive magistrates were transferred to the judicial magistrates, drastically increasing the judicial magistrates' case loads without providing them with increased capacity. The North Western Frontier Province (NWFP) does not have any specialized civil, criminal, family or landlord-tenant courts to ease the case load in the primary courts and provide fora where judges with specific training in particular areas of the law can utilize their expertise in facilitating the flow of cases.

Lack of training facilities and administrative and technological support further hinders the adoption of modern case flow management techniques. Judges lack case flow management skills to enable them to dispose of cases in a timely manner and avoid backlog. The lack of administrative support and the lack of information technology facilities result in courts without automated systems to ensure the uniform numbering of cases. The absence of standardized forms to facilitate the processing of cases institutionalized procedures for expediting the receiving and processing of documents also inhibit efficient operation. Both legal and administrative personnel require training in the use of case flow management software to enhance their capacity to assess the status of cases and take steps to streamline the calendar of the court.

Frivolous litigation tactics also contribute to delays in case processing. Sometimes entire cases are fabricated, and other times a genuine claim will be accompanied by baseless supplemental claims included to harass the other party.

#### **Reform Measures Undertaken**

The Peshawar High Court has implemented several reform measures in order to improve case flow management.



## CAPACITY BUILDING

As part of the Access for Justice Program, 107 new civil and criminal courts were established in major districts and the number of judges was increased. Newly recruited additional session judges and civil judges are receiving pre-service training while senior judges undergo in-service training. The judicial staff at both the High Court and district levels are also receiving training. Annual judicial conferences are being held to discuss the ongoing concerns of the judiciary.

## MONITORING AND INSPECTION

The Peshawar High Court conducted initial inspections of the courts and prepared a consolidated inspection report for circulation to all courts. This report informed courts of ways in which to monitor case flow and included standard checklists for cases of different types to be maintained by the courts and referred to at various stages of each case.

A standard Annual Work Plan was adopted for use by all courts. Each court is required to prepare an annual work plan for submission to the district judge who shall consolidate these plans for submission to the High Court. The Peshawar District Court has already submitted its work plan.

In July 2002, a Time-Bound Reduction Plan was implemented whereby each court was required to set a minimum number of cases to be decided each month. These projections and the quantitative disposal of cases are regularly monitored by the office of the Member Inspection Team (MIT), which also monitors certain sensitive cases, such as those of detained defendants that have not yet been tried and family cases. MIT officers assist in speeding the resolution of cases by, for example, placing calls to the court before which a detained defendant's case is pending to expedite the scheduling of the hearing.

## COMPLAINT AND GRIEVANCE CELL

A Complaint and Grievance Cell in the office of the MIT was established as an accountability mechanism to entertain complaints by parties against judicial officers and to address grievances about delay in the disposal of cases. Between July 2002 to December 2004, the new department received 2,804 complaints and fully addressed 2,039 of them.

"The reforms implemented in the Peshawar courts have proven to be extremely successful in reducing the backlog of cases.... [We] have now disposed of a full 75 percent of the entire backlog of cases four years old or older. In the past two years (2003–2004), the average rate of disposing of cases was 14 percent higher than the rate at which cases were filed. If this pattern continues, the backlog of cases will be completely remedied."

*Mr. Muhammad Sher Shah is the Registrar of the Peshawar High Court in Pakistan. He served as General Secretary of the District Bar three times and its President four times. He was appointed as Additional District and Sessions Judge in October 1993 until he was promoted to District and Sessions Judge in 2001. In June 2002, he was part of the Member Inspection Team in the Peshawar High Court until his posting as Registrar in November 2004.*



Muhammad Sher Shah  
Registrar, Peshawar  
High Court, Pakistan

LARRY RAMOS

## INCENTIVE AND REWARD POLICY PROGRAM

The Incentive and Reward Policy was introduced to foster healthy competition between judicial officers and motivate them to improve their performance. Annual salary increases and other monetary and non-monetary awards are given to judicial officers based on their performance in their monthly evaluations of the quantitative and qualitative disposal of cases and court management.

## EQUIPMENT

To facilitate case and case flow management, 155 courts were equipped with computers, printers, photocopiers, fax machines and other necessary equipment. To date, nearly half of the courts have been supplied with new equipment, and requisitions have been made to ensure that the remaining courts receive equipment as soon as it is available. People trained in information technology are also recruited to serve as support staff to the courts.

