

Judicial Education and Training

Journal of the International Organization for Judicial Training

Issue 6, 2018



Judicial Education and Training

Journal of the International Organization for Judicial Training

MISSION

The journal Judicial Education and Training publishes topical articles on the education and training of judges and justice sector professionals around the world.

This journal aims to stimulate a community of learning in judicial education by showcasing selected papers presented to the biennial conferences of the International Organization for Judicial Training (IOJT). Additionally, it solicits original research, practical experience, and critical analysis on issues and trends in judicial education. It also provides a medium for informed discussion, the exchange of professional experience, and the development of knowledge in judicial education for a global readership.

Contributions are invited from chief justices and senior judges, judicial educators and academic researchers with an interest in this field. Earlier issues of this online journal may be found at:

<http://www.iojt.org/Journal.aspx>

Judicial Education and Training

Journal of the International Organization for Judicial Training

MANUSCRIPT SUBMISSION GUIDELINES

The Journal welcomes original manuscript submissions written in English that are between 3,000-5,000 words in length, including references. Manuscripts should be double-spaced using Times New Roman font, 12-point font size. A concise, informative title along with the names and institutional/court affiliations of each author should be included. Abbreviations should be clearly defined. All tables, figures, and appendices should be noted in the manuscript and submitted as a separate document with sufficient detail to recreate the graphic or appendix. Manuscripts should use a reference-list style of citations to books, articles, and reports. A style sheet is available upon request by contacting the Editor at iojt-journal@judcom.nsw.gov.au.

Manuscripts should be submitted via e-mail to the attention of the Editor at iojt-journal@judcom.nsw.gov.au, with the submission attached as a Microsoft Word document. Manuscripts will be sent to one or more experts for review at the discretion of the editors.

Decisions by the Editors regarding manuscript acceptance and publication shall be regarded as final. The Journal reserves the right to edit articles as appropriate.

JUDICIAL EDUCATION AND TRAINING

Journal of the International Organization for Judicial Training

Editors-in-Chief: Ernest Schmatt AM PSM, Australia and Dr Rainer Hornung-Jost, Germany

Editor: Anne Murphy, Judicial Commission of NSW

Technical Editor: Dominique Cornelia, Judicial Commission of NSW

Proof readers: Fleur Findlay, Kate Lumley and Antonia Miller, Judicial Commission of NSW

Cover design: Lorraine Beal, Judicial Commission of NSW

Production: Judicial Commission of NSW

Manuscripts should be submitted to the editor:
iojt-journal@judcom.nsw.gov.au

© Copyright 2018

International Organization for Judicial Training

Website: www.ncsc.org

ISBN: 978-0-89656-300-1

Contents

Introduction	7
Social media and big data: a judicial survival guide <i>Barry Clarke</i>	11
Online sexual exploitation of children and the Philippine Judicial Academy competency enhancement training program <i>Myrna Feliciano</i>	21
Development of outcome-based education gender sensitivity training for court personnel of the Philippine judiciary <i>Teresita Leonardo-De Castro, Erlyn A. Sana, Melflor Atienza, Katrina Legarda, Myrna Feliciano, Amy Avellano</i>	31
Declaration of Judicial Training Principles: a look back at its adoption and forward to its future prospects <i>Benoît Chamouard and Adèle Kent</i>	43
Electoral courts: substantive and methodological challenges for judicial training; experience and prospective in Mexico <i>Carlos Soriano Cienfuegos</i>	49
Judicial training in Latin America: study on the practices of the judicial colleges <i>Leonel González and Jeremy Cooper</i>	57
Judicial education: the Papua New Guinea experience <i>Sir Salamo Injia, Kt, GCL and John Carey</i>	69
China's judges' education and training reform: practice and future innovation <i>Dr LI Xiaomin</i>	77
Opportunities and challenges of judicial education: a case of Nepal <i>Shreekrishna Mulmi</i>	83
Emerging challenges in judicial education: Nigeria in focus <i>Hadiza Santali Sa'eed</i>	93
Judicial training in Pakistan: methodology and evaluation <i>Muhammad Shahid Shafiq</i>	103
Providing a Mongolian legal education system and its future direction <i>Volodya Oyumaa</i>	111

Introduction

Introduction

The world is changing – and judges need to adapt to linguistic, cultural and societal changes, including those prompted by technology. In line with the overall theme of the IOJT’s 8th International Conference held in Manila, Philippines, “Judicial education 2025 – Core values and future innovations”, the articles chosen focus on the emerging challenges faced by society and the judiciary. Discussion topics include big data and loss of privacy, gender-sensitivity training and online sexual exploitation of children and how the Philippine Judicial Academy capacitates its judges through competency enhancement training.

Our first article by **Judge Barry Clarke**, Regional Employment Judge, Wales, examines the devices and apps we use in daily life which cause us to lead hyperconnected lives. Social media platforms offer a rich vein of raw material for the cases judges are asked to decide. They have even contributed to an evolution of the language we use. To develop Benjamin Franklin’s famous quotation, the stuff of life is there, which means that the stuff of dispute is there too. This compels us to keep up to date, and as Judge Clarke says, whether we think that these trends have been a force for good or not, they cannot be ignored.

In the second article, **Professor Myrna Feliciano**, Chair at the Philippine Judicial Academy discusses how easy and unrestricted access to the internet opens up the risk for online victimisation. With the rapid advance and proliferation of information and communication technology (ICT) worldwide, connectivity between individuals transcends national boundaries and physical hindrances. The spread of ICT has not only co-opted existing forms of child abuse and exploitation but also enabled new forms of exploitation such as cyberbullying and internet harassment, sextortion, exposure to sexually explicit content, offline sexual abuse facilitated by the internet and social media, child abuse material and live streaming and trafficking of sexual abuse of children, otherwise known as webcam sex tourism. Professor Feliciano discusses how the Philippine Judicial Academy training program is responding to this with their competency enhancement training.

Our third article by **Justice Teresita Leonardo-De Castro** of the Supreme Court of the Philippines, **Professor Erlyn Sana**, **Professor Melflor Atienza**, **Katrina Legarda**, all from the University of the Philippines, **Professor Myrna Feliciano**, Chair at the Philippine Judicial Academy and **Judge Amy Avellano**, presiding judge, Negros Occidental examines the gender sensitivity training of court personnel which the Philippine judicial academy has been conducting since 1998. Despite the regular continuing professional development sessions in gender sensitivity, studies still show that institutional norms and practices remain discriminatory and gender insensitive. Their findings suggest the need for a continuing professional development program that will inculcate consistency in the court personnel’s knowledge, beliefs, and actual practices.

Following the adoption of the Declaration of Judicial Training Principles in 2017 at the IOJT’s 8th International Conference in Manila, our second theme showcases challenges, opportunities, review and reform in judicial training across Mexico, Latin America, Papua New Guinea, China, Nepal, Nigeria, Pakistan and Mongolia.

Judge Benoît Chamouard, Head of the International Department of the French National School for the Judiciary and **Justice Adèle Kent** of the Court of Queen’s Bench of Alberta,

and Executive Director, National Judicial Institute, Canada examine the Declaration of Judicial Training Principles in our fourth article. They look back at the reasons that led the IOJT and its members to work towards recognition of the principles guiding their action, and at the progress made through to adoption of the declaration. Looking to the future, the article also proposes possible ways of upholding the standards set out in this declaration.

Mexico's transition from authoritarianism to democracy triggered a series of political reforms, an important one of which was the creation of electoral courts. In the fifth article, **Carlos Soriano Cienfuegos**, General Director at the Electoral Judicial Training Centre of the Federal Electoral Court of Mexico, analyses the five major challenges faced in Mexican electoral courts and their specialised judicial schools.

In the sixth article, **Leonel González**, Training Director of the Justice Studies Centre of the Americas and **Professor Jeremy Cooper**, Visiting Professor at Middlesex University and former UK Joint Director of training at the Judicial College, discuss the important role that the Justice Studies Center of the Americas is playing in Latin America. Judicial training in the region is still new, with the first Latin American judicial academies being created in the 1980s. This article examines the research conducted in 2016 on the best practices in the training of judges.

In the seventh article, **Sir Salamo Injia**, Kt, GCL, Chief Justice of Papua New Guinea and **John Carey**, Executive Director of the Papua New Guinea Centre for Judicial Excellence, Port Moresby, examine the history of judicial education in Papua New Guinea (PNG), which led to the birth of the Papua New Guinea Centre for Judicial Excellence (PNGCJE) and give a descriptive insight into its progression. The recognition of the importance for judicial education is examined. A review of the PNGCJE provides a background to the framework, core values, aims and objectives of the judicial education program in PNG.

Judicial reform has been carried out in an inclusive way in the People's Republic of China. This reform has established new and higher requirements for the judicial ability and professional concepts of Chinese judges. **Dr Li Xiaomin**, Vice-President of the National Judges College, China, in the eighth article, discusses how the judges' training patterns have been profoundly affected by the significant progress made in fields like the reform of the judicial responsibility and trial-centered litigation systems, judicial publications and informatisation and the construction of intelligent courts.

Our ninth article by **Shreekrishna Mulmi**, Director at the National Judicial Academy of Nepal (NJA), examines the NJA, Nepal. Prior to the establishment of the NJA, Nepal on 17 March 2004, there was no training institute for their judges. The Nepal judiciary has the common goal to build a prosperous nation and fulfil constitutional obligations. In this context, the capacity-building programs and the research activities contribute to achieving these goals. This article explores the present context of judicial education in Nepal and the challenges faced by it, along with a few recommendations.

In our tenth article, **Hadiza Santali Sa'eed**, Deputy Director/Head of Judges Performance and Evaluation/Legal Department at the National Judicial Council, Nigeria, critically outlines the activities of the National Judicial Institute in a bid to identify challenges which may be intrinsic to other jurisdictions, while illuminating shortcomings. It also proffers some suggestions on how we can all, within our respective courts and jurisdictions, complement the efforts of our judicial education system.

Pakistan is experiencing institutional changes due to ever-evolving global trends and domestic transformation processes. Our eleventh article by **Muhammad Shahid Shafiq**, Senior Faculty

Member of the Sindh Judicial Academy, Karachi, Pakistan, discusses and highlights key issues that have been debated and resolved in the field of legal and judicial education. Methodology and evaluation recently undertaken in Pakistan and the ways and means of implementing the recommendations for reform are discussed.

In spite of its relatively short history, the legal education system of Mongolia has produced a sufficient number of legal professionals to meet social demand. In our final article, **Volodya Oyumaa**, Member of the Judicial General Council, Mongolia, examines the development of the Mongolian education system and how it has affected the reforms and renovations of legal education to reach a high level.

Ernest Schmatt AM PSM and Dr Rainer Hornung-Jost, Joint Editors-in-Chief

Social media and big data: a judicial survival guide

Barry Clarke*

Introduction

When speaking to judges about the impact of social media and the “big data” industry that has grown up alongside it, I often ask them to cast their minds back a decade or so. In terms of popular culture, 2007 does not seem so very long ago. In technological terms, however, it was a lifetime ago.

In the UK, as 2007 began, no one had a Facebook account (Facebook launched in the UK in July 2007) and no one owned an iPhone (Apple launched the first iPhone in the UK in November 2007). eBay had not long been launched. Online banking and online shopping were in their infancy. If a person wanted to watch television, they turned on their television set. If they wanted to listen to music, they put on a CD or turned on a radio.

How things have changed. In 2018, we are living what social scientists Anabel Quan-Haase and Barry Wellman call “hyperconnected” lives.¹ Technology suffuses every aspect of our existence and continues to transform it.² We hear phrases like “Web 2.0”³ and the “Internet of things”.⁴ The smartphones in our pockets operate as digital Swiss Army knives. These devices, and the apps on them that we use, have become our window to the wider world: email, GPS navigation systems, taking and sharing of photographs, messaging services, traffic updates, word processors, news consumption and, increasingly, a platform for paying for goods and services. Diagnostic health services are coming. Occasionally, we even use these devices to make phone calls. These devices have, at the same time, become our main means of escaping the world: streaming of video and audio content, gaming and internet browsing. They are part of the fabric of daily life. A strong case can be made that they have expanded our knowledge and our horizons and enabled us to make richer connections with wider circles of people.

At the centre of these trends are the innovative companies that enable us to search the world wide web and connect with one another through social media. In doing so, the world is often reflected to us as *we would like it to be*, not as *it is*; witness, for example, the growth of echo chambers⁵ and their impact on how we consume and share news of world events.⁶ Then again,

* Regional Employment Judge (Wales), national director of training for Employment Tribunals (England and Wales) and a deputy chair of the Central Arbitration Committee. The views expressed in this paper are entirely personal but informed by several years of providing training to judges about social media use.

¹ <https://en.wikipedia.org/wiki/Hyperconnectivity>, accessed 17 October 2018.

² The Government Office for Science produced an excellent and very readable report on the topic in January 2013: *Foresight future identities (2013) final project report*, The Government Office for Science, London at <https://www.gov.uk/government/publications/future-identities-changing-identities-in-the-uk>, accessed 17 October 2018.

³ https://en.wikipedia.org/wiki/Web_2.0, accessed 17 October 2018.

⁴ https://en.wikipedia.org/wiki/Internet_of_things, accessed 17 October 2018.

⁵ [https://en.wikipedia.org/wiki/Echo_chamber_\(media\)](https://en.wikipedia.org/wiki/Echo_chamber_(media)), accessed 17 October 2018.

⁶ There is a polemical article on the issue here: K Hosanagar, “Blame the echo chamber on Facebook. But blame yourself too”, *Wired*, at <https://www.wired.com/2016/11/facebook-echo-chamber/>, accessed 13 November 2018.

some might say that there are good reasons to avoid the world as it is. The growth of social media has been accompanied by a coarsening of public debate⁷ and an increase in online attacks on public figures including judges.⁸

All these services, and the way we use them, leave lasting digital footprints online for each of us. Those footprints are analysed by advanced algorithms.⁹ They are repackaged.¹⁰ They are sold for profit.¹¹ The organisations that perform these tasks have become known collectively as the “big data” industry. The vast amount of data that we now broadcast online — sometimes known as a “data exhaust”¹² — gives this industry an unparalleled insight into how we behave, the choices we make and, increasingly, the choices we are *going to make*.¹³ It has delivered a mechanism for making predictions about how we will spend our money,¹⁴ the entertainment we will consume,¹⁵ how healthy we will be (and the cost of our insurance)¹⁶ and perhaps even how we will vote.¹⁷

Yet, if we lose the devices by which we access these services and transmit this data to the world at large, the resulting “fear of missing out”¹⁸ can, for some, negatively influence psychological health.¹⁹

In summary, when discussing social media, the “pros” and the “cons” are both in abundance. But, whether we think that these trends have been a force for good or not, they cannot be ignored. For several reasons, they are of great importance to holders of judicial office.

⁷ See, for example, J Hoggan, “I’m right and you’re an idiot”, New Society Publishers, 2016.

⁸ See J Reid Meloy and M Amman, “Public figure attacks in the United States, 1995–2015” (2016) 34(5) *Behavioral Sciences and the Law*, 622–644. The three most likely victim categories were shown to be politicians, athletes and judges.

⁹ The algorithm behind the Facebook news feed is accessibly described in this Time Magazine article from July 2015: V Luckerson, “Here’s how Facebook news feed actually works”, *Time*, 2015 at <http://time.com/3950525/facebook-news-feed-algorithm>, accessed 17 October 2018.

¹⁰ A readable article on so-called “data mining” is available here: A Furnas, “Everything you wanted to know about data mining but were afraid to ask”, *The Atlantic*, 2012 at <https://www.theatlantic.com/technology/archive/2012/04/everything-you-wanted-to-know-about-data-mining-but-were-afraid-to-ask/255388/>, accessed 17 October 2018. A blogger talks about how it is done on eBay here: J Hu, “Data mining and e-commerce”, eBay, 2010 at <http://www.ebaytechblog.com/2010/10/20/data-mining-and-e-commerce/>, accessed 17 October 2018.

¹¹ An interesting account of how data analytics increased profit can be found here: “Tesco saves millions with supply chain analytics”, *Information Age*, 2013 at <http://www.information-age.com/tesco-saves-millions-with-supply-chain-analytics-123456972/>, accessed 17 October 2018.

¹² <https://www.techopedia.com/definition/30319/data-exhaust>, accessed 17 October 2018.

¹³ See further T Harkness, *Big data: does size matter?*, Bloomsbury Sigma, 2016 and S Finlay, *Predictive analytics, data mining and big data: myths, misconceptions and methods*, Palgrave MacMillan, 2014.

¹⁴ Explored in L Finger and S Dutta, *Ask, measure, learn: using social media analytics to understand and influence customer behaviour*, O’Reilly, 2014.

¹⁵ Explored in S Asur and B Huberman, “Predicting the future with social media”, (2010) at <https://arxiv.org/abs/1003.5699>, accessed 17 October 2018.

¹⁶ See Actuaries Institute, *The impact of big data on the future of insurance*, Green paper, November 2016.

¹⁷ A more controversial proposition, sceptically considered in H Schoen et al, “The power of prediction with social media”, (2013) 23(5) *Emerald Insight* pp 528–543 at <https://www.emeraldinsight.com/doi/abs/10.1108/IntR-06-2013-0115>, accessed 17 October 2018.

¹⁸ https://en.wikipedia.org/wiki/Fear_of_missing_out, accessed 17 October 2018.

¹⁹ B Riordan et al, “Fear of missing out (FoMO): the relationship between FoMO, alcohol use, and alcohol-related consequences in college students”, *Annals of Neuroscience and Psychology* 2:6 at <http://www.vipoa.org/neuropsychol/2/7>, accessed 13 November 2018.

Relevance for judges

I noted above that the devices and apps we use are now part of the fabric of daily life. That provides the first, and perhaps most compelling, reason for judges to be interested in these trends. Social media engagement is one of the mechanisms by which marriages, friendships and business relationships form and are broken. Social media platforms offer a rich vein of raw material for the cases we are asked to decide.²⁰ They have even contributed to an evolution of the language we use.²¹ To develop Benjamin Franklin's famous quotation, the stuff of life is there, which means that the stuff of dispute is there too. This compels us to keep up to date; we must be judges of 2018, not of 2008 or 1998.

The second reason for judges to be interested in these trends is because, in the years to come, they will radically change the nature of what we do. Those who have followed the writings of Richard Susskind will be familiar with his prophesies on how the internet and artificial intelligence will influence the development of the legal profession.²² Machine learning is already here; its use in assessing the risk involved in legal disputes will only increase. Any judge who doubts this should spend some time browsing the website of the legal analytics company Lex Machina, the result of a joint venture between LexisNexis and the law and computing departments of Stanford University.²³

However, it is on two other reasons that I shall concentrate. The first concerns the online security of judges. The second concerns their online conduct.

Security

I shall begin this section with a personal anecdote. In face-to-face training that I have delivered on this topic, the part of the session with the most impact is where I demonstrate the ready availability online of sensitive personal data about individual judges.

Using publicly available information from data aggregation websites,²⁴ which facilitates “jigsaw research”, I can often locate a judge's home address and year (or precise date) of birth. In one case I obtained the maiden name of a judge's mother, the names of his wife and daughter and pictures of his extended family; this was a judge who did not use social media at all. In another case I located the school attended by a judge's children and, in yet another, the park in which a judge ran a five kilometre race every Saturday morning. This was all done swiftly from the comfort of a desk; 20 years ago, a private detective would have been required. Such are the risks judges now face.

Given the sensitive, confidential and sometimes life-changing nature of the work judges do, they need to learn how to protect themselves. They need to develop wisdom about the way

²⁰ An interesting experiment is to do a Google search on “the impact of social media on [] law” and insert a specialism of your choice. Appearing alongside the numerous academic articles and blog posts will be a host of law firm marketing pieces, a sure sign that this is a growth area.

²¹ See this blog: J Reed, “How social media is changing language”, Oxford Dictionaries, at <https://blog.oxforddictionaries.com/2014/06/social-media-changing-language/>, accessed 17 October 2018.

²² See R Susskind, *Tomorrow's lawyers: an introduction to your future*, Oxford University Press, 2 edn, 2017 and R Susskind and D Susskind, *The future of the professions*, Oxford University Press, 2015. A quick understanding can be gained from their public lectures. See, for example, a shared lecture at <https://www.gresham.ac.uk/lectures-and-events/what-will-happen-when-artificial-intelligence-and-the-internet-meet-the-professions>, accessed 17 October 2018.

²³ <https://lexmachina.com>, accessed 17 October 2018.

²⁴ Some examples in the UK are <http://opencharities.org>; <http://www.192.com>; <https://companycheck.co.uk>; <http://www.genesreunited.co.uk>; and <http://www.rightmove.co.uk>.

they interact with new technology. They need to educate their friends and family members too, since their use of technology and social media also creates a digital footprint that captures their judicial relatives.

When I started delivering these training sessions in 2012, it was typically the case that about a quarter of those attending owned a smartphone and an even smaller number used social media. Moreover, those who did use social media could be described as “light users”; for example, they might have set up a Facebook account simply to stay in touch with travelling adult children. As we near the end of 2018, the situation has markedly shifted. Now, I find that a large majority own a smartphone (and often a tablet as well) and somewhere around two-thirds actively use social media. It will not be long, if we have not arrived there already, when most candidates for judicial office will bring with them a social media history – a digital “baggage”.²⁵ In addition, the range of social media services being used by judges has increased. The use of Twitter, which can be a popular platform for spreading legal news, is widespread. I am especially interested in the numbers now using Instagram and WhatsApp, since few judges realise that both services are owned by, and share data with, Facebook.²⁶

I set out below some suggestions to help judges use technology and social media more wisely. If followed, they will enhance privacy and security, and minimise the chances that a disaffected party can trace a judge to his or her home address. They will reduce, to some extent, the way in which data about judges’ lives as citizens, parents, voters, workers and consumers becomes a tradeable commodity in the “big data” world described above. Ultimately, however, the clock cannot be turned back. In the words of Pete Cashmore, the CEO of the digital media website Mashable, “Privacy is dead, and social media hold the smoking gun”.²⁷

- Find out what information about you is public and remove/amend it where you can. Make every effort to ensure that your home address and telephone number are not online (for example, through holding a company directorship).
- When signing up for online services, enter the minimum amount of authentic information possible. Consider providing a memorably bizarre rather than truthful answer to a security question – for example, that your first pet was called “Do you like pizza?”
- If you don’t use social media, protect yourself by speaking to and educating those who do. If you do use social media, use common sense. Take care of your privacy. Check who can see what you post: friends, friends of friends, everyone? Don’t announce online holiday plans or a house move, except perhaps to a limited circle of trusted contacts. Be careful of the photographs you share. Ask friends not to “tag” you in photographs.
- Consider using a pseudonym as your social media handle.

²⁵ Which may contain something known as the “database of ruin”, which is discussed polemically in this online interview: W Dunn, “Databases of ruin”, *New Statesman America* 2017 at <https://www.newstatesman.com/microsites/cyber/2017/02/databases-ruin>, accessed 17 October 2018.

²⁶ See “Why do Facebook and Instagram share information?” at <https://help.instagram.com/833836199971426>, accessed 17 October 2018 and <https://faq.whatsapp.com/en/general/26000112/?category=5245250>. Regulatory concerns have recently been expressed; see “WhatsApp and Facebook to face EU data taskforce”, BBC News, 2017 at <http://www.bbc.co.uk/news/technology-41761264>, accessed 17 October 2018.

²⁷ P Cashmore, “Privacy is dead, and social media hold smoking gun”, CNN, 2009 at <http://edition.cnn.com/2009/OPINION/10/28/cashmore.online.privacy/>, accessed 17 October 2018.

- Check the default settings of websites and browsers you use. Can you increase the privacy settings? Be wary of signing up to websites using your social media profiles. Turn on two-step verification where it is available.
- Change your passwords regularly. Don't use the same password for everything. Make sure they are good passwords (a password manager app, like mSecure, will help you remember your passwords and even suggest secure and random new ones).
- Maximise privacy settings on your smartphones. Turn off location services. Don't allow apps to access all your contacts. Back up your data. Use encryption services. Use anti-virus and anti-spyware software. Keep software up to date, since that is how weaknesses are identified and repaired.
- Be wary of using free public WiFi, which is usually not encrypted, for work use.
- Buy (and use) a shredder for disposing of personal mail.
- Consider using more than one email address. For personal use, consider using an email address that does not contain your name.
- Treat unsolicited text messages and emails warily. Do not reply. Do not open attachments if you are not confident that the source is safe.

These are matters that can and should be emphasised through judicial training.

Conduct

As judges, we are mercifully more likely to be exposed to the crass things said and done online when they are said and done by the parties appearing before us rather than when said and done by judges. Nonetheless, it is worth reflecting for a moment on why people say and do such crass things online. This may make judges approach their cases in a more nuanced fashion and it may also promote understanding of the impulses that drive risky behaviour. I propose four reasons.

The first reason is that social media communication, like email and text messaging before it, uses a much less formal style. A chatty exchange over email may begin with an informal salutation and end with a light-hearted comment in a way that formal letters or memoranda would never have done.²⁸ In the context of exchanges on internet bulletin boards, an early form of social media, one judge described this communication as “rather like contributions to a casual conversation (the analogy sometimes being drawn with people chatting in a bar) which people simply note before moving on; they are often uninhibited, casual and ill thought out; those who participate know this and expect a certain amount of repartee or ‘give and take’.”²⁹ One might say that less formal conversation is *less filtered* conversation.

The second reason is that social media communication can exhibit narcissistic or attention seeking elements, often related to low feelings of self-esteem among those using it. There is a burgeoning field of psychological research into the relationship between social media activity

²⁸ It has been suggested that the presence of a full-stop (or period) is synonymous with formality and even irritation, as discussed in this irreverent article: B Crair, “The period is pissed: when did our plainest punctuation mark become so aggressive?”, *The New Republic*, 2013, at <https://newrepublic.com/article/115726/periodour-simplest-punctuation-mark-has-become-sign-anger>, accessed 17 October 2018.

