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# PAKISTAN'S LAW & JUSTICE SECTOR REFORM EXPERIENCE *- SOME LESSONS*

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Livingston Armytage[1]

Pakistan is one of the world best-kept tourist secrets, being endowed with a deep history, a rich and embracing culture and the majestic splendour of most the world's highest mountains – features which are generally not well known abroad. Those of us that have had the privilege to live and work in Pakistan have had much to appreciate. What is generally better known is that Pakistan is a large poor country which ranks between Papua New Guinea and Nepal on the United Nation's human development index, and faces a range of profound governance and economic challenges to its development.

This aim of this paper is to illuminate and reflects on one focused and substantial effort to improve this situation. It complements an earlier article outlining the purpose, goals and objectives of the project published at its outset.[2] It will review the ongoing experience being gained in Pakistan's *Access to Justice* reform program with a view to distil lessons learned for the emerging discourse on law and justice development programs. The paper approaches the subject in four parts: history, objectives, progress to date, and lessons learned.

## A HISTORY OF THE REFORM AGENDA

Over the past thirty years, it is generally acknowledged that the law and judicial sector has been chronically under-funded. The institutions of justice have been degraded and this has impaired the quality of judicial services. Moreover the stature, independence and integrity of the courts has on occasion been seriously compromised which has, in turn, led to a loss of public confidence in the institutions of justice despite the best efforts of many dedicated judges. This malaise is manifest in a complex of related problems. Most notably, this includes monstrous backlog exist throughout the courts with chronic delays in disposal of cases of five, ten, even twenty-plus years. In one court we surveyed the grand-children of the original litigants continuing to dispute an interest in land some sixty (60) years after institution of proceedings. Other problems include major shortages of judges and courthouses, grossly inadequate facilities, and a dismal system of compensation, giving rise to complaints of endemic corruption. These problems, which are now deeply entrenched, will require substantial long term interventions to resolve.

The *Access to Justice Program* (AJP) has been designed to address these problems, and provides a unique opportunity to improve the quality of justice in the long term. The AJP is a program loan provided by the Asian Development Bank (ADB) to the Government of

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[2] L Armytage, Pakistan's Judicial Reform Project, *The Australian Law Journal*, July 2001, 75, 452.

Pakistan which, valued at USD350m, is the largest-ever reform program in any law and justice sector. Structured in three phases, it commenced almost five years ago and will continue for the next five years or more:-

- *Phase One* (1998/99) – The program commenced with an extensive "research diagnostic" which identified and assessed the needs for reform of the judicial and legal sector.

- *Phase Two* (2001/2) – The Government of Pakistan defined an agenda of priority reforms based on this research which was piloted with a technical assistance grant from the ADB of USD3m for the courts.[3]

- *Phase Three* (2002+) - The Government then started to implement the substantive reform program, which has been designed in the light of experience gained from the pilot projects.

## B OBJECTIVES

The objectives of the Access to Justice Program are broadly to improve the administration of justice as a means of strengthening the rule of law and thereby the system of governance for the people of Pakistan. In the short term, it is intended to offer a range of specific benefits:

**i.** Community – Principally, the public will benefit from better judicial services being provided by improved efficiency in the administration of justice and the more speedy disposal of cases. Through this means, it is intended that those who have opted out from the formal justice system, notably the commercial community, will regain confidence to return their disputes for resolution. Additionally, the provision of expanded legal aid and community legal literacy, supported by the *Access to Justice Development Fund,* will contribute to helping the poor to become aware of their rights and providing a means to exercise them in courts of law.

**ii.** Courts – The program will provide unprecedented resources to support the courts to administer justice in a fair, timely and cost-effective manner. By supporting the Law Commission in an expanded policy-making role, it is intended that the administration of justice will be coordinated at a systemic level. It will fund the building of literally hundreds of court complexes and the renovation of existing court houses. It will improve court infrastructure and facilities, for example, through computerisation of the courts. It will provide funding for the recruitment and training of new and existing judges. Additional needs will be specially funded through the *Access to Justice Development Fund*.

**iii.** Police and prosecutors - Related benefits will extend on a sector-wide basis to integrate reforms affecting the establishment of an independent prosecution service, and the management, administration and training of police.

