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## Special Focus on Hong Kong

Since July 1, 1997, Hong Kong has been governed by the Basic Law, which came into effect upon its reunification with the People's Republic of China. The Basic Law provides for implementation of the "one country, two systems" principle that allows Hong Kong a high degree of autonomy as a Special Administrative Region of China. Under this new constitutional order, Hong Kong's way of life and common law system are preserved.

The Basic Law contains important safeguards to guarantee the independence of the Judiciary. For example, Hong Kong Judges enjoy security of tenure, are appointed by the Chief Executive on recommendation of an independent commission, and may only be removed by the Chief Executive for inability to discharge their duties or for misbehavior, on the recommendation of a tribunal consisting of judges.

Under the Basic Law, both Chinese and English are official languages in Hong Kong. In considering what language to use in court proceedings the Hong Kong courts adopt a pragmatic approach. The paramount consideration is the just and expeditious disposal of the matter before the court. All court hearings are open to the public and the press, except in exceptional circumstances.

On July 1, 1997, the Court of Final Appeal was established in Hong Kong to replace the Privy Council in London as Hong Kong's final appellate court. That Court is at the apex of Hong Kong's court system, followed by the High Court (comprising the Court of Appeal and the Court of First Instance), the District Court (including the Family Court) and the Magistrates' Courts. There are also four Tribunals (Lands, Labour, Small Claims and Obscene Articles) and a specialized Coroner's Court within the Judiciary.



**Court of Final Appeal**  
*Photo Courtesy of CCA*

The Chief Justice presides in the Court of Final Appeal and is the head of the Judiciary, charged with its administration. The Chief Judge of the High Court is the Court Leader for the High Court. Both the Chief Justice and Chief Judge of the High Court must be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country.

The Judicial Studies Board is responsible for providing training for the Judges. Its activities include judgment writing courses to enhance the ability of judges to write judgments. Judges also attend conferences, seminars and workshops to keep them abreast of developments in different areas of law and in areas relevant to their judicial work.

To provide assistance to Judges in dealing with matters relating to judicial conduct, the Hong Kong Judiciary produced The Guide to Judicial Conduct which draws on the experience of a number of other jurisdictions which have adopted similar guides. The Guide emphasizes that Judges should exercise a high degree of alertness and caution, using common sense, while not isolating themselves from the community they serve.

Any legal system should ensure adequate access to justice for all. In Hong Kong, legal aid is provided for low income groups. However, as with many jurisdictions throughout the world, the courts in Hong Kong are experiencing an increase in the number of unrepresented litigants, having regard to the relatively high level of legal fees. Such a phenomenon poses a challenge to the Hong Kong courts. The Civil Justice Reform implemented since 2 April 2009 will have the effect of streamlining proceedings, and of encouraging the use of mediation to settle disputes without resorting to potentially costly litigation.

## Profile on Hong Kong's new Chief Justice: The Honourable Andrew Li

Chief Justice Andrew K.N. Li was born in Hong Kong on 12th December 1948. He received his education in Hong Kong at St. Paul's Co-Educational Primary School and St. Paul's Co-Educational College until the completion of Form 3. He finished his secondary education in England and attended Cambridge University. He holds the degrees of Master of Arts and Master of Laws from that University. He was called to the English Bar in 1970 and the Hong Kong Bar in 1973.

Chief Justice Li was appointed as the Chief Justice of the Court of Final Appeal, Hong Kong Special Administrative Region on 1 July 1997. Before his appointment, Chief Justice Li practiced at the Hong Kong Bar. In 1988 he was appointed Queen's Counsel.

Chief Justice Li has a long record of public service. He was a member of the Executive Council and Steward of the Hong Kong Jockey Club. He had served as Chairman of the University and Polytechnic Grants Committee and the Land Development Corporation. He had served as Vice Chairman of the Council of the HK University of Science and Technology, Deputy Chairman of the Board of Review of Inland Revenue and as member of the Law Reform Commission, the Securities Commission, the Standing Committee on Company Law Reform, the Banking Advisory Committee and Judicial Service Commission. He is Vice Chairman of the Council of St. Paul's Co-Educational College. He is a trustee of the Friends of Tsinghua



Chief Justice Li in Court Room, Hong Kong

University Law School Charitable Trust and a Guest Professor of the Tsinghua University.

Chief Justice Li's awards include Honorary Degrees awarded by the HK University of Science & Technology (1993); the Baptist University (1994); the Open University of Hong Kong (1997); the University of Hong Kong (2001); the Griffith University (2001), the University of New South Wales (2002), the University of Technology, Sydney (2005), the Chinese University of Hong Kong (2006) and the Shue Yan University (2009). He was made an Honorary Bencher of the Middle Temple in 1997 and an Honorary Fellow of Fitzwilliam College Cambridge in 1999. He was awarded the Grand Bauhinia Medal by the Hong Kong Government in 2008.

Chief Justice Li is married with 2 daughters.