²⁹ *Smith v ADVFN plc* [2008] EWHC 1797 (QB) at [14] per Eady J.

and self-esteem³⁰ and the tendency of people to project a false version of themselves online.³¹ Efforts to appear witty, relevant or likeable may prove counterproductive. This is perhaps especially true in the field of sexual offences, where judges would be wise to heed the sage words of the Court of Appeal:³²

The complex mixture of motives which impels people, especially young people, to post messages on such sites includes, the court suspects, the desire to attract attention, admiration from peers and to provoke the interest of others in the person posting the material. We suspect that objective truth and the dissemination of factual evidence comes low on the list.

The third reason is the ubiquity of devices by which social media content is accessed. A few decades ago, a person's irritation with a colleague at work might not survive a good night's sleep — certainly not long enough for them to use a typewriter to prepare a document to be placed on a public message board in the workplace. Nowadays, the ever-present smartphone might mean that a comment is made online in the heat of the moment, perhaps with less awareness of who might read it, resulting in dismissal.³³ These are devices that we touch an average of 2,617 times a day.³⁴ Around the world more people have access to a smartphone than a toothbrush³⁵ or a toilet.³⁶ The average person responds to a text within 90 seconds (rather than 90 minutes for an email)³⁷ and many will look at their device within five minutes of waking up.³⁸

The fourth reason, connected to the third, is the addictive nature of the devices and the social media apps they contain. It has long been noted that social media services have addictive qualities.³⁹ Indeed, they were designed to be so.⁴⁰ The red badge for alerts and notifications, for example, was deliberately chosen because it is a trigger colour.⁴¹

³⁰ An early example can be found in C Steinfield, N Ellison and C Lampe, "Social capital, self-esteem, and use of online social network sites: a longitudinal analysis" (2008) 29(6) *Journal of Applied Developmental Psychology* 434–445. A more recent example is C Andreassen, S Pallesen and M Griffiths, "The relationship between addictive use of social media, narcissism, and self-esteem: findings from a large national survey" (2017) 64 *Addictive Behaviours* 287–293.

³¹ See S Herring and S Kapidzic, "Teens, gender and self-presentation in social media" in J Wright (ed) 2 edn, *International Encyclopaedia of Social and Behavioural Sciences*, Oxford Elsevier, 2015, and O Gil-Or, Y Levi-Belz and O Turel, "The 'Facebook-self': characteristics and psychological predictors of false self-presentation on Facebook" (2015) *Front Psychol* 6:99.

³² *R v D* [2011] EWCA Crim 2305 at [7] per Mackay J.

³³ By way of example, see A Argo, "Shop worker who abused colleague fairly dismissed", *The Courier and Advertiser*, at <https://www.pressreader.com/uk/the-courier-advertiser-fife-edition/20131129/281599533290347>, accessed 17 October 2018.

³⁴ M Winnick, "Putting a finger on our phone obsession", *dscout* at <https://blog.dscout.com/mobile-touches>, accessed 17 October 2018.

³⁵ <https://www.linkedin.com/pulse/really-more-mobile-phone-owners-than-toothbrush-jamie-turner/>, accessed 13 November 2018.

³⁶ "Deputy UN chief calls for urgent action to tackle global sanitation crisis", UN news, 2013 at <https://news.un.org/en/story/2013/03/435102-deputy-un-chief-calls-urgent-action-tackle-global-sanitation-crisis>, accessed 17 October 2018.

³⁷ "Why use SMS marketing?", <https://www.cdyne.com/downloads/sms-infographic.pdf>, accessed 17 October 2018.

³⁸ <https://www2.deloitte.com/uk/en/pages/press-releases/articles/uk-public-glued-to-smartphones.html>, accessed 13 November 2018.

³⁹ See D Kuss and M Griffiths, "Online social networking and addiction — a review of the psychological literature", (2011) 8(9) *Int J Environ Res Public Health*, 3528–3552.

⁴⁰ See N Eyal, *Hooked: how to build habit-forming products* in R Hoover (ed), Penguin books, 2014 and G van Koning bruggen et al, "Spontaneous hedonic reactions to social media cues", (2017) 20 *Cyberpsychology, Behaviour and Social Networking* 5.

These four reasons combine to form a toxic brew. The opportunities for unfiltered comment are obvious. Judges would do well to bear these features in mind when criticising parties for their online conduct. However, they should take note of them for another purpose: judges are human beings and, therefore, are not immune to the same impulses. Against that backdrop, what guidance can and should be given to judges, particularly those joining the judiciary in 2018 and bringing their digital baggage with them?

Around the world, judicial codes of conduct or statements of judicial ethics draw from the Bangalore Principles, compiled in 2002 by a meeting of chief justices now known as the Judicial Integrity Group.⁴² An extensive commentary was produced in 2007.⁴³ Both documents predate the emergence of social media and the “big data” industry and, at first blush, cast little light on judicial conduct online. That said, potentially problematic behaviours online are simply an extension of potentially problematic behaviours in the real world. For that reason, the Bangalore Principles provide a workable platform on which to construct additional guidance.⁴⁴

The six Bangalore values are independence, impartiality, integrity, propriety, equality and, expressed as a single value, competence and diligence. In respect of each value, a principle is expounded followed by examples of its application. For example, the second value of impartiality provides for this principle: “Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.” As an example of its application, we are told that “a judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary”. The third value of integrity provides for this principle: “Integrity is essential to the proper discharge of the judicial office.” We are told that “a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

In the context of online conduct, it is the fourth value — “propriety” — that is most pertinent. The principle says this: “Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.” The examples of its application include the following:

- As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge’s court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

⁴¹ The designer is interviewed here: P Lewis, “Our minds can be hikacked: the tech insiders who fear a smartphone dystopia”, *The Guardian*, at <https://www.theguardian.com/technology/2017/oct/05/smartphone-addiction-silicon-valley-dystopia>, accessed 17 October 2018.

⁴² “The Bangalore principles of judicial conduct”, 2002 at https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf. A short history of their development is available at: <https://www.judicialintegritygroup.org/the-bangalore-principles-of-judicial-conduct>.

⁴³ “Commentary on the Bangalore principles of judicial conduct”, UN Office on FDrugs and Crime, at https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf, accessed 17 October 2018.

⁴⁴ I acknowledge a debt here to Justice John Vertes (senior judge of the Supreme Court of the Northwest Territories of Canada) and his paper “Why can’t we be friends? Should judges be on Facebook?” (2011) 19(2) *Commonwealth Judicial Journal* 3.

- A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

It is clear that the highest standards are expected of a judge on and off the bench and, by extension, in respect of his or her digital life. In practice, does this mean that judges should not engage in social media at all? I would suggest not. That would be too onerous and intrusive a requirement. A person becoming a judge in 2018 could no more divest themselves of a social media life than they could divest themselves of the ability to shop or bank online or consume news and entertainment services online. In any case, requiring judges to abandon their digital lives upon appointment might lessen their effectiveness as decision-makers. We should bear in mind, admittedly out of context, the words of Lord Denning:⁴⁵

If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.

A similar sentiment was expressed by an appellate court in Texas, which was asked to decide whether a criminal trial had been unfair because of a Facebook friendship between the judge and the victim's father.⁴⁶ In the course of deciding that the trial was not tainted by the appearance of bias, the court said this:

Allowing judges to use Facebook and other social media is also consistent with the premise that judges do not "forfeit [their] right to associate with [their] friends and acquaintances nor [are they] condemned to live the life of a hermit. In fact, such a regime would ... lessen the effectiveness of the judicial officer." Comm. on Jud. Ethics, State Bar of Tex., Op. 39 (1978). Social websites are one way judges can remain active in the community. For example, the ABA has stated, "[s]ocial interactions of all kinds, including [the use of social media websites], can ... prevent [judges] from being thought of as isolated or out of touch." ABA Op. 462.

The ruling nonetheless made clear that judges should be mindful of their responsibilities under applicable judicial codes of conduct. In the Texas case, the judge had properly placed on the record the fact that he was friends on Facebook with the victim's father and that he had received a plea for leniency from him; he treated it as an inappropriate ex parte communication.

I am not aware of any judicial code of conduct that explicitly prohibits judges from using social media altogether.⁴⁷ Given the difficulty in defining social media activity (would it extend to reviews of products on Amazon, sellers on eBay or hotels on TripAdvisor?) this is not

⁴⁵ *Packer v Packer* [1953] 2 All ER 127 at 129.

⁴⁶ *Youkers v State of Texas*, (2013) Court of Appeals (Fifth district of Texas), 05-11-01407-CR.

⁴⁷ I am indebted to Hannah White, Associate to Judge R Letherbarrow, District Court in New South Wales, Australia, who surveyed various Commonwealth jurisdictions for me. The firmest advice against social media I have seen is the Statement of Principles of Judicial Ethics for the Scottish Judiciary, which is available here: <http://www.scotland-judiciary.org.uk/21/0/Principles-of-Judicial-Ethics>. It states that "Judges are advised not to sign up to social media sites such as Facebook or Twitter" (paragraph 5.2). By contrast, the *Judicial Guide to Conduct for England and Wales* states that "the use of social networking is a matter of personal choice"; <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>, accessed 17 October 2018. The jurisdiction that appears to have done most work in developing principles around social media use for judicial officers is Canada; see https://www.cacp.ca/law-amendments-committee-activities.html?asst_id=844.

surprising. Our focus should therefore be on the use of social media that is consistent with accepted norms around judicial ethics. I would suggest that the following guidelines to judges can be developed from the Bangalore principles and offer a sound basis for future discussion:

- Unless running an authorised blog (intended, for example, to demystify the work of the judiciary), do not use your personal digital life to publicise your appointment or your work as a judge or to identify yourself in a judicial capacity.
- Avoid expressing views online that, were it to become known you hold judicial office, could damage public confidence in your own impartiality or in the impartiality of the judiciary in general.
- Be wary of “following” or “liking” particular advocacy groups, campaigners or commentators if association with their views could damage public confidence in your impartiality. If you wish to follow certain political commentators, avoid creating your own echo chamber by ensuring a breadth and diversity of views.
- Avoid expressing views that are indicative of prejudgment of an issue of fact or law. Do not comment on actual or pending cases, whether your case or another judge’s case. Do not engage in private exchanges over social media sites or messaging services in respect of such cases. Do not post comments on websites in support of your own decisions.
- Avoid looking up the parties online or engaging in private research in respect of their digital lives; this is an extension of the rule that a judge should not engage in independent investigation of the case. Do not indulge idle curiosity.
- Be circumspect in tone and language and professional and prudent in respect of all interactions on social media. Consider in respect of each comment or photograph: what might its impact on judicial dignity be? Treat others with dignity and respect too; do not use social media content to trivialise the concerns of others. Behave in a manner that promotes a safe and healthy working environment.
- Consider whether any pre-appointment digital content might damage public confidence in your impartiality. If it does, remove it (it may be necessary to take advice on how to do so).
- Be wary about extending or accepting “friend requests” to and from lawyers or representatives who may appear before you.⁴⁸ The risk is that the connection might suggest a degree of leverage that a lawyer has over a judge, in the sense of being in a privileged position to influence the judge. Such an online friendship will not always be a disqualifying factor, but it will be a matter of degree and perception.
- If you have been insulted or abused online, seek advice from senior judicial colleagues. Do not respond directly.

These are again matters that can and should be emphasised through judicial training. The risk otherwise is that judges may face disciplinary action which, in many jurisdictions, is done publicly.⁴⁹

⁴⁸ See, further, J Browning, “Why can’t we be friends? Judges’ use of social media” (2014) 68 *U Miami L Rev* 487; S Jones, “Judges, friends, and Facebook: the ethics of prohibition”, (2011) 24 *Geo J Legal Ethics* 281; B Hull, “Why can’t we be ‘friends’? A call for a less stringent policy for judges using online social networking” (2012) 63 *Hastings Law Journal* 595.

⁴⁹ In England and Wales, for example, see here: <https://judicialconduct.judiciary.gov.uk/disciplinary-statements/2018/>, accessed 20 November 2018.

Conclusion

If judges are to be modern and diverse, and properly reflective of the societies they serve, they should be familiar with the way technology and social media are transforming all aspects of life. If they choose to be aloof from social media services — an understandable, admirable but increasingly difficult aspiration — they should at least be aware of their influence. If they choose to engage, they should do so with their eyes open and they should proceed with caution, aware of the security risks arising from their digital footprints and with the benefit of guidelines about appropriate online behaviour. Effective judicial training is essential to protect judges and to maintain compliance with ethical standards.

Online sexual exploitation of children and the Philippine Judicial Academy competency enhancement training program

Myrna Feliciano*

Introduction

With the rapid advances and proliferation of information and communication technology (ICT) worldwide, connectivity between individuals has transcended national boundaries and physical hindrances. Data shows that more than half of Filipino youth regularly use the internet and own gadgets with internet accessibility. The spread of ICT has not only incorporated existing forms of child abuse and exploitation but enabled new forms of exploitation such as cyberbullying, internet harassment, sextortion, exposure to sexually explicit material, offline sexual abuse facilitated by the internet and social media, child abuse material, live streaming and trafficking of sexual abuse of children, known as, webcam child sex tourism (WCST).

Easy and unrestricted access to the internet opens up the risk for online victimization. Neither internet access points nor digital content are monitored or regulated by service providers, and this is exacerbated by a lack of awareness of online safety. Combined with child or adolescent sexual curiosity, recklessness and susceptibility to peer influence or pressure, exploitation is rife.

The major underlying factor in online child abuse is poverty, which is often used to justify an involvement in commercial sexual exploitation. Family values, a culture of silence and acceptance combine to facilitate community-level involvement in areas where WCST has become a cottage industry.

Another factor is the emergence of new technologies and advanced computer software that can manipulate photographs and potentially manipulate pornographic virtual images. In addition, new mobile phone technologies and digital cameras allow for the quick production and exchange of digital images.

Consumerism among youth also plays a role the victimisation of children regarding instant messaging services, mobile phone technology that allows people to pass pre-paid credits or “pasaload” from one mobile phone to another, “sexting,” access to free pornographic websites as well as the assumption that cybersex is safer because they no longer require physical contact with customers. The easy access to children has led to crime syndicates that prey on children.

In view of new technologies providing enhanced access to child victims and child sexual abuse material, offenders are able to obtain to a larger and new population of children through the use of online forums, social networks and other internet-based communication tools. Offenders

* Professor II, Philippine Judicial Academy and Chair, Legal Method and Research. Portions of this paper are culled from M Feliciano et al, “Survey of Literature Review on Child Online Protection”, UNICEF, 2016, p 187, cited as UNICEF SLR Study.

may simultaneously make more than 200 “friends” with whom they are at different stages of “grooming”. Offenders initiate sexual conversation with children that respond favorably or at least remain engaged, and try to use sexual abuse materials to validate and vindicate acts such as rape, sexual harassment, prostitution and sexual abuse.¹ By providing channels for fast, free and difficult to trace ICT, offenders have increased opportunities to expose children to such harmful content. In addition, transfer services, through email, instant messaging, sexual networking sites, file transfer protocols, cloud computing and do-it-yourself websites have dramatically increased the accessibility of child abuse material.²

Providers and consumers of child sexual material may also have access to new technologies that reduce permanent digital evidence. Applications such as SnapChat and Wickr enable users to distribute temporary images that disappear within seconds following receipt.³

The increased level of harm suffered by victims has been found by experts insofar as “contact sexual abuse” when images or videos of abuse have been distributed online. Subsequent viewing and distribution of the materials serve to re-victimize and exacerbate the psychological damage to the abused.⁴

This is also true of non-contact abuse which denotes the producing, possessing or distributing sexual abuse material, making harassing or sexually suggestive comments to children, advertising sexual services of children on the internet, and actively employing or viewing children in live online sex shows.⁵ Moreover, children who come across such harmful contact can be affected before they determine whether the content is appropriate or take action to remove themselves from the situation. Some children can experience signs from the exposure, while others may not appear to be affected although it has the potential to influence the child’s development of values and perceptions.⁶

The phrase “Webcam Child Sex Tourism” is a term coined by the Dutch law enforcement community because it communicates both the cross-border nature of the crime in addition to the implied promise of remuneration for a child to perform sexual act for an adult. In the study conducted by Terre des Hommes Netherlands in the Philippines, children are often coerced

¹ United Nations Office on Drugs and Crime, *Study on the effects of new information technologies on the abuse and exploitation of children*, United Nations, New York, May 2015 (hereinafter cited as UNODC): at n 78, citing K Choo, *Online child grooming; a literature review on the misuse of social working sites for grooming children for sexual offences*, Australian Institute of Criminology, 2009, pp 11–15, at www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf, accessed 23 October 2018.

² *ibid* at p 17, citing K Choo, pp 13–14.

³ *ibid* at p 19, citing S Henn, “Teens dig digital privacy, if Snapchat is any indication”, *Tech, Culture and Connection*, 9 December 2013, at www.npr.org/sections/alltechconsidered/2013/12/10/249731334/teens-dig-digital-privacy-if-snapchat-is-any-indication, accessed 23 October 2018.

⁴ *ibid* at p 19, citing M Hamilton, Brief of the American professional society on the abuse of children in support of respondent Amy Unknown *Doyle Randall Paroline v Amy Unknown and United States*, US Supreme Court Case No 12-8561, at <http://sol-reform.com/12-8561-bsac-APSAC.pdf>, accessed 23 October 2018.

⁵ *ibid* at p 7, citing E Quayle, in M Ainsaar and L Lööf (eds), *Online behaviour related to child sexual abuse: literature report*, pp 10-11, at www.childrenatrisk.eu/robert/public/Online_behaviour_related_to_sexual_abuse.pdf, accessed 23 October 2018.

⁶ *ibid* at p 13, citing K Mitchell, D Finkelhor and J Wolak, “The exposure of youth to unwanted sexual material on the internet: a national survey of risk, impact and prevention”, (2003) 34(3) *Youth and Society* 330, at www.unh.edu/ccrc/pdf/Exposure_risk.pdf, accessed 23 October 2018.

or encouraged to seek “webcam sex shows” by parents, family members or other community members. WCST is perceived as an easy and harmless way to make money. However, the psychological effects on children exploited through WCST are profoundly traumatic.⁷

One of its research projects was done with the assistance of “Sweetie_1000”, a programmed computer model which looked like a 10-year old Filipino. During the 10 weeks online, the researchers received 20,172 request for conversations. Out of this number, 1,000 perpetrators provided identifying information, including their names.⁸

To respond to these new forms of child exploitation, the Philippine Government has established agencies such as the Anti-Cybercrime Group of the Philippine National Police, the Council for the Welfare of Children (CWC), the Inter-Agency Council Against Trafficking (IACAT), Inter-Agency Against Child Pornography (IAACP), the National Bureau of Investigation (NBI) and the Department of Justice — Office of Cybercrime (DOJ–OC), among others.

In 2014, the Department of Social Welfare and Development (DSWD) served 24 cases of cyber pornography bringing the total number of cases served since 2010 to 113. The cases were referred by the Philippine National Police, National Bureau of Investigation and Non-Government Organisations. Of these cases, 86 are ongoing in court while 27 children have been integrated with their families or are placed in DSWD or NGO-managed centers.⁹ In 2011, a total of 7,276 cases were filed in Regional Trial Courts designated as Family Courts which increased to 8,221 cases with the National Capital Region (NCR) ranking first followed by Regions 4A and 3 respectively.¹⁰

The international law framework

The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) by the UN General Assembly through its Resolution 44/25 of 20 November 1989 entered into force on 2 September 1990 and the Philippines ratified it on 21 August 1990. The convention contains four general principles:

- Article 2 on non-discrimination
- Article 3 on best interests of the child
- Article 6 on right to life, survival and development
- Article 12 on the views of the child.

Article 34 guarantees the protection of the child against sexual exploitation and sexual abuse.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, was adopted by the UN General Assembly, Resolution 54/263 on 25 May 2000, signed by the Philippines on 8 September 2000 and ratified on 6 September 2003. The production, distribution, dissemination, importation or possession of child pornographic materials are criminalised in this treaty.

⁷ Terre des Hommes, *Becoming Sweetie: a novel approach to stopping the global rise of webcam child sex tourism*, WCST Research, 2013, pp 13–14, at www.terredeshommes.nl/sites/tdh/files/uploads/research_report.pdf, accessed 23 October 2018.

⁸ *ibid* at pp 54–56.

⁹ UNICEF Systematic Literature Review Study, p 27, citing DSWD, 2015.

¹⁰ *ibid* at p 169–170.

“Sale of children” means any transaction whereby a child is transferred by a person or group of persons to another for remuneration or any other consideration. “Child prostitution” means the use of a child in sexual activities for remuneration or any form of consideration. On the other hand, child “pornography” means any representation by whatever means of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primary sexual purposes (Art 2).

Thus, the following acts and activities are ensured by State Parties to be fully covered by penal law:

- (a) Offering, delivering or accepting by whatever means, a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labor
- (b) Improperly inducing consent as an intermediary for the adoption of a child in violation of applicable international legal instruments of adoption
- (c) Offering, distributing, disseminating or providing a child for prostitution.

The International Labor Convention 182

The International Labor Convention 182 (Worst Forms of Child Labor Convention, 1999), as supplemented by ILO Recommendation 190 (1990). This convention was adopted on 17 June 1999 and the Philippines ratified it on 28 November 2000.

This convention seeks to prohibit and eliminate the worst forms of child labor. Article 3(b) of the convention provides that “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” as one of the worst forms of child labor. Recommendation 190 on the same date considered work which exposes children to physical, psychological or sexual abuse to be hazardous.

The UN Convention against Transnational Organized Crime including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

“The UN Convention against Transnational Organized Crime including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” (UNTOC), a UN convention, was signed on 12 December 2000 in Palermo, Italy and the Protocol was signed on 12 December 2000 in New York, USA. Both treaties were ratified by the Philippines on 28 May 2002.

The Protocol does not define “exploitation” but illustrates forms of exploitation in the definition of “trafficking in persons” such as the exploitation of the prostitution of others or other forms of exploitation, forced labor services, slavery or practices similar to slavery, servitude or the removal of organs.

The State Parties are required to implement a range of provisions to facilitate legal assistance, extradition and international cooperation in law enforcement measures. The convention can be applied to the prevention, investigation and prosecution of “serious crime” which encompasses a range of conduct where punishment is 4four years or more, including the use of ICT to abuse or exploit children.¹¹ The “organized criminal group” benefit has been interpreted to include

¹¹ UNODC Study, above, n 1, pp 37.

“sexual gratifications, such as receipt or trade of materials by members of child grooming rings, the trading of children by preferential sex offenders rings or cost-sharing among ring members.”¹²

A key provision of the protocol is that consent of the victim of the practice of trafficking in persons is irrelevant of Art 3(b).

In applying Art 6(4) of the protocol, each State Party shall take into account the age, gender and special needs of the victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.¹³

The Council of Europe, Convention on Cybercrime

“The Council of Europe, Convention on Cybercrime”, known as the Budapest convention, was adopted by the Committee of Ministers on 19 September 2001. It was opened for signature on 23 November 2001. Twenty-nine of the current 44 member states of the Council ratified it. Non-members were invited to participate in the negotiation, including Canada, Japan, the US and South Africa. The Philippines was invited on 15 June 2011 and ratified this convention on 28 March 2018.

This convention is designed to protect network and user security. More important is the entire section of Title 3, Art 9 which is devoted to the criminalisation and definition of child pornography distributed through a computer system.

The convention has three principal objectives. First, it attempts to meld together, across the panorama of participating members, domestic substantive law regarding cybercrime offences and related offences and provisions. Second, it establishes a criminal procedure framework that empowers each participating country to investigate and prosecute offences committed by means of, or with the assistance of a computer system. It also provides for the gathering and preservation of evidence in electronic form that is related to the commission of such offences. Third, it sets up a regime designed to foster effective international cooperation.¹⁴

The Philippine Judicial Academy (PhilJA) and its competency enhancement training program on online sexual exploitation of children

Based on the 1st National Family Courts Summit held on 16–17 September 2015, Group 12 on Special Concerns and Emerging Issues outlined the issues and barriers to justice and child protection in adjudicating online sexual exploitation of children (OSEC).

Initially, UNICEF Philippines commissioned two studies, namely, “A systematic literature review on online child protection”¹⁵ and “Protection of children from abuse and exploitation: online capacity gap analysis of stakeholders”¹⁶ in 2015–2016. Likewise, the Law and Human

¹² UNTOC, Art 2(a) at www.asil.org/insights/volume/15/issue/24/protecting-children-cyber-crime-twentieth-session-un-commission-crime, accessed 30 October 2018.

¹³ UNODC Study, n 1, pp 37–38.

¹⁴ D Oddis, “Combating child pornography on the internet: the Council of Europe’s Convention on cybercrime” (2002) 16 *Temple International and Comparative Law Journal* 477, citing “Background of the convention on cybercrime” found in Council of Europe’s website, at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185, accessed 23 October 2018.

¹⁵ Study undertaken by M Feliciano, F Vargas, L del Rosario and S Hernandez.

¹⁶ Survey was conducted by M Legarda, M Ladia, J de Guzman-Torio and M Cacol.

Rights Unit of The Asia Foundation (TAF) prepared a paper on “Preliminary analysis of the landscape of online child abuse cases and its observations, concerns and/or questions which were barriers to justice”.

Accordingly, the Supreme Court Committee on Family Courts and Juvenile Concerns, chaired by Justice Teresita Leonardo-de Castro, with the approval of the Supreme Court en banc, adopted the TAF proposal to make an OSEC module for PhilJA and utilise it for training and improving the competencies of judges, prosecutors, social workers and police investigators in handling online sexual investigation.

