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Asia Pacific Regional Forum News

Newsletter of the International Bar Association Legal Practice Division

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International Bar Association Conference 2010

VANCOUVER

3–8 October 2010

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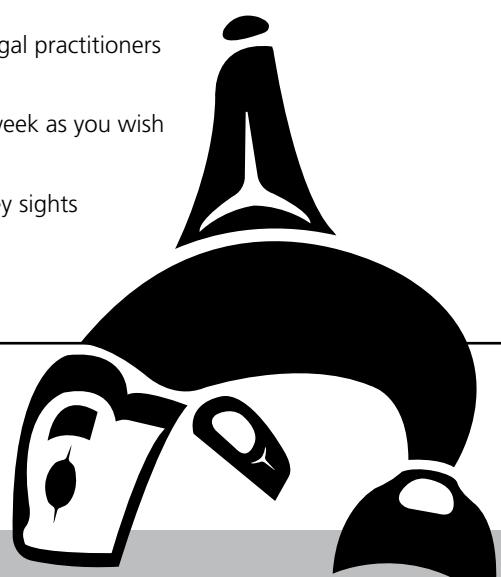
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This newsletter is intended to provide general information regarding recent developments in the Asia Pacific Region. The views expressed in this publication are those of the contributors, and not necessarily those of the International Bar Association.

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Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience

Asia Pacific Judicial Reform Forum, 2009
330 pages
ISBN: 978-0198060772

The book *Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience* focuses on judicial reform in the greater Asian region. It covers the experiences gained and observed from judicial reforms, as well as the action, implementation and practical outcome of such reforms by various contributors in relation to seven countries: Cambodia, India, Indonesia, the Philippines, Sri Lanka, Nepal and Vanuatu. The book focuses on the practical, rather than theoretical, elements of such reform.

The judicial reforms described in this book include the implementation of case management techniques to avoid backlogs and delay (Indonesia and the Philippines), the reduction of barriers to the accessing of justice (Vanuatu and India) as well as the securing of access to justice (India and Sri Lanka), judicial education and skills development for judges and court staff (Cambodia and Nepal), establishment of an independent judicial council (Nepal) and other (and more detailed) actions to improve the court systems and other justice-orientated activities. The introduction also provides summaries of the main themes discussed in the book and goes on further to discuss the differing views towards judicial reform in general, as well as providing an effective background of the judicial reform 'industry' including the key elements of the forces behind such reforms.

The book summarises the ten main themes arising in each of the contributors' discussions: the need, seen by the contributors, to have clear goals and outcomes of the proposed judicial reforms; the importance of the leadership of the judiciary in the implementation of the reforms; the need to consolidate judicial independence (and the further need to balance this with the need for external

assistance); overseeing the transitory period while the changes are enacted, coupled with the management of effective integration of the changes; effective training in relation to the reforms; community participation; the need for donors due to domestic budgetary restraints; the importance of information collection and also, information technology upgrading of the judicial system; and a focus on results.

The book could be called an amalgam of various viewpoints and experiences. Given its position as more of a compilation of discussions, it lacks a central guiding ideology which can be easily discussed. However, this does not reduce its value; a publication (especially one in the form of a compilation) involving such a difficult and in-depth topic would lose credibility if it attempted to propose any neat answers.

This review will now discuss two sections of the book. First, chapter 1, 'Securing Justice: Development and Reform Initiatives to Ensure Effective Judiciaries'. The author of chapter 1, Mohan Gopal, discusses (among other points) the six critical variables which decide the effectiveness of a judicial system, and provides a proper, overall summary of the book's issues. Secondly, the Philippines-focused portion of chapter 4, 'Ethics, Integrity, and Judicial Accountability', by Myrna Feliciano, provides an example of the more specific issues covered in the book.

Securing justice: development and reform initiatives to ensure effective judiciaries

In order to achieve the goal of judicial reform, Gopal summarises the content and methodology of judicial reform as the following:

- role and responsibility of the court;
- organisational efficacy of the judicial system;
- knowledge of law of judges and counsel;
- judicial method including skills and practice;

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- effective management of processes and people in the conduct of cases and the court in general; and
- access to justice.

As mentioned above, it needs to be ensured that the points are made relevant for the judicial system of each individual country. For example, a country which adopts a civil code system (such as Indonesia) will rely more heavily on the legislature as court decisions are not binding.

Hence, except for the six points above, legislation and legislative organisation are two additional important points for civil code jurisdictions, where only if there is a reasonable, acceptable and effective law, the court or judge can implement the law correctly and can make a reasonable and acceptable judgment. For the judicial reform of civil code jurisdictions in particular, it is not only the organisation of the judicial system which should be reformed, but the actual laws and regulations as well, including those related to the judiciary itself.

A specific topic raised by Feliciano in the Philippines portion of the book (see below) not given as one of the above six approaches to judicial reform is the issue of transparency in judicial appointments. Feliciano devotes a fair amount of time to discussing the need for the judiciary to be selected on a basis of ability and not for any other reasons (for example, political connections or other forms of nepotism). Whilst transparency in such judicial appointments and the judicial complaint processes are highly important, we are of the view that increased transparency in all facets of the judicial system (including, for example, in judicial decision making and court transcripts, jury selection, and reasons for sentencing) should be one of the broader areas of reform focus. Feliciano does, however, make a valid point about the need for fiscal independence of the judiciary (in the context of money control and detachment from political parties or boroughs), something that many may not initially consider.

Promotion of judicial ethics, integrity and accountability (the Philippines experience)

The Philippines experience in the promotion of judicial ethics, integrity and accountability described in the book includes an enforceable

and defined code of ethics and conduct to guide the judges and members of the judiciary, transparent judicial appointments, and the streamlining and openness of the judicial complaint process. Feliciano also stressed that the heads of the judiciary and government should encourage the implementation and ongoing promotion of such reforms.

Feliciano stresses that the case management process should focus on a right-based approach, and that court procedure should be used as a means to attain substantive justice, rather than for any other reason. There is a focus on success on reforms in the Philippines that decreased procedural delays which are required because 'justice delayed is justice denied'. From this reviewer's perspective, an increase in time efficiency does not necessarily mean a better standard of justice is awarded – an increase in time efficiency must be balanced carefully with the need for due procedural diligence. Feliciano does quite rightly stress, though, that minimising delay in the court system increases public confidence in it by portraying the courts as 'no-nonsense tribunals that truly mean business'. Feliciano also mentions that when deciding on procedural amendments, training the existing members of the judicial system (judges, court officers, and the like), and coordinating the changes with other government agencies, is important.

Conclusion

The book focuses on judicial reform in the greater Asian region and is aimed at pushing judicial reform in this area by sharing the successful experiences gained and the lessons learnt of the seven Asian countries from their respective judicial reforms, and also coming to its own conclusions regarding effective judicial reform. After finishing reading this book, the reader should have a further understanding of judicial reform issues both for Asia and in general, as the book discusses these fairly extensively and certainly contains some potent points. However, the suggestions for judicial reform given by the various contributors to the book are highly important, but in some cases may lack certain further reforms procedures which some may feel should be adopted.