# The Commonwealth Law Conference Hong Kong, April 2009

The Patron Chief Justices' Meeting took place at the Commonwealth Law Conference in Hong Kong, on April 5, 2009. Discussions included looking at the work of CJEI over the past two years and plans for the future, the reality and perception of judicial integrity throughout the Commonwealth, judicial workloads, and funding for the judiciary. It ended with a lunch hosted by the Honourable Chief Justice Andrew Li at the Hong Kong Convention and Exhibition Centre.

In attendance and pictured below were (first row left to right): The Honourable Judge Sandra E. Oxner, Chairperson, CJEI; The Right Honourable Sir Dennis Byron, President, CJEI; The Honourable Chief Justice Andrew Li, Hong Kong; The Right Honourable Beverley McLachlin, Canada; The Honourable Chief Justice M.L. Lehohla, Lesotho; (second row left to right) The Right Honourable Chief Judge Richard Malanjum, Malaysia; The Honourable Chief Justice Benjamin J. Odoki, Uganda; The Honourable Chief Justice Chan Sek Keong, Singapore; The Honourable Chief Justice Ivor Archie, Trinidad and Tobago; The Honourable Sir David Simmons, Barbados; The Honourable Chief Justice Georgina T. Wood, Ghana; The Right Honourable Lord Judge, England and Wales and The Honourable Chief Justice Christopher J. Gardner, QC, Falkland Islands.



# Message from the Editor



Madan Lokur, Judge,  
High Court of Delhi, India

A recent visit to Halifax and then to Pakistan (which has quite a few Fellows of the CJEI) gave me an insight into what judicial independence is all about and what the judiciary has to watch out for.

In early November 2007, the government of Pakistan passed the Provisional Constitution Order (PCO). This required all persons who were, immediately before the commencement of the Order, in office as judges of the Supreme Court, the Federal Shariat Court or a High Court, to take a fresh oath of office under the Oath of Office (Judges) Order, 2007 (the Order). Immediately thereafter, a seven member Bench of the Supreme Court assembled and restrained the government from abusing its powers to subvert the independence of the judiciary. The Supreme Court enjoined the judges from taking

oath under the PCO. A very large number of our colleagues abided by the direction of the Supreme Court and declined to take the oath and so by operation of “law”, they “ceased” to hold office. To make matters worse, they were placed under house arrest and had virtually little or no contact with the outside world for quite some time.

Justice Mian Shakirullah Jan (CJJI Fellow 2009) of the Supreme Court of Pakistan gave the participants of the 16<sup>th</sup> Intensive Study Programme in June a first-hand account of the tumultuous period. He informed us of the pressures put on the judges from Day 1 to toe the government line and left us wondering how the judges were able to resist. In August, I visited my friend Justice Asif Saeed Khan Khosa (CJJI Fellow 2007) of the Lahore High Court. By then, things had more than substantially changed for the better as far as the judiciary was concerned. He reconfirmed the trials and tribulations faced by the judges and explained how the Black Coat revolution started by the lawyers in Pakistan resulted in a restoration of the rule of law and democracy and a reaffirmation of the independence of the judiciary. The Black Coat revolution culminated in an unprecedented order passed by a fourteen member Bench of the Supreme Court, which declared as unconstitutional the PCO and the Order, thereby holding that all those judges who took the oath, despite the injunction of the Supreme Court, were unlawfully appointed. The judges who had declined to take the oath not only stood vindicated but they ensured that a similar onslaught on the independence of the judiciary would not be possible in future.

In its momentous order passed on 31<sup>st</sup> July, the Supreme Court declared that:

“An independent and strong judiciary is a backbone of viable democratic system all over the world. The time-tested experience has proved that independent and strong judiciary provides strength to the institutions running government particularly, those who roll on the wheels of democracy. Equally the independent and strong judiciary acts as an arbiter striking balance among various segments of democratic system. It helps state organs such as legislature, executive and the judiciary itself to function smoothly maintaining balance inter se.”

What do these events tell us? That while life and liberty is precious to all of us, so is the rule of law and the independence of the judiciary – especially if we wish to live in a democratic set-up. Fearless and independent judges are neither available for sale nor for bargain and if they stick to their oath of office to protect the constitution without fear or favour, they will continue to have the support and confidence of the people and will be the bulwark against any authoritarian misadventures. We, the CJJI family, have always stood for these values, and will continue to do so. We are, therefore, proud to have amongst us those Fellows who have stood up for basic constitutional rights of the people. Through this publication, we take this opportunity to salute all these heroes of the independence of the judiciary.

# Bangladesh Strives to Ensure Access to Justice for the Poor

Badrul Alam Bhuiyan, Bangladesh  
(CJJI Fellow 2008)

In line with Article 7 of the Universal Declaration of Human Rights, it has been pledged in the preamble of the Constitution of the People's Republic of Bangladesh that the foremost and fundamental aim of the State is to establish a society in which equal justice would be secured of all citizens. Article 27 of the same Constitution provides for a fundamental right that all citizens are equal in the eyes of the law and are entitled to equal protection of the law.

Unfortunately, almost 40% of the population of Bangladesh consists of those who cannot even earn US\$1-2 in a day. They live below the poverty line and cannot afford to reach the doors of a court of law. As a result they silently bear the agonies of the injustices done to them without any legal relief and are deprived of the fundamental rights of equal treatment as guaranteed in our Constitution.