**iv.** Bar – The bar will receive a range of benefits involving improvements in legal education and training, and the distribution of collections of books for bar libraries. As the result of reduction in court delays, the bar will be able to complete its work

[3] See Armytage 2002 for a detailed description of the design of these pilot projects.

clients more quickly, thereby rendering fees earlier. It will become instrumental in providing legal aid to the poor, in delivering legal education to the community, and eligible for additional funding from the *Access to Justice Development Fund*.

## C PROGRESS TO DATE

At the beginning of 2003, the pilot projects of phase two have been completed and the implementation of phase three has commenced. What follows are some reflections on the past two years of work outlined in component order.

### 1. Judicial Policy and Administration

Component one of this project was the most substantial in terms of the allocation of resources provided and, in this context, it is the most significant. It involved a vast amount of foundational work, much of which was complex and inter-dependent on other reforms, including:-

a. *Training* – Initiatives have been made to introduce continuing on-the-job training for judges throughout the country in order to improve judicial competence. More than twenty conferences, workshops and seminars have been conducted for the courts including provincial judicial conferences, which it is hoped will become perennial; and workshops focusing on developing judicial management skills in delay reduction. The first ever bench book, or practice manual, was published and distributed to every judge in the country. An extensive training-of-trainer program on curriculum development and presentation skills was conducted for the teaching faculty of Federal Judicial Academy. Substantial ongoing training needs both at the induction and continuing levels do however remain to be addressed.

b. *Study tours* –Four study tours were conducted for more than thirty judges and court administrators to other common law jurisdictions including Britain, Canada, the United States, Australia and Singapore. In terms of skills transfer, the most useful of these was a visit by pilot court judges in the delay reduction project to the Subordinate Courts of Singapore. Contrary to initial expectations of obvious differences between Pakistan and Singapore, participants found this experience particularly useful in providing a tool-kit of practical techniques, from which they selected, experimented and applied lessons learned in their own courts with some quite notable successes. On reflection, this study tour provided the pilot judges with “do-able” role-models of how courts could re-assume control of their day-to-day proceedings, and encouraged participants to reinvigorate their work practices with quite impressive effects.

c. *Management systems* – The endemic delays of the Pakistani court system are caused in part by chronic under resoursing, but in another part by archaic and inefficient work practices. In order to improve the capacity of the courts to manage and administer their performance, a great deal of work was undertaken to improve the management of the courts.

   This work was complex and interdependent. It included reviewing the courts’ information management system, which was pre-colonial and more than one hundred years old; measuring judicial performance, refining performance standards and improving compensation systems. Reform of the judicial statistics system, for example, was dependent of related work designing the courts’ automation plan,

custom-building courts' information management software and integrating actual experience monitoring performance and progress data in the delay reduction project. Much of this work integrated to refine the system of management reporting to enable judicial leaders to monitor their business and to make better informed policy and management decisions to administer caseloads more efficiently. In addition, the first reports on courts' performance of the courts were published to provide greater transparency and accountability on the business of the courts. An improved budget allocation and compensation system for judges does however remain urgently needed to improve court facilities, and attract high calibre candidates to the judiciary.

d. *Organisational reform* – In order to improve the quality of judicial policy-making, an important initiative focused on expanding the role and mandate of the Law Commission to include responsibility for coordinating the administration of justice. This was established through ordinance, and creating the *Access to Justice Development Fund* comprising an endowment of US$25m to provide funding for special purposes to improve the operation of the courts, judicial and legal education and the bar, and to provide legal aid and community legal education to the public. In another important move, the office of the *Member Inspection Team* (MIT) will be strengthened in order to improve the capacity of the High Courts of each province to monitor the performance of the courts and to process complaints from the public.

e. *Judicial budget* – Efforts were made to negotiate with central agencies for budgetary improvements to the law and justice sector, particularly for improved judicial compensation and infrastructure, with only partial success to date.

f. *Computer procurement and automation plan* – An assessment of the information automation needs of the superior courts, and related lead-agencies in the law and justice sector was undertaken, designed to harmonise the information management systems of the courts, and provide a blueprint for the procurement of 1,100 computers nation-wide. In addition, customised cause list software has been developed and piloted in the courts. Sixty computers were installed on a pilot basis to support registry functions and delay reduction initiatives across the country. These initiatives require ongoing support.