## BENCH-BAR LIAISON COMMITTEES

A Bench-Bar Liaison Committee has been es-

tablished in every district throughout the province. Each committee is headed by the district judge of that jurisdiction. Committee members meet quarterly to discuss strategies on how to improve judicial performance.

**CRIMINAL JUSTICE COORDINATING COMMITTEES**  
Criminal justice coordinating committees have likewise been established in each of the provincial districts. These committees are chaired by the district judge and staffed by the district police officer, the district jail superintendent, the district public prosecutor and the probation officer. They hold monthly meetings to discuss the issues related to the criminal justice system and create strategies to overcome them.

### **Conclusion**

The reforms implemented in the NWFP courts have proven to be extremely successful in reducing the backlog of cases. The courts have now succeeded in disposing of 89 percent of cases filed between 1971 and 1980, 81 percent of cases filed between 1981 and 1990, and 67 percent of cases filed between 1991 and 1999. Peshawar courts have now disposed of a full 75 percent of the entire backlog of cases four years old or older. In the past two years (2003–2004), the average rate of disposing of cases was 14 percent higher than the rate at which cases were filed. If this pattern continues, the backlog of cases will be completely remedied.

In accomplishing these reforms, NWFP courts relied on the committed leadership of the Chief Justice, and the multi-tiered program to educate and motivate judicial officers to mobilize to improve case and case flow management. The reform program engages every court in the province and is monitored very closely by the High Court. Due to the comprehensive approach and strong leadership, the NWFP reform program has been immensely successful in improving case flow management and ultimately access to justice.

## **Karachi East Operational Practices and Procedures to Case and Case Flow Management**

**HON. ZAFAR AHMED KHAN SHERWANI**

*District and Sessions Judge*

*Karachi East, Pakistan*

**J**udicial reforms to achieve access to justice are a crucial element of the agenda to encourage economic growth and alleviate poverty. The Asian Development Bank (ADB) has provided financial assistance to the government of Pakistan for a multifaceted judicial reform program. The improvement of case flow management in the courts is one of the central goals of the reform program.

Case flow management is the management of the continuum of processes and resources necessary to move a case from filing to disposition, whether this disposition is by settlement, plea, dismissal, trial, or any other method. The goal of case flow management is to expedite the disposition of all cases in a manner consistent with fairness to all parties; to enhance the quality of litigation; to assure litigants equal access to the adjudicative process; and to minimize the uncertainties associated with the processing of cases.

East Karachi has adopted a two-tiered approach to address the severe problem of case backlog in the courts of that jurisdiction. Not only must the current backlog of cases be disposed of as swiftly as possible, but effective case monitoring systems and accessibility of case information must be improved to maintain efficient case flow in the future. The first level of the program, which has already been completed, involved the definition of institutional goals and establishment of priorities. The second level, which is currently in progress, involves setting up an evolutionary information processing and dissemination model at District Level Courts.

### **Establishment of Goals and Priorities**

The first level involved the following strategies: (a) promoting a paradigm shift among the members of the judiciary; (b) prioritizing cases; (c) fixing time periods for the disposition of cases; (d) monitoring of the courts; and (e) consulting with the Bar.

**89%**

of cases filed between 1971 and 1980 that have been disposed by Peshawar courts.

**81%**

of cases filed between 1981 and 1990 that have been disposed.

**67%**

of cases filed between 1991 and 1999 that have been disposed.

The paradigm shift requires a change in the attitudes and approaches of the individual members of the judiciary and court staff. While such a shift is intangible and difficult to measure, it is nonetheless a fundamental element of implementing and sustaining any reform program. In the case of the East Karachi judicial reform program, the paradigm shift was achieved through dissemination of information on the programs accompanied by training. Judges were encouraged to welcome the reforms and provide assistance and cooperation to the new methods adopted to facilitate case flow. They were taught how to prioritize cases, beginning with the 30- to 35-year old cases that had been transferred from the High Court to the District Courts with the expansion of the latter's jurisdiction.

The program's goal was to clear the backlog within a period of two to three years. A workshop was held with members of the judiciary where it was jointly decided to clear the backlog at a rate of three percent per month. A time limit was fixed for the disposal of each category of case and steps were taken to ensure the implementation of the scheme. Judges have been monitored to ensure that they adhere to the statutory periods limiting the amount of time allowed to decide each type of case. For example, civil cases must be disposed of within eight months, rent cases within five months, and family cases within four months.