Recently, to enable the poorer segments of society to access justice, the Legal Aid Act has been enacted. Before enactment of this law some NGOs were active in providing Legal Aid to the poor to a very limited extent, but with this enactment, legal aid is being awarded through the gov-

ernment machinery with financial assistance from CIDA. Now a days, Legal Aid is being offered to the indigent litigants in all the 64 Districts of Bangladesh under the auspices of the District Legal Aid Committee under the close supervision of the National Legal Aid Organization.

Because of the backlog of the cases in the courts of law, delay in disposal of cases is very common in Bangladesh. Justice delivery is time consuming and costly, and therefore poor people are always afraid of seeking justice before the court. To drive out this backlog ADR has been embodied in the procedural laws of Bangladesh, ie. Family Court Ordinance 1985, the Civil Procedure Code (Amendment) Act 2003, Money Loan Act 2003 which became very successful in reducing the backlog and ensured access to justice for the poor.

Similarly, some other projects are underway with the financial assistance of ADB, CIDA, DANIDA and other development partners. These are: Promoting Access to Justice and Human Rights in Bangladesh Project, Supporting the Good Governance Program, Capacity Building Project of the Judicial Administration Training Institute (Phase-2), and the Construction of 64 Chief Judicial Magistrate's Building Project. We can hope and believe that with the completion of the aforesaid project access to justice would be easier, especially for the poor.



# Judicial Education in Pakistan

**Muhammad Amir Munir**

CJEI Fellow 2008

Additional Director (Academics), Federal Judicial Academy

[www.fja.gov.pk](http://www.fja.gov.pk)

Pakistan is a federation consisting of four provinces: Punjab, Sindh, Northwest Frontier Province (NWFP) and Balochistan. It has also other regions like Northern Areas (NA), Federally Administered Tribal Areas (FATA), Provincially Administered Tribal Areas (PATA) and Islamabad Capital Territory (ICT). Further, Azad Jammu & Kashmir has a special status in the 1973 Constitution of Pakistan. The present population of Pakistan is almost 170 million. In a publication, "The Judicial System of Pakistan", available on the website of the Law and Justice Commission of Pakistan, the tentative figures relating to the number of judges, magistrates, law officers and court personnel are:

## Strength of Judges and Administrative Staff of Superior & Subordinate Judiciary

Judges	Supreme Court of Pakistan	Federal Shariat Court	Lahore High Court	High Court of Sindh	Peshawar High Court	Balochistan High Court
Chief Justice & Judges	19	08	50	28	16	08
Administrative Staff	567	216	1861	970	346	308
Pendency	10,914	3,316	75,195	27,291	13,610	2,445
Distt & Sessions Judges/ Adtl Distt & Session Judge/ Senior Civil Judge/ Civil Judge	-	-	939	508	277	197
Administrative Staff	-	-	10330	-	3317	1450
Pendency	-	-	110,546	123,663	37,000	8,377

## Strength of Members and Administrative Staff of Administrative Tribunals

	Federal Service Tribunal	Punjab Service Tribunal	Federal Ombudsman	Federal Tax Ombudsman
Members	11	05	07	01
Staff	126		593	145
Pendency	20453	1516	4885	357

## Current Strength of Law Officers of the Federation and Provinces

Federation	Federal	Balochistan	NWFP	Punjab	Sindh	Total
Attorney General for Pakistan/ Advocate General	1	1	1	1	1	5
Deputy Attorney General/Additional Advocate General	10	2	5	12	8	37
Standing Counsel/ Assistant Advocate General	9	2	5	33	12	61
District Attorney	--	31	--	58	24	113
Deputy District Attorney	--	--	--	180	152	332
Assistant Deputy District Attorney	--	16	--	128	--	144
Public Prosecutor	--	--	31	--	31	62
Deputy Prosecutor	--	--	45	--	--	45
Assistant Public Prosecutor	BPS-16	--	42	--	--	42
	BPS-14	--	84	--	--	84
Government Pleaders	--	--	9	--	--	9
Assistant Government Pleaders	--	--	31	--	--	31
<b>Totals</b>	<b>20</b>	<b>52</b>	<b>253</b>	<b>412</b>	<b>228</b>	<b>965</b>

These figures do not include data from AJ&K and Northern Areas. All these are personnel attached with the justice delivery system and hence need training and education for their capacity to work effectively and efficiently.

The need to have a judicial training and education institute in Pakistan was felt many decades ago when the Second Law Reform Commission (1967-1970) recommended to establish a Judicial Service Academy. However, this idea could not be materialized until 1988 when the Ministry of Justice and Parliamentary Affairs, Government of Pakistan passed a *Resolution* to establish the Federal Judicial Academy (FJA). This way, Pakistan entered into a new regime of judicial training and education under a specialized organization established for such purposes. However, before this development, another institute, i.e., Institute of Training in Shariah and Legal Profession was established in 1981 under the umbrella of the International Islamic University in Islamabad. This institute was established to provide basic and advanced level training to judges, attorneys, prosecutors and legal professionals. In 1985, this institute was upgraded to the status of an academy and is called the Sharia Academy. Since then, Sharia Academy is organizing training and education programs for judges and lawyers on Islamic law, Islamic jurisprudence and Sharia law.