The OSEC module

The OSEC module was conceptualised by Atty Katrina Legarda and Judge Amy Avellano which was piloted on 4–5 May 2016 at the Discovery Suites, Ortigas Center, Pasig City. Its general objective is to increase capacity as multidisciplinary frontline workers in preventing, referring, investigating, prosecuting and adjudicating OSEC cases. Its specific objectives are for participants who should be able to:

- (a) demonstrate sensitivity to victims and identify possible referral mechanisms
- (b) gain deeper understanding and apply international and domestic legal framework and relevant Supreme Court issuances
- (c) increase capacity skills in detection, surveillance, monitoring, evidence gathering and appreciation and electronic complexities of digital evidence, and
- (d) competently investigate, prosecute, and adjudicate OSEC cases and give psycho-social assistance.

The training scenario involves participants, including judges, prosecutors, social workers, and police investigators who may be facing or handling OSEC cases. Lecturers, including members of the bench, experts in law, psychiatry/psychology, social work, digital forensics and crime investigation who are recognised authorities in their fields are also included, as are facilitators, including members of the bench and prosecutors with actual experience in handling OSEC cases and whose ability to facilitate have been determined through a rigorous screening process and polished by individual and team monitoring.

Training Framework

Competency Enhancement Training — Online Sexual Exploitation of Children (CET–OSEC), consists of a combination of lectures from experts, module videos and case vignettes as trigger materials and instructional resources, workshops, practicum and problem-solving activities in small or large group settings. Activities and topics are arranged to provide participants with a competency-based, interactive, comprehensive and holistic training for their immediate use.

CET–OSEC is competency-based: The objectives, subject matter, training activities and assessment measures are all formulated according to actual competencies or behavioral outcomes that participants can demonstrate at the end of the program.¹⁷ These behavioral competencies are evidence that learning has taken place.

¹⁷ A Segall et al, 1975.

CET–OSEC is interactive: It features short inputs from content experts that are immediately followed by exercises, workshops, problem solving activities and plenary sessions to enable participants to reflect and immediately apply what has been learned. Their active participation in these activities provides them a sense of ownership of the outputs in each of the sessions.

CET–OSEC is comprehensive: It features the basic principles of online sexual exploitation of children. OSEC is a psycho-social problem, a legal issue and an international concern. The basic principles are reinforced with practical applications to ensure that the participants fully understand and develop competence in handling OSEC cases inside and outside court settings.

CET–OSEC is holistic: It provides both cognitive and emotional theoretical and substantive inputs and practical activities to expedite inculcation and internalisation of the problem of OSEC among participants.

The program

At the beginning of the program, a participant and facilitator manual is distributed. There is a chief facilitator for each day to introduce the lecturers, to see the activities are scheduled on time and ensure that the internet and videos are working in the venue so that all activities may be promptly carried out. The following gives a brief outline of topics covered in the training.

LECTURE 1: “The Wonderful World of Cyberspace” — topics to be covered here should make the participants aware of the digital world of millennial generation and the magnitude of the global and local phenomenon of OSEC. Vibrant and interactive, the message is: “The internet is a tool that is both beneficial and harmful”. To set the tone for the second lecture, a video called “Lorna” is shown.

LECTURE 2: “The Generation Today: Dynamics of Young Children in the Digital World” — topics to be covered here include the effects of gadgets and the internet on young children, what can cause harm, and other familial and environmental factors increasing the vulnerabilities of victimisation. The lecture will also touch on “gaming” and how addiction to this is initiated at a very young age.

LECTURE 3: “Trauma-informed Care: Caring for the Child and Its Carers” — The lecture will commence by “processing” Module Video 1 to explain how a child can be groomed for victimisation. The lecturer must inform the participants of the referral system for victims (to whom, when, why and how); give participants a better grasp of how they can help the child and the family in transitioning to rehabilitation and community reintegration; and help them, as front-line workers protect themselves from “vicarious trauma”.

The specific objectives of the following sessions are to gain deeper understanding of, and to apply international and domestic legal framework and relevant court issuances and to increase skills in detection, surveillance, monitoring and evidence gathering.

LECTURE 4: “Legal Framework: Making the Obsolete Relevant” — This is an interactive lecture that will show slides of the various forms that OSEC can take, the definition of these forms and a discussion of the relevant provisions of laws which may be utilized in the investigation, prosecution and adjudication of OSEC cases. The lecturer will stress that while there are no specific laws on OSEC per se, the present laws are sufficient to prosecute acts of OSEC.

LECTURE 5: “Detection, Surveillance, Monitoring and Investigation of the Crimes Against Millennials” — topics include procedures in cybercrime investigation, undercover surveillance,

issuance of search and seizure warrants, requests for subpoena duces tecum, resources available, and the use of digital evidence in either testifying or conducting basic online investigation of interviews to facilitate prosecution of OSEC.

These lectures are followed by workshops and small group discussions.

LECTURE 6: “The Financial Trail of OSEC” — this is an interactive lecture, and topics include the investigation of online transactions for the payment of OSEC including modes of surveillance, monitoring and investigation of remittance centers. The lecturer will show how to “follow the money”.

LECTURE 7: “The Digital World” — topics here include basics of computers and network systems, the digital landscape here and abroad, digital forensics (collection, preservation and storage of digital evidence), tips on how to navigate to the sites to preserve the evidence and to subsequently remove offending sites. The lecturer must “show and tell”: real-time chatting, website manipulations and so forth.

These lectures are followed by simulation activities on how to catch a predator.

LECTURE 8: “Simplified Digital Evidence for the Courts” — using an OSEC case scenario, help the judges identify tangible and intangible pieces of evidence that a court may expect the prosecution to present.

LECTURE 9: “The Expert’s Testimony: Challenges and Gaps” — this topic covers the challenges often encountered in presenting an expert witness in OSEC and trafficking in persons (TIP) cases. The lecture concludes by sharing a brief background of an OSEC/TIP case where there is no expert witness and enumerate the types of evidence that the prosecution may present to prove its case.

Practical small group sessions and simulations help to apply this information.

Conclusion

Participants’ evaluation of the seminar provided a 100% satisfaction rating, as “it improved their knowledge” and is information which can be applied in their role. Suggested training needs to include follow-up seminars on familiarity with the cyber-world, gathering and preservation of evidence, how to trace or search for communication between the victim and offender on the internet, amongst others.

In spite of all these safeguards, there were gaps in the execution of these laws and programs in administrative agencies and delay in courts. We need social services which are crucial in ensuring the welfare of victims of different forms of child abuse.

The recommendations in our UNICEF study are:

1. Laws and policies should be strengthened with amendments addressed to the legislators while problems are addressed with proper solutions.
2. Internet Service Providers should be legally liable in monitoring their services.
3. Coordination with other countries in solving child abuse is vital.
4. Monitoring the online activities of sexual offenders should also be ensured by both government agencies and NGOs.
5. A database of sex offenders should be created.
6. The government should provide compensation for child victims.

7. Families, schools and individuals should use the internet responsibly and implement an internet safety policy.
8. The CET module on online child protection should be supported by the Philippine Judicial System, in particular PhilJA, regularly and OSEC information should be given in its Enhanced Justice on Wheels programs which are disseminated in cities and villages, including the Department of the Interior and Local Government.
9. Another trainer's training seminar for facilitators should be scheduled by PhilJA CET-OSEC to train all judges.

Appendix

Internet slang that may be used in a conversation with a minor

AMA	Ask me anything
A/S or A/S/L or A/S/L/P	Age, sex, location, picture
AFK	Away from keyboard
AITR	Adult in the room
AOS	Adult over shoulder
BAE	Babe/Before anyone else
BRB	Be right back
DM/PM	Direct/private/personal message
EB	Eyeball; meet-up
ELI5	Explain like I'm 5
Face palm	Meaning "ugh" or idiot
Head desk	Extreme face palm moment
HIFW	How I felt when
ICYMI	In case you missed it
IDK	I do not know
IKR	I know right
IMO/IMHO	In my opinion/humble opinion
IRL	In real life
J/K	Just kidding
JSYK	Just so you know
LOL	Laughing out loud
Lulz	Just for kicks or laughs; variation of LOLs (lots of laughs)
OMG	Oh my God/Gosh
PAW	Parents Are Watching
SMH	Shaking My Head
S3X	Sex
TBT/FBF	Throwback Thursday/Flashback Friday
TTYL	Talk To You Later
YOLO	You only live once

Development of outcome-based education gender sensitivity training for court personnel of the Philippine judiciary

Teresita Leonardo-De Castro*, Erlyn A. Sana**, Melflor Atienza***,
Katrina Legarda#, Myrna Feliciano##, Amy Avellano^

Introduction

As part of its mandate to capacitate judicial personnel, the Philippine Judicial Academy (PhilJA) regularly conducts a series of continuing professional development (CPD) programs. Among these include the gender sensitivity training of court personnel which the academy has been conducting since 1998. Despite the regular CPD sessions in gender sensitivity, studies still show that court personnel, including the institutional norms and practices, remain discriminatory and gender insensitive.¹

Gender sensitivity refers to the ability to recognize gender issues, especially women's different perceptions and interests rising from their unique social location and gender roles.² Ocampo³ argued that gender orientation exceeds the typical man/woman differences but also includes lesbians, gays, bisexual, and transgender (LGBT) people. In recognition of these orientations, gender sensitivity refers to the understanding and consideration of socio-cultural factors underlying sex-based discrimination.⁴

The Philippines has more than enough laws and statutes that promote gender sensitivity in all areas of socialization from the family, to schools, work places, government service, and international relations. But the gender situation in the country remains a picture of sharp contradictions. Anonuevo⁵ wrote that "while women show advancement in politics, academic and professional excellence, and even legislation, contrasting images of prostituted women, battered wives, economically disadvantaged women, and exploited migrant workers continue

* The Honorable Chief Justice of the Supreme Court of the Philippines.

** PhD, Professor, National Teacher Training Center for the Health Professions (NTTCHP), University of the Philippines, Manila.

*** MD, MHPEd, FPCP, FPSDG, FPSDE Professor and Dean, NTTCHP, University of the Philippines, Manila.

LIB Faculty, College of Law, University of the Philippines.

ML, LLM, Chair, Legal Method and Research Group, Philippine Judicial Academy.

^ LLB, LLM Presiding Judge, Regional Trial Court 58, San Carlos City, Negros Occidental.

¹ M Feliciano and C Sobritchea, *Gender Sensitivity in the Family Courts*, University of the Philippines Center for Women's Center, Quezon City, 2005.

² M Sta, *CEDAW Benchbook*, Ateneo Human Rights Center, Quezon City, 2008.

³ C Ocampo, "Sex in the workplace: approaches to sexual orientation and gender identity discrimination in the workplace absent an anti-discrimination law" (2000) 86 *Philippine Law Journal* 1.

⁴ <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder=&fullsearch=0&page=-1>, accessed 7 November 2018.

⁵ C Anonuevo, "An overview of the gender situation in the Philippines", *Online Papers*, Friedrich Ebert Stiftung Philippine Office, Quezon City, 2000 at <http://library.fes.de/pdf-files/bueros/philippinen/50069.pdf>, accessed 31 October 2018.

to haunt the overall picture of women discriminated against because of their gender”. Ocampo⁶ also presented cases where LGBT persons were discriminated against despite the presence of the numerous laws and declarations. Among court employees themselves, Feliciano and Sobritchea⁷ reported that according to both male and female judges, female witnesses encounter intimidation and sexually-suggestive comments, especially on their personal appearances, their clothing, and bodies, sexist remarks and jokes, as well as discriminatory treatment during their conduct of their court testimony.

To address this gap in training and practice, the PhilJA “Committee on Gender Responsiveness in the Judiciary” (CGRJ) commissioned this study.⁸

The general objectives were:

- To describe the level of understanding and appreciation of court personnel on gender sensitivity.
- To formulate an appropriate training design matching the levels of understanding of court personnel.

The specific objectives were:

- To describe the profile of court personnel in terms of their levels of understanding of how gender sensitivity is embedded in lay and professional languages, workplace situations, and general flow of routine social activities, and court proceedings.
- To compare the profile of the levels of understanding according to court personnel’s demographic and professional backgrounds.
- To identify suitable learning outcomes that court personnel should achieve in terms of gender sensitivity.

Methodology

Research design

This was a cross-sectional survey. Respondents were selected by stratified random sampling accomplished by a self-administered questionnaire. They were asked for selected demographic characteristics, employment history in the judiciary, and their general levels of understanding and appreciation of the many dimensions of gender sensitivity.

Population and sampling

All employees of the Philippine judiciary composed the population in this study. As of the end of October 2013, the Supreme Court of the Philippines had a total of 27,988 employees. Online formula to determine the sample size was used and yielded 384 respondents at a confidence level of 95 per cent and margin of error at 5 per cent. The research team increased the sample size to 430 as a contingency for non-responders and to make up for cases of drop-outs and for unwilling

⁶ above, n 3.

⁷ above, n 1.

⁸ From eight actual training sessions conducted by the Philippine Judicial Academy from July 2015 to June 2017, the training conducted on June 16 and 17, 2016 was selected for this study. The study followed levels 1 and 2 evaluation developed by D Kirkpatrick, *Evaluating training programs: the four levels*, Berrett-Koehler Publishers Inc, 1998.

or unavailable respondents. The Sharia Court personnel were not included because they would be difficult to reach given the limited time of the study. It was also understood that the Filipino Moslem populations could not just be analyzed without relating to their cultural context. The sampling frame was further reduced into two strata: sex and official job designations. Based on the new population formed from these two strata, the simple random sampling procedure was done and yielded 430 respondents. The response rate was 100 per cent.

Data collection procedures

The study used a survey questionnaire, review of secondary documents, and focus group discussion as data collection procedures. The questionnaire was constructed according to the objectives of the study and pilot tested to 40 court personnel selected by convenience sampling from the main office in Manila. Appropriate revisions were made and the blueprint of the final instrument is outlined in the table below.

Table 1. Questionnaire blueprint

Constructs (variables) used	Number of items (type of questions)
1. Demographic characteristics	5 (Supply Type: identification)
2. Employment history and professional background	10 (Supply Type: 6 questions identification and 4 enumeration)
3. Level of understanding & appreciation of gender sensitivity:	
a. Gender-fair language	4 (Selected Response Type: 3 questions in the rating scale and 1 Multiple-Choice Question (MCQ))
b. Gender socialization	8 (Selected Response Type: 6 questions in the rating scale and 2 MCQs)
c. Provisions of CEDAW and other statutes	10 questions (Selected Response Type: 6 asked in the rating scale and 4 MCQs)
4. Total questions	37 items

Annual reports, newsletters, collections of laws and statutes on gender and related issues, as well as selected office records such as organisational charts were reviewed. Selected court personnel from both legal and non-legal professionals participated in a focus group discussion to further triangulate the results.

Analysis of data

Questions on the three dimensions of gender sensitivity were analysed as test scores. Means and mode, as well as the measures of dispersion particularly the ranges, variances, and standard deviations were obtained. The same measures of central tendency and dispersion were used as estimates in determining if there was a significant difference in the overall levels of understanding of gender sensitivity with other variables like sex, official designation, and gender orientation. The t-test for unmatched pairs and analysis of variance were performed at confidence level $p=0.05$.

Results and discussion

From among the 430 respondents, 261 were female representing 60.7% and 166 male equivalent to 38.6%; there were 3 respondents (equivalent to 0.7%) who did not indicate their sex. Table 2 presents the distribution of respondents according to their official designations. There were 423 valid responses. Figures show that respondents were topped by 95 clerks of court, followed by 74 administrative personnel, and 66 stenographers.

Table 2. Distribution of respondents according to their official designations (n=423)

Designation	Frequency	Percent
1. Clerk of court (COC)	95	22.1
2. Stenographer	66	15.3
3. Judge	32	7.4
4. Administrative Staff (Clerks, Data Encoder, Records Officer, etc.)	74	17.2
5. Utility	26	6.0
6. Security	1	0.2
7. Executive Personnel (Administrative Assistants, Executive Officers, etc.)	6	1.4
8. Trainers / Training Officers	22	5.1
9. Court interpreter	20	4.7
10. Sheriff	25	5.8
11. Legal researcher	48	11.2
12. Social worker	3	0.7
13. Attorney	4	0.9
14. Justice	1	0.2
TOTALS	423	98.4

In terms of civil status, there were 296 (68.8%) per cent married respondents, 114 (26.5%) per cent who were single, and 15 (3.5%) widowed. These figures when combined with the sex distributions of respondents show another marked distribution of court employees. This is presented in the table below. Figures show that married female employees dominate the group, and even among the singles, female employees are still far greater in number compared to male personnel.

Table 3. Cross tabulation of respondents according to sex and civil status (n=427)

Civil status	Male	Female	Total
Single	29	84	113
Married	130	166	296
Widowed	5	10	15
Total	166	261	427

There is a wide distribution of court employees in terms of years in government service. The mean is 13.10 years and the distribution of respondents is presented in the table below. There were only 420 valid data results. Studying the profile in terms of years of service reveals that there is a generally a good spread of new, novice, mid-career, peak, and late career of the judicial employees.

Table 4. Distribution of respondents according to their years of service (n=420)

Range of number of years service	Frequency	Percent
0.1 month to 5 years	94	22.38
6-10	95	22.62
11-15	64	15.24
16-20	59	14.04
21-25	39	9.29

Range of number of years service	Frequency	Percent
26-30	34	8.10
31-35	16	3.81
36-40	17	4.05
41-50	2	0.48
Totals	420	100

Respondents came from all regions of the Philippines but 271 (63%) represented those from the National Capital Region (NCR). There were 9 invalid responses so the data only summed to 421. The remaining 37% were equally shared by those coming from the rest of the geographic divisions of the country.

Table 5. Geographic distributions of respondents (n=419)

Regions	Frequency	Percent
1: Ilocos Region	4	0.9
2: Cagayan Valley	6	1.4
3: Central Luzon	7	1.6
4: Southern Tagalog	16	3.7
5: Bicol Region	7	1.6
6: Western Visayas Region	23	5.3
7: Central Visayas	6	1.4
8: Eastern Visayas	14	3.3
9: Western Mindanao	9	2.1
10: Northern Mindanao	8	1.9
11: Southern Mindanao	34	7.9
12: Central Mindanao	9	2.1
National Capital Region	271	63
ARMM: Autonomous Region in Muslim Mindanao	3	1.7
CAR: Cordillera Autonomous Region	2	0.5
Totals	419	97.4

Table 6 presents the reported sexual orientations of respondents. There were 271 invalid data (item was not answered by respondents) so the results were only obtained from 159 responses. Findings include 15 orientations ranging from the usual male and female to LGBTs and others. Figures reveal that other than being primarily female, respondents are not necessarily feminine in terms of sexual orientations.

Table 6. Sexual orientations of respondents (n=159)

Reported sexual orientation	Frequency	Percent
1. Female	57	35.85
2. Feminine	14	8.81
3. Equal (probably bisexual)	6	3.77
4. Neutral	2	1.25
5. Gay	4	2.52
6. Lesbian	1	0.63
7. Moderate	1	0.63

Reported sexual orientation	Frequency	Percent
8. Male	15	9.43
9. Masculine	6	3.77
10. Pure breed	1	0.63
11. Straight	23	14.47
12. Not familiar with genders	1	0.63
13. GAD orientation by LGU	1	0.63
14. None/NA	13	8.18
15. Hetrosexual	14	8.81
Totals	159	100

Levels of understanding and appreciation of court employees on gender sensitivity

Perceived understanding of basic concepts and dimensions of gender sensitivity

Respondents were requested to accomplish a rating scale indicating their perceived levels of understanding on the basic dimensions of gender sensitivity. Response options ranged from 1: understand very well, 2: know what it is, 3: heard about it, and 4: not aware of it. The table below presents the mean scores of respondents on the dimensions of gender sensitivity.

Table 7. Means and standard deviations of the perceived levels of understanding of respondents on the dimensions of gender sensitivity (valid n=376)

Concepts on gender socialisation	Mean score	Standard deviation (SD)
1. Gender socialisation		
a. Distinction between sex and gender	1.91	0.83
b. Gender roles and stereotypes	2.28	0.86
c. Gender ideology and discrimination	2.32	0.80
d. Gender socialisation in general	2.38	0.85
2. Gender-fair language		
a. Gender-fair language in day-to-day activities	2.23	0.87
b. Gender fair language in the court	2.30	0.94
3. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and other legal provisions		
a. CEDAW	2.75	1.72
b. Republic Act No. 9262: The Anti- Violence against Women and their Children	1.88	0.74
c. Rules on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary	2.47	1.71

Among all the dimensions of gender socialization, respondents reported confidence in knowing the most basic concept of distinguishing between sex and gender; this posed the highest mean score at 1.91. The ratings on the rest of the dimensions are lower with means that are greater than or equal to 2. The low standard deviations, except as to CEDAW⁹ and the administrative

⁹ The Convention on the elimination of all forms of discrimination against women.

procedure in the court, further prove that these ratings are basically uniform across all types of respondents. This perceived understanding at the “knowing what it is” level indicates that respondents can most likely recall the terms, distinguish them from others, explain these in their own words, but might not be accurate and completely correct. CEDAW attracting the lowest rating that is almost close to 3 is revealing because records of the PhilJA and the Supreme Court of the Philippines show that many seminars and workshops on this topic had already been conducted in almost all regions and employees.

Putting all the dimensions of gender sensitivity in context

The respondents were also requested to answer eight multiple-choice questions (MCQ) that put all the dimensions of gender sensitivity in context. Analysed as a test, each correct answer was given a one-point equivalent and respondents acquired a score from 0 to 8 points. The figures in Table 8 show that 247 (59.40 %) of respondents passed while 169 (40.63%) failed. Findings prove that respondents were able to relate their earlier reported perceived levels of understanding or “knowing what gender sensitivity is” to particular contexts or scenarios. In the hierarchy of the cognitive domain of learning, this ability to define terms, distinguish them from other related concepts, explain them in one’s own words, analyse when a particular act becomes a violation of a law, and determining which law applies to a particular case, are all evidence of a thorough grasp of the dimensions of gender sensitivity as a learning outcome. The eight questions range from the levels of recall, comprehension, application, analysis, and evaluation and when answered correctly can suggest higher order thinking skills.¹⁰ While the provisions of CEDAW and Anti-Sexual Harassment were perceived as “know what it is”, the respondents’ ability to transfer them to actual situations show deeper understanding of these legal statutes.

Table 8. Performance of respondents in the MCQ test

Test item	No of respondents	No of respondents who got the correct answer (Percent who passed)
1. Gender-friendly language	408	198 (48.53)
2. Sexual harassment	430	130 (30.23)
3. Sextortion	415	389 (93.73)
4. Gender sensitivity	412	134 (32.52)
5. Prejudice against the sexes	430	364 (84.65)
6. Anti-Sexual Harassment Law (RA 7877)	407	363 (89.19)
7. Gender socialisation	412	81 (19.66)
8. Recruitment of only single women	416	319 (76.68)
Mean performance	416.25	247.25 (59.40)

Relating the concepts of gender sensitivity to behaviour and actual decorum

The first two constructs dealing with the basic concepts and relating them with given contexts are both in the cognitive domains of learning. They deal with knowledge, acquiring, retaining, applying, analysing, and evaluating it. When this knowledge translates into actual attitudes and become actions, and are performed consistently, they become behaviours. All educational

¹⁰ E Sana (ed), *Teaching and Learning in the Health Sciences*, The University of the Philippines Press, Quezon City, 2010.

interventions, both in formal (like a degree program) and non-formal structures like (short-term training programs, seminars and workshops, etc) aim to cause this change, that is, acquisition of knowledge and competencies, and translated as behaviour change.

The last rating scale collates the three dimensions of gender sensitivity translated into behaviours as experienced and/or witnessed by court employees. The table below presents the summary of mean ratings and standard deviations as obtained from the ratings of court personnel. The response option ranged from 1: Always, 2: Occasional, 3: Seldom, and 4: Never. Such response option was designed to indicate consistency in respondents' observations and patterns of behaviours in the court as a workplace.

Table 9. Means and standard deviations of respondents' observations and experiences in the court (n=430)

Action statements (Dimensions)	Mean	Standard Deviation
1. Branding out some personnel as "gays," "lesbians," "bading," "buntis," "kabit," etc (Gender-fair language)	2.72	1.03
2. Having separate lines or "pila" or service counters for men, women, gays, and lesbians (Gender socialisation)	3.65	0.72
3. Forming of exclusive organizations in the judiciary for men, women, gays, and lesbian employees (Gender socialisation)	3.71	0.67
4. When filing and following up their cases, some clients complain that our court is insensitive to women, gays, children, and lesbians (CEDAW, etc)	3.72	0.61
5. Cases of reporting sexual harassment against suspected court personnel (CEDAW, etc)	3.49	0.72
6. Oppressive behaviours of some court employees especially between those at the supervisory level and their subordinates (CEDAW, etc)	3.15	0.87

The statements in Table 9 are negatively formulated so a rating towards 4 is favorable. The obtained mean and standard deviations reveal that court personnel consistently do not practice gender insensitive acts at their workplace. Ratings concentrate between seldom to never revealing that participants are generally conscious of not stereotyping LGBT persons and not discriminating among any of the sexes. During the focus group discussion, participants emphatically expressed that, more than any other government servants, employees of the judiciary should observe gender sensitivity because of the following reasons:

- due to the sex of the litigants, the judiciary should maintain its independence
- the courts should live up to the canons of the judiciary such as impartiality, treating everybody equally (regardless of gender) (emphasis given by a judge), competence, and diligence
- the judiciary also "models" how to treat women and the different sexes
- court employees should be models of good behaviours, both inside and outside the courtroom.

On the other hand, the participants, especially the judges recognise that insensitivity towards sexes exists and is rampant in some circles in the court. They identified the usual exchange of sexist jokes between male lawyers and judges and how they treat their women colleagues. These practices have been there since the beginning because of tacit gender socialisation. The judges and lawyers in the group related that part of their professional socialisation in law school to being mentored and taught by professors who are “notoriously known as dirty old men” but brilliant lawyers. For this same reason, the focus group discussion participants expressed that gender sensitivity is a total change of attitudes and cannot be achieved only in one training. It is a frame of mind, a creed to live by and should start not only in law schools but from as early as basic education. They related that:

If socialisation in the family will not be gender-sensitised, all the efforts of the other social institutions will just be superficial.