In addition to setting limits on the amount of time allowed for the disposal of each case, the program has introduced new scheduling practices. Previously, the general practice was for the court staff to fix the hearing dates. As a result, judges did not know how many cases were scheduled for a particular date nor did the staff know whether the judge was available on that date or not. Now, judges have become more involved in setting the schedule of cases and are required to maintain their own court appointment records. These new scheduling practices are intended to assure litigants and attorneys that cases will proceed as scheduled.

Judges and their staff are monitored to see that proper court procedures are observed. There are also regular consultations with members of the Bar who provided inputs on the reform programs.

After this program was followed in

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LARRY RAMOS

Hon. Zafar Ahmed Khan Sherwani  
District and Sessions Judge, East Karachi  
Pakistan

*Mr. Zafar Ahmed Khan Sherwani is a Districts and Sessions Judge of Karachi East, Pakistan. He was formerly Registrar, Special Courts for Speedy Trials, Home Department of the Government of Sindh. He was also Deputy Chief Planning, Emergency Planning Cell, Home Department and Member Inspection Team, then Registrar, of the High Court of Sindh. He was also involved in the Pilot Project of the Access to Justice Project of the Asian Development Bank.*

Karachi Central, the twenty-five judges assigned there were able to clear 70 percent of their backlog within thirty-two months. Two factors counteracted the positive effects of the reforms and prevented the backlog of cases from being disposed of as quickly as it could have been. First, several courts were vacant because the presiding judges had been transferred to new assignments. Second, extra-judicial duties performed by the judges, including the supervision of local elections, referendums, and general elections, prevented them from focusing all of their time on processing the backlog of cases. While it is an important function of the judiciary to ensure independent elections, it nonetheless affects the primary functions of the courts.

The same approaches and methodologies to address the case backlog were implemented in Karachi East. In thirteen months, 40 percent of the backlog was cleared. The number of pending cases was reduced from 12,961 to 10,389 as of 1 January 2005.

### **Improvement of Information Processing Techniques**

The second level of judicial reforms focuses

**The effectiveness of a court's caseload management often depends greatly on the character of the local legal culture and the attitudes and behaviors of private attorneys. Surveys show that many lawyers prefer good case flow management in the courts because it improves certainty within the system.**

on the introduction of improved information processing techniques.

The District Courts of Karachi East has embarked upon a groundbreaking program of automating its case flow management, using Case Filer, a state-of-the-art software application designed and developed by a Pakistani company. This system enables the court to automate case filing and tracking as well as to efficiently disseminate case lists and information related to specific cases. Case Filer allows litigants to make case inquiries via an information cell located on the premises of District Court East. Parties are now able to access searchable case lists, judgments and basic rules and procedures on the Internet.

An information technology training center was established to enable judges and their staff to receive basic training on computer applications and accessing customized court-related software. Private consultants were hired to conduct workshops and symposia on the use of technology to facilitate case and case flow management. The training center will train trainers for other courts as well.

A 50,000 volume law library has also been established to provide judges access to legal materials, including journals, as well as providing Internet facilities. Case law is available online and on CDs prepared by an electronic law journal. The library is run by staff who are available to assist with the electronic as well as the traditional resources. The library is available to all the judges in Karachi East, as well as to judges from other districts.

All the courts in the district, the information technology training center, and the library are connected by a local area network following the Integrated Information Processing Monitoring Model. Information at all levels about bar and court management is now available to court users, litigants, members of the bar, and judicial officers and staff. The general public can also access, first hand, current information about court rules, procedures, case lists, and any other matter concerning the courts through information kiosks. Parties may also file cases electronically by submitting forms available on the [www.karachieast.org](http://www.karachieast.org) online. Judges can use the One-Point Access to Information program to monitor all

courts through a single interface through the local area network. This makes it possible for judges to monitor the entire process and identify the cases that are not proceeding according to schedule.

The two-tiered program to alleviate case backlog and promote the speedy resolution of cases over the long term has already shown signs of success and promises to continue to improve the efficacy of the judicial system in Karachi in the future.

## **Case and Case Flow Management**

**RICHARD HOFFMAN**

*Consultant, The Asia Foundation*

Courts in Singapore, the Philippines, Pakistan and Bangladesh have all developed and adopted case and case flow management techniques, following the pattern established in North America and Western Europe. In Bangladesh, for example, the World Bank has developed a project to get an accurate count of the cases in every court so that judges will have complete information regard the cases on their dockets. The Asian Development Bank (ADB) is supporting preliminary work on case flow management in India, and the court system in Delhi is now in the second phase of that project.