## 2. Delay Reduction Project

Another major component was the pilot project in delay reduction, which is arguably the earliest visible success of the program.

The delay project has resulted in substantial improvements in judicial performance, which are measurable favourably in international terms. These included a reduction of more than thirty per cent (30%+) in backlog in one major judicial district in Karachi, capital of Sindh, and an imposing increase in productivity in case disposals of almost two hundred and fifty per cent (246%) in Peshawar, capital of North-West Frontier Province. During the pilot project, efforts focused on reducing backlog, rather than spreading efforts more broadly to include new case management and/or alternative dispute resolution (ADR). In future, it may be expected that these additional techniques will contribute to consolidating further improvements in reducing delay. Proposals were also developed to revamp the process serving establishment agency, and to improve court relations by introducing bench-bar and citizen-court liaison committees in every district. Significantly, the courts themselves opted-in to this pilot project of their own volition, expanding the original pilot courts from

six courts only to more that one hundred by the end of the pilot phase. In light of this encouraging headway, chief justices endorsed the extension of the pilot project to all courts throughout the country.

### 3. Access to Justice

The remaining components provided important but smaller outputs in terms of resources provided. These initiatives including the translation of *Black's Law Dictionary* into Urdu, promotion of Citizen-Court Liaison Committees, introduction of public information kiosks, initiatives to promote gender equality and opportunity for women into the judicial and legal professions; and the introduction of a *Freedom of Information Act*.

### 4. Judicial Training

As earlier mentioned, substantial foundational work was completed in building the capacity of the Federal Judicial Academy to deliver training throughout the judiciary. A training needs survey was distributed to elicit the perceived priorities for judicial training. A Training-of-Trainer program was then conducted in (a) presentation skills and (b) curriculum development. During these twelve workshops, a more detailed training needs assessment was conducted to supplement the earlier survey. In addition, the first bench book, or judges' practice manual, was published and supplied to every judge, representing a substantial step towards improving the competence of the judiciary. This bench book will be regularly updated and new bench books will be published in due course.

### 5. Legal Education and Profession

Much needs to be done to improve the generally lamentable standard of legal education. To this end, a number of steps were taken to stimulate improvements with the provision of seed grants to leading law colleges for the development of a range of initiatives. A substantial collection of statutes and texts, over more than 160 volumes each, was also distributed to twenty major bar associations in order to improve access of lawyers to essential legal resources.

### 6. Commercial Dispute Resolution Procedures

Some work was completed on a relatively modest scale owing to intervening events relating to the reform of arbitration facilities prior to the project addressing most needs.

### 7. Legislation

Substantive drafting activities were completed to complement related activities, including the laws of contempt, defamation, freedom of information, the Law Commission Ordinance and Rules, Law Reports Act, and formalisation of the Access to Justice Development Fund.

## D SOME LESSONS LEARNED

In any formalised evaluation of program performance, it is usual to assess the efficiency and effectiveness of delivery of "outputs", "impacts" and "outcomes". In this section, an assessment of the efficiency of work performed, together with some critical reflections of the effectiveness of performance, will be provided. Noting this writer's role as team leader

of phase two of this program, this paper can not claim to be disinterested, - and indeed no pretence to undertake an impartial evaluation is made here. That would require a more independent view, substantially larger resources and a totally different methodology. Rather, what is being offered here is an opportunity to capture some lessons which we have learned over many recent months. In that sense, this is an effort to capture some still wriggling specimens for the more analytical study of others in the laboratory of academe, before they escape off the tabletop of project memory.

In this sense, it is timely to reflect on which elements of the reform agenda have as yet succeeded and which have not, as these may be illuminating for the design and management of ongoing endeavours. In any stock-take, it is apparent that some have been more amenable to reform for a variety of reasons: technical facility, the particular extent of counterpart engagement, available resources and/or intervening external events. Realistically, it will take considerable resources, time and effort to rebuild the institutions of justice. But, our experience of the pilot projects provides many grounds for encouragement.