At the moment, there are three regular chartered judicial academies in Pakistan while two judicial training institutes are still working under resolution of their respective high courts. At federal level, the Federal Judicial Academy is imparting judicial training and education to judges, magistrates, law officers and court personnel from across the country, Northern Areas and Azad Jammu and Kashmir. In Sindh and Punjab, their respective chartered judicial academies are performing the functions at the provincial level. The NWFP and Balochistan provinces have established judicial training institutes at the High Court level but they are still not fully functional.

#### **Federal Judicial Academy:**

The Academy worked under the umbrella of Resolution until 1997 when the Federal Judicial Academy Act, 1997 was passed and enacted. Since then it is functioning as a body corporate having its own seal and perpetual succession. The aims and objects of this prime judicial education body are to provide pre- and in-service training to judges, magistrates, law officers and court personnel; organizing conferences, seminars and workshops for improvement of the judicial system and quality of judicial work and publishing of journals, memoirs, research papers and reports. Its Board of Governors consists of Chief Justice of Pakistan and four provincial chief justices, the Federal Law Minister, the Federal Law Secretary and Attorney-General for Pakistan. The Director-General is also member / secretary of the Board. It has 7:2 (judge : non-judge) ratio in governing body. Mr. Moazzam Hayat, former district and sessions judge and Registrar, Lahore High Court is serving as the Director-General since 2005. The Academy has a purpose built campus with residential facility. It is located in sector H-8/4, Islamabad. Its website is located at [www.fja.gov.pk](http://www.fja.gov.pk).

*The Academy worked under the umbrella of Resolution until 1997 when the Federal Judicial Academy Act, 1997 was passed and enacted.*

#### **Sindh Judicial Academy:**

In 1993, Sindh province established the first provincial judicial training institute—Sindh Judicial Academy (SJA). The 1993 Act of SJA provides almost the same aims and objects as that of the FJA except that training/education of court staff is not mandated in this law. Likewise, training of the members of the bar is an additional domain with SJA. Further, it has some other provisions

## Judicial Education in Pakistan (Continued)

relating to legal and constitutional research and conducting of departmental examinations for members of district judiciary and allied staff which are not part of the federal law that established FJA. The Board of Governors of SJA is chaired by the provincial chief justice. Other members include a senior judge of Sindh High Court, the Attorney-General for Pakistan, Minister of Law, Advocate-General, Sindh, One district and sessions judge, one senior member of the Bar, one principal of a law college, the Secretary, Law Department, Sindh, a renowned scholar, the Registrar, High Court of Sindh and the Director-General. It has 50:50 (judge : non-judge) ratio in governing body.

The Academy has to train and orient judicial officers, law officers and members of the bar in Sindh province. The training of court staff and court administrators/registrars is not included in the SJA charter.

Mr. Justice (R) Saleem Akhtar, former Judge of Supreme Court of Pakistan is serving as Director-General of SJA since 2007. The Academy is located at Bath Island, Defence, Karachi.

### **Balochistan Judicial Academy (BJA):**

Established in 1999 by the High Court. The process to get charter (provincial legislative act) is under way. A bill has been prepared in this regard to be submitted to the Provincial Assembly for enactment. It has also the same aims and objects as defined by the FJA except very

few additions. Its Board consists of 7 members and is headed by the Chief Justice of Balochistan High Court. Other members are: one senior puisne judge of Balochistan High Court; the Registrar, Balochistan High Court; the Secretary, Government of Balochistan, Finance Department; the district and sessions judge; the Secretary, Government of Balochistan, Law and Parliamentary Affairs Department and the Director-General. Hence, if the law is enacted, it will have 6:1 (judge : non-judge) ratio in its governing body.

Dr. Abdul Rehman Brahui, former District and Session Judge / Registrar, Balochistan High Court is present Director-General. The Academy is located in the Balochistan High Court, Quetta.

### **Punjab Judicial Academy:**

Punjab is largest province of Pakistan with population of more than 70million people and almost 1000 judges/magistrates. The judicial officers and court staff used to get pre-service training at the FJA. However, in the year 2007, the Punjab Judicial Academy (PJA) was established, first through an Ordinance promulgated by the Governor of Punjab and then on expiry of the Ordinance, the Provincial Assembly enacted the Punjab Judicial Academy Act, 2007 (Act XV of 2007). It has defined comprehensive aims and objects (functions) including among others, developing court and case management skills; delay reduction skills; alternate dispute resolution skills; skills in information technology; legislative drafting courses; inculcating of

ethical values and standards in judicial officers, etc. The PJA is meant only for judicial officers and court personnel (staff attached with courts). The Act provides that the teaching methods and evaluation system shall be at par with international standards.