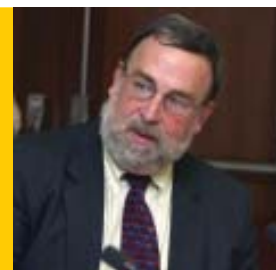
There are ten key elements to an effective case flow management program: (a) leadership; (b) clearly defined goals; (c) information; (d) communication; (e) clear policies and procedures; (f) education and training programs; (g) commitment by the administrative staff; (h) accountability mechanisms; (i) judicial responsibility and commitment; and (j) backlog reduction and inventory control. The effectiveness of a court's caseload management often depends greatly on the character of the local legal culture and the attitudes and behaviors of private attorneys. Surveys show that many lawyers prefer good case flow management in the courts because it improves certainty within the system.

Adopting case flow management principles is most effective when leadership within the courts and the judicial system support the reforms. Principles and proce-

dures for good case flow management cannot be imposed from the outside. Leadership within the judiciary and the wider legal community must appreciate the fact that proper case flow management does not sacrifice justice but enhances it. Good case flow management prevents unnecessary delays in litigation and ensures that cases are resolved while memories are fresh, evidence is available, and the parties are alive. In certain countries and jurisdictions, lawyers have been skeptical that case flow could be effectively managed. However, after the implementation of reforms, lawyers' behavior reflects their reliance on the certainty gained by way of case flow management. Attorneys no longer file cases unless they are ready to move to trial and disposition, for example. Case flow management is important not only because it ensures timely disposition of individual cases, but also because it can increase deference for the judicial system as a whole and mitigate frivolous litigation.

Institution of case flow management principles must be treated as a continuing process, and not as a one-time remedy. Programs for the adoption of case flow management principles must not only be piloted and implemented but also revisited and reinforced. When courts adopt case flow management principles, they must consistently review their performance in order to maintain the gains made by initial reforms. The biggest challenge is to institu-

“Case flow management is important not only because it ensures timely disposition of individual cases, but also because it can increase deference for the judicial system as a whole and mitigate frivolous litigation. ”



LARRY RAMOS

**Richard Hoffman**  
Consultant  
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tionalize the reforms process so that case flow management becomes entrenched in the judicial culture and incoming judges and administrative staff simply proceed with the reformed principles and procedures.

## Open Forum On Case and Case Flow Management

### Resistance to Case and Case Flow Management Reforms

- Participants expressed concern that judicial reform efforts might be met with resistance from the government and from the judiciaries and members of the bar.
- **Example: Peshawar, Pakistan.** The government in Peshawar, Pakistan initially resisted reforms, including the creation of additional posts and the grant of judicial allowances. Meetings between the reform program designers and officers of the provincial governments from the chief secretary to the lowest ranking official, led to agreement on the necessity of certain reforms.

### Donor and Recipient Nation Relations

- Donor nations and foreign institutions that promote and fund judicial reform programs might be seen to intrude on the domestic affairs of the recipient states and so undermine their sovereignty.

- Recipient states must remain sovereign and independent, and be allowed to implement reforms on their own.
- Rewards to recipient states for the successful implementation of reforms are acceptable, but imposing penalties for unsatisfactory implementation is more problematic.

### **Bench and Bar Resistance**

- In many South Asian countries, there generally is tension between the bench and the bar and common resistance to reform efforts.
- **Example: Delhi, India.** Case hearings are often postponed because the vocal and aggressive Delhi Bar treats adjournment of a case as a matter of right and not as a privilege.
- **Solution: Peshawar, Pakistan.** The Chief Justice visited each district to educate the judicial officers about the need to implement the judicial reform program, emphasizing that the delay in implementation of the reforms would be detrimental to the delivery of justice.
- Court representatives also met with members of the Bar to discuss the aims and purposes of the judicial reform program and obtain their cooperation, particularly in helping reduce delay in the disposal of cases. A Bench-Bar liaison committee was established to enhance the consultation process and encourage frequent dialogues between representatives of both groups.
- **Solution: East Karachi, Pakistan.** The Court obtained the cooperation of the members of the bar in implementing judicial reforms by fostering a shared sentiment that both the Bench and the Bar were working in the interest of justice. The benefits to the public were emphasized. Attorneys understood that reforms would facilitate their work, that speedy disposal of cases would expedite the payment of their fees, increasing attorney incentives to support reform efforts.