On the "win" side of the balance sheet, it is appropriate to categorise the following initiatives: the delay reduction project which has generated impressive measurable improvements in performance; the design of an overarching courts' automation plan which can provide a blueprint for major improvements in information management capacity across the justice sector; the Training-of-Trainers program at the Federal Judicial Academy which has consolidated a foundation of training capacity within the judiciary itself; publication of the bench book which provides a quality-assured practical tool for judges with extended shelf-life; revamping of the courts statistical reporting system and, related to that, the first publication of annual performance reports for the courts in the past thirty years.

Measured against these on the other side of the ledger are the ongoing challenges of improving the system of judicial compensation and incentives; the chronic under resoursing of the judicial budget; the lack of visible linkage of the reform agenda to poverty alleviation and benefits for the ordinary person. In particular, there was lack of structuring and communicating visible benefits in terms of strengthening human rights, improved legal aid and community legal literacy as being practical tools for improving access to justice, which it is expected to be addressed in the ongoing program.

More specifically, let me offer a number of observations or "lessons learned" from our experience are offered:-

*1. Sustaining initiatives*

The scope and term of the Access to Justice Program is unusually well structured to sustain momentum beyond the usual confines of short-term project terms. Because of the pilot project nature of phase two, further steps are required to sustain the continuity of ongoing work-in-progress in court reform, particularly a number of longer-term initiatives, including:-

- Support to the Federal Judicial Academy to deliver training
- Piloting of statistical systems and data gathering procedures
- Publication of courts' reports
- Development of a career-path for judicial administrators

- Establishment of the expanded Law Commission, and AJD Fund
- Improvement of the judicial budget and compensation scheme
- Implementation of automation plan, customised court software, and computer training
- Co-ordination of the national delay reduction plan
- Promotion of leadership in gender equality in both the courts and judge-made law
- Revision and development of bench books
- Partnering of bar and civil society in the reform process.

*2. Independence*

All judicial sector reform programs confront the challenge of operating within the doctrine of judicial independence – and how to consolidate that independence while collaborating with the executive agencies of government to manage the reform process. There is often a major divergence of expectations between the various stakeholders in the executive and judicial arms of government which must be managed to converge in an agreed agenda. This creates peculiar challenges in the process of building engagement.

*3. Liaison and communication*

In practice, this difficulty is compounded by the need for ownership and leadership in the change process at the pinnacles of the central agencies, and also at provincial and local levels. In our experience, donor-defined "log-frames" are characteristically ill-suited to reflect the qualitative nature of this relationship-building process in its various critical dimensions. At a practical level, it was often difficult to find a visionary champion of the reform process, and when found, this was more often at the mid-level of a district and sessions judge than at the apex level of the responsible ministers or chief justices. In this sense, it was difficult to transform the reality of the process being donor-driven. Added to this, was the reality that receptivity of the reform program varied from province to province, meaning that different strategies are required in each province and that different progress had an impact on the harmonisation of engagement strategies.

To deal with these realities, it was our experience that considerably more time and resources than were originally envisaged were required to concentrate on managing key relationships, liaising with the multitude of stakeholders, developing credibility and trust, and continuously communicating about the benefits of the reform process.

4. *Institutionalision*

Changes in judicial leadership highlighted the need for sustained engagement with each implementing agency, particular across transitionary events. It was sobering to observe that the lack of any institutional memory of preceding work is often almost absolute. It may be trite to observe that ultimately the challenge of any change management strategy is to institutionalise it in the implementing agencies. Moreover, the placement of experts in institutions and twinning arrangements may be useful to consolidate these changes.

*5. Civil society and the community*

The challenge of engagement with the bar and civil society is ongoing, despite extensive overtures being made to integrate the bar in particular into the reform process. These included participation in the delay reduction pilot projects, the formation of district bench-bar liaison committees, distribution of newsletters to bar associations, distributing book

collections and numerous presentations. Owing to a complex of factors involving turnover in bar office-holders, endemic tensions between bar and bench, and the politicisation of the bar on related issues, these efforts need to be extended. Efforts to institutionalise representation of the bar and civil society in the governance structure of the Law Commission have met with partial success, only.

