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THE AUSTRALIAN LAW JOURNAL

OFFPRINTS

Pakistan's law and justice sector reform experience: Some lessons*

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The aim of this article is to 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 article approaches the subject in four parts: history, objectives, progress to date, and lessons learned.

HISTORY OF THE REFORM AGENDA

It is generally acknowledged that the law and judicial sector in Pakistan is chronically under-funded. The institutions of justice have been neglected, if not degraded, and this has impaired the quality of judicial services. Moreover, the stature, independence, and integrity of the courts have been seriously damaged by legitimising the unconstitutional – two military coups – in just a quarter of a century. This has inevitably 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 a monstrous backlog existing throughout the courts with chronic delays in disposal of cases of five, 10, even 25-plus years.

In one court we surveyed, the grand-children of the original litigants were continuing to dispute an interest in land some 60 years after the institution of proceedings. While some cases are disposed of within about five years, it is not unusual to take 10 years – and often considerably more – to exhaust the normal avenues of appeal. Similarly, it is commonplace for daily trial lists to exceed 100 cases, thereby precipitating vicious cycles of adjournments, which perpetually churn aged cases. In one court district, we survey an average of 108 adjournments for every civil case.

Other problems include major shortages of judges and court houses, grossly inadequate facilities, and a dismal system of compensation, giving rise to complaints of endemic corruption. These problems, which are now deeply entrenched, involve generational change, and will require substantial long-term interventions to resolve.

The Access to Justice Program was launched to redress these institutional problems, and to improve access to justice, as public goods and services, in an element of the government's broader poverty reduction strategy.[7] In essence, it is a program loan provided by the Asian Development Bank to the government of Pakistan which, valued at US$350m, 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* (1998/1999): The program commenced with an extensive "research diagnostic" which identified and assessed the needs for reform of the judicial and legal sector.
- *Phase Two* (2001/2002): The government of Pakistan defined an agenda of priority reforms based on this research which was piloted with a technical assistance grant from the Asian

* This article is an edited version of a paper presented at the 13th Commonwealth Law Conference, Melbourne, 14 April 2003. See Armytage L, "Pakistan's Judicial Reform Project" (2001) 75 ALJ 452 for an outline of the project at its outset. Prior to the successful completion of this project, the author was evacuated twice from Islamabad following 11 September-related terrorist activities against expatriate interests.

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[7] An as yet unproven hypothesis: Carothers T, "Promoting the Rule of Law Abroad: The problem of knowledge", Working Papers, Democracy and Rule of Law Project (Carnegie Endowment, January 2003).

Development Bank of US$3m for the courts.[8]

- *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.[9]

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 strengthening the system of governance for the people of Pakistan. In the short term, it is intended to offer a range of specific benefits:

1. *Community*: Principally, the public will benefit from more efficient judicial services being provided by improved efficiency in the administration of justice and the more speedy disposal of cases, noting that these reforms will be made largely within the existing institutional and legislative frameworks.[10] 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 become aware of their rights and provide a means to exercise them in courts of law.
2. *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 co-ordinated 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 training of new and existing judges and, with fungibility of funding, possibly additional recruitment. Additional needs will be specially funded through the Access to Justice Development Fund.
3. *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.
4. *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 more quickly, thereby arguably rendering fees earlier. It will also become instrumental in providing legal aid to the poor, in delivering legal education to the community, and be eligible for additional funding from the Access to Justice Development Fund.[11]

PROGRESS TO DATE

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

Judicial policy and administration

The first component of this project was the most substantial in terms of the allocation of resources provided. It involved a vast amount of foundational work, much of which was complex and interdependent on other reforms, including:

[8] With the benefit of hindsight, it would be useful to evaluate the linkage and rationale of the pilot projects to the research diagnostic and, moreover, the appropriateness of the criteria for selection of these pilot initiatives.

[9] Once again, it will in due course be illuminating to monitor and evaluate the extent to which the implementation phase builds on the respective pilot projects.

[10] The Access to Justice Program focuses on a range of "efficiency" concerns. To this extent, a variety of substantive "justice" issues were not intended to be addressed within the terms of reference of the program.

[11] Notwithstanding, critics may argue that pro-poor strategies such as civil empowerment through community legal literacy, human rights and legal aid, engagement with the Bar and legal education have been marginalised, relative to the larger reform investments of the program, and need to be redressed.

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- *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 20 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 the Federal Judicial Academy. Substantial ongoing training needs, both at the induction and continuing levels, do however, remain to be addressed, particularly in the systematic delivery of training of core judicial skills such as decision-making, legal research and case management.
- *Study tours*: Four study tours were conducted for more than 30 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. For example, some judges applied time standards, while others curtailed the granting of adjournments, or introduced settlement conferences and other alternative dispute resolution procedures. 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 results in reducing backlog, which are outlined below.
- *Management systems*: The endemic delays of the Pakistani court system are caused in part by chronic under-resourcing, but in another part by archaic and inefficient work practices and highly politicised, often hostile, relations with the Bar. 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 included reviewing the courts' information management system, which was essentially a colonial relic, measuring judicial performance, refining performance standards, and improving compensation systems. It is noted that much ongoing work remains to be completed in these aspects. Designing the courts' automation plan, for example, was dependent on related work reforming the judicial statistics system, 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' workload and performance 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 and court staff.
- *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 co-ordinating 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 will be strengthened in order to improve the capacity of the High Courts to monitor court performance, for example, through conducting the confidential annual reviews of judges, and to investigate complaints from the public against judicial officers.
- *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 very little success to date.