### **Implemented Reforms**

#### ISLAMABAD, PAKISTAN

- a. Annual district conferences were institutionalized and held in the frontier provinces to give the subordinate judiciary (i.e. district judiciary) an opportunity to convey their grievances to the High Court to which they report administratively.
- b. Grant funds were allocated for the Access to Justice Program and for the compensation and the establishment of a rewards program for judicial officers. Representatives of the 29 implementing agencies involved in the program management of the Access to Justice Program sat in the Project Management Unit for better coordination in the distribution of the meager resources.
- c. District criminal justice coordination committees, citizen liaison committees and bench and bar committees were established.
- d. An Annual Report was published that incorporates the opinion of the previous Attorney General (who was the representative of the High Court Bar Association) retired judges, previous judges of the High Court and other representatives of the bar association.
- e. A training program in case and case flow management was developed for lawyers and judges to be conducted by senior lawyers.
- f. Model districts in four provinces were established for identification and implementation of best practices to be replicated in other districts.
- g. Training programs in process service were established for judicial officers.
- h. A judicial welfare fund was established for judicial officers and staff.
- i. A retirement fund for judicial officers and staff is being studied.
- j. Fines are now being imposed for suits filed for malicious purposes or on frivolous grounds, or on the basis of false documents.
- k. Adjournments at each stage of a suit have been limited to three, and a fourth adjournment now merits the payment of fees to the other party. The judge would dispose of the case *ex parte* upon the fifth or sixth adjournment if the other party did not appear. Readmission of a case is no longer routine but allowed only upon payment of a fee.
- l. An *ad interim ex parte* injunction is now granted with the requirement that the application for injunction must be resolved within ten days of the appearance of the opposing party.
- m. Fully-equipped district libraries and conference rooms were established in various districts.
- n. A wireless system that facilitates the summoning of witnesses to criminal cases has been installed in some districts.

- o. Water coolers, washrooms, shaded areas, and fans were installed for litigants in consideration of the small and overheated courtrooms.
- p. Information kiosks were established in many subordinate courts to inform litigants about court procedure, filing fees, and hearing dates.

#### PESHAWAR, PAKISTAN

- a. Dialogues between members of the Bench and the Bar, and officers of the provincial governments, were held to get their cooperation to the implementation of judicial reforms.
- b. A Bench-Bar liaison committee was established.

#### EAST KARACHI, PAKISTAN

- a. An Annual Confidential Report (ACR)—a performance evaluation report and listing of all courts that performed well—was adopted.
- b. Sanctions and penalties have been imposed following disciplinary proceedings for judges and other court officers who receive poor evaluations.
- c. Training programs for lawyers were conducted by retired senior judges and senior lawyers.
- d. Bail fees have been lowered.
- e. Stay orders are no longer granted, except in the case of demolition and disposition.
- f. Amendments to the Code of Criminal Procedure and Code of Civil Procedure are being studied with the objective of disposing of cases expeditiously.
- g. The separation of criminal and civil courts is being considered.
- h. Establishment of a federal court to deal with highly technical cases, such as commercial law cases, is being considered.
- i. Implementation of programs for improved Bench-Bar relations has been commissioned.
- j. Shortening of process service has been commissioned.



## Court Registries and Process Service

### Challenges to Improving Court Registries and Process Service: The Peshawar Context

MUHAMMAD TARIQ

*Additional Member, Inspection Team,  
Peshawar High Court, Pakistan*

**C**ourt Registries in Pakistan perform different functions at the High Court and District levels. The High Court Registry, headed by the Additional Registrar, receives and evaluates documents submitted to the High Court for preliminary hearing. Also, when the cases are scheduled for a hearing, the Registry secures the attendance of the parties involved in the particular case. The High Court Registrar has certain judicial functions as well, including rejecting documents or ordering a dismissal

of a case where a party is in default. On the other hand, District Registries perform only non-judicial functions, including reviewing the compliance with the formal requirements for filing complaints, establishing and maintaining relationships between the court, the bar, and the public, and providing attorneys and litigants copies of orders and judgments.

Despite the fact that the High Court registry is stronger than the district registry, neither is well organized or properly equipped. They lack resources, equipment, and properly trained staff. Unlike their counterparts in developed countries, court registries in Pakistan have no formal organization relationships with the bar, media or civil society. Current reforms in Pakistan seek to address these problems:

- **Bench-Bar Liaison Committees (BBLC) and Citizen-Court Liaison Committees (CCLC)** have been established at the District Level to formalize the relationship between the courts, the bar, and civil society and expedite the disposal of cases.