Gender-sensitivity should be part of the socialisation in basic education and should pervade in all levels of formal education. Gender-sensitivity is changing a culture and frame of mind.

Comparison of levels of understanding of gender sensitivity and selected variables

The levels of understanding gender sensitivity as measured by the MCQ items were tested if they vary according to selected variables. The table below presents the summary of these variables identified as sources of variation in the levels of understanding gender sensitivity, the corresponding statistical tests used, actual values obtained and their confidence levels.

Table 10. Sources of variation of the levels of understanding of gender sensitivity

Variables identified as a source of variation	Actual statistical test used and value obtained	P values obtained
1. Official designations of respondents (14 categories)	Analysis of variance $F = 3.46$	Significant at $p=0.01$
2. Grouping of participants between legal and non-legal personnel (2 groups)	T test for equality of means $t = 3.31$	Significant at $p=0.01$
3. Sex (2 groups)	T test of unmatched pairs $t = -2.20$	Significant at $p=0.01$
4. Gender orientations of respondents (15 groups)	Chi-square $X^2 = 137.28$	Significant at $p=0.02$

Figures in Table 10 provide evidence to conclude that levels of understanding of gender sensitivity is affected by official job descriptions, sex, sexual orientations, and grouping between those who are law practitioners and those in the non-legal professions.

Recommendation: development of an outcome-based education training program in gender sensitivity

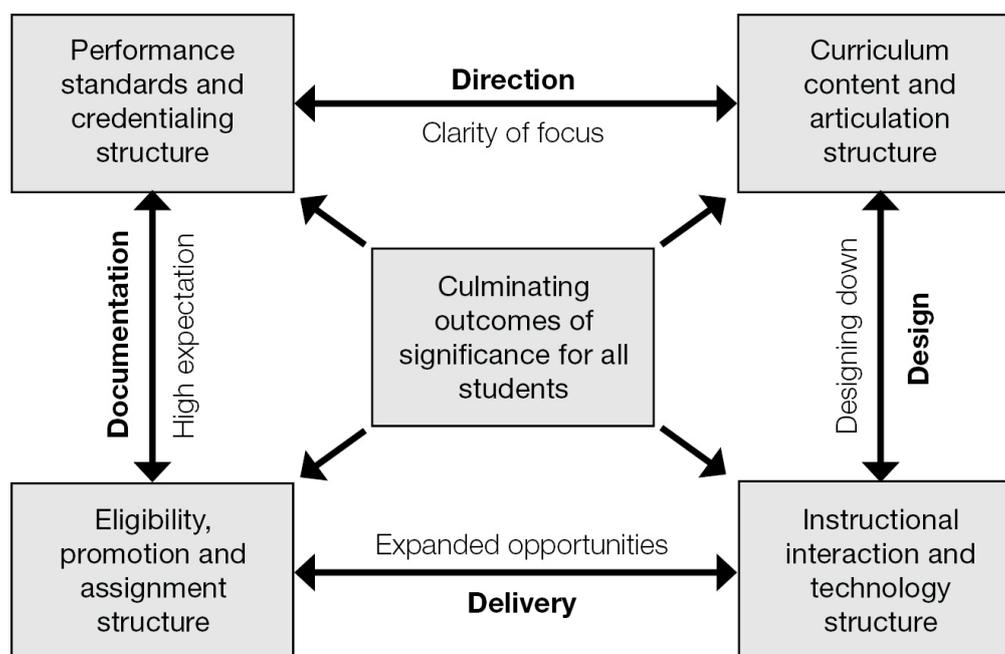
In planning any educational program, basic steps include needs assessment. Based on the findings, other curricular components are decided upon, namely determining what to teach, how to teach it, and finding out if learning has taken place.¹¹ The survey on gender sensitivity of the judiciary personnel serves as the needs assessment phase. The CGRJ reflects on the results and develops an appropriate program for its personnel.

¹¹ *ibid.*

Findings of the survey imply the need for a more focused, outcome-based learning experience in gender sensitivity. Considering the heterogeneous demographic and professional traits of the judiciary personnel, the program should also be implemented using multidisciplinary approach, engaging the employees in their actual designations, and performance-based to inculcate social accountability to the public that they serve.

These derived features of the training program match the nature of outcome-based education (OBE). This educational design refers to “an approach to education (training) in which decisions about the curriculum (program) are driven by the outcomes the students (trainees) should display by the end of the course. The educational outcomes are clearly specified and serve as bases in deciding on all other curricular elements.¹² Spady¹³ captures these elements in the schema below. Starting from an articulation of program outcomes that learners should demonstrate at the end of the learning experience, educational designers organise the program’s contents (what to learn), delivery (how to learn the content), integration of the topics and experiences with appropriate technological instructional resources, and assessment (making sure learning has taken place).

Figure 1: Outcome-based education (OBE) as a Systems Framework¹⁴



¹² R Harden, J Crosby and M Davis, “AMEE guide no 14: Outcome-based education: Part 1: an introduction to outcome-based education” (1999) 21 *Medical Teacher* 7.

¹³ W Spady, *Outcome-based education: critical issues and answers*, American Association of School Administrators, 1994.

¹⁴ *ibid.*

Survey results point to the following outcomes that all training programs of PhilJA should espouse:

- **Respectful government servants, not only to their families but also their co-workers, and the public:** beginning with the inculcation of respect for individuals, their families, workplace, and the community. The gender-sensitivity training (GST) hopes to build government servants with public accountability
- **Gender sensitive government personnel:** court personnel should be sensitized to ensure the public that the judiciary will remain impartial and competent despite all gender preferences of its clients, and
- **Capacitating public servants to create and maintain gender-sensitive workplaces:** the judiciary educates not only its personnel but also the public about gender sensitivity.

Consistent with OBE design, the blueprint of a gender sensitivity training is presented in the figure below. Springing from the program outcomes are specific training objectives expressed in the cognitive and affective domains of learning. Content includes an integration of concepts from the three dimensions of gender sensitivity coming from various disciplines including legal, medical, psychological, and socio-cultural perspectives. The recommended instructional resources reflect the integration of principles of adult education, information and communication technology, as well as evidence-based practice. Expected outputs from participants ranging from active participation to working in groups, reflective thinking, and role playing are non-threatening and best-practice outcomes from training adults. Assessment of performance is both formative and summative that can be credited as CPD for the various employees across their professions. Kirkpatrick’s program evaluation models fit the training design and only need appropriate orientation of PhilJA training teams.¹⁵

Figure 2: GST OBE Program Blueprint

Training Objectives	Subject Matter, Delivery Strategies and Instructional Resources	Assessment
<ul style="list-style-type: none"> • Recognize gender-related problems • Refer the problem to appropriate authorities • Handle the case appropriately • Consistently demonstrate gender sensitive behaviour as appropriate • Maintain gender-sensitive environment in the workplace 	<ul style="list-style-type: none"> • Basic concepts of gender-related studies: sensitivity, stereotyping, socialization, discrimination • Course of gender insensitivity • Gender discrimination as seen in actual court records • Individual conscience reflection • Small group discussion • Watching of video cases • Problem solving of court dilemmas 	<ul style="list-style-type: none"> • Level I Evaluation: use of participants’ feedback on the program, actual sharing during plenary, interaction with trainers and organizers • Level II Evaluation: Performance in the test (questionnaire) administered before and after the training • Level III Evaluation: performance ratings as reported by head of offices of respondents

Conclusion

The Philippine judicial personnel represent a diverse set of government servants in terms of age, years of public service, job designations, and geographic stations. They reported 15 classifications of gender preferences.

¹⁵ D Kirkpatrick, above n 8.

The court personnel reported that “they know what it is” as far as terms, concepts, principles, and statutes on women, children, and domestic violence are concerned. Respondents showed a lower level of application of these concepts and principles in their lay and professional language use, workplaces, routine social activities, and court proceedings. They did not meet the passing scores in areas like sexual harassment, gender stereotyping, mainstreaming, and overall gender socialisation. These profiles and levels of understanding varied significantly according to respondents’ demographic and professional backgrounds. The study provides evidence that despite continuous sensitisation and training, court personnel still remain in need of more rigid and disciplined reorientation with regard to gender sensitivity issues.

Declaration of Judicial Training Principles: a look back at its adoption and forward to its future prospects

Benoît Chamouard* and Adèle Kent**

Introduction

On 8 November 2017, the International Organization for Judicial Training (IOJT) adopted the *Declaration of Judicial Training Principles*.

This seminal text with worldwide application marks a significant step forward for judicial training,¹ an area that now has clear, simple international standards that are very much in line with the challenges and realities of the 21st century.

This declaration follows on from a number of other major texts setting down standards in justice, such as the *Bangalore Principles of Judicial Conduct*,² the *Universal Charter of the Judge*³ or the *Declaration on Social Justice for a Fair Globalisation*.⁴ The members of the IOJT, composed of 129 judicial training institutions from 79 countries, unanimously adopted the declaration. As a purely soft law norm, its purpose is to guide and advise with all the legitimacy of the judicial training schools that make up the IOJT, but without establishing binding legal obligations.

This article looks back at the reasons that led the IOJT and its members to work towards recognition of the principles guiding their action, and at the progress made through to adoption of the declaration. Looking to the future, it also proposes possible ways of upholding the standards set out in this declaration.

* Judge, Head, International Department, French National School for the Judiciary (ENM), France.

** Justice, Court of Queen's Bench of Alberta, and Executive Director, National Judicial Institute, Canada.

¹ According to the declaration, the notion of the judiciary may “include prosecutors, defenders/defence counsel, court staff and others, depending on the justice system”, International Organization of Judicial Training, *Declaration of Judicial Training Principles* (2017), p 3. Available at <http://www.iojt.org/~media/Microsites/Files/IOJT/Microsite/2017-Principles.ashx>.

² Adopted on 25 and 26 November 2002 by the Judicial Group on Strengthening Judicial Integrity. UNODC, “The Bangalore Principles of Judicial Conduct 2002”. Available at https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf, accessed 18 October 2018.

³ Text of the International Association of Judges, adopted on 17 November 1999 and updated on 14 November 2017 available at <https://www.domstol.dk/om/otherlanguages/english/publications/Publications/The%20universal%20charter%20of%20the%20judge.pdf>, accessed 18 October 2018.

⁴ International Labour Organisation, 29 November 1985. Updated 2008 version available at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_371208/lang--en/index.htm, accessed 18 October 2018.

The adoption of the Declaration of Judicial Training Principles, the culmination of a collective effort

An idea comes to maturity

The idea of adopting a worldwide declaration on the principles of judicial training was initiated in November 2015, at the 7th conference of the IOJT. A call was put out at the inaugural session of the conference to conceptualise and proclaim these principles. It was accepted immediately by the members of the organisation who scheduled the adoption of the declaration for the 8th conference in 2017.

This call came at the same time as one from the European Judicial Training Network (EJTN), culminating in the adoption of a European declaration on 10 June 2016.⁵

The idea of laying down principles to guide judicial training emerged as judicial training reached maturity. The idea of providing the judiciary with specific training coincided with the opening of the first judicial training institutes at the end of the 1950s. The creation of institutes dedicated to this training accelerated from the 1980s onwards, then again in the 2000s, in countries with a variety of different judicial cultures. The immense majority of countries now have such institutes that share values and practices reaching beyond the specifics of their judicial systems in many ways.

Sixty years on from the creation of judicial training, the declaration consecrates its role and specificity internationally by formalising a consensus that already existed within the community of schools.

It is widely accepted that training of the judiciary constitutes a major democratic factor in the life of a State. Only a properly trained judiciary will have the ability and strength to act independently and impartially, thereby embodying the principle of the separation of powers. In systems where judges are not elected, their legitimacy is based solely on their competence and independence, thus making effective training particularly necessary. Judicial training therefore plays a prominent role in constructing and upholding the rule of law. This role implies specific features that are accepted by all, but which had not, until now, been the subject of any formal recognition. The governance of a judicial training institute serving to train independent professionals cannot be similar to that of training institutes in other sectors. The training methods, meanwhile, must be adapted to the judicial profession and to modern techniques in adult training.

An inclusive, pedagogical approach

From the acceptance of the principle of a declaration in 2015 through to its final adoption in 2017, most of the work consisted in highlighting the values of, and the consensus between, judicial training institutes around the world.⁶

⁵ See <http://www.ejtn.eu/Judicial-Training-Principles/>, accessed 18 October 2018.

⁶ n 1, above at p 1. This dimension is written into the preamble of the declaration, which states that: “The declaration sets out guiding principles for judicial training that reflect how IOJT members conceptualize and strive to implement judicial training. The principles are both the common base and the horizon uniting judicial training institutions throughout the world, regardless of the diversity of judicial systems.”

An international working group was set up with representatives from four continents and from a variety of legal and judicial systems. Its work was organised in three main stages:

- compiling a list of national or regional declarations or texts that define the principles of judicial training⁷
- writing a draft declaration and circulating it among all IOJT members for their remarks
- presenting, debating and adopting the text at the 2017 General Assembly.

In order to ensure that the declaration was as broadly representative as possible, yet without renouncing the fundamental values of judicial training, preference was given by the working group to an inclusive approach. The 129 members of the IOJT were consulted at all three phases and had the possibility of expressing their views at each of them. All the remarks on which there was a consensus were included in the final version of the text.

The working group also decided to annex explanatory commentaries to the 10 articles of the declaration for the purpose of clarifying the content and scope of the articles themselves, as well as their adaptation to certain national specifics. These commentaries are an integral part of the declaration and were debated and adopted in the same way as the preamble and ten articles of the text.

This inclusive approach and the addition of commentaries provided a balance between asserting values and seeking broad consensus. They resulted in the unanimous adoption of the declaration by the IOJT members represented at the General Assembly.

Asserting common values

The power of unanimity

The unanimous adoption of the declaration considerably reinforces its scope. As a de facto standard or soft law norm, the weight of the declaration can be based only on:

- the representative nature of the community that adopted it, and
- the extent of the consensus supporting it within that community.

With its 129 institutions from 79 countries, the IOJT forms the largest network of judicial training institutions in the world. It is the only worldwide organisation that federates regional initiatives. At present, the IOJT is therefore the most representative forum for the community of judicial training schools.

The unanimous adoption of the declaration by the General Assembly, which is the broadest body of the IOJT, shows that the text is representative in the field of judicial training.

⁷ After listing the existing texts, the working group based itself mainly on the following documents: “The 20 principles of judicial education in Canada”, National Judicial Institute, October 2006; “Judicial training principles”, European Judicial Training Network, June 2016, <http://www.ejtn.eu/Judicial-Training-Principles/>, accessed 13 November 2018; “European charter on the statute for judges”, Council of Europe, July 1998; “Opinion no 4 to the attention of the committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at National and European levels”, Consultative Council of European Judges, November 2003; “Opinion No 15 on the specialisation of judges” (Point 27), Consultative Council of European Judges, November 2012; “The Bangalore principles of judicial conduct”, n 2 above; “The principles of judicial training: towards international recognition?”, X Ronsin, (2016) 5 *Journal IOJT* 11.

Addressing the different dimensions of judicial training

The declaration is divided into four parts addressing the different dimensions of judicial training.

The first part comprises Article 1 and is dedicated to “Principles”. Notably, it emphasises the essential role of judicial training in the rule of law, judicial independence and the protection of fundamental rights.

The second part addresses the “Institutional Framework” (Articles 2 to 5). These four articles refer to the governance of judicial training institutes, each from a different angle. The administrative organisation and positioning of judicial training institutes are intimately linked to judicial system organisation. They therefore vary considerably from one country to another⁸ and cannot be modelled or standardised to any great extent, unlike other areas of judicial training. The declaration accordingly seeks to set out the essential principles of the governance of an institute: independence in course design, content and delivery (Article 2), the support of the judicial authorities (Article 3) and the provision of sufficient human resources and funding (Article 4). Article 5 provides a reminder that these principles also apply to relations with any international funding agencies which may provide support to the institutes.

The third part (Articles 6 and 7) address the place of training in the professional life of members of the judiciary. It stresses that training is not only a right, but also a responsibility for the latter, and that they must enjoy the benefit of both pre-service and in-service training.

Finally, the fourth part (Articles 8 to 10) is dedicated to the “content” and “methodology” of training. It states that judicial training should not be limited to the law, but must also cover non-legal knowledge, skills, social context, values and ethics, which means that it should mainly be dispensed by peers using specific and modern techniques.

The fact that these standards were adopted unanimously should not be taken as suggesting that they represent only the lowest common denominator between today’s judicial training institutes. Few institutes around the world can claim to apply all the principles that have been adopted, demanding as these principles are. For instance, pre-service training is not always mandatory, in particular, in certain common law countries. The institutional rules are not applied in all the civil law countries. In-service training throughout the career of members of the judiciary does not exist in many countries. The adoption of these principles by IOJT members therefore represents a demand for strict compliance with their own principles and the wish to progress together. Despite their consensual nature, the adopted principles show the way forward and form “the common base and the horizon uniting judicial training institutions throughout the world”.⁹

Upholding the judicial training principles

The adoption of a declaration of judicial training principles is more than a mere expression of values by the institutes, no matter how solemn and important. In order to become genuine standards, the principles set out in this declaration must be recognised, accepted and applied by the judicial world outside training schools. Institutes do not act alone, and the principles governing their action can only take root if they are relayed by all judicial stakeholders.

⁸ The training institution may therefore be totally independent (Italy); under the supervision of the judicial authority (Spain, Romania, common law countries); under the supervision of the Ministry for Justice (France, Tunisia, Egypt, Laos, United Arab Emirates); or a part of the Ministry for Justice (Senegal, Finland, Austria).

⁹ n 1, above at p 1: Preamble to the Declaration.

It is therefore incumbent upon the members of the IOJT to uphold this declaration nationally by bringing it to the attention of their major partners, having it accepted or adopted by their boards or steering committees, and making reference to its content in their day-to-day action.

Internationally, the declaration would benefit from being cited and taken up by the organisations acting in the area of justice, whether funding authorities, international or non-governmental organisations. In many ways, the declaration provides a useful, objective framework for the intervention of these organisations in the field of justice.

Finally, the IOJT is the right organisation to uphold these principles.¹⁰ As a forum for exchanges, the organisation can place itself at the disposal of its members to implement the principles it has adopted.

One concrete proposal that the IOJT is considering is a series of regional meetings of IOJT members within that region, likely by teleconference or other electronic means, where members could discuss the challenges of delivering judicial education in accordance with these principles, either because of issues within the institute or within the broader judicial structure. A plan will be finalised in the upcoming months for that purpose, with the support of the network of IOJT regional deputy presidents.

¹⁰ *ibid.* As the declaration expressly indicates in the Preamble, “the IOJT also encourages judicial training institutions to support each other in the implementation of this declaration”.

Electoral courts: substantive and methodological challenges for judicial training; experience and prospective in Mexico

Carlos Soriano Cienfuegos*

Introduction

In the context of the third wave of democratisation, in those countries that experienced a democratic transition, understood as the change from authoritarianism to democracy, a series of political reforms were carried out. The main characteristic of these was to create electoral institutions, both in the administrative and the judiciary.

In the case of the judiciary, the electoral courts generally began to exercise similar powers to those of the administrative courts, basically carrying out a legal review. As in the case of Brazil and in Mexico, with the passage of time, various challenges have been highlighted in the exercise of the judicial function in the area of legal knowledge, which has made it necessary to create specialised judicial schools.

This article analyses the case of Mexico and examines the existence of five major challenges; three are *substantive* and two are *methodological*. In all cases, an attempt is made to provide tentative solutions to these.

The first of the substantive challenges is the need to generate and disseminate knowledge in an area of law that is constantly changing and expanding. In addition to the structural strengthening of the judicial school, the creation of strategic alliances with universities is an alternative solution.

The second challenge is the change in the exercise of the role of the courts, now more similar to that of a constitutional court, which implies a change in the way the rules are interpreted, starting with the Constitution. Given this, it is necessary to design a research agenda which prioritises the development of works focused on constitutional hermeneutics, that is, in the techniques of interpretation and application of the constitutional text.

The third challenge is the increasing influence in the region of global human rights, through the work of the Inter-American Court of Human Rights, as well as the process of receiving its jurisprudence. This challenge must be addressed by establishing mechanisms that improve judicial dialogue between national courts and the inter-American trial, such as a system of precedent citations.

The first of the methodological challenges is that due to the breadth of subjects requiring specialised legal knowledge, the production of such knowledge can no longer be left only

* General Director at the Electoral Judicial Training Center of the Federal Electoral Court of Mexico.

to jurists, as they do not have all the technical and methodological requirements to produce it. Due to this, the formation of interdisciplinary research groups today is a response to the contemporary complexity of the law.

The second of these challenges is the need to train public officials in electoral matters quickly and effectively. As this is beyond the resources that are available in a classroom with a teacher, it leads to the use of information technology in these processes. This implies that the judicial school must modernise in the technological and pedagogical aspects in order to offer, as far as possible, self-managed courses that facilitate the autonomous work of students.

The challenges posed and the alternatives for solution point to a modernisation agenda in teaching and research that is ahead of the judicial schools of the courts with specific competencies. In the case of the electoral courts, looking to the future, it constitutes an alternative to meet the expectations of justice of contemporary society.

Electoral law is constantly changing: an excursus to the institutional change to democracy

According to Soledad Loaeza, the Mexican State which emerged from the revolution was identified with popular democracy, rejecting everything he identified with “elitism”, and which created an adverse environment to the emergence of political parties.¹

The notion of non-existence of the social and political plurality of the regime was not always effective. Thus, the path of the so-called Mexican electoral reformism was undertaken,² which was driven by incremental change.³

Rafael Segovia points out the reasons for the need of change in the rules of political competition.⁴ According to Segovia, there was the imperative to open avenues for political expressions of any ideological orientation that could not be represented. The aim was clear, to maintain the ideological political struggle in the field, that is, always in the peaceful way and through the institutions. Then there is the logic of change based on the pioneering reforms of 1963 and 1973.

What distinguished the Mexican transition, and which still marks the road to democracy, is a process of liberalisation and gradual institutionalisation. In 1977, when the parties were “constitutionalized”, a *Law on Political Organizations and Electoral Processes* was issued, which allowed the inclusion of political forces previously excluded from political competition by granting them a “conditioned register”, by which they could obtain a vote of 1.5% in the elections, access to the deputies of proportional representation and to keep their register.

However, this moment of openness was tempered by the 1986 reform, in which the conditioned registry was eliminated, and the so-called governance clause was introduced into the Constitution. Without going into detail, it could be seen that the results of the 1985 mid-term elections seemed an anteroom still very distant from the future plurality that has been achieved in legislative bodies, particularly in the Chamber of Deputies since 1997.

¹ S Loaeza, “El Partido Acción Nacional: la larga marcha 1939–1994”, FCE, 1999, pp 54 and 60.

² Which, according to Loaeza, is as deeply rooted in Mexican political life as the famous “revolutionary tradition.” This is no less, because it would then be one of the main characteristics of Mexican authoritarianism: its intention to change, albeit in a limited way. See also S Loaeza, “The tradition of political reformism in Mexico and Jesus Reyes Heróles”, The College of Mexico, Tribute to Jesus Reyes Heróles, México, 2011, p 261.

³ *ibid*, p 405.

⁴ R Segovia, (1990) 27 “EL PRI: las nuevas circunstancias” *Cuaderno de Nexos*.

To the series of reforms in favour of the plurality mentioned above, an institutional advance was made in the case of the federal (now national) administrative authority, beginning in 1990 with the birth of the Federal Electoral Institute (IFE), the predecessor of our National Electoral Institute. In the case of the jurisdiction, the participation of such an organ in the resolution of political or electoral conflicts founded in the ideas of José María Iglesias, his precursor (and as pointed out by the teacher Héctor Fix Zamudio),⁵ affirms that the gradual consolidation of the electoral jurisdiction, in particular the electoral qualification keeps the imprint of the outstanding jurist.⁶

Authors like Fernando Ojesto Martínez⁷ and Álvaro Arreola Ayala,⁸ in an historical review of “electoral justice” focus on the reforms that occurred between 1977 and 1996 to determine the stage in the history of the subject that occurs exclusively after the Constitution of 1917 was approved, although they do not clearly specify the classification criteria they use. On the other hand, Dr. José de Jesús Orozco Henríquez performs a similar exercise using as classification criteria the nature of the organ that resolves the controversies raised.

Orozco points out that during the 20th century, the quality of subjects empowered to resolve electoral conflicts was political until 1987, mixed from 1987 to 1996, and jurisdictional from 1996 onwards.⁹

The Supreme Court of Justice of the Nation (SCJN), through the amendment to Article 60 of the Constitution on 6 December 1977, had the power to hear complaints, against acts of the Electoral College. The SCJN however issued an opinion, which was not binding.¹⁰ In addition, the appeal process was not widely used and from 1977 to 1985 only 10 appeals were resolved, and all were unfavorable to the appellant’s claim.

The constitutional reform of 15 December 1986, and the issuance of the Federal Electoral Code of 9 January 1987, created the Electoral Disputes Tribunal (TRICOEL). The TRICOEL, was composed of seven magistrates numeraries and two supernumeraries, who were appointed by the Congress of the Union at the proposal of the parliamentary groups. The quorum for a valid sitting was constituted with the presence of at least six magistrates, among them the president of the plenary, who was elected by his companions. Decisions were taken by majority, with the president having a casting vote in case of a tie.¹¹

TRICOEL was competent to resolve appeals and complaints. The first was valid against the resolutions issued by the Federal Electoral Commission, when it resolved some of the resources of its jurisdiction, while the complaint was the means of challenging the results recorded in the district computer records, the purpose of said appeal was to obtain the nullity of said results.