The Board of Management consists of eleven members headed by the Chief Justice of Lahore High Court. Other members are: two judges of Lahore High Court; Chairman, Planning and Development Board of the Government; Registrar, Lahore High Court; Additional Chief Secretary to the Government; Secretary to the Government, Finance Department; Secretary to the Government, Law, Parliamentary Affairs and Human Rights Department; Principal, Punjab University Law College; one district and sessions judge and the Director-General. Therefore, it has 7:4 (judge : non-judge) ratio in its governing body. Mr. Justice (R) Tanvir Ahmad Khan, former Judge of Supreme Court of Pakistan has been appointed as first Director-General of PJA. The Academy is presently located in Lahore near Lahore High Court.

### **Provincial Judicial Training Center, NWFP:**

The Peshawar High Court also realized the fact that the training and education of judicial officers and court personnel is needed so that their professional competence may be improved. In 2008, a Notification was issued by the Peshawar High Court establishing the NWFP Judicial Training Center (JTC). It is mentioned in this Notification that the provin-

cial government of NWFP shall be asked to establish a full fledged Provincial Judicial Academy at Peshawar in due course of time. The purpose of establishing JTC is to provide for capacity building of the judges and staff of the Courts. Through an Order dated 11 March 2008, Mr. Khurshid Iqbal, Additional District and Sessions Judge was appointed as Director, JTC. The website of the Peshawar High Court describes the activities of the JTC as under:

“Efforts are underway to convert the Judicial Training Centre into a Provincial Judicial Academy. The Judicial Training Centre is hectically working on a draft law for the purpose.

Mr. Justice Syed Yahya Zahid Gilani, Judge, Peshawar High Court, is the informal Judge In-Charge of the Judicial Training Centre. Mr. Khurshid Iqbal, Additional District & Sessions Judge was appointed as the first Director of the Judicial Training Centre. However, with a view to make the Judicial Training Centre immediately and fully operational, two other Judicial Officers were transferred to the Judicial Training Centre. They are: Mr. Muhammad Zeb Khan, Additional District & Sessions Judge and Mr. Shahrukh Arjumand Khan, Civil Judge as Director and Assistant Director, respectively.

Judicial Training Centre successfully organized the 5th Provincial Judicial Conference on 7th -8th April 2008. This two-day conference was a high profile activity of Peshawar High Court, for which all the arrangements were made by the Judicial Training Centre.

Currently, the Judicial Training Centre is coordinating a Basic Computer Orientation Training Programme for all Judicial Officers of the NWFP, which is organized by the Institute of Computer and Management Sciences (ICMS), Peshawar.”

At present, this training center is

totally judge-controlled. It is located in the Peshawar High Court, Peshawar.

#### Conclusion:

From the above resume, it can be understood that the judicial education regime has been established in almost all the provinces of Pakistan. The FJA is also playing its role at the federal level but with focus on district judiciary of all the provinces and other regions/areas of the country. Efforts should be made to prepare a comprehensive National Judicial Education and Training Strategy so that resources are not overlapped or duplicated at federal and provincial levels. Still further, the establishment of these institutions/academies will help in providing more pre- and in-service training and education opportunities to judges, magistrates, law officers and court personnel as earlier only the FJA's forum was available for any such training or education. Now, FJA can concentrate more on specialized and advanced level training programs / courses mainly through in-service training and education plans while the provincial academies / training institutes can focus more on pre-service training needs. The twenty years of long experience of the FJA of interaction with many foreign institutes has helped this organization to be able to provide training of trainers program for judicial education bodies in provinces. Almost all the charters mentioned above have provisions of cooperation with each other. It is hoped that once the National Judicial Education and Training Strategy is formulated by the judicial policy makers, judicial education and training

in Pakistan will enter into a new era of excellence in this field.

#### NOTES

1. © **Muhammad Amir Munir**, LLB, LLM (Punjab). He is a Civil Judge 1<sup>st</sup> Class / Magistrate s.30 from Punjab Province. Since November 2006, he is serving as Additional Director (Academics) on deputation with the FJA. His email address is [bi-onic4@hotmail.com](mailto:bi-onic4@hotmail.com).

2. Dr. Faqir Hussain, Registrar, Law and Justice Commission of Pakistan / Registrar, Supreme Court of Pakistan has published this article which can be downloaded in MS Word .doc file from [www.lijcp.gov.pk](http://www.lijcp.gov.pk) and then clicking to 'articles' in menu. The document states that it has information updated as of May 2007. Visited 18 May 2009.

3. Federal Judicial Academy, *Annual Report 2002-2003*, Islamabad: Federal Judicial Academy, p. 5.

4. Resolution No.F.12(11)/87-Legis dated 14 September 1988. Published in the Gazette of Pakistan, Extraordinary, September 19, 1988 [Part III], pp. 760-764.

5. See <http://my.iiu.edu.pk/Academies/Shariah/tabid/326/Default.aspx>. Visited 19 May 2009.

6. See PLJ 1998 Federal Statutes 225.

7. See PLD 1994 Sindh Statutes 83.

8. See PLJ 2008 Punjab Statutes 239.

9. Notification No.H(a)43/Trg-I-II-III-IV -V-J dated 11<sup>th</sup> March, 2008. See also [http://www.peshawarhighcourt.gov.pk/nwfp\\_JTC.php](http://www.peshawarhighcourt.gov.pk/nwfp_JTC.php). Visited on 18 May 2009.