**Unlike their counterparts in developed countries, court registries in Pakistan have no formal organization relationships with the bar, media or civil society.**





**Muhammad Tariq**  
Additional Registrar  
Peshawar High Court  
Pakistan

“It is interesting to note that a process server is called a *piada*, in Urdu, which means a *pedestrian, a man who walks on foot*. Part of the reform program includes providing process servers with vehicles to facilitate conveyance. Staff has been hired to strengthen the process serving agencies. The Peshawar High Court has held training sessions for process servers and bailiffs.”

*Mr. Muhammad Tariq is an Additional Member Inspection Team of the Peshawar High Court of Pakistan. He is a focal person for the Asian Development Bank-supported Pakistan Access to Justice Program, as well as an Additional District and Session Judge. He remains civil judge and magistrate and senior civil judge at different stations of the province.*

- **Information kiosks** have been placed in almost half of the districts of NWFP province so the public can obtain information regarding their cases.
- **An Office of District Court Administrator** has been planned by the Peshawar High Court. The pilot project, which is under review by the provincial government, will authorize one of the civil judges in each of the major districts to act as District Administrator.
- **Judicial training programs** have been initiated by the Peshawar High Court to build capacity and supplement the under-resourced Federal Judicial Academy, which lacks proper facilities but is currently the only judicial training institution in Pakistan.
- **Joint planning sessions** involving district judges, ministerial staff, and process serving agencies are being encouraged by the Pakistan High Court.
- **Computers and printers** have been provided to nearly half of the courts in Pakistan, and the remaining half will soon be provided these facilities as soon as funding becomes available. The computers are part of a larger plan under the Access to Justice Program to automate court processes, the first phase of

which involves the automation of the superior courts, followed by the district courts.

### Process Service

The provision of service of process in NWFP needs significant reform. Currently, the process serving agency is headed by the *Civil Nazir*, who is assisted by the *Naib Nazirs*, the bailiffs and process servers, who execute the court processes. While both process service for both civil and criminal suits needs reform, the remainder of the paper focuses on the civil aspect of service of process.

The ADB recently conducted a study on the challenges confronting process service. First, process servers tend to have a large workload and receive little compensation. Process servers rank as the lowest grade of government official<sup>1</sup>. Under the law and the high court rules, process servers are paid from the revenue generated by the process fees, which are very low. Process servers have insufficient logistical support. They receive little or no training, so that many do not know what a summons is when they begin work. The poor monitoring system compounds the problem. Further, there is a shortage of process servers.

Peshawar High Court has embarked on reform programs, taking into account the relevant existing laws and the ADB report and recommendations on process service. The Peshawar High Court has already amended the Civil Procedure Code and the High Court Rules & Orders. The remaining recommendations for reforms have been forwarded to the provincial government as well as the federal government, including a recommendation to upgrade the posts of process servers from Grade 1 to Grade 4, that of bailiffs to Grade 5, and that of *Naib Nazirs* to Grade 7. It is interesting to note that a process server is called a “*piada*,” in Urdu, which means “a pedestrian, a man who walks on foot.” Part of the reform program includes providing process servers with vehicles to facilitate conveyance. Staff has been hired to strengthen the process serving agencies. The Peshawar High Court has held training sessions for process servers and bailiffs. Each and every district has also been encouraged to hold its own training sessions at the district level. The monitoring system has streamlined the process of reporting. Each Senior Civil Judge justice



has been asked to send a monthly report on the performance of their individual process servers and actions taken against defaulting process servers, if any. The Peshawar High Court then issues a report about the performance of each process service agency of the province. During the past two years, forty process servers have been punished for default in executing the summons.

### **Karachi East Strategies for Improving Process Service**

**HON. ZAFAR AHMED KHAN SHERWANI**

*District and Sessions Judge  
Karachi East, Pakistan*

**T**he judicial system relies upon proper service of process to protect the due process rights of defendants. Current reforms in Pakistan aim to preserve defendant's rights by ensuring that service of process is carried out effectively and its integrity is maintained and protected.