In 1990, Articles 41 and 60 of the Constitution were amended and the first Federal Code of Electoral Institutions and Procedures (COFIPE) was issued. Through this, the Federal Electoral

⁵ H Zamudio, “Ignacio Luis Vallarta. La incompetencia de origen y los derechos políticos”, en Universidad Nacional Autónoma de México, A cien años de la muerte de Vallarta”, México, IJ-UNAM, 1994, p 32.

⁶ J Moctezuma Barragán, “José María Iglesias y la Justicia Electoral”, México, Editorial IJ-UNAM, 1994, p 183.

⁷ F Ojesto Martínez, “Evolución de la justicia electoral en México” in Orozco Henríquez, Jesús (Coord.), Sistemas de Justicia Electoral: Evaluación y Perspectivas, México, IFE-PNUD-IDEA-TEPFJ, 2001, pp 306–311.

⁸ A Arreola Ayala, “La Justicia Electoral en México. Breve recuento histórico”, México, TEPJF, 2008, pp 30–42.

⁹ J de Jesús Orozco Henríquez, “Justicia electoral y garantismo jurídico”, México, Porrúa, 2006, pp 15–19.

¹⁰ The fourth paragraph of Article 60 of the Constitution mentioned that this remedy only arose for substantial violations during the electoral process or in the qualification of the election.

¹¹ All these rules were found in Articles 352 to 362 of the Federal Electoral Code of 1987. The appeals were regulated in Articles 323 to 335 of the same Code.

Tribunal (TRIFE) was created. This was defined by COFIPE, Article 264.1, as an autonomous judicial body, consisting of a central hall, which was composed of five judges and four regional rooms, composed of three members. The judges were elected by the Chamber of Deputies by a favorable vote of 2/3 of the members present at the respective meeting, at the proposal of the President of the Republic. The TRIFE Chambers resolved the Appeal and Non-Compliance Appeals. The first was valid against the acts of the organs of the IFE, while the appeal of noncompliance served as an annulment of choice.

In 1993, great progress was made in the establishment of an electoral jurisdiction with fullness in its resolutions. The TRIFE Second Chamber, as a result of the reform of 3 September of that year, had the power to resolve the Reconsideration Appeal, which was appropriate to challenge the substantive decisions handed down in the appeals resolved by the other TRIFE. The Second Instance Chamber ended with the electoral qualification exclusively carried out by a political body, as it performed the same regarding the elections of Deputies and Senators to the Congress of the Union, leaving to the Electoral College the qualification of the presidential election. Thus the TRIFE resolutions were no longer subject to review by any other body.

Between August and November 1996, the Electoral Tribunal of the Judiciary of the Federation (TEPJF) was created, which was the highest authority in the field. This change has made great contributions to Mexican electoral democracy, embodied in judgments and jurisprudential theses. The constitutional reforms in August and in November to COFIPE and to the Organic Law of the Judiciary of the Federation (LOPJF), as well as the issuance of the General Law of the Appeal System (LGSMIME), established norms for the judicial authority in electoral matters, to exercise its functions, which now included the qualification of the presidential election. The TEPJF has maintained the integration method from 1996 to the present. According to Article 99 of the Constitution, the Superior Chamber is composed of seven judges appointed by the Senate of the Republic on the proposal of the SCJN. The Regional Chambers are composed of three members elected by the same method.

Through the 2007 constitutional reforms and the legal reforms of 2008, the TEPJF regime was modified to respond to situations that arose in practice from 1996 to 2006. The most outstanding are the following:

- the permanent functioning of the Regional Chambers was determined, as before the reform, they only worked during the electoral process
- it was established that the Chambers of the TEPJF can only declare the nullity of an election for the grounds expressly provided by law
- the Chambers were given the power to not apply laws to the specific case which were contrary to the Constitution.

Finally, in 2014, came the creation of the Regional Specialized Room and the Review Resource of the special sanctioning procedure, as well as the conception of two new regional rooms. With this reform, the procedure for integrating the electoral courts of the entities was modified, transferring the same to the Senate and, following the ideas of Professor Miguel Carbonell,¹² these bodies are constitutionally autonomous. In this way, election monitoring is compliant with the requirements of the regulations; the field of the exercise of the jurisdictional function

¹² M Carbonell, "Elementos de derecho constitucional", *Fontamara*, 2004, p 137.

is in the hands of 33 specialised courts, which resolve the matters within its jurisdiction according to criteria of constitutionality, conventionality and legality. The principles of certainty, impartiality, independence, legality, maximum publicity and objectivity prevail.

As we have seen, the constant electoral reforms, which seek to update and modernise the law, also provide a challenge for the judicial school, as they force it to quickly transform its objectives in terms of curriculum. In Mexico, the Center for Electoral Judicial Training (CCJE) has faced this in two ways:

- (a) As for our organisation, we have two major areas: one for research and one for training. The first generates highly specialised knowledge, while the second is responsible for disseminating that knowledge, through various programs that reach our entire country.
- (b) The CCJE also has a broad alliance with universities, including the participation of university professors in both research and training. Through our editorial series, professors participate in the generation of knowledge with an agenda designed according to the needs of the judicial school, and through refresher courses which replicate the same for the benefit of our court officials.

A specialised interpretation

In Mexico, as in much of Latin America, legal interpretation was used without distinguishing the type of rules in question.

Gradually, it was accepted that the constitutional norms, by their content, were something more like directives of action than norms of concrete content. This is problematic for two reasons. First, applying the Constitution directly it is necessary to determine its content and, second and more complex, to determine whether an act adheres or not to the constitutional text, it is often necessary to determine a content for that principle and create a concrete constitutional rule.

For this purpose, in Mexico, special attention has been paid to methods or directives of constitutional interpretation, particularly two of them: the *pro person principle* and the *consistent interpretation*. By means of the *pro person* interpretation clause, one has an interesting picture: when there is a normative conflict of any kind, judges should opt for the rule that is more favorable to people.

The *consistent interpretation* clause establishes that when a norm can have multiple meanings, one must choose the one that makes it compatible with the content of a constitutional norm. In addition, the proportionality method and the application of different levels of constitutional scrutiny have reached our legal system and constitute tools that are continuously used by judges.

Globalisation of human rights

As discussed earlier, part of the Mexican democratic transition was marked by a process of liberalisation in the exercise of political rights, which was complemented by the insertion of Mexico into the regional system of protection of human rights, that is to say the inter-American system of human rights.

This raises at least two problems. The first is one of a cultural nature, since many Mexican lawyers thought that applying international treaties in the settlement of disputes was an attack against national sovereignty and a kind of betrayal of the entrenched nationalism of the sector.

Although repeated practice, (the custom) and a very important constitutional reform of June 2011 seems to have already addressed this problem, there is another: by widening the norms that lawyers and judges can use, it is imperative that they are able to apply these later.

Further, lawyers and judges must know the instruments of inter-American law, and a very important source of the *corpus iuris* to be applied, the precedents of the Inter-American Court of Human Rights.

In this regard, the CCJE developed a specialised website, with public access, available at: <http://derechos.te.gob.mx/>. Further, there is a program of judicial visits in the Inter-American Court, whereby the court's workers interact directly with the rules, principles and practices of that system.

Perhaps a fundamental part that lies ahead is that the rules built up in inter-American cases become true precedents, which when quoted by the constitutional courts of the region, will become part of the body of rules that must be applied.

Formation of multidisciplinary groups

A frequent example in electoral matters within a federal country like Mexico, is where a State includes in its local electoral law rules on proportional representation. The participants in the electoral process, who do not agree with the content of the law, challenge it before the electoral authorities.

As can be seen from the approach, the judicial body that decides the litigation will have to determine the effect of the law on the representative system. In order to be able to decide this, to a large extent, both quantitative and qualitative empirical methods have to be used.

It is precisely at this point that the traditional training of lawyers is insufficient. I do not omit to consider the important efforts that exist to reverse this, such as the Socio-Legal Master of the International Institute for the Sociology of Law, or magazines such as the Journal of Empirical Legal Studies.

The truth is that the training required to face these challenges is not currently completely in the hands of lawyers. Therefore, the judicial school's research and training groups should create, in addition to solid legal knowledge, the participation of professionals from other perspectives, both methodological and empirical. At CCJE, our research unit has members whose areas of expertise include anthropology, history, political science, communication and sociology. This has allowed us to design refresher courses and training in which the legal perspective is enriched by what can be said of the disciplines mentioned, which, as a first step, distances us from self reference.

Online education and use of technology

Currently, there is a debate about the role of social networks in the transmission of information. Concepts such as "fake news" could lead us to believe that the lack of corroboration of the sources of information detracts to some extent the use and veracity of these means.

However, the efficiency of electronic media, when working with professionalism and ethics, is a very powerful channel of communication. The operational cost of having a group of students is enough and the requirement is increased when the judicial school has to execute its teaching work in diverse places of a country.

In the case of the Federal Electoral Court of Mexico, there are precincts in five cities: Mexico City, with three judicial offices in Guadalajara, Monterrey, Xalapa and Toluca, with a seat in each city. By necessity, we are focused on the design of self-executing courses. The use

of technology will have a great impact on those who, with a prior technical and pedagogical review, no longer need the support of a tutor, although this is casuistic and can not be generalised.

In this sense, we are making even more progress, given that the courses offered, as I have already mentioned, are self-executing, that is to say, the student progresses by themselves, within a period of time that is pedagogically considered reasonable. This academic offer is integrated as follows:

a) Courses

- Introduction to Mexican electoral law
- Regulation of independent applications
- The model of political communication in Mexico
- The financing and control model in Mexico
- System of nullities in electoral matters
- Legal interpretation and argumentation
- Electoral sanctioning system.

b) Graduates

- Diploma on Political Rights
- Diploma on Electoral Law.

As a result of the new integration of the Superior Chamber, the Electoral Tribunal of the Judiciary of the Federation, through its Center, has trained more than 2,500 people in person — addressed to the authorities of the states or, of course, belonging to the militancy of political parties — and through the 22 distance education programs, a total of 8,797 people have attended, of which 6,705 have completed their courses, workshops or graduates.

The integration of an academic offering online, integrated by courses combined with tutors and self-executing, according to the needs, have been offered.

Conclusions

The exercise of jurisdiction in electoral subjects has differences that oblige the judicial schools to have an agenda of investigation and specialised training so that their needs in terms of generation, diffusion and socialisation of the knowledge can be satisfied.

It is submitted that the five problems presented and their respective solutions present a strategic agenda of collaboration and modernisation, both organisational and methodological, that constitute an agenda that can be taken into account by judicial schools, electoral or otherwise, in what otherwise meets lawyers' and judges' needs.

The commitment that we as institutions face in society in its search for justice forces us to guide our performance for efficiency, but never forgetting, also, our ethical duties.

Judicial training in Latin America: study on the practices of the judicial colleges

Leonel González* and Jeremy Cooper**

Introduction

The Justice Studies Center of the Americas (JSCA) is an international agency of the inter-American system of justice. It now has more than 15 years' experience carrying out its mandate from the Organization of the American States, to support member States in promoting the modernisation process of justice systems across the region.

JSCA, with the support of the government of Canada through Global Affairs Canada, is implementing the project “Improving access to civil justice in Latin America”.¹ In this context, a research project was carried out in 2016 entitled “Judicial training in Latin America: study on the practices of the judicial colleges”. This research intended to summarise best practices in the training of judges by the institutions charged with judicial training across Latin America. The ultimate objective of the project was to produce a manual on judicial training for Latin America based upon identified existing best training practices.

Methodology

The study mirrored a pilot conducted in Europe by the European Judicial Training Network (EJTN) in 2013. The results were published in 2014 in a report entitled *Best practices in training of judges and prosecutors*.² The goal of the study was to identify positive practices that were being developed in judicial academies in the European Union. They were rated according to three levels:

- “Promising practices”: experimental practices with potential but little empirical information about their effectiveness
- “Good practices”: effective practices and with a higher degree of impact measurement
- “Best practices”: objectively and comprehensively evaluated practices and with the highest degree of effectiveness.

* Training Director, Justice Studies Center of the Americas.

** Visiting Professor at Middlesex University, training consultant and former UK Joint Director of Training at the Judicial College.

¹ Justice Studies Center of the Americas (JSCA), “Improving Access to Civil Justice in Latin America”, at <http://w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/d000358001>, accessed 19 October 2018.

² European Commission, “Study of best practices in training of judges and prosecutors”, European Union, Luxembourg, 2014.

After identifying practices, the aim was to reinforce the practices highlighted in the European institutions. The JSCA proposed implementing a similar research project based in Latin America, using available institutional resources. The study would be taken as a baseline for making recommendations around five significant topics:

1. identification of training needs
2. innovative educational or training programs
3. innovative training methodologies
4. tools for promoting international judicial cooperation in the area of judicial training
5. assessment of the performance of the participants in training and the effect of the activities.

Concerning the practice categories, the JSCA chose to use only two out of the three categories used in the European study, leaving aside “best practices” which was considered an intrinsically subjective and complex term that could lead to confusion. The two remaining categories were redefined as follows:

- Good practice: a training program or strategy that has worked within one or more organisations regarding which there is an objective basis to state that it is effective and has the potential for replication within other organisations.
- Promising practice: (which is sometimes only in experimental form) a program that has at least preliminary evidence of being effective or for which there is a potential to generate data that will be useful for determining whether it can become a good practice and be shared in a more diverse judicial training space.

The JSCA decided to adopt what the European Commission has called a “reactive” methodology.³ The information gathering was based on the application of a questionnaire with open-ended questions that was sent to all of the judicial academies identified in Latin America along with an explanatory letter inviting them to participate.

The JSCA differed from the approach used in the European case in one respect, due to the fact that there was no time nor resources available to issue an initial invitation to academies asking for representative experts who could participate in the development of the questionnaire. This had limiting effects on both the response to the questionnaire and the uniformity of its application, but to address these difficulties, opportunities were provided to explain and provide feedback on the questionnaire via email and videoconference.

The selection of the sample, which was composed of 20 judicial academies, was conducted through a theoretical sampling.⁴ This allowed the JSCA to explore a descriptive-evaluative space of judicial training programs in Latin America, which in turn allowed it to make the inferences that JSCA presents in the report.

Fifteen responses were received from the judicial academies. This information was systematised based on the information analysis guidelines for each practice identified above. This allowed the JSCA to coordinate the organisation, reduction and initial codification of the

³ *ibid.*

⁴ B Glaser and A Strauss, *The discovery of grounded theory: strategies for qualitative research*, Aldine Transactions, 1967.

information.⁵ Then, the content analysis process⁶ was conducted, which was organised around the five categories mentioned above. Within each one, based on empirical data, the various experiences gathered were presented, highlighting their requirements, contexts of production and potential, generating observations and recommendations regarding the regional context in general.

Thus, due to the nature of its objectives and data, the research was framed in a qualitative approach,⁷ which initially sought to provide a descriptive approach to the topic addressed but which has an underlying public policy focus that seeks to generate an impact on the institutions, contributing to improving practices around the training that judicial academies design and execute.

For this reason, and in order to triangulate data and support the research and its conclusions, a validation workshop was conducted with experts on the subject following the first draft. The workshop was divided into three modules, which:

- (a) addressed the aspects of the study design, its objectives and methodology of information collection
- (b) analysed the information and preliminary results, and
- (c) discussed the potential impact and diffusion that a study of these characteristics could have.

Each module was introduced and contextualised briefly and then led to a guided but open and reflective discussion.

A relevant instance was the realisation of the importance of continuing this type of study, including new perspectives and sources of data such as the opinions of judges or the contrast of the discourse with the statistics related to the functioning of judicial schools.

The critical evaluation of the study contributed not only to future perspectives, but also to the report that was modified in the light of the discussions at that workshop.

With this information, the JSCA delved into the political and contextual aspects that give rise to the judicial schools, to open a discussion on the part of the latter about their role in judicial systems and society itself.

Although the invitation was extended to all Latin American countries, due to available resources, only national or federal schools were considered.

Although the study was specifically directed to judges and their training processes, it also covered information that included prosecutors and defenders.

A topic to be considered in future research would be the inclusion of other sources of information, not just reactive surveys. Statistical data or testimony from key informants would provide a relevant input that would allow JSCA to move away from the mere sphere of official institutional discourse and provide new perspectives on the practical operation of judicial schools and the training landscape in the region.

⁵ A Huberman and M Miles, *Data management and analysis methods* in N Denzin and Y Lincon (eds), *Handbook of Qualitative Research*, Sage Publications, 1994.

⁶ L Bardin, *Content Analysis*, 2nd edn, Edicoes, 1996.

⁷ R Hernandez, C Fernandez and P Baptista, *Investigation methodology*, 6th edn, McGraw-Hill, 2014.

Stages of the development of judicial training in Latin America

Judicial training in the region is still new. The first Latin American judicial academies were created in the 1980s, and many of them continue to redefine their structures, functions and spheres of action. The main stages of judicial training in the region are as follows.

Delivery of regulatory information or doctrine

The regional experience shows us that one of the distinctive images of legal teaching (which also includes law schools) during the first stage has been one in which a professor presented the contents of a regulation and the doctrine or case law associated with it. This is what Sartre⁸ called the nutritional concept of knowledge and Freire⁹ has called a banking approach to teaching. According to this understanding, students (judges, officials or employees) are reduced to passive subjects who receive that information without having the opportunity to provide feedback based on their personal professional experience, although they have an equal importance in the creation of knowledge.

Therefore, the content provided is limited to regulatory or doctrine-related information regarding a specific topic.

At the same time, doctrine (understood as theoretical reflection on a certain area of law) has a neutralising effect on teaching as a political strategy to accompany the changes that take place in the judicial system.

The centrality of doctrine, particularly in reference to private law, has distanced universities and judicial academies from the discussion of specific problems that occurred in the daily practice of the courts.

Disconnection with processes of change

The other factor of training has been its independence from the transformations that judicial systems experienced in the 1990s both in terms of procedure and regulations. Both judicial academies and universities have had agendas that differed from the changes taking place in the courts.

While the systems slowly moved towards the installation of a system of oral hearings or produced significant changes in criminal or civil regulations, incorporating new social realities, the structure of training spaces continued to function on the basis of courses or programs that were conceived according to the needs of the case file or through training in areas that were not in demand.

The operators interpreted the changes in the language of the written or traditional system that had been in place and thus did not address the need to acquire skills that would allow participants to work in the new system.

In addition, courts themselves did not engage in introspection regarding work dynamics and the results achieved. In view of this, Marensi¹⁰ argued that the production of knowledge (scientific sphere) became divorced from its transmission (educational sphere) and its application (reality).

⁸ J Sartre, *The man and things*, translated by L Echavarrri, Editorial Losada, 1960.

⁹ P Friere, *Pedagogy of the oppressed*, Siglo XXI Editors, Buenos Aires, 2008.

¹⁰ I Marensi, "A new pedagogical approach for the judicial training in Latin America", *Systems Magazine (No 1)*, Crisis in Judicial Training, 2002.

Expansion of civil and criminal justice reforms

Over the past 15 years, nearly all Latin American countries have undertaken comprehensive criminal justice reform programs. In this context, the general belief that there was a need to modernise criminal justice administration system coalesced around the replacement of inquisitorial-written models with oral-adversarial ones.

In contrast, civil justice has had a much slower agenda of change. While it began in the 1980s, most countries in the region have only recently joined the discussion of new civil procedure codes. The common factor here has been the creation of oral proceedings in which the hearing is the natural space of judges' work.

Despite the regulatory reforms, Binder¹¹ has identified a “duel of practices,” which consists of a confrontation between the old and the new, between the tradition of inquisitorial practices and new ways of actions associated with the adversarial model. Rather than being seen as a miscarriage of implementation, the scope of a high level of conflict between the processes is an initial task without which the implementation process would not present significant progress.

In this sense, JSCA research has shown that the success or failure of procedural reforms in Latin America has taken place on the terrain of practices. This data has exemplified the need to conceive of judicial reforms between practices that belong to opposing logics and training as an opportunity to catalyse disputes and reorient the system's work towards dynamics that are consistent with the objectives of the changes that are promoted.¹²

The impact of developments and innovations in pedagogy

In the field of teaching, the last few decades presented very significant progress in the development of new trends and conceptual approaches to adult education.

This movement positioned education as a student-centered process and learning as a process through which knowledge is created through the transformation of experience.¹³ At the same time, the education was seen as a facilitator of that process of extraction through the creation of a safe and welcoming space in which students could reflect on and give meaning to their experiences.¹⁴ Both modes of experience (concrete experience and abstract conceptualisation) and transforming experience (reflexive observation and active experience) are part of a learning process in which the educator plays four roles:

1. facilitator: helping students to get in contact with their personal experience and reflect on it
2. expert: helping students to organize and connect their reflections based on knowledge of the subject
3. regulator or evaluator: helping students to learn the application of the knowledge and skills in order to meet performance requirements, and
4. trainer: helping students to apply the knowledge in order to achieve their goals.

¹¹ A Binder, *The implementation of the new criminal justice adversarial*, Ad-Hoc, Buenos Aires, Argentina, 2012.

¹² In 2003, JSCA reported that “among the many administrative weaknesses of the various systems, the main one and the weakness that is most apparent is issues with the organization of oral hearings. In all cases, the stakeholders identified the ongoing failure of hearings as a significant problem that resulted in delays, frustration of the parties and the loss of resources in terms of time”: see Comparative report: monitoring project of judicial reform processes in Latin America, August 2003, available on the JSCA website at www.cejamericas.org.

¹³ A Kolb et al, “On becoming an experiential educator: the educator role profile” (2014) 45(2) *Simulation and Gaming* 204.

¹⁴ *ibid.*

This mode is based on six fundamental proposals regarding learning:

1. it is conceived of as a process rather than results
2. all learning is re-learning
3. it requires conflict resolution between dialectically opposed models of adapting to the world
4. it is a comprehensive process of adapting to the world
5. it is the result of operations of synergy among the person and the world, and
6. it is the process of knowledge creation.¹⁵

This entire intellectual apparatus was slowly filtered in the space of judicial training and the way in which judges' learning was understood by other institutional stakeholders. As these ideas took shape, empirical research appeared on the way in which training was delivered.

The research that Ken Bain¹⁶ conducted over 15 years in US universities in order to identify shared characteristics among hundreds of professors whose work was considered exceptional by students, instructors and officials is worth noting.¹⁷

The conclusions suggested that the key is the way in which the teachers understand the course and value human learning.

To a great extent, the factor shared by courses delivered to judicial branch members has been limited to lectures or rigid courses in which an instructor "transmits" certain knowledge. However, judicial academies have slowly incorporated a new teaching perspective that takes up these challenges and posits other training approaches. Latin American training has incrementally moved through the three moments of Bloom's taxonomy:¹⁸ from knowledge to skills and abilities.

The current situation: towards the professionalisation of judicial education

The first Latin American judicial academies were developed in Costa Rica in 1981 and Uruguay in 1987, the most recent being those of Ecuador (2009) and Bolivia (2013). This shows that the movement is ongoing. The following table presents a summary of these and other indicators on the reality of the majority of the judicial academies in Latin America.

¹⁵ D Kolb, *Experiential learning: experience as the source of learning and development* (Vol 1), Prentice-Hall, 1984.

¹⁶ K Bain, *Lo que hacen los mejores profesores de universidad*, Universidad de Valencia, translated by Oscar Barberá, Spain, 2007.

¹⁷ A similar study was conducted with law professors. See M Hunter, G Hess and S Sparrow, *What the best law teachers do*, Harvard University Press, 2013.

¹⁸ B Bloom, (ed) *The taxonomy of educational objectives, handbook I: the cognitive domain*, Longman, 1956.

	Country	1. Does your institution train judges and prosecutors or only judges?	2. When did your organisation take on the role of judicial training	3. Is your agency the only one that provides ongoing training to judges (and prosecutors, if applicable) in your country	4. Is ongoing training mandatory or voluntary?	5. Who determines the contents of training?	6. Who plans and delivers training?	7. How frequently is said training offered?
1	Bolivia	Judges and auxiliary staff	2013	No	Mandatory	Mixed system	Mixed system	Ongoing
2	Chile	Judges and auxiliary staff	1996	Yes	Voluntary	Mixed system	Mixed system	Ongoing
3	Colombia	Judges and auxiliary staff	1998	Yes	Voluntary	Autonomous system	Mixed system	Ongoing
4	Costa Rica	Judges and auxiliary staff and prosecutors	1981	No	Mandatory	Mixed system	Mixed system	Ongoing
5	Ecuador	Judges and auxiliary staff and prosecutors	2009	Yes	Mandatory	Autonomous system	Autonomous system	Ongoing
6	Guatemala	Judges and auxiliary staff and prosecutors	1999	Yes	Mandatory	Mixed system	Mixed system	Ongoing
7	Honduras	Judges	1989	Yes	Mandatory	Mixed system	Mixed system	Ad hoc
8	Mexico	Judges	1994	No	Voluntary	Autonomous system	Mixed system	Ongoing
9	Nicaragua	Judges	1993	Yes	Mandatory	Autonomous system	Mixed system	Ad hoc
10	Panama	Judges and auxiliary staff and prosecutors	1993	Yes	Mandatory	Autonomous system	Mixed system	Ongoing
11	Paraguay	Judges and prosecutors	2000	No	Voluntary	Autonomous system	Mixed system	Ongoing
12	Peru	Judges and prosecutors	1994	Yes	Mandatory	Autonomous system	Mixed system	Ongoing
13	Puerto Rico	Judges and auxiliary staff	2003	Yes	Voluntary	Autonomous system	Mixed system	Ongoing
14	Dominican Republic	Judges	1998	Yes	Voluntary	Autonomous system	Mixed system	Ongoing
15	Uruguay	Judges and auxiliary staff	1987	Yes	Mandatory	Autonomous system	Mixed system	Ongoing

Good and promising practices of judicial schools of Latin America

The following focuses on the main findings and trends detected in judicial training.