10. [http://www.peshawarhighcourt.gov.pk/nwfp\\_JTC.php](http://www.peshawarhighcourt.gov.pk/nwfp_JTC.php). Visited on 18 May 2009.

Justice Francis H V Belle  
Eastern Caribbean Supreme Court  
(CJJI Fellow 2008)

## Why Mediation Works

Mediation as we know is an assisted negotiation in which a third party “neutral” assists the conflict parties in arriving at a resolution of their conflict. A mediator is neither a judge nor an advocate for either point of view in the dispute.

We in the judiciary and the courts in general tend to appreciate mediation for its ability to save time and reduce costs and the size of trial case-loads. But there are few discussions in a forum such as this which explain why mediation is a conflict resolution tool that works.

Court adjudication, arbitration, mediation, and conciliation all play a role in managing conflict and preventing anarchy in modern societies. Without these systems of conflict resolution we would have constant fragmentation and social strife. However, mediation is singled out as the best way to make the solution to the conflict one that the parties on both sides can embrace and call their own. Mediation is considered the best way to find a solution that is sustainable. Were I called upon to refer to five reasons why mediation works I would list them as follows:

1. Mediation addresses not just the issues in the conflict but the needs of the parties.
2. Mediation allows values and emotions to be expressed because these things are not deemed irrelevant.
3. Mediation encourages parties to seek shared interests.
4. A Mediator can set the atmosphere for encouraging peaceful dialogue by establishing ground rules which prohibit abusive behaviour and other barriers to meaningful conversation during the mediation session.
5. Mediation fosters dialogue by encouraging the conflict parties to listen actively to each other, accept shared responsibility for conflict and even empathize with or forgive each other.

Having listed these positive features of mediation, I would add that mediation asks the basic question, how do we go on together? It is, therefore, a harbinger of peace.

To address the five points in more detail it is important to understand that we all have basic needs. Sometimes those needs are not being met in the workplace, market place or even the home. We have to be able to identify and understand these needs and in this way acquire a better understanding of the background to the conflict itself.

Most people would agree that it takes time to get to know someone well enough to be in touch with their values and to know how those values relate to their own. In this way you discover the things you may have in common. There may be other things you share beyond values, but values may form the basis for certain practices and habits which underpin peaceful relations or create conflict.

In a conflict situation deliberating over issues such as values may lead to a better understanding of the interests of the parties and enable them to discover shared interests.

In many conflict situations people become abusive or dehumanise their opponents. Dehumanizing one’s opponent is a very dangerous practice. When you see your conflict partner as less than human, you run the risk of thinking that any kind of demeaning behaviour towards the conflict partner is justified but fair minded people know that that is not true. Unbridled responses based on dehumanizing thoughts will lead to violence and bloodshed. Mediation practice teaches the parties involved to avoid such attitudes and responses.

Much has been written and said about dialogue. It is important to distinguish dialogue from argument. Dialogue does not proceed on the basis that there must be a winner or loser. Dialogue simply creates the best opportunity for an exchange of ideas and sometimes through the dialogue, a mutual change in perspective. A change in perspective can lead to a change of heart, forgiveness of perceived wrongs and a complete resolution of conflict. Dialogue can also significantly reduce the chances of the parties engaging in any future conflict.

Judicial officers and others involved in developing their systems of justice may require an in depth understanding of mediation if they are to convince their executive to support the inclusion of mediation in their justice system. This short article is designed to support such efforts.

# News and Notes from Around the Commonwealth

## NIGERIA

The Kano State Judiciary has introduced a court connected ADR Centre in conjunction with Security Justice and Growth, a DFID programme. The Kano Multi Door Court House (KMDCH) is a space for non-adjudicatory forms of resolving disputes including conciliation, mediation, arbitration and other hybrid processes. The Chief Judge of the State, Honourable Justice Shehu Atiku worked tirelessly towards this goal, and signed the legal notice establishing the KMDCH.

The KMDCH is the third such court house in Nigeria. It was commissioned on January 20<sup>th</sup>, 2009 and put under the able leadership of Abdullahi Ado Bayero, a Senior Magistrate and Professional Mediator and Arbitrator. Public reaction so far has been enormously positive.



Abdullahi Ado Bayero, Director of the new KMDCH



Nigeria: The commissioning ceremony by the Deputy Governor of the State Engr. Abdullahi Gwarzo (centre), Hon. Chief Judge of Kano State, Justice Shehu Atiku (left) and the Director Kano Multi-Door Court House, Abdullahi Ado Bayero (right).

**Technology at the Judicial Research Centre (JRC):** On July 30 2009, the JRC was commissioned. The Centre's aim is to improve access to information and promote international best practices. The JRC will aid Judges immensely in writing judgments, as they will be able to check references and cases cited by counsel easily. The JRC is equipped with twenty-one HP Desktop computers with 17" flat screen monitors and a network printer. The server room is also fully equipped with a 40KVA Stabilizer, 20KVA Network Inverter, a Server, Router and Switch. Access to high speed internet is powered by a C-Band VSAT. More information, including pictures, can be found at [www.kadunajudiciary.org](http://www.kadunajudiciary.org).