- *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 partly 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.

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 backlog reduction, which are measurable favourably in international terms. These included a reduction of more than 30% in backlog in one major judicial district in Karachi, capital of Sindh, and an imposing increase in productivity in case disposals of 246% in Peshawar, capital of North-West Frontier Province.

The design of the delay reduction project preserved the normal operating environment of trial courts, specifically, legislative and procedural frameworks and available resources, in order to maximise replicability under normal conditions. Seemingly, these performance improvements are attributable predominantly to the benefits of training and associated support.

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. In future, it may be expected that these additional techniques will contribute to consolidating further improvements in reducing delay. Significantly, the courts themselves opted in to this pilot project of their own volition, expanding the original pilot courts from eight courts to more that 100 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. 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.

Access to justice

The remaining components provided important but smaller outputs in terms of resources provided. These initiatives included the translation of *Black's Law Dictionary* into Urdu, promotion of Citizen-Court Liaison Committees, introduction of public information kiosks, moves to promote gender equality and opportunity for women in the judicial and legal professions, and the introduction of defamation law and a *Freedom of Information Act*. It should be noted that these reforms, once linked, raised unexpected controversy with the spectre of vexatious litigation repressing any benefits of public access to information.

Judicial training

As already 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 12 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.

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

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texts, over more than 160 volumes each, was also distributed to 20 major Bar associations in order to improve access of lawyers to essential legal resources.

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.

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". Noting my role as team leader of phase two of this program, this article cannot 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 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.

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 the first publication of annual performance reports for the courts in the past 30 years which will build on these improved reports.

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-resourcing of the judicial budget and, arguably most important, the lack of visible linkage of the reform agenda to poverty alleviation and benefits for the public. 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 to be hoped will be addressed in the implementation phase. There has been relatively little work committed to legal education, the legal profession, and Bench/Bar relations. Moreover, it should be observed that the design of the pilot projects has resulted in most of the "wins" falling on the side of "efficiency" concerns whereas most of the "weaknesses" fall on the side of substantive "justice" concerns.

More specifically, let me offer a number of observations or "lessons learned" from our experience.

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 projects. 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.

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.

Put bluntly, the reasons why the "executing agency" of the government of Pakistan may want the program – which doubtless included retirement of relatively expensive foreign debt – do not flow on to the "implementing agency", the judiciary, and result in quite bifurcated engagement strategies. Put even more bluntly, the Executive may manipulate the development process to subjugate rather than consolidate its judiciary. Given Pakistan's history of martial administrations, each insisting on new oaths of allegiance being sworn by the judiciary, this is not a matter for idle speculation.[12]

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 notion that the process was 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, as has been experienced elsewhere. It is a matter for comment that this all-too-familiar challenge is rarely adequately reflected in the design of respective terms of reference for development projects in the law and justice sector.

[12] On 26 January 2000, half of the Supreme Court of Pakistan was not reinstated – ie, it was summarily dismissed – for refusing to swear a new oath of allegiance to the ongoing administration of President Musharref.

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Institutionalisation

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.

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 only partial success. It would not be simplistic to surmise that this was largely due to the judiciary's anxiety to control its own affairs.

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. While the challenge of turnover is endemic to managing any stakeholder relationship in the government or judiciary, it was particularly acute with Bar officers whose tenure was limited to one year and whose expectations thereby focused on immediate – if not instantaneous – benefits from the reform process.

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.

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 does not really matter how well-designed work may be, or how efficiently executed. In testament to this reality, Pakistan, as elsewhere, is littered with infrastructure developments subsiding into ruin owing to the lack of maintenance programs or trained staff. 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*.

Historically, donors have focused on maximising return on investment from their consultants, measured in terms of tasks, activities, and work products. More recently, a shift of attention can be discerned towards an emerging refocusing on the results of those endeavours as measured in terms of visible improvements to the operating environment. This shift is however harder (that is, more expensive) to measure, and takes considerably more time – which, it is noted, is often not made available. A solution lies in the sequencing of reform overtures, each building on its predecessor, but reframed by a rigorous summative evaluation process – which, it is further noted, is usually not provided.

Time-frames

Related to this issue, there is a need to recognise that the size of these reform initiatives requires generational change involving substantially longer time-frames than generally expected. At present, 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, revamped the system of statistical returns and developed a professionalisation plan for judicial administration. But, the reality is that substantial additional work is invariably required to promote endorsement of these initiatives, to adjust work practices, and to provide training and related support, which will not be fully consolidated for many years to come. This will require ongoing change strategies that will sustain the present initiatives.

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 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 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 utility 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.

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.

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 article may also offer a modest step forward in that direction.

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