The identification of training needs

Training needs assessment (TNA) is a systematic process for the gathering of data from different sources, using a variety of methods designed to identify improvements that can be achieved through training.

Training theory generally defines “need” as “the gap between existing and desired knowledge, skills, and attitudes, which could be reduced or even eliminated by training”.¹⁹

Without a detailed (and ongoing) knowledge of the training needs of the cohort to be trained, a professional training program will lack both impact and credibility.

It should be noted that the consensus of educational theory is that in broad terms, needs assessment can be conducted at three different levels.

- **The organisational level:** an assessment that identifies the knowledge, skills, and competences needed by the organisation as a whole.
- **The functional level:** an assessment that identifies the knowledge, skills, and competences needed by the profession or by function.
- **The individual level:** an assessment that identifies the individual-training needs of target group members. TNA at the individual level assesses the individual training needs of judges and prosecutors.

The responses to the JSCA study revealed a wide range of TNA activity is occurring across the region, displaying some imaginative and comprehensive approaches to the challenges faced by judicial training bodies mostly at the individual level, but with some examples of TNA at both the organisational and the functional levels.

Assessment of training programs and participants

In general, assessment of training activities demonstrates to what extent the training needs have been successfully addressed by the training activities. At the same time, assessing training activities helps to identify new or further training needs. The two aspects represent key elements of the whole training circle of training needs assessment — planning — delivery — evaluation.

There are several models for measuring the effectiveness of training activities. Perhaps the most popular is the training evaluation model developed by Donald and James Kirkpatrick.²⁰ They divide training evaluation into four graduated levels that essentially measure:

1. **Reaction of trainees:** what they thought and felt about the training
2. **Learning:** the resulting increase in knowledge or capability
3. **Behaviour:** the extent of behaviour and capability improvement and implementation or application
4. **Results:** the effects on the business or environment resulting from the trainee’s performance

¹⁹ n 2, above.

²⁰ D Kirkpatrick and J Kirkpatrick, *Implementing four levels: a practical guide for effective evaluation of training programs*, 1st edn, Berrett-Koehler Publishers, San Francisco, 2007.

Regarding the assessment of performance, in its Opinion No 4/2003²¹ the CCJE highlights the importance of the assessment of programs and methods for the continuous improvement of judicial training. However, the CCJE warns that the evaluation of the performance of participants in judicial training initiatives raises more questions. A clear distinction should be made between the evaluation of participants in initial training (where it exists) and in continuous training. The first is deemed appropriate where initial training is part of the selection and appointment procedure. The second, however, is considered inappropriate if it affects career development. In that respect CCJE recommends that “in principle, participation in judges’ training initiatives should not be subject to qualitative assessment”.²²

Design of innovative curricula

Only Honduras, Chile, Bolivia, Nicaragua, Peru, Ecuador and Puerto Rico offered examples of innovative curriculum design. However, each example was an imaginative and pragmatic response to a real need for change. In each case, it was made clear that the extent of the response had to be tailored to the challenges posed by a combination of geography and limited economic resources.

Innovation in curriculum design is in its early stages in Latin America, and there is little evidence at present of examples of training bodies making significant use of the range of strategies that are becoming increasingly available to training bodies around the world, in particular by use of the internet. The Peru experiment, however, provides a striking exception of the truly ambitious and imaginative use of what technology has to offer in this regard. It is also encouraging to note that Chile, Honduras and Puerto Rico demonstrate a clear commitment to interdisciplinary training in appropriate settings.

The development of innovative training methodologies

A number of interesting methodologies were put forward as examples of innovative training practices by Chile, Uruguay, Puerto Rico, Bolivia, Colombia, Panama, México and Ecuador. They fell broadly into four categories: use of electronic platforms; full interactive e-learning programs; train the trainer methodologies, plus a few further miscellaneous projects.

The use of international links in training

The use of international trainers, the sharing of trainers and training programs across national borders, and the exploitation of exchange program opportunities collectively characterize the growing development of international activity in the judicial training scene in Latin America. However, funding is essential for any international program and it almost always comes from abroad. Examples of such programs came from Colombia, Honduras, Chile, Nicaragua, Dominican Republic, Puerto Rico and Ecuador.

The JSCA observed that in Latin America, there is an increase in the collaboration between institutions in order to improve knowledge in a wide range of subjects.

Conclusions and recommendations

JSCA analysis leads it to offer the following conclusions and recommendations.

²¹ Consultative Council of European Judges, “Opinion No 4 of the Consultative Council of European Judges (CCJE) to the attention of the committee of ministers of the council of Europe on appropriate initial and in-service training for judges at national and European levels”, Strasbourg, 27 November 2003, at www.csm.it/documents/46647/0/Opinion+No.+4+%282003%29.pdf/bee336e6-c62c-420e-a19d-166e9a4a2a17, accessed 22 October 2018.

²² *ibid* at [42].

Transfer of “good” and “promising” practices

There is a high level of potential transferability of training practices between judicial training institutions across the continent identified by the study. The JSCA believe there to be outstanding potential for such collateral activity across much of Latin America due to its political histories, cultural and legal synergies, and language.

To realise this transferability, international and local networks can serve as an adequate platform for the different colleges to identify an institutional point of encounter and socialisation about the work they perform.

Training needs assessment (TNA) and program evaluation

There should be a close interrelation between TNA, the evaluation of training activities and the subsequent refinement of training programs. This is what makes the difference between a good and a promising practice.

With the exception of Colombia (and to a limited extent Chile), no judicial training institution has introduced or is even planning to introduce evaluation systems and methods that aim to assess how much of the new knowledge/know-how acquired throughout the training is used by judges in the longer term, or how it impacts upon the performance of the judicial system more generally.²³

The JSCA recommends that the process of introducing long-term evaluation by judicial training institutions should now be prioritised. The JSCA also observes that the internal evaluations of the programs are rather fragmented and the institutions do not evaluate them as an integral whole. None of the schools surveyed assess the programs through a verified external method, nor do they evaluate whether the courses that compose them are integrated in a coherent way. The JSCA recommends that the school commissions, for example, from the research area, studies of this nature to analyse which gaps could be satisfied.

Need for judicial training to engage directly with society

Generally, there is relatively little engagement between judicial training in Latin America and wider society, particularly in the use of other disciplines such as psychology, sociology, criminology, finance and business. That is, judicial training is operating largely introspectively.

The most effective judicial systems are run by judges who understand the economic, social and moral complexities of the world in which their adjudications take place.

The JSCA recommends that the judicial training institutions responsible for the design and provision of judicial training across the region of Latin America review their overall training offer to ensure sufficient opportunities are provided for common activities between judges and prosecutors and other professionals, both as trainers and participants.

Participative training

It is widely accepted that the most effective training is that which engages the participants directly in the process.

While some countries in Latin America do involve participants quite extensively in the planning of the content of training programs (Puerto Rico, Columbia and Chile), there is little adherence to a general training methodology in which the participant training judges are active participants in the actual delivery of the program.

²³ Kirkpatrick, Levels 2–4, above n 20.

The JSCA recommends that judicial training programs in Latin America need to ensure greater active participation of judges in the actual training activities.

As a *quid pro quo*, great care should be taken to ensure that the environment in which participative training for judges takes place is made sufficiently safe and secure to enable participants to exchange views and experiences through free expression and to learn from one another, without external monitoring or interference.

Training in judicial skills and judgecraft

Across the globe, the emergence of a greater interest in training in judicial skills and judgecraft (as compared to substantive laws and procedures) is significant, and is likely to become of greater importance in the coming years. It has special meaning, particularly in Latin America, since judicial reforms in the last 25 years have established a system of hearings in criminal and civil matters, and the judges have had to readjust themselves to this.

This area of training is particularly well-suited to crossing national boundaries. Although the study revealed some examples of “good” or “promising” practices involving hands on, observation-based skills training (Colombia, Puerto Rico, Bolivia, Costa Rica, and Ecuador), the JSCA recommends expansion of this type of work both nationally and cross border.

A phenomenon in Latin America is the use of external teachers in training courses and the financing of schools through international cooperation agencies. In this region, it is common for entities to offer “mixed programs” that do not depend solely on judicial academies in terms of determining their content, selecting the instructors and financing of training activities.

On many occasions the judicial schools who receive this type of aid are torn between maintaining their programs and training priorities or introducing courses built by external institutions or bodies who are not necessarily familiar with the local reality. By adopting the latter, the courses may fail to address the training needs, thereby weakening the independence of judicial schools and their interference in determining the direction of training.

New training methodologies

The use of multi-faceted training methods that seek to integrate a wide variety of training tools into one program is on the increase in Latin America. This approach provides the best long-term framework for training judges in the modern world. In the multi-faceted approach, electronic media and information technology play an important role.

The internet, Moodle learning platforms, and e-learning are used in a number of “good” and “promising practices” across the region.

Using these tools enables the rapid acquisition of a wide range of sources that also provide a cost effective way of organising and using cross-border contacts to disseminate and provide access to materials and information. The JSCA recommends that more judicial training institutions should make use of new technologies.

Value of cross-border training

There is value in approaching judicial training on some issues via consortia that cross national boundaries. The shared experiences created may carry exponential benefits and economies of scale. Judicial training institutions should make maximum use of the benefits of structures and mechanisms in place to design and deliver cross-border training programs and other initiatives.

At the same time, from the approach of international cooperation agencies, the presentation of joint plans between different judicial colleges can serve as an alternative to maximize the limited economic resources usually provided for judicial education in the region.

Creation of a clearinghouse

The JSCA study has revealed a number of interesting, diverse practices in the delivery and further development of continuing training programs for judges across the region.

There is scope for greater information exchange across borders in Latin America regarding new challenges and solutions. Staff and judicial exchanges, colloquia, workshops and so forth could be organised with greater frequency in order that more “good” and “promising” practices might be collectively developed.

As an initial step, the JSCA recommends the creation of a Judicial Training Clearinghouse, based in a suitable location, whose initial task will be to act as the central point for collecting and disseminating information concerning progress in the this field across Latin America. Thereafter, the clearinghouse should seek to establish a formal professional collaboration with the EJTN as cooperators.

Judicial education: the Papua New Guinea experience

Sir Salamo Injia, Kt, GCL* and John Carey**

Introduction

In 2007, the Government of the Independent State of Papua New Guinea (PNG) in its white paper on law and justice determined that it was important and necessary to have a judicial college. There was a desire by the judges and magistrates in PNG for a college which would provide programs for their professional development.¹ The essential ingredient was the focus on judicial excellence and a recognition that the continued ad hoc approach to judicial training was not effective and efficient and there was a need for the establishment of a judicial college that would be able to deliver structured judicial education programs.

The PngCJE was established in 2010 under a Memorandum of Understanding (MoU) signed between the Chief Justice, Chief Magistrate and Secretary for the Department of Justice and the Attorney General. A five-year corporate plan was published which addressed a more structured and integrated approach for training for judicial officers and court staff.

The core values of the PngCJE in achieving judicial excellence are:

- judicial independence is at the pinnacle of the administration of justice, judicial officers shall be free from all undue influence in the exercise of their judicial powers
- equality for all before the court in accordance with the law
- impartiality and fairness for all in accordance with the law
- decision making in a timely and transparent manner
- courts are easily accessible
- a competent, skilled and experienced workforce to enhance efficiency and effectiveness in the judiciary
- integrity of the court to enhance public confidence and trust, and
- certainty of all court process and programs.²

* Chief Justice of Papua New Guinea (PNG) and Chairman of the Board of the Papua New Guinea Centre for Judicial Excellence (PngCJE). He has been a Judge of the National Courts of PNG for 25 years, Deputy Chief Justice for five years and Chief Justice for the past nine years. He holds a LLB (UPNG), LLM (Harvard) and was admitted to the Bar in PNG in 1983.

** Executive Director of the Papua New Guinea Centre for Judicial Excellence (PngCJE) based in Port Moresby, PNG. He has a MBA in Finance (University of Leicester, UK), LLB (Hons) (University of Liverpool, UK) and a BS in Engineering (Walla Walla University, USA). He was admitted as an attorney-at-law in the Cayman Islands and barrister and solicitor in the Republic of Fiji. He is also a justice of the peace for the Bahamas.

¹ PngCJE Business Plan 2013, foreword by Deputy Chief Justice Sir Gibbs Salika, KBE, CSM, OBE.

² *ibid* at p 5.

In being able to provide the framework with which judicial education could be properly launched in PNG, the government supported the judiciary's forging ahead.

The government acknowledges moves by the judiciary to take the lead in establishing a formally structured legal/judicial training program building upon the foundation created by the current ad hoc judicial training programs undertaken by the judiciary and the Magisterial Service. Government will support the judiciary and the Magisterial Service to work with the Legal Training Institute to bring to government a proposal to establish the Judicial and Legal Training Centre. The centre will maintain its present role in the professional training of lawyers. In addition it will establish a training centre in which judicial officers and court officers can have their skills and competencies upgraded. The centre will also be available for use by others in the sector who have a close engagement with the court processes. Government proposes to invite similar judicial and legal professional development institutes in Australia and New Zealand to form an association with the centre so as to encourage the exchange of instructors, course materials and experiences. The centre's resources will also be available to the judges and court staff of other Pacific jurisdictions.³

While the independence of judiciary is mandatory for the doctrine of separation of powers to be observed, it is noteworthy that the executive and legislative branches of the government supported this position of judicial education locally and with a view to being a regional resource for Pacific Island countries.

For judicial educators to plan what should be taught, curriculum design provides the structure.⁴ When developing programs it is imperative to consider constraints such as finance because "judicial education is expensive and must be cost effective."⁵ The PNG judiciary spent a considerable amount of time in developing the best approach to delivering judicial education and focused on planning and business plan development to bring about a proper execution. Having the experience of ad hoc professional development gave insight into what scenarios would not be as effective in the delivery of judicial education.

The ability to provide continuing education is important to the improvement and efficiency of the delivery of judicial services. These programs build competency, and competency produces confidence by the beneficiaries of the training as well confidence in the beneficiaries of the training by the public.

Historically, training at the judiciary level was not a part of the organisational culture. "[W]e have to train our judges and equip them with the skills that are necessary to apply that law to resolve disputes."⁶ The Chief Justice of PNG, Sir Salamo Injia, has championed judicial education both in PNG and regionally and as Chairman of the Board of PngCJE provides leadership and guidance in its overall mandate.

Judges had previously resisted these trainings based on the presumption that upon their appointment, they know the law and that there was no need for further training as they were the elite group of jurists, until the year 2000, when knowledge and skills-based trainings were initiated and embraced.⁷

³ Office of the Secretary for Justice and Attorney General, *A just, safe and secure society: a white paper on law and justice in Papua New Guinea*, 2007, p 18.

⁴ L Armytage, *Educating judges: towards improving justice*, 2 edn, Brill Nijhoff, 2015, p 192.

⁵ Judge Sandra Oxner's report (June 1999) on judicial education and the state of the Philippine Judiciary at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JudicialEducation.pdf>, accessed 18 October 2018.

⁶ S Injia, Chief Justice of PNG, "Judges, Magistrates attend workshop" quoted in Post Courier Newspaper, 28 November 2017 at <https://postcourier.com.pg/judges-magistrates-attend-workshop/>, accessed 26 October 2018.

⁷ *ibid.*

Through leadership of the Chief Justice in PNG, all stakeholders are supportive and seek to provide opportunities for judicial education programs.

By now, 100 percent of judges are pro judicial education-oriented. Around late 1990s, 80 percent were against judicial education.⁸

Having commitment from the top is critical to the success of any judicial education initiative. Small Island Developing States,⁹ regardless of their judiciary's size, should at a minimum establish a judicial education committee to provide guidance in developing programs or directing the judiciary to access programs which offer continuing professional development. In spite of the normal budgetary challenges which usually create obstacles to the full implementation of a proper judicial education program, every effort should be made to realise some gains in establishing a platform.

The PNG experience is one that is shared by many judiciaries in the common law system. The judicial education and training programs are judge led and focussed to ensure full support of the judiciary and to assure that the curriculum development is in line with the reality of issues raised in the judiciary. The PngCJE Board (the Board) has developed a training activity process guide. Typically the flow of this is as follows:

1. The proposal to conduct a training activity in the judiciary will be formulated and submitted to the PngCJE Secretariat (Secretariat) or the chairperson;
2. The Secretariat or chairperson will assess the request and if considered necessary, will submit the request to the Board;
3. The Board will consider the request and decide on its importance and relevance. If the Board decides to execute that activity, it will then be registered on its training activity schedule;
4. If the Board decides to execute the training activity, it will appoint a Design, Delivery and Evaluation Sub-Committee (DDE) for that particular activity. DDE will comprise of judges, judges' personal staff, registry staff or corporate management staff;
5. The Chairperson of the DDE will usually be the Judge Court Track Manager or Judge Chairperson of the relevant court committee or project team leader. The chairperson or project team leader could also be the most senior officer of the judges' staff services, court registry services or the corporate services. With the Board's oversight, supervision and control, DDEs will plan the activity, design the program, deliver the program, compile the report on the activity conducted, and conduct ongoing monitoring and evaluation of the implementation of the recommendations contained in the activity report;
6. It is the duty of the DDEs to deliver the specific training activity. The selection of the trainers/facilitators/presenters, engagement of external technical expertise, assembling and distribution of course material, selection of training venue are the responsibilities of the DDE;

⁸ *ibid.*

⁹ Currently, the United Nations Department of Economic and Social Affairs lists 57 Small Island Developing States.

7. Internal trainers engaged as trainers/facilitators/presenters who have completed Train the Trainer (ToT) courses run by PngCJE, PJSI, Commonwealth Judicial Education Institute or an equivalent ToT course offered by recognised judicial training organisation, qualify as trainers. The trainers may or may not be members of the DDE;
8. The Secretariat will be responsible for attending to logistical arrangements and assisting the DDEs for the training activity.

Development

The rule of law and the concept of justice are worldwide and fundamental principles ... worldwide mutual assistance in judicial education can and should be developed.¹⁰

In 2017, the PngCJE appointed its first Executive Director. This was an important step toward the realisation of the need to build capacity as judicial education expands. Further, it was anticipated that there would be an increased sense of urgency in delivering on the goals of judicial education as the PngCJE works toward its aims and objectives in providing continuing professional development programs.

One of the challenges that PngCJE faced over the years was the output expectation with a very small staff. In spite of this particular challenge, there were training activities organised which met some of the needs of the judiciary. There was a need to enhance methodology in delivering educational programs as the face to face approach was the only type employed. Part of the growth of the PngCJE was the ability to write publications, provide remote training through online delivery or edited and distributed presentations, self-directed material and increased ToT workshops to produce trainers who could reach the provincial teams in delivering training.

With our courts located in 22 provinces, it is practical to be able to produce training material on a myriad of subjects and disseminate to these locations for judges, magistrates and court staff to use at their own pace. It becomes more cost effective and increases readership rate while contributing positively to productivity and output in the judiciary. Through the additional recruitment of staff in areas such as Research and Publications, Information Technology and Communications and Judicial Education Management, the PngCJE will enhance capacity and be able to optimise efforts in delivering judicial education and training programs to other Pacific Islands judiciaries.

The process of building a comprehensive and efficient judicial education provider is indeed challenging and in particular, requires human and financial resources to accomplish.

The Judiciary can play an important role in maintaining the rule of law even in the immediate period after a coup as demonstrated in the decisions of the High Court and Court of Appeal in Fiji.¹¹

¹⁰ J Wallace, "Globalization of judicial education" (2003) 28 *Yale J Int'l L* 355 at 364.

¹¹ G Williams, "The case that stopped a coup? The rule of law and constitutionalism in Fiji" (2001) 1 *Oxford University Commonwealth Law Journal* 73.

Reflections

Lessons learnt

It is argued that the learning needs of judges are in certain respects quite particular, relating both to the nature and content of the learning, and to the education process supporting that learning.¹²

Essential to the rule of law in any land is an independent judiciary, judges not under the thumb of other branches of Government, and therefore equipped to administer the law impartially.¹³

The interaction between customary and Western law presents itself in numerous other ways.¹⁴

Independence of the judiciary is significant in being able to manoeuvre through the disparity that exists in these instances. No human being is infallible or omniscient.

When lawyers don black robes to become judges, they do not magically acquire all the knowledge, experience, and skills necessary to become excellent judges.¹⁵

Judicial education fills the interstitial spaces that are present between achieving judicial excellence and qualifying to become a judge.

It is no accident that the past fifty years have demonstrated to the common law world that judicial education and training is an essential tool to upholding justice. “In many jurisdictions, judges must learn their new roles by the seat of their pants.”¹⁶ The PNG judiciary has embraced this reality and has been focussed on improving its ability to deliver programs domestically while preparing for a regional role in assisting other Pacific Islands countries’ judiciaries where the need arises.

There is no reluctance by any member of the judiciary in PNG in helping wherever possible within the parameters of constraints that exist in the proper functioning of the judiciary. There will always be funding challenges given limited resources and competing priorities. In spite of this fact, the significance of judicial education and training is accepted.

With increasing international disputes that entail entities and persons in multiple jurisdictions, courts are increasingly recognising their existence as a global community instead of monolithic entities in a jurisdiction isolated and unto themselves. Judges face similar challenges, can learn from other judges and to a large extent may cooperate in dispute resolution matters, as they accept that they are a part of a common judicial initiative regardless of whether they are on a “national supreme or constitutional court or on an international court or tribunal”.¹⁷

¹² n 4 above at p 111.

¹³ R Bader Ginsberg, “Judicial independence: the situation of the US Federal judiciary” (2011) 85 *Neb L Rev* 1.

¹⁴ J Van Dyke, “Providing support for independent judiciaries and constitutional governments” *Land Law and Judicial Governance* 279 at 321: see <https://www.victoria.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-xii,-2011/van-Dyke.pdf>, accessed 18 October 2018.

¹⁵ M Russell, “Towards a new paradigm of judicial education” (2015) 1 *J Disp Resol* 1 at <https://scholarship.law.missouri.edu/jdr/vol2015/iss1/6>, accessed 18 October 2018.

¹⁶ D Catlin, “Michigan’s magic touch in educating judges” (1986) 25 *The Judges’ Journal* 32 at <http://heinonline.org/HOL/LandingPage?handle=hein.journals/judgej25&div=71&id=&page=>, accessed 18 October 2018.

¹⁷ A Slaughter, “A global community of courts” (2003) 44(1) *Harvard International Law Journal* 191 at 193 at <https://www.jura.uni-hamburg.de/media/ueber-die-fakultaet/personen/albers-marion/seoul-national-university/course-outline/slaughter-2003-a-global-community-of-courts.pdf>, accessed 18 October 2018.

Judicial education and training may lead to judicial reform. In many countries judicial reform is hampered by the political executive. Hence, the importance of an independent judiciary to drive judicial reform. “Indeed it is widely held that a genuinely independent judiciary is the last line of defense for individual freedom.”¹⁸

Benefits to the judiciary

Keeping the judges abreast of the market is a topic in itself and I cannot go into it in this lecture. It is, for example, dependent on high quality judicial education and seminars through which the business community brings the judiciary up to date.¹⁹

It is therefore incredibly important for judicial capacity to be continually developed through continuing education and training, international exposure, cross-country dialogue and information exchange.²⁰

Judicial educational programs should be regionally based for multiple reasons. First, this reduces travel time and cost, increasing the ease of participation. A second advantage of this approach is to connect the appellate judiciary from relatively small population states within regional groupings of similar states. The main goal of a regionally based program is to create a network of judges that can work together to deal with common issues.²¹

This is particularly relevant to Small Island Developing States whose judiciaries are small (ie comprised of less than 150 judges per jurisdiction).

The PngCJE has been able to develop research capacity, even though it is in its fledgling stage of development.

The need for in-house judiciary research, its mission, the research methodologies, and even many of the research projects are the same across different court systems.²²

The importance of research will be seen in the future as papers are published and the recommendations from research work are considered for implementation where relevant.

¹⁸ C Barrow-Giles, “Regional trends in constitutional developments in the Commonwealth Caribbean”, paper presented at the Conflict Prevention and Peace Forum, January 2010, Haiti at p 15 at <http://www.cpahq.org/cpahq/cpadocs/Cynthia%20Barrow.pdf>, accessed 18 October 2018.

¹⁹ Right Hon The Lord Thomas of Cwmgiedd, “Giving business what it wants — a well run court for commercial and business disputes”, paper presented at the Grand Court of the Cayman Islands Guest Lecture, 2 March 2017 at p 16 at <https://www.judiciary.uk/wp-content/uploads/2017/03/grand-court-of-the-cayman-islands-guest-lecture-march-2017.pdf>, accessed 18 October 2018.

²⁰ B Davis, “Keynote address at the 5th Asia-Pacific judicial reform forum (APJRF) meeting”, 31 October and 1 November 2013, Singapore.

²¹ C Silak, “Judicial education for state appellate court judges: a regional collaborative strategy” (2016) 1(1) *Concordia Law Review* 111 at <http://commons.cu-portland.edu/clr/vol1/iss1/4>, accessed 18 October 2018.

²² Y Mersel and K Weinshall-Margel, “Establishing a judiciary based research centre — the Israel experience”, paper presented at the 5th International Conference on Judicial Training, Bordeaux, 2011 at <http://elyon1.court.gov.il/heb/Research%20Division/doc/Establishment1.pdf>, accessed 18 October 2018.

The way forward

Judges ought to act in a manner that promotes public confidence in the judiciary. Judicial education aids in supporting judges to achieve this goal. Judicial education also facilitates opportunities for the public to gain knowledge on how the judiciary functions.