**Status of ADR Implementation:** Nigeria's ADR project has reached an advanced stage. The Design Phase Report has been submitted and a series of training sessions are being conducted for those who will eventually man the new ADR Centre.



## MAURITIUS

Mauritius has taken measures to implement judicial reforms recommended by the Mackay Report.

The focus is on a reduction of backlog of cases at the Supreme Court and at lower courts, reduction of delay in determining cases and improvement of court infrastructure. Measures taken so far are yielding satisfying results. The changes thus far include:

1. The appointment of four additional judges since January 2009.
2. Setting up specialized divisions in the Supreme Court: Criminal Division, Family Division, Commercial Division, Road Accident Claims Division.
3. The creation of five additional court rooms in the lower courts.
4. Transfer of administrative offices out of the Supreme Court building to allow space for Judges' Chambers.
5. A newly renovated building for the Flacq District Court.
6. Construction of a new building to house Bambous District Court.
7. A new home for Central Archives, freeing up space in the district court buildings.



## TRINIDAD AND TOBAGO

February saw extensive Family Court training on the topics of Hearing the Voice of the Child, Domestic Violence, and Economic

Consequences of Relationship Breakdowns. Facilitators included judges and members of the community with specialized experience and knowledge in this area.

From January to May training was held for Prison Officers at the JEI: Training for other Stakeholders in the Criminal Justice System. Topics were:

1. The role, structure and function of the Judiciary within Trinidad and Tobago.
2. The role of the Prison Service in the Administration of Justice.
3. Human Rights and related issues.
4. Parole and Sentencing.
5. Prison Rules.
6. Documents for the Courts.

May saw a Joint Civil Proceedings Rules Training with the Bar, and a Magistrates' Continuing Education Seminar. Topics included: Reasons and Reasoning and Impartiality/Recusal/Bias.

**Update on CJEI Fellows:** The Honourable Chief Justice Ivor Archie (CJEI Fellow 2003) delivered

an Address on Access to Justice and Human Rights at the Commonwealth Law Conference in Hong Kong (April 2009); the Keynote Address at the formal opening of the Crime and Justice Commission Conference (May 2009) and the Keynote Address at the Employers' Consultative Association (May 2009).

**CAJO Conference:** The inaugural Conference of the Caribbean Association of Judicial Officers (CAJO) was hosted by the Caribbean Court of Justice (CCJ) in Trinidad from June 25<sup>th</sup> to 27<sup>th</sup> this year. The theme was Caribbean Judiciaries in an Era of Globalization: Meeting the Challenges of the Time. Two days of the conference were dedicated to addresses and discussions on a variety of topics under four themes:

1. Efficiency and Fairness in the Justice System
2. Judicial Independence and Accountability
3. Justice Beyond our Borders
4. Court Administration and Technology

The Honourable Chief Justice Ivor Archie delivered the Keynote Address. The Honourable Justice Kangaloo J.A. (CJEI Fellow 1993) contributed and chaired the session on A Judicial Code of Ethics. The Honourable Justice Jamadar J.A. (CJEI Fellow 2004) presented a session on



## PHILIPPINES

**Green Forum:** April 16-17 2009 saw the Supreme Court led *Forum on Environmental Justice:*

*Upholding the Right to a Balanced and Healthful Ecology.* The forum gathered representatives from the three branches of government, people's organizations, local communities and indigenous peoples. The objectives include recommending actions to the Supreme Court that it may take to protect and preserve the environment, validating the draft *Rule of Procedure for Environmental Cases*, discussing the need for a mechanism/structure that will address the need to monitor environmental cases or issues and monitor compliance therewith, and identifying and replicating best practices of some agencies and units. A multi-sectoral Memorandum of Agreement was signed by government and civil society representatives for a more effective enforcement and implementation of the country's environmental laws.

**Lectures and Mock Trials in the National Language:** On January 27 and February 2 and 11, the Academy conducted lectures and mock trials in Filipino, the national language. The move complements the Supreme Court's initiatives on the use of Filipino in court proceedings. It is in line with Supreme Court Chief Justice Reynato S.

Puno's objective of improving access to justice. No major problems were observed in the mock trial, and English was only used where legal terms had no precise Filipino translation.

**Mediation as a Key to Ending Tribal Wars:** The Academy and the Office of the Solicitor General are looking into using mediation as an alternative to the use of force in resolving disputes in the indigenous communities of the Cordilleras region. Violence often results in a chain of reactive violence affecting generations. The *bodong*, a tribal institution established to stop tribal wars, ensure the protection of each tribe and establish a peaceful alliance, but its unwritten law allows instant retaliation. The proposed training programme for *bodong* stakeholders will be part of a specialized mediation programme along with commercial and environmental mediation currently being studied.

**Court-Annexed Mediation:** Now operational in 45% of courts nationwide covering all 13 judicial regions. Each region has at least one Philippine Mediation Centre.

**Judicial Training Activities:** From January to April the Academy conducted core programmes such as the judicial career enhancement programme, the pre-judicature programme, and orientation workshops. Special focus trainings were also held focusing on extralegal killings and enforced disappearances, enforcement of compromise cases in small claims courts, handling child abuse cases, and improving access to justice in family courts, among others. The participants evaluated the training as highly profitable.



