

# Chapter 6

## Operational Challenges in Judicial Reform

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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.

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### **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*

When 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

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Hon. Mian Shakirullah Jan  
Judge, Supreme Court  
Islamabad

*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-

established 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.

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**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.

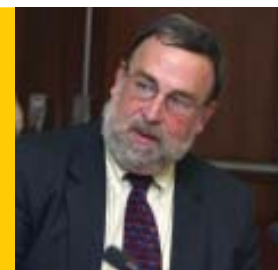
There are ten key elements to an effective case flow management program: (a) leadership; (b) clearly defined goals; (c) information; (d) communication; (e) clear policies and procedures; (f) education and training programs; (g) commitment by the administrative staff; (h) accountability mechanisms; (i) 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  
The Asia Foundation

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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 completed 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.

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