A greater understanding of how our courts work is an important component of that enhanced confidence.²³

Concerns about maintaining a judge's impartiality can limit the venues appropriate for a judge's education efforts.²⁴

Judicial education programs could familiarize judges with customs that are likely to be misinterpreted. This type of curriculum could be incorporated in orientation programs for new judges as well as in continuing judicial studies programs.²⁵

Ultimately, the success of a judicial academy and its programming will be judged on whether or not it improves national public trust and confidence in the judiciary.²⁶

The type of legal system is not a factor with regard to the general principles of judicial education.²⁷ "There is a need for a well-structured, continuing legal education-oriented, and university-based education for judges and judicial officers."²⁸ While this view may be reasonable, it remains to be seen whether this is the best way forward for judicial education and training. Within the PNG context, there is a well-structured judicial education and training program which has a 120-hour minimum standard expectation of all judges. Rather than being university based, it is proffered on the basis that being judge-led and focussed is the most acceptable and beneficial way for the design, delivery, evaluation and success of such programs.

"Judicial officials should receive continuous training and education throughout their career including, where appropriate, in racial, cultural and gender sensitization".²⁹ The need for judicial education is clear as the courts handle complex matters which are not limited to law and requires judges who have a wide perspective.³⁰

²³ M Greenstein, "Commenting on pending or impending matters" at https://www.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/spring07_2.authcheckdam.pdf, accessed 26 October 2018.

²⁴ C Gray, "When judges speak up: ethics, the public and the media" *American Judicature Society*, 1998, p 27 at <https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Publications/When-Judges-Speak-Up-Study-Materials.ashx>, accessed 26 October 2018.

²⁵ A Renteln, "Making room for culture in the court" (2010) 49(2) *Judges' Journal* 7 at 14.

²⁶ S Oxner, "Judicial education as a foundation for judicial reform: a framework and an evaluation analysis", p 2, paper presented at the International Judicial Conference, 11–14 August 2006, Islamabad, Pakistan at <http://www.supremecourt.gov.pk/ijc/Articles/6/3.pdf>, accessed 26 October 2018.

²⁷ J Wallace, "Judicial education and training in Asia and the Pacific" (2000) 21 *Mich J Int'l L* 849 at 854 at <https://repository.law.umich.edu/mjil/vol21/iss4/2>, accessed 18 October 2018.

²⁸ S Buhai et al, "The role of law schools in educating judges to increase access to justice" (2011) 24 *Pac McGeorge Global Bus & Dec LJ* 161 at 172 at <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com.au/&httpsredir=1&article=3412&context=facpubs>, accessed 18 October 2018.

²⁹ United Nations Office on Drugs and Crime, *Judicial ethics training manual for the Nigerian judiciary*, p 43 at https://www.unodc.org/pdf/publications_unodc_judicial_training.pdf, accessed 18 October 2018.

³⁰ H Chao, "The education and training of judges and the implications of the development of the ASEAN-China free trade area", address by Judge of Appeal Chao Hick Tin, Supreme Court of Singapore, at https://www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/the-education-and-training-of-judges-and-the-implications-of-the-development-of-the-asean-china-free-trade-area_chao-ja.pdf, accessed 18 October 2018.

Conclusion

Judicial education continues to progress in PNG. As the PngCJE continues to embrace its role as the domestic provider of judicial education in PNG there will be continued confidence in the judiciary's responsiveness to the community in its expectation of the delivery of justice. The consistent delivery of judicial education and training programs in the domestic programming engenders confidence of the ability of the PngCJE to grow and contribute substantially to the training needs of other judiciaries in the region. "Judicial education has a very important part to play in the rule of law".³¹

The judiciary works tirelessly to ensure that the rule of law is upheld. Through the judicial education programs there is an increased awareness of the importance of ensuring that the rule of law prevails for the people of PNG. Further, strengthening judicial integrity is an important benefit that is also associated with focused judicial education and training programs which demonstrably enhances the quality of life for all. "Even though judicial integrity is critical, only a few international institutions are currently focussing on this issue".³² The evolution of the PngCJE can serve as a case study of how Small Island Developing States' judiciaries embrace and engage judicial education and programs in their growth and development.

³¹ W Martin, "Future directions in judicial education", paper presented at the Supreme and Federal Court Judges' Conference, 2011, Wellington, New Zealand at http://www.supremecourt.wa.gov.au/_files/Future_Directions_in_Judicial_Education_January_2011_NZ.pdf, accessed 18 October 2018.

³² P Langseth and O Stolpe, "Strengthening judicial integrity against corruption", paper presented at the United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Office, March 2001, Vienna at https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf, accessed on 18 October 2018.

China's judges' education and training reform: practice and future innovation

Dr LI Xiaomin*

Introduction

The National Judges College (NJC) of the People's Republic of China is the principal institution for the education and training of judges in China. Founded in 1997, it can hold more than 1,000 people for training at the same time with the old campus and the new campus, which officially opened in September 2015. With the motto of "respecting morality, profession, law and fairness", the NJC, since its establishment, has carried out vocation, renewal, promotion, and trial-oriented training to presidents and vice presidents of High People's Courts and Intermediate People's Courts, senior judges and reserve talents of different levels of courts. The NJC has also provided pre-job training for reserve judges. Meanwhile, high-level legal education for doctors and masters is also provided. According to the training principle of meeting the demands of all the judges by different levels of classification, the past 19 years have witnessed more than 1,000 training courses with over 100,000 judges and court staff. The NJC has established an integrated pattern of national judges' education and training with the 33 branches at the High People's Courts throughout the country.

Judicial reform initiates a new pattern of judges education and training in China

With the comprehensive promotion and implementation of the construction of the rule of law in China, the judicial reform has been carried out in an inclusive way, which puts forward new and higher requirements for judicial ability and professional concepts of Chinese judges. The judges training pattern has been profoundly affected by the significant progress made in fields like the reform of "specified number of judges system", the reform of judicial responsibility system, the reform of the trial-centered litigation system, the reform of judicial publication and informatisation, and the construction of intelligent courts.

The impact of judicial reform on the system of judges' education and training

The training system includes a management system, training types, curriculum system, teaching method system, and so on. The management system of judges training in China has the Political Department of the Supreme People's Court as the guide, the NJC as the leader, and the provincial branches as the supports. The NJC and the branches have their respective functions and tasks. The judicial reform will also adjust the previous training scope. The system of judges' education and training includes that of training types. The former system consisted of judges'

* Dr LI Xiaomin is vice-president of China National Judges College, the Supreme People's Court, People's Republic of China. He engages in Economic Law, Administrative Law, Intellectual Property Law and theoretical and practical research on the judicial system.

pre-job training, promotion training, renewal training, new court president and vice president training. After the judicial reform, pre-job training, judges' assistants' training and new judges' training will be transferred to new types of training.

The impact of judicial reform on the content of judges' education and training

The judicial reform requires a higher professional quality of judges. As a matter of fact, the content of judges' training is determined by the demands of judges' professional quality. The judicial reform emphasises judges' occupation, ethics, behavior norms, humanities, social cognition, trial controlling ability, judgment methodology, documents reasoning and argumentation, etc. Therefore, the content of judges training also needs to be changed according to the judicial reform. An ancient Chinese saying from the "Book of Rites" goes that: "The teacher is to introduce knowledge, as well as virtues." Similarly, education and training for judges should not only focus on judicial ability, but also encompass judicial skills and attitudes.

The impact of judicial reform on the method of judges' education and training

Confucius once said: "Teachers are not supposed to explain unless one is desperately anxious to learn." And Socrates said: "Education is not spoon-feeding, but kindling the flame." Obviously, the ancient sages of China and the West share a common view on the methods of education and training. Heuristic and interactive teaching methods are more important to judges' training. The judicial reform requires the change of the original inculcating way of teaching. Case study and discussions are helpful to strengthen the interaction of training.

The impact of judicial reform on the teachers of judges' education and training

Mei Yiqi, once the president of Tsinghua University in China, said in the 1930s that: "Whether a university is extensive and profound lies in great masters, not large buildings." For any educational training institution, the master is the core, and it is also true for a judges' training institution. After the judicial reform, with the adjustment of teaching contents and methods, the teachers are also influenced. The training of judges demands the participation of excellent judges and famous scholars, and the formation of staff teams who can closely connect theory and practice.

The practice of judges' education and training reform under the new pattern

In the education and training practice, the NJC and all levels of training institutions insist on problem-oriented and demand-oriented guidance, adhering to the principle of "self-centering, eclecticism and characteristics-highlighting" and a focus on the five core issues of "for whom to teach, what to teach, who will teach, whom to teach, how to teach". It has obtained fruitful achievements in optimising the training structure and deepening the teaching reform. This paper will give a detailed introduction on how to improve the practicability, pertinence and effectiveness of teaching and training, so as to contribute to the construction of the rule of law civilization in the world with the training of Chinese judges.

Projecting demand-oriented teaching design

Firstly, select demand-oriented teaching issues. The key to choose the right topic is to accurately understand and grasp the three demands of the organisation, the post and the people, and realize the integrity of the three. The NJC is building a unified topic library to share high-quality project resources, which is also one of the strategies to improve the teaching quality.

Second, determine demand-oriented teaching contents. The NJC constructed a mechanism facilitating the understanding of the teaching requirements, according to which each judge should submit at least three questions, three difficult cases and three pieces of experience before the training. Furthermore, flexible project groups will be set up according to the training tasks, where the collective wisdom be exerted. It also helps to study the trainee's demands, characteristics and training principles, so that appropriate teaching plans can be designed. In this way, different requirements of each training course are collected and different depth and breadth of training can be conducted for different types and levels of trainees. Even for the same subject, the teaching content and focus are different facing different needs.

Third, establish demand-oriented teaching approaches. In 2010, the Supreme People's Court put forward the guideline of "one goal, two transfers, and three ways" for judges' education and training, ie set the goal to establish the socialist concept of rule of law and improve the judicial ability; transfer from knowledge training to the combination of knowledge and ability, from theoretical research training to the combination of theory and practice; and advocate three pedagogical methods of judges teaching, case teaching and field teaching. President Zhou Qiang, Chief Justice of the Supreme People's Court, attaches great importance to the reform of teaching methods. In recent years, besides further strengthening and improving the several teaching methods clearly required by the Supreme People's Court, the NJC and its branches also actively explore other approaches such as interactive teaching, debate teaching, question and answer, menu teaching, etc, so as to strengthen the innovation and effectiveness of teaching methods.

Designing teaching reform measures in three key links: curriculum development, teaching organisation and teaching module design

Firstly, focus on the training target and concentrate on developing new, essential, close, and practical teaching courses, in pursuit of enhancing the pertinence and effectiveness of judges' training.

Second, standardise the five steps of curriculum development, ie set the training object based on the position requirements of different trainees, prepare the teaching programs, design the teaching unit and module, choose the teaching topics, and select the teaching methods. The emphasis is on the composition and design of teaching modules. The proportion of classroom teaching, research teaching, modular teaching and interactive teaching in different courses is clearly defined.

Third, further promote the reform of teaching module design. The "modular teaching" as the basic teaching form in conventional courses is divided into several categories with clear objectives and broader application:

1. trainee enrolment module
2. leadership capability and leadership approach module
3. trial theory and practice module
4. the trial skills and ability module.

Fourth, timely updating of the training contents. Training courses should be designed according to the trainees of different courses, and make sure of "one course, one policy" while adjusting various focuses. A certain percentage of training content should be annually updated in order to meet the trainees' expectations and requirements to learn new ideas, new knowledge, and new experience.

The innovative development of China's judges education and training to 2025

Practice continues to develop and innovation never ends. In 2025, artificial intelligence will be applied more widely in the field of education. The pattern of the interconnection of all things will be formed, leading to an unprecedented data revolution. "Data is productivity, those who take the lead in big data and are good at using big data, can take the initiative and know the future."¹ Conforming to the needs of the development of the times and the construction of high-quality judicial ranks, the building of a "wisdom college" will also be an inevitable choice, which will make great strides together in the development of the economy and internet technology.

Big-data-based scientific decision-making and management reform

The use of big data, "internet plus" and other technical means will help to improve the information level of teaching and management. Establishing a judges' education and training administrative office system and the information management system, and joining the data together, will unify the management of online enrolment, payment, registration, teachers, curricula, training information, evaluation, etc, and thus promote the integrated construction of the training information system of various regions and departments. Through cloud computing and data mining technology, analysis and prediction on the training can be made, realising precise analysis, monitoring and evaluation of the current training object, training contents, training methods, and training effects. This will pertinently improve teaching methods and teaching effect, form positive interaction between the teachers and the students and among the students, reasonably control the implementation and management of judges training, optimise the management and decision-making process and increase the level of scientific management and decision-making of judges' training.

Promote international exchange and cooperation of judges' education and training with information technology

The NJC meanwhile functions as the international exchange center of the Supreme People's Court and therefore is an important window for foreign judicial exchanges. Under the background of global economic integration, the NJC highlights the characteristics of "internationalism, openness, contemporaneity" to strengthen international exchanges in the judicial field, and build the NJC into "the window of international exchange and cooperation in judges training" with foreign judges training resources. Since the new campus was opened, it has received the visits of nearly 20 Chief Justices from Canada, Germany, UK, Portugal, Italy, and so on. The Portuguese Chief Justice, Antonio Henriques Gaspar, the British Chief Justice, the Rt Hon Lord Neuberger of Abbotsbury, the Vice President of the Italian Supreme Judicial Committee, Giovanni Legnini, have been invited to deliver lectures to the judges and college faculty. "Openness and cooperation" is also an important spirit of the internet. The NJC vigorously promotes international judicial exchanges and cooperation by making full use of its experience in information construction. Judge Richard Allen Posner from the United States Court of Appeals for the Seventh Circuit was also invited to deliver lectures for judges and faculty in Chicago through the network video, opening up a new method for judges' education and training as well as international judicial communication. Currently, the NJC takes strategy

¹ M Huateng, "Opportunity and challenges brought about by the development of modern science and technology", China Changan Net, 9 June 2017 at <http://news.hbtv.com.cn/p/733963.html>, accessed 14 November 2018.

for “One Belt and One Road” as its main foreign exchange by way of, for instance, actively organising seminars with judges of relevant countries. The NJC also aims to establish and perfect dispute settlement mechanism along the “One Belt and One Road”; increasing assistance efforts for foreign judicial trainings; and, expanding the scope and scale of foreign judges training. In recent years, the NJC has held 14 to 16 day long seminars for foreign judges of more than 10 countries, with nearly 400 foreign judges participating. The NJC is building a new pattern of international judicial exchanges and cooperation, hoping to share judicial training resources, share achievements and strike win-win cooperation.

At the same time, all involved parties should cooperate with one another, strengthen technical protection, regulate the use of data, and solve the problem of information security together, so that the cadenza of big data can glitter with more gorgeous light for human development.

Opportunities and challenges of judicial education: a case of Nepal

Shreekrishna Mulmi*

Education is not the learning of the facts, but the training of the mind to think — Albert Einstein

Introduction

The powers of the Nepali judiciary today are laid down by the 2015 Constitution of Nepal: “The powers relating to justice in Nepal shall be exercised by courts and other judicial bodies in accordance with this Constitution, other laws and the recognised principles of justice”.¹ The expression “the recognised principles of justice” maintains values developed in international and comparative settings to assist in evolving a competent system of justice in Nepal. As the Constitution mandates, the judiciary should be independent, impartial and competent, and have a duty to ensure civil liberties, fundamental rights, human rights, and to uphold the rule of law in the country.² The judiciary has the common goal to build a prosperous nation and fulfil constitutional obligations. In this context, the capacity-building programs and the research activities contribute to achieve these goals. Fifteen years ago, continuing judicial education programs were established by the National Judicial Academy of Nepal (NJA-Nepal) under the leadership of the Nepali judiciary and the Chief Justice of Nepal. In this context, this article explores the present context of judicial education in Nepal and the challenges faced by it, along with a few recommendations.

Judicial education principles at international level

Judicial education has become an international concern for ensuring judicial independence, the rule of law, and the protection of the rights of all people. Hence, on 8 November 2017, the members of the International Organization for Judicial Training (IOJT), composed of 129 judicial training institutions from 79 countries, unanimously passed the *Declaration of Judicial Training Principles*.³ The IOJT encourages judicial training institutions to support each other in the implementation of this Declaration. The principles recognise that judicial training is essential to ensure high standards of competence and performance in the judiciary and is

* Shreekrishna Mulmi is Director at the National Judicial Academy of Nepal (NJA-Nepal) and holds an LLM in human rights from the University of Hong Kong and an LLM in criminal and corporate laws from the Savitribai Phule Pune University, Pune, India. The views expressed in this article are the personal views of the author and are not necessarily the views of the NJA-Nepal. This paper is the revised version presented at the 8th International Conference on the Training of the Judiciary, 5–9 November, 2017 in Manila, Philippines. The author wishes to thank Mr Hugh Pennicook, presently working as volunteer at NJA-Nepal for his comments and feedback. The author can be reached at skmulmi@hotmail.com.

¹ Constitution of Nepal (2015) art 126.

² *ibid*, the Preamble.

³ The *Declaration of Judicial Training Principles* was adopted at the 8th International Conference on the Training of the Judiciary, 5–9 November, 2017 in Manila, Philippines.

fundamental to judicial independence, the rule of law and the protection of the rights of all people. The Declaration also recognises that it is the judiciary and judicial training institutions themselves that are responsible for the design, development and delivery of judicial training.

An essential aspect of judicial education is that judicial leaders and the senior judiciary support judicial training, along with providing sufficient funding and other resources to achieve their aims and objectives. Judicial training is not an additional function of the judiciary, it is rather part of their judicial work. Therefore, each member of the judiciary should have time to be involved in training and members of the judiciary are required to receive training before or upon their appointment, and should also receive regular training throughout their careers.⁴

Apart from the above principles, the European Judicial Training Network has also adopted judicial training principles which recognise judicial education as a multidisciplinary and practical type of training, essentially intended for the transmission of professional techniques and values complementary to legal education.⁵ The principles make it mandatory for judges and prosecutors to receive initial training before or on their appointment. The training is part of the normal working life of a judge or prosecutor. All judges and prosecutors should have time to undertake training as part of the normal working time, unless it jeopardises the service of justice. In accordance with the principles of judicial independence, the design, content and delivery of judicial training are exclusively for the national institutions responsible for judicial training to determine. Training should primarily be delivered by judges and prosecutors who have been previously trained for this purpose. States should provide national institutions responsible for judicial training with sufficient funding and other resources to achieve their aims and objectives. The highest judicial authorities should support judicial training.⁶

Drawing on the experiences of other jurisdictions, Nepal also determined that there was a strong need for ongoing judicial education amongst the Nepali judiciary. This need was felt particularly following the promulgation of the 1990 Constitution because it had internalised values developed in international and comparative settings for evolving a competent system of justice in Nepal. However, it was not until around the year 2000 that successful negotiations between the Nepal Government and the Asian Development Bank (ADB) led to the establishment of NJA-Nepal under the auspices of the ADB's Corporate and Financial Governance Reform Project. The establishment of NJA-Nepal was a component under the Improving Legal Enforcement Mechanism and Judicial Capacity stream of the project.⁷

Introduction to the National Judicial Academy of Nepal

An autonomous corporate body with perpetual succession, NJA-Nepal has been a member of the International Organization for Judicial Training (IOJT) since its inception. It was established on 17 March, 2004 under the National Judicial Academy Ordinance, 2004 which was later replaced by the *National Judicial Academy Act, 2006* (NJA Act).⁸ The objective of NJA-Nepal

⁴ *ibid*, articles 1–10.

⁵ The General Assembly of the European Judicial Training Network (EJTN) (9–10 June 2016) has adopted these core principles of judicial training.

⁶ *ibid*.

⁷ First Annual Report of NJA-Nepal for the year 2004/05.

⁸ There was no training institute for judges of Nepal before the establishment of NJA-Nepal. The Judicial Service Training Center (JSTC) was there under the executive branch of government for the in-service training of officers of

is to serve the training and research needs of judges, government attorneys, government legal officers, judicial officers, private law practitioners and others who are directly involved in the administration of justice and also to establish itself as a legal information center for the law and justice sector.

NJA-Nepal works under the broad policy guidelines of a 16-member Judicial Academy Council led by the Chief Justice of Nepal. The Minister for Law and Justice, Vice-Chair of National Planning Commission, two sitting Senior Justices of the Supreme Court, and the Attorney General of Nepal, among others, serve as Members to the Council. The seven member Executive Committee of NJA-Nepal, which is headed by the Executive Director, represents NJA's stakeholder organisations and is responsible for program design and delivery. The vision for the establishment of NJA-Nepal was to focus on enhancing the capacity and professional efficiency of judicial human resources through training, research and the dissemination of judicial information aimed at promoting an equitable, just and efficient judicial system.

Since its establishment, NJA-Nepal has been working to deliver on the following objectives as provided in the NJA Act:

- To conduct training, conferences, workshops, seminars, symposia and interaction programs for the enhancement of knowledge and professional skills of judges, judicial officers, government attorneys and private law practitioners and to bring about attitudinal change that enhances their professional efficiency.
- To undertake research in the field of law and justice and to provide scholarly and practical legal literature to judges, judicial officers, government attorneys and others who are involved in judicial administration.
- To help promote a competitive, professionally competent, service oriented and effective private Bar.

In addition to NJA-Nepal's direct stakeholders above, the Supreme Court of Nepal has directed the Nepal government to have legal and judicial training for the officials working in the executive branch of government, such as Chief District Officers and officials of Land Revenue and Land Reform Offices, etc, who are required to perform quasi-judicial functions.⁹ Therefore, NJA-Nepal has adopted an inclusive approach and focuses on working with a wide cross-section of stakeholders operating in the area of administration of justice.

Since its establishment, NJA-Nepal has been working in partnership with different national and international governmental/non-governmental organizations and UN specialized agencies on various law and justice issues. NJA-Nepal has extensive experience working with the Ministry of Home Affairs and Ministry of Land Reform. It has also been working with USAID, AusAID, European Union, World Bank, KOICA, JICA on various issues relating to law, justice and judicial reform. Further, NJA-Nepal has also worked with UN Women, UNDP, UNFPA, UNICEF and ILO.

the Nepal judicial service where judges do not participate as it is separate from the judicial branch. The establishment of JSTC was a requirement for career development of officers as the *Civil Service Act*, 1993 provides a provision to participate in an in-service for promotion of the officers.

⁹ *Amber Raut v Government of Nepal* (Writ no 0043 of 2066). The Supreme Court issued a directive order to the Government of Nepal to manage legal and judicial principles and process training from the organisations like NJA-Nepal to the Chief District Officers and other quasi-judicial officials to try criminal and civil cases.

NJA-Nepal has been operating in accordance with the direction provided by the Strategic Plan. The 12th meeting of the Judicial Academy Council approved the plan in December 2015. Its second Strategic Plan has been designed with the broader objective of making NJA-Nepal a center of excellence for judicial education. The Strategic Plan sets out three goals, nine strategic interventions and six supportive strategic interventions.¹⁰ In a bid to enhance capacity and increase the professional efficiency of its stakeholders and to institutionalise itself as an umbrella institution for judicial training, NJA-Nepal is committed to implementing the Strategic Plan in an effective and efficient manner.

Taking note of contemporary developments in the law, including the promulgation of the Constitution of Nepal and the enactment of the new civil and criminal codes,¹¹ NJA-Nepal has at present been focusing on constitutional, civil and criminal law issues through both its training programs and publications.

Policy on judicial training in Nepal

Prior to the establishment of NJA-Nepal, there was confusion amongst judges as to whether they were required to undertake judicial education in order to promote their on-going capacity development. Following the establishment of NJA-Nepal, there is no such confusion and now it is agreed that every judge requires such training.

In 2017, the Supreme Court of Nepal adopted a training policy for judges of all tiers as well as judicial officers of Nepal. The policy recommends that every judge/officer should participate in a training program at least once a year, and prescribes a mandatory induction training for new District and High Court judges. The policy indicated the need for interactive programs for Supreme Court judges. Further, it specified job specific training, induction training, subject-related training, refresher training, service related training, in-service training, promotion-oriented training, training of trainers, leadership development training, ICT training, judicial etiquette training, pre-retirement training for the judges of District and High courts, as well as training for judicial officers and support staff in the judiciary.¹²

The recognition of training programs for the judges and officers in Nepal has obviously helped in ensuring the independence of the judiciary. Now, judges and officers are expected to be engaged in perpetual study and learning. The knowledge of law and skills gained by judges through continuing judicial education programs help to achieve an independent, impartial and competent judiciary and to fulfil the duty to ensure civil liberties, fundamental rights, human rights, and to uphold the rule of law in the country, according to the Constitution.

Training and research at NJA-Nepal

At present, there are 421 judges across all tiers of the judiciary, including the Justices of the Supreme Court of Nepal. Around 3,300 officers and more than 5,000 support staff are working in different capacities in the legal and judicial sector. Twenty thousand private law practitioners are also engaged in the legal and judicial sectors.

¹⁰ Second Five Year Strategic Plan (2015/16 – 2019/20), NJA-Nepal.

¹¹ Nepal Government enacted five landmark Acts such as *National Criminal (Code) Act 2017*, *National Criminal Procedure (Code) Act 2017*, *National Civil (Code) Act 2017*, *National Civil Procedure (Code) Act 2017* and *Criminal Offences (Sentencing and Implementation) Act 2017* and repealed some 13 Acts and brought amendments in several Acts which came into force from 17 August, 2018.

¹² Training Policy of Supreme Court of Nepal for Judicial Human Resources, 2017.

As training is a major activity of NJA-Nepal, it focuses on training to contribute to overall personal development of the concerned personnel. It helps to enhance knowledge and skills that impact on the promotion of effective, efficient and accessible justice. A vivid and vibrant change has been experienced in the judicial discourse as a result of training, seminars and workshops conducted by NJA-Nepal. NJA-Nepal has started working in accordance with the training policy approved by the 12th meeting of the Judicial Academy Council in December 2015.