The process service department of the police was transferred to the Deputy Inspector General Investigation Branch, headed by the Deputy Inspector General of the Police (DIP). A formal program involving all concerned district police officers was implemented to systematize process service in the district. The centralized process service division for criminal cases prepares a monthly report listing for each process service whether service was completed fully and whether service process was not successfully completely and why. Regular meetings are held with the DIP Investigation Branch to discuss the reports, evaluate the work of the process servers, and suggest means and procedures on how the process serving agency could be further improved.

The civil process serving agency was also centralized and extensive training is being provided to the bailiffs responsible for civil process service. Lack of proper training and systematized procedures resulted in unreliable process service and poor record keeping. The reliability of process service will be greatly improved if the bailiffs have formal schooling and are given proper training for carrying out their duties.

The first step taken in the Karachi district was to provide bailiffs with proper training by a competent judicial officer, typically the senior civil judge who is also in charge of the process service agency. These trainings teach bailiffs how to effect service appropriately and efficiently and prepare reports on effective and ineffective service. These reports require plausible reasons for the service that was not effective. Bailiffs are expected to submit a monthly efficiency report and are evaluated regularly. Complaints regarding allegations of corruption, inefficiency, or poor monthly reports will receive immediate administrative action.

The new agency infrastructure for civil and criminal process service along with the extensive training for the process servers themselves is the first step to ensure improved delivery of justice and protection of defendant's rights in Pakistan.

### **Improving Court Registries and Process Service**

**RICHARD HOFFMAN**

*Consultant, The Asia Foundation*

**E**very case starts in the court registry. The registry, also called the chancery or the clerk's office, receives, accepts, monitors and retrieves all the documents for every case. It conducts the initial review of a case, it monitors the progress of the case, and ensures the timely entry of all documents into a filing system, whether automated or manual. Automated data processing and electronic filing methods may improve case flow and efficiency more readily than manual registers. Manual registers make it more difficult to monitor cases and spot those that deviate from standard patterns in order to address issues in a particular case early and prevent long delays.

The court registry is in the best position to determine whether cases are proceeding on schedule and to detect which cases do not follow standard time patterns. The registry establishes the initial jurisdiction of the court by ensuring that the respondent or opposing counsel is properly notified. The registry can only perform this

**Service of process must be taken seriously as a fundamental element of the delivery of justice.**

**Pragmatic approaches are needed to improve the effectiveness and reliability of process service.**

**There are three principles for improving process service: notification, supervision, and information.**



function, however, if the judiciary treats it as a partner and entrusts it with the responsibility of monitoring the progress of cases and enforcing the policy of the court regarding the need for parties to proceed in a timely manner.

Further, the registry is often the first contact with the court system for many litigants. It must be available and capable to assist, but not advise, *pro se* litigants. The registry staff can facilitate the filing process to ensure that all documents are filed properly and timely. However, it is improper for the registry to provide legal advice. The registry also serves to protect judges from improper influences and communications by interposing a barrier to prevent parties and attorneys from having direct contact with judges. The focus of strategies to improve court registries should be on anti-corruption strategies to maintain the fair and equal treatment of each case.

### Service of Process

Service of process must be taken seriously as a fundamental element of the delivery of justice. Pragmatic approaches are needed to improve the effectiveness and reliability of process service. There are three principles for improving process service: notification, supervision, and information.

A model process service establishes the court jurisdiction over the responding party by properly notifying that party. The initial notification of the suit must be by personal service on the party, after which time, the opposing counsel can accept service. Personal service is the preferable method, but alternative means of service are acceptable

if the server can show that the party is avoiding service, including posting, mailing, and publication. In the future, electronic notice may be instituted to supplement or replace traditional mail.

Whether service is effected by bailiffs or other agents employed by court or by private process servers, effective court supervision is mandatory to prevent abuse. An integrated national system of process service can be established with proper court management.

Bailiffs must receive the proper training to ensure effective, efficient and timely service of processes. They should be educated to appreciate the nature and purpose of their responsibilities as servers of process and the importance of service within the larger context of the delivery of justice by the court system.

There has been increased interest in outsourcing this function to private providers. Properly organized and administered, the function can be performed well by non-court personnel but the court, normally through its administrative staff, or, if there is no full-time administration, through the registry, must supervise the service of process, or viewed more generally, the execution activity. This is a function that has been characterized in almost all countries, at one time or another, by significant corruption. Thus, designing an effective process-serving and execution of judgment unit—whether it be within the courts, the executive branch, or the private sector—requires a great deal of planning and anticipation of possible problems, both in inadequate performance and in improper behavior.