In the case of civil society, initiatives were taken to externalise the focus of communicating the benefits of the reform process, principally through a media campaign involving national television, radio and both news and commissioned articles in the press. That said, much more remains to be done in terms of engaging and mobilising the expectations and resources of civil society to demand improved standards of judicial service delivery.

With the benefit of hindsight, it is useful to reiterate the importance of involving all key stakeholders from the outset of the design phase. There are however practical difficulties associated with managing a flexible and expanding reform agenda whose scope may expand dynamically in response to unforeseen needs as they become apparent. Perhaps unavoidably, we encountered some complaints of feeling left-out from the bar and civil society; however, frequent changes in the representation of those interests made continuity of dialogue and a sense of inclusiveness at times quite difficult.

*6. Project management*

There were two aspects of project team management that worked particularly well. First was the guidance of a universally respected senior counterpart in the team, which was provided by retired Supreme Court Justice Shafi-ur Rahman, my much respected mentor and friend. Without his leadership, our best efforts would have lacked insight and direction, and many doors would have remained closed.

Second was the formation of a small long-term "core" team to oversee and manage the entire process, in the place of an array of short term technical specialists. This approach reflected priority to building and sustaining key relationships rather than delivering technically sound work products which may have been designed by relative strangers unfamiliar with local conditions.

*7. Change management*

Judicial reform projects, like any other, are first and foremost a change management process. The nature of effective reform is, in its essence, an ongoing qualitative process, rather than a quantifiable technical result and, in this sense, it ultimately doesn't really matter how well designed work may be, or how efficiently executed. Pakistan, as elsewhere, is littered with infrastructure developments subsiding into ruin owing to the lack of maintenance programs or trained staff in testament to this reality. The "input" is only one contributing variable and, on the scale of things, a small one. Yet, despite this reality, design documents and monitoring procedures persist for perhaps understandable reasons to focus on "outputs" which, however competently developed, may have no direct relationship with improved outcomes.

*7. Time-frames*

Related to this issue, there is a need to recognise more realistic time-frames which may often be a longer than may be initially attractive expected. Often, results are measured in

terms of the time-horizon to complete the technical aspects of the reform work. For example, experts have completed the work required to design and circulate a courts' automation plan, custom-designed cause-list software, revamp the system of statistical returns and develop a professionalisation plan for judicial administration. But, the reality is that substantial additional work is invariably required to promote endorsement of these initiatives, adjust work practices, and provide training and related support.

*8. Training*

In the related aspect of strengthening institutional and human capacity, training and study tours are often only the tip of an otherwise unsurveyed iceberg. It is a relatively simple matter to research, design and conduct a useful workshop(s) or observation program. But, in practice, much more is often required to support the trainees return to their workplace by securing the understanding and endorsement of supervisors to restructure position descriptions, work systems and practices, and co-ordinating the services of surrounding staff. Without this further investment, there is much evidence to demonstrate that the training intervention may be frustrated.

Study tours are often an seen as expensive means of securing stakeholder engagement – as incentives for participating in the reform process. However useful this may be, they can also be a positive learning experience, as occurred with the visit to Singapore. Our evaluation of the relative value of the various study tours underscored the value of investing a core team member in accompanying participants for the purpose of managing expectations, focusing observations and facilitating the integration and application of learning into the working practices of participants. As it turned out, this investment also contributed invaluable team-building benefits for the remainder of the project.

*9. Linkage*

There is a need to link judicial and legal sector reform programs more closely, and visibly, with higher level trans-sectoral objectives. The law and justice sector serves as a threshold of performance indicators for the functionality of other sectors. In relation to law and order, for example, it will not matter how much better trained the police may be, or how much faster the courts can hear their cases, if poverty remains endemic, youth is alienated, traditional authority structures are eroded, education fails to provides career paths and unemployment is rampant. The symptom of rising street crime will overshadow the quality of technical work at an agency level.

*10. Evaluation*

A final observation relates to the challenge to review endeavours more systematically. Evaluation is an ongoing challenge that in my observation is most commonly honoured in the breach. In those cases where it does occur, it is a matter of comment how rarely there is an effective sharing of our still scant experience, and how little this is enabled to contribute to the ongoing process. It is pleasing to report that efforts are actively being taken in this regard in the Access to Justice Program. It is hoped that this paper may also offer a modest step forward in that direction.

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