NJA-Nepal operates with a small number of faculty members and officials based at NJA-Nepal, and a larger number of trainers are invited as extended faculty from the judiciary and the law and justice sector of Nepal. In the beginning of every fiscal year, NJA-Nepal designs an annual calendar for the training and research activities to be conducted with the funding support provided by the Government of Nepal. NJA-Nepal's annual training and research activities must be endorsed by the Executive Committee and the Judicial Academy Council. Besides conducting regular training, NJA-Nepal also conducts in-service training and induction training for new judges and officers of the Nepal judicial service. Further, it organizes training addressing the specific training needs of judges and other officers working in the judiciary. Sometimes, NJA-Nepal also receives requests from quasi-judicial bodies to conduct legal and judicial training for their officers.¹³ So far, NJA-Nepal has covered in its programs 20,000 judges and officers of the Nepal judicial service and has published more than 10 dozen publications since its establishment. Some judges and officers have participated in multiple training programs, which is reflected in the aggregated number of their participation mentioned above.

Besides training, NJA-Nepal also conducts research programs and publishes a range of reports and issues papers addressing recommendations for law reform in aspects of the Nepali justice system. It has so far undertaken a number of research activities to make recommendations for legal and judicial reform processes and also for quality enhancement of its training programs. It has conducted research programs on judgment execution, status of implementation of directive orders of the Supreme Court, inclusion in the Nepali judiciary, access to justice by vulnerable groups, women and children in the justice system, the relevance of the Rome Statute of the International Criminal Court in the Nepali legal system, cyber-crimes, restorative justice on transitional justice-related cases, health-related laws for ensuring fundamental rights, local courts under the Constitution and combatting banking crimes.

Since 2007, NJA-Nepal has published the *NJA Law Journal*, a research-based annual journal which incorporates articles contributed by eminent scholars, jurists and experts from the judiciary and academia from within and outside the country. It also aims to encourage and strengthen serious legal research and to reach out to a larger community in Nepal and abroad. So far, 15 issues of the *NJA Law Journal* have been published which have covered varied themes such as legal and judicial reform, transitional justice, access to justice, human rights, and international law. Since 2014, NJA-Nepal also commenced the publication of a Nepali language journal to cater to the needs of Nepali writers and readers. The 2018 issue of *Pratipadan* focused on civil and criminal codes.

NJA-Nepal also invites eminent scholars and law practitioners to deliver talks on various contemporary issues of law and justice for the benefit of the judicial community of Nepal. In

¹³ NJA-Nepal has conducted three-month training programs for Chief District Officers and officials of Land Revenue and Land Reform Offices.

the past, it had the honor to invite three former Chief Justices of India, namely, Justice P N Bhagawati; Justice J S Verma; and Justice A M Ahmadi. NJA-Nepal also had the privilege to invite Justice Douglas R Campbell of the Federal Court of Canada; former Justice Albie Sachs of the Constitutional Court of South Africa; renowned feminist Catharine A MacKinnon of Canada; Professor Suri Ratnapala from the University of Queensland; Professor Suzannah Linton, University of Hong Kong; Professor Dr Surya Subedi, former UN Special Rapporteur to Cambodia; Paulas E Lutulung, Deputy Chief Justice of Supreme Court of Republic of Indonesia; Justice Pius Langa, former Chief Justice of the Constitutional Court of South Africa; Professor Matthias Hartwig from Max Planck Institute for Comparative Public Law and International Law, Germany; as well as other eminent scholars, to deliver talks on various subjects. These kind of programs help the Nepali judiciary to learn about best practice of other jurisdictions and has contributed in learning of international perspectives in different subject matters.

Achievement/opportunities for NJA-Nepal

In the course of its training and research activities, NJA-Nepal has been working in coordination with the Supreme Court of Nepal, the Office of Attorney General, Ministry of Law, Justice and Parliamentary Affairs, and the Nepal Bar Association, among other institutions. It works in the area of judicial reform in line with the Strategic Plan of the Nepali Judiciary. In 2004/2005, the Nepali judiciary commenced its work in judicial reform by implementing the Strategic Plan of Nepali judiciary as a five-year plan. The Plan identified the mission, vision and values of the judiciary in order to set out clear strategic objectives. The Strategic Plan sets out several areas for programmatic intervention.¹⁴ It identified training needs, including effective training and research programs for judges and other judicial officers in court management and the enforcement of court verdicts, amongst other topics. In order to support the implementation of the Strategic Plan, NJA-Nepal started to work from the beginning with the close coordination and support of the Nepali judiciary and other stakeholders by imparting training programs, conducting research and publishing literature.

After 15 years of operation, NJA-Nepal has seen a significant increase in the capacity of the judiciary and other stakeholders. In the fiscal year 2017/2018, 566 judges, 234 public prosecutors, 254 court officers, 45 law officers, 154 advocates, 135 non-gazetted staff of court, 36 non-gazetted staff of government attorney and 130 quasi-judicial officials, 100 police, and 170 others took part and benefitted from various NJA-Nepal programs.¹⁵

NJA-Nepal mainly focuses on enhancing access to justice and human rights protection programs. It often focuses on the rights guaranteed in the Constitution and laws of Nepal in its training, research and publications. In particular, its activities have included training and publication of resource materials on human rights, gender justice, and juvenile justice in the administration of justice. Similarly, NJA-Nepal undertook studies and conducted training on restorative justice in order to achieve more effective justice outcomes for victims. In order to share and learn best practices from other jurisdictions, NJA-Nepal organised a regional conference of judges and judicial educators on enhancing access to justice through judicial education.

¹⁴ Strategic measures no 6, Five Year Strategic Plan of Judiciary (2004/5–2009/10), Supreme Court of Nepal.

¹⁵ Annual report of NJA-Nepal for the year 2017/18.

NJA-Nepal also conducts skills-based training courses on topics including judgment writing. Skills-based training on judgment writing for judges and bench officers is conducted either as a specialised course or as a component of general courses such as the induction training and in-service training programs. Similarly, NJA-Nepal also focuses on procedural matters in its programs. These aim to promote fair trial standards and uniformity in the trial process. It also conducts human rights and fair trial training for quasi-judicial officers.

NJA-Nepal also conducts interventions in the areas of court and case management, as well as dealing with court customers. It has worked for efficient judicial management and to enhance public confidence in the justice system. In order to make training and judicial functioning more effective, it has undertaken studies and also developed guidelines for maintenance of privacy in investigation, prosecution and adjudication and in conducting video hearings. NJA-Nepal also conducted follow-up training programs for judges, judicial officers, prosecutors and police officers to disseminate provisions contained in the guidelines.

NJA-Nepal has introduced a judicial outreach program by developing guidelines and training of trainers to enhance confidence towards the judiciary, to create awareness of the judicial system, and to enhance access to justice for poor and marginalised groups. The Constitution of Nepal requires that gender equality and social inclusion (GESI) principles be integrated across all state institutions. NJA-Nepal is working to integrate GESI principles into Nepal's judiciary through training and research programs.

Taking note of contemporary developments in the law, including the enactment of the new civil and criminal codes, NJA-Nepal is currently focusing on civil and criminal law issues in its training and publications. These changes from the previous legal system have brought significant departures in substantive and procedural laws and norms. NJA-Nepal has specifically worked to develop training manuals to assist its stakeholders in navigating these changes. It began by developing training of trainers on particular aspects of the law and conducted a number of training of trainers and normal training programs. In addition, resource materials have been developed to educate judges and others attached to the judiciary, as well as private law practitioners.

NJA-Nepal has organised occasional regional conferences in different areas. In September 2016, it organised a Regional Expert Consultation on International Humanitarian Law for justice sector actors from the South Asian Association for Regional Cooperation (SAARC) countries in partnership with the International Committee of the Red Cross. Judicial educators from SAARC countries, including Iran, participated in the consultation with the aim of allowing these actors to incorporate international humanitarian law issues into their training courses. Further, in September 2013, NJA-Nepal organised a Regional Conference of judges and judicial educators on *Judicial education and enhancing access to justice*. This Regional Conference discussed and deliberated on the relevance of judicial education in enhancing access to justice. Judges, judicial educators and professors from Bangladesh, Bhutan, India, Malaysia, Nepal, Pakistan and Sri Lanka assembled at NJA-Nepal to exchange and share their experiences on judicial reform processes and access to justice. The Regional Conference also adopted a seven-point Kathmandu Declaration on network building and the exchange of information among judicial academies in the region. Similarly, in 2006, during its inception, NJA-Nepal had conducted a conference on *Strengthening institutional mechanisms to combat trafficking of women and children*. Senior judges from Bangladesh, India, Nepal and Sri Lanka took part in the conference.

Challenges of NJA-Nepal

As a major vehicle for judicial reform, NJA-Nepal has been working to achieve its goals by aligning its training and research programs with international best practice. An increase in the case loads of the courts has led to a corresponding increase in the number of judges, judicial officers and prosecutors in Nepal, which has in turn placed additional demands on NJA-Nepal's judicial capacity development and research programs. NJA-Nepal has faced the following challenges in responding to this demand:

Lack of trained faculty members/experts for practical training

The training programs should be developed by trained persons and experts to ensure the programs are needs-based and practical, and to ensure that they are participative. However, deputed judges as faculty members from the Supreme Court are not trained facilitators. Due to this constraint, NJA-Nepal has faced the challenge to develop sufficient practical training manuals and materials for the training programs, although it conducts various thematic and other training courses. In the context of the Supreme Court's training policy of every judge/officer in every year receiving training, and the responsibilities and demands outside the core judiciary,¹⁶ it has put pressure on NJA-Nepal to increase its training numbers. NJA-Nepal also needs to develop a pool of experts and facilitators to run its programs more effectively.

Monitoring and evaluation is crucial to judicial education. The training programs should be built from research recommendations, needs assessment and training impact evaluations. Though NJA-Nepal has conducted hundreds of training and capacity-development programs, it lacks impact assessment of those programs. It is yet to develop appropriate tools for evaluation and monitoring of the impact of judicial education on the actual performance at the field level.

Lack of human resource and other physical facilities

Even though NJA-Nepal engages in different areas of judicial capacity enhancement, it has faced problems in recruiting human resources to the academy itself. Although a few staff have been recruited this year, it is yet to put in place a human resource development plan for core members within NJA-Nepal. Even though the Organization and Management Survey (O&M), as approved by the Government of Nepal, sanctioned 48 core staff for NJA-Nepal, the recruitment process was slow and has not yet been fulfilled. NJA-Nepal must strengthen its capacity by recruiting staff and developing the human resources already contained within NJA-Nepal by providing specific training courses, legal research skills, training management skills and presentation skills to its staff. This could be managed by granting opportunities to internal staff for academic and non-academic courses within the country and abroad.

The devastating earthquake of 2015 has made the situation more difficult. NJA-Nepal is in need of further support for physical infrastructure following the earthquake which destroyed its office building and training halls. NJA-Nepal has managed to construct temporary infrastructures (prefab houses) at the new site with the support of the Nepal Government and partner organisations. NJA-Nepal has managed to formulate a Master Plan for the proposed permanent buildings in the new site and is in the process of completing a dormitory for the trainees with the support of the Nepal Government. It has built a staff building, in accordance with the Master Plan, and is now looking forward to further support from the government and donors for the construction of the remaining buildings set out in the Master Plan.

¹⁶ n 9, above.

Lack of mandatory training courses and selection of participants

The training policy of the Nepali judiciary has provided important guidance on judicial training, but lacks the provision of mandatory training courses for judges in the process of career development. As a result, some participants take the programs as an excuse to stay away from work or for a free trip to Kathmandu. This dilutes the very objective of judicial education for which the NJA-Nepal was created.¹⁷

Another challenge faced by NJA-Nepal is related to the selection of participants. Although the NJA-Nepal develops an annual calendar of programs for respective organisations with prior consultation, it is not allowed to choose the course participants. Except in the train the trainer programs, participants are nominated by their respective organisations which possess neither the database relating to the training needs of participants, nor the requisite information on their aptitude or interest. Nor is there any projection of institutional needs. These organisations do not ask the prospective candidates prior to their nomination whether they are interested to participate in the given program.¹⁸

Conclusion and recommendations

Judicial education is fundamental to the process of judicial reform. This is a fact which should be readily apparent to the judicial leadership. Judicial education should be supported by the Supreme Court of Nepal, the Office of Attorney General and other concerned institutions as their normal duty of justice delivery. Unless the judicial leadership is clear about the reform goals, lends it weight to reform processes, and takes seriously the deliverables of the judicial education institutions to improve court management and dispensation of justice, judicial education becomes a lonely walk.¹⁹ Therefore, senior judges and judicial members have the specific duty to educate and develop the juniors as a part of their regular work. It is not an additional duty from their regular work — rather they should have time to educate judges of lower courts.

NJA-Nepal must also work to attract and retain skilled legal researchers in order to develop its faculty and associated experts. Effective human resources planning will be critical to these efforts. Strong internal human resources, taking into account the growing needs of the staff at NJA-Nepal, as per training requests from different organisations, is crucial. The appropriate physical facilities are essential to make training programs relevant to the career development of trainees.

Nepali judicial education is also in need of improvement through learning from best practices of other jurisdictions. NJA-Nepal is also required to work in enhancing cooperation with Nepal government and other partner organisations for strengthening human resource capacity and physical infrastructure development. The resourceful judicial training institutes from developed countries can assist or support the judicial training institutes of developing countries like Nepal. It is also useful for NJA-Nepal to participate in various kinds of international conferences such as IOJT conferences, law and justice-related conferences to learn best practices from other jurisdictions.

¹⁷ A Bhattarai, “Judicial education in Nepal: achievement and challenges” (2009) 3 *NJA LJ* 149 at 156 at <http://nkcs.org.np/nja/elibrary/pages/view.php?ref=42&k=>, accessed 30 October 2018.

¹⁸ *ibid* at 155.

¹⁹ *ibid*.

Emerging challenges in judicial education: Nigeria in focus

Hadiza Santali Sa'eed*

*Lawyers don't become good judges by the wave of a magic wand ... Not even the best lawyers ...*¹

Introduction

As our world becomes more complex and connected, our judiciaries are being called upon to divert from their traditional, insulated roles and embrace new ones. We are expected to anticipate rather than respond, to be dynamic rather than adaptive. In addition, we must know good old fashioned law and procedures and remain true to the long-standing tenets of justice. However, in the words of Justice Sandra Day O'Connor: "the issue is not simply one of learning how to cope with change but rather, how to prepare ourselves and our courts ... for the future".² As we strive to meet the demands of the public by building professional capacity and competence through judicial education, it is clear that the current system of judicial education is largely inadequate and/or the current expectation trajectory renders most changes redundant. There are many emerging challenges in judicial education.

The National Association of State Judicial Educators identifies the goal of judicial education as the maintaining and improvement "of the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole".³ The "explosion"⁴ of judicial education in the last decade has brought about an exciting expansion to the international arena. Numerous judicial training centers have been created throughout Central and Eastern Europe, Central Asia, Africa and Latin America, which continue to facilitate discussion on contemporary issues, design judicial orientation programs, enhance curriculum and faculty development, the pedagogy of adult education as well as produce material resources. This rapid emergence has also brought with it changes and challenges to judicial policy-makers and educators alike.

Judicial education is the primary means of enhancing the competence of judicial officers and staff of the judiciary, thereby improving the administration of justice. It also fosters public trust and confidence in the judiciary. It is more often targeted at maintaining competencies by addressing substantive law knowledge deficiencies, improving court and case management skills and building procedural proficiency. In spite of the diversity of judicial systems, an analysis of existing texts and practices does show a broad convergence among the approaches

* Deputy Director/Head Judges Performance and Evaluation, Legal Dept, National Judicial Council, Nigeria.

¹ D Catlin, "Michigan's magic touch in educating judges" (1986) *The Judges Journal* 32 at 38.

² S O'Connor, "Managing courts in changing times" (1991) *New York State Bar Journal* 8-15. Cited in C Ericksen, *Trends in judicial education*, ISSUU, 2012 at 72 at https://issuu.com/chuckericksen/docs/jud_ed_trends_1_, accessed 1 November 2018.

³ Court of Criminal Appeals Judicial and Court Personnel training program, Rules of Judicial Education, effective 18 May 2017.

⁴ P Sallmann, "Comparative judicial education in a nutshell: a cursory exposition" (1993) 2 *Journal of Judicial Administration* 245.

taken by different legal systems. The distinction decreases as countries adopt effective judicial education principles regardless of their underlying legal system and the differences which exist in the judicial education programs in the common law and civil law jurisdictions.⁵ Consequently, the ultimate goal of judicial education is to improve the performance of all judicial personnel, whether they play an adjudicatory or administrative role, towards enhancing the efficiency and effectiveness of the justice administration system. Additionally, judicial education aims to improve service delivery, thereby building public confidence and reinforcing the independence of the judiciary.

This article undertakes a foray into the activities of the National Judicial Institute (NJI) in a bid to identify challenges which may be intrinsic to other jurisdictions, while illuminating shortcomings. It also proffers some suggestions on how we can all, within our respective courts and jurisdictions, complement the efforts of our judicial education system. While acknowledging that a myriad of peculiar emerging challenges exist in each jurisdiction in judicial education, there are some challenges which are experienced in nearly all jurisdictions. This article focuses on the challenges pertaining to access to judicial education, innovation, relevance, faculty, curriculum and funding.

The National Judicial Institute: for better or ...?

Permit me to address specifically my jurisdiction, Nigeria. Nigeria arguably has the largest judiciary in Africa. The third arm of government, our judiciary, currently has 1,048 superior court judges bearing the burden of hearing and determining the disputes of 180 million people, representing a fifth of Africa's population. The challenges are immense and the drive of its leadership has consistently been to ensure that it maintains a level of service delivery that meets universally accepted requirements of efficient and timely justice delivery. It is a sine qua non for a stable, just and economically advanced nation.

Our journey towards a system of judicial education has evolved from the nascent days of the justice system, where mentorship by more experienced seniors on the arcane wisdom of the docket, was more commonplace. The "eureka" moment came at the All Nigeria Judges Conference held in Ilorin in 1982, where the embryonic idea to create a formalised structure for judicial education in Nigeria was born.

The resolve was to create the NJI, which would serve as the principal centre for the training and instruction of judicial officers and judiciary staff in Nigeria. The objective was to ensure that judges are trained in the application of contemporary legal principles and the art of judging cases that come up before their lordships' courts. Similarly, through judicial education, it was envisioned that the courts' personnel would maintain the high level of competence needed to support the judges as they carry out their judicial responsibilities, while providing accurate and timely justice delivery to the Nigerian people. This idea was perfected over the course of the 1980s, and by 1990 had become a fully fledged idea, and the NJI was subsequently established by law.

⁵ Consultative Council of European Judges, "Situation report on the judiciary and judges in the Council of European member States", updated version No 2, 2015, *Opinion no 4 CCJE* at <https://rm.coe.int/168074744d>, accessed 1 November 2018.

In fulfilment of its objectives and functions as provided by s 3(1) of the *National Judicial Institute Act*, the NJI serves as the “principal focal point of judicial activities relating to the promotion of efficiency, uniformity and improvement in the quality of judicial services in the superior and inferior courts”.⁶

As the focal point for judicial education in Nigeria, the NJI is under statutory directive to conduct courses for all categories of judicial officers and their supporting staff with a view to expanding and improving their overall knowledge and performance in their different sections of service; to provide continuing education for all categories of judicial officers by undertaking, organising, conducting and facilitating study courses, lectures, seminars, workshops, conferences and other programs related to judicial education. The NJI is also statutorily mandated to organise a biennial conference for all Nigerian judges of superior and lower courts respectively so as to serve as an avenue for the exchange of best practices within the judiciary. As part of its academic development of judicial officers and personnel, the NJI is also charged with the duty to disseminate by way of publication of books, journals, records, reports or other means, any information that will enhance capacity and knowledge acquisition, and to promote or undertake any other activity which is calculated to help achieve the purpose for which the NJI was established.

When judged on the same parameters as other judicial academies in other climes, the NJI has the virtues of a functional judicial academy. For full disclosure, it must be stated that I am a former staff member of the NJI. I cannot hold brief for the NJI and cautiously critique their activities. I know them to be largely successful in attaining their motto: “Knowledge for Excellence”. However, as with all human endeavours, the NJI is plagued with limitations and problems which other jurisdictions are likely also to be experiencing and pose an escalating challenge to effective judicial education.

Whither access to judicial education?

This article posits that the best point to examine emerging challenges in judicial education is to consider challenges facing the NJI. The Nigerian system of judicial education is entirely government owned, administered and staffed. Therefore, as with all government-owned establishments, there are often issues as to the balance of considerations between cost and service delivery. Training is expensive and resources are often limited when one considers the number of judges and court staff nationwide vis-a-vis the number of training programs available for the instruction of judges and court employees. Although the majority of judges throughout most jurisdictions have continuing education opportunities available each year, the same cannot be said when considering key support personnel (eg court administrators). According to JERITT,⁷ only about 25% of court support staff have access to continuing education each year. This article respectfully disagrees with this figure and suggests it to be much less.⁸

It is easy to see how this would provide an annual challenge to judicial training institutions like the NJI to provide effective national coverage, so much so that some court staff in various

⁶ *National Judicial Institute Act*, Ch N55, s 3(1), Laws of the Federation of Nigeria 2004.

⁷ The Judicial Education Reference, Information and Technical Transfer project at <http://nasje.org/resource-highlight-judicial-education-reference-information-technical-transfer-jeritt-project/>, accessed 1 November 2018.

⁸ J Hudzik, *Issues and trends in judicial education*, Michigan State University, Judicial education reference, 1995, cited in Ericksen, above n 2 at 74.

jurisdictions may never attend a program at the NJI for the duration of their appointment. This poses a great challenge for any head of court that wishes to initiate judicial reform, as the ability to train judges and staff is a panacea for judicial reform. Placing the facts in their proper context, it can be said that the coverage of judicial education is an inevitable pointer to the ability of that judicial system to meet the challenges of adjudication effectively, though it would be uncharitable to posit that the judiciary and the administration of justice sector has remained stagnant.

What is the relevance of the curriculum and training offered?

The foundation of any program of judicial education must lie in the theory of adult and professional learning. The prevailing system of judicial education is lacking in any consistent pedagogic approach or direction. There is a need to develop a policy-based orientation to the process of judicial education and a more useful means of assessing the value of this educational endeavour in terms of its impact on judicial performance. The challenge of judicial education is to devise and provide a means to promote the continuing improvement of judicial competence. Once the formal requirements of professionalism have been met, it remains the task of educators to facilitate a process of meaningful learning.

A constant challenge that is often discussed is what training methodology to adopt in preparing judicial officers for a life on the Bench. This methodology must be fit for purpose in order to address the issue that in the past few years, many judicial officers, especially on the lower Bench, were rather inexperienced in trial procedure before their appointment and some were entering into court for the first time. This in turn provides concerns that professional legal education in Nigeria does not sufficiently prepare people for a career as a magistrate or judge. Those appointed to magisterial positions are not sent to the NJI for induction, and judges that are newly appointed are only required to undergo a two-week induction program, which may be considered grossly inadequate to prepare them for a career that involves adjudicating over complex court procedures and trial management.

Most courses in the NJI are targeted towards ensuring that our judicial officers are equipped to perform their jobs by illuminating various esoteric areas of law that would otherwise be complicated. However, emergent trends in areas of law such as transnational crime, cross border financial transactions and conflicts of laws are evolving faster than most courts can address. Where the expertise exists within the Bench, they are often insufficient to deal with the volume of litigation as other competencies required to become a “managerial” judge are not a point of focus. These include the use of best case and court management practices as well as available court automation tools. In Nigeria, some courts have over 500 pending cases, and many others have an average of 150 pending cases. Hence it is baffling that training on caseload management does not receive greater focus.

Coupled with this challenge, the distance to the NJI and the expense occasioned in attending courses preclude some jurisdictions from having the necessary number of staff trained as would efficiently meet the demand for justice delivery. As such, cases suffer and case disposal times are adversely affected. Therefore, there is still a need for a more focused and structured approach to the professional development of judicial officers.

Is it innovative enough?

One of the more significant efforts to address educational needs of court professionals was spearheaded in the 1990s by the National Association of Court Management (NACM) to identify “core competencies,” and develop a framework outlining core areas of court

management, skills and responsibilities that all courts managers should possess to be effective.⁹ The NACM Curriculum Guidelines are developed around interrelated and interdependent core competencies: leadership; strategic planning; court governance; public trust and confidence; purposes and responsibilities; caseload and workflow; operations management; public relations; educational development; workforce management; ethics; budget and fiscal management; and, accountability and court performance. Court managers can use the guideline as a self-assessment tool to determine the professional competencies and training requirements within their court systems.

Summarily, judicial instruction, where not backed by research on emergent areas of the law, may result in the recycling of the same methodologies and inevitable stagnation on the intellectual side of judicial training. Where the method of instruction, as utilised at the NJI, is paper based, it not does encourage a migration to the current paperless adjudicatory environment. One can question the cost of using paper as opposed to the use of a PowerPoint presentation and e-storage devices or apps such as Dropox, which can be accessed from any location in the world. There is more emphasis on the use of information technology tools for the adjudication of disputes and the rise of e-courts have inevitably tolled the bell, as it were, for our traditional methods of instruction, which has proven to be inefficient.

Is the judicial syllabus contemporaneous to the issues facing the judiciary?

Allied to the issue of relevance of judicial education is the question of the currency of the information being imparted to members of the judiciary. In most cases, some judicial education programs are reactive in nature, being dictated by current trends in emerging jurisprudence, the emergence of crimes, economic issues, transaction methods and terms, as well as international legal principles. For instance, prior to 2010, there were no topics addressing the correlation between transnational crime and terrorism in the syllabus of the NJI. Over the years, there was an escalation of the Boko Haram threat, however, the first national “Conference on Counter-Terrorism” did not occur until 2014.

The abiding issue lies in the inability of most judicial education systems to pre-empt the rise of these issues and train in anticipation of same. This requires a great deal of research and collaborative action across the globe in order to identify