## TANZANIA

Starting July 6th, Tanzania ran a two week conference on Information and Communication Technology (ICT) for Judges and Court Registrars. Previously, similar programmes have been conducted for Justices of Appeal and most of the High Court Judges. Tanzania had only 9 untrained Judges. This summer, all remaining Judges and Registrars are being trained. The long range plan is to have all Magistrates and other support staff trained on computer basics. The training timetable mixes Judges and Registrars for the first time and includes topics such as: Word Processing Concepts; Presentation Techniques: Creating Slides; Creating and Editing Documents; Sorting and Queries Techniques; Applications of Internet: E-Communications and E-Business, and Introduction to Computer Networks.



## GUYANA

**House approves ten year old legislation:** On July 20, 2009 the Summary Jurisdiction (Lay Magistrates) Bill was approved by the Guyana Parliament. Lay magistrates will now have jurisdiction throughout Guyana. Since lay magistrates are usually people with little or no legal training, he or she will be assisted by a clerk, preferably with legal qualifications. A lay magistrate may dispense of any criminal offence triable summarily if the punishment does not exceed G\$10,000, and civil cases where the dispute does not exceed G\$25,000. The new legislation should help with the backlog of existing cases. There are currently eighteen magistrates in Guyana, fewer than the total number of courts. Sometimes magistrates are tasked with controlling various courts in various districts. Magistrates will now be appointed from the districts in need of them, and able to work at reducing the backlog in a specific court. This will also mean that magistrates hearing cases in one area are familiar with the culture of that area, and thus more able to promote reconciliation over litigation. Furthermore, with the appointment of more lay magistrates, the total number of court days can increase, helping with the backlog. The lack of out of district allowances paid to magistrates will also free up more funds for Guyana to inject into other areas of the judiciary including judicial education.

# Appointments



## NIGERIA

The National Judicial Council at its Meeting of 1<sup>st</sup> July, 2009 approved the appointment of two additional High Court Judges.

One of the recent innovations in the Kaduna State Judiciary has been the provision of a Research Assistant and Data Processing Officer for each of the High Court Judges to assist them with research and transcription of the recorded proceedings, thereby enhancing speedy dispensation of justice.



## SOLOMON ISLANDS

F.O. Kabui, C.S.I., C.M.G., O.B.E., Chairman of the Solomon Islands Law Reform Commission (CJEl Fellow 2004), has been elected by Parliament to be the sixth Governor-General of Solomon Islands. Her Majesty the Queen appointed him on July 7<sup>th</sup>, 2009, the Independence Day. F.O. Kabui took oaths of office and allegiance that day. Later in the year he will visit London to meet the Queen. Under the Constitution Parliament elects the Governor-General and the Queen formally makes the appointment.



## TRINIDAD AND TOBAGO

The Honourable Justice Jamadar (CJEl Fellow 2004) was appointed to the Court of Appeal in September 2008.



## PAKISTAN

Muhammad Amir Munir (CJEl Fellow 2008) has been appointed as a civil judge in Islamabad by the Lahore High Court.

Mr. Munir currently works with the Federal Judicial Academy, and is awaiting official notification of his appointment.



## REPUBLIC OF SEYCHELLES

Following the recommendation of the Constitutional Appointments Authority (CAA), President James Michael has appointed Honourable Justice Mr. Frederick Egonde-Ntende (CJEl Fellow 1996), currently a judge of the Ugandan High Court, as the new Chief Justice of the Seychelles Supreme Court. Justice Egonde-Ntende is a Ugandan national, and will take up his post at the end of August 2009. In the interim, upon the recommendation of the CAA, Honourable Justice Bernardin Renaud will be Acting Chief Justice. Honourable Justice Rajan Perera, who has reached retirement age, will continue in his functions until he has finished his cases. Justice Egonde-Ntende has extensive experience in the reform of judicial systems and the computerization of case administration systems. He was also involved in setting up an independent judiciary in East Timor, where he served as a Judge of the Court of Appeal. Justice Egonde-Ntende lectured in the law department of Makerere University in Uganda, and was the Chairperson of the Law Reporting Committee of the Judiciary in Uganda. He also worked extensively with matters of drug trafficking while a judge in the United Nations Mission in Kosovo (UNMIK).

## Upcoming Events

Legal Conference: Mauritius  
Enhancing the Justice System under the Rule  
of Law  
September 22 - 25, 2009

CMJA Triennial Conference  
Turks and Caicos Islands  
September 26 - October 3, 2009

International Organization for Judicial Training  
Conference  
Sydney, Australia  
October 25 - 29, 2009

CJEI Biennial Meeting  
Kuala Lumpur, Malaysia  
March 23 - 27, 2010

International Association of Women Judges Bi-  
ennial Conference  
Seoul, Korea  
May 11 - 15, 2010

Commonwealth Law Conference  
Hyderabad, India  
February 5 - 9 , 2011

## Send us your news!

We are eager to share news of elevations, honours or deaths in the CJEI Report. This includes new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgments, etc. We would also be pleased to learn of any recent judicial education initiative in your country.



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