### Every case begins at the registry, which:

- accepts, receives, monitors and retrieves documents;
- registers cases;
- conducts the first review of a case;
- monitors the progress of cases and ensures the timely entry of all papers into a filing system;
- monitors and detects cases which do not follow standard scheduling patterns;
- assists, but does not advise, *pro se* litigants;
- establishes a court's initial jurisdiction by proper notification of a respondent or his counsel; and
- protects judges from improper influences by interposing a barrier to prevent parties and attorneys from having direct contact with judges.



Muhammad Bilal

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# OPEN FORUM

## On Improving Court Registries and Process Service

### Process Service

- Process service is crucial to initiating the judicial process.
- Proper record keeping of process served is required to prevent false allegations by the recipient party that process was not properly served and/or that they did not receive notice of the suit.
- Supervision of the process service is necessary to ensure that the process servers perform their work honestly and efficiently and to identify deficiencies.
- Judges and registrars should examine and audit their records regularly to avoid and prevent irregularities, and to address such irregularities in a timely manner. Spot checks could be instituted to ensure that the process servers faithfully fulfil their duties.
- Proper funding is required to ensure that process servers have expertise. Greater efficiency of process service in developed countries can be largely attributed to greater availability of funding.
- Incentive structures must be analyzed to identify causes for delays or failure of service of process. Potential benefits to parties and/or financial and strategic advantages to delaying service must be considered.

### CREATION OF SPECIALIZED COURTS AND INCREASING THE COST OF LITIGATION

- Specialized courts, including separate criminal and civil courts and separate pre-trial and trial courts, may speed disposal of cases.
- Increasing court fees and trial costs may deter litigants from pursuing baseless claims and thus alleviate some of the court congestion. There was concern, however, that access to justice should not be predicated on the ability to pay court fees.
- **Example: Singapore.** Trial costs are high and calculated on a per day basis. However, the Singapore model works because the country has resources to ensure proficiency in processing the cases.

### Information Dissemination

- Court rules and procedures must be systematically and broadly distributed.
- Information on legal and judicial reform programs must be centrally collected and compiled for dissemination. Some South Asian countries have moved toward centralized information registries by placing court information on their websites, such as [www.ifes.org](http://www.ifes.org), [www.karachieast.org](http://www.karachieast.org).
- The Internet can facilitate the judicial process, by providing a central location for information storage and dissemination, and by providing automated court filing services. Karachi East's website, [www.karachieast.org](http://www.karachieast.org), enables the relatives and friends of a person under illegal detention to obtain and file an online form for a writ of release for the detainee. Electronic submissions are reviewed immediately by magistrates. Online filing represents a step toward achievement of justice at everyone's doorstep.



Participants to the ADB Symposium on Access to Justice deliberate on strategies to improve court registries and process services.





## Previous Law and Policy Reform at the Asian Development Bank Annual Publications

- Law and Policy Reform at the Asian Development Bank 2003  
*Report: RETA on Judicial Independence*
- Law and Policy Reform at the Asian Development Bank 2001–2002  
*A Guide to Movable Registries*
- Law and Policy Reform at the Asian Development Bank 2001  
*Report: RETA on Legal Literacy for Supporting Governance and Poverty Reduction*
- Law and Policy Reform at the Asian Development Bank 2000, Vol. II  
*Report on Insolvency Law Reforms in the Asian and Pacific Region*
- Law and Policy Reform at the Asian Development Bank 2000, Vol. I  
*Report on Secured Transactions Law Reform in Asia: Unleashing the Potential of Collateral*

## About the Asian Development Bank

The Asian Development Bank (ADB)'s work is aimed at improving the welfare of the people of the Asia and Pacific region, particularly for the 1.9 billion who live on less than \$2 a day. Despite the success stories, Asia and the Pacific remains home to two thirds of the world's poor.

ADB is a multilateral development finance institution owned by 63 members, 45 from the region and 18 from other parts of the globe. ADB's vision is a region free of poverty. Its mission is to help its developing member countries reduce poverty and improve their quality of life.

ADB's main instruments in providing help to its developing member countries are policy dialogues, loans, technical assistance, grants, guarantees, and equity investments. ADB's annual lending volume is typically about \$6 billion, with technical assistance provided usually totaling about \$180 million a year.

ADB's headquarters is in Manila. It has 26 offices around the world. The organization has more than 2,000 employees from over 50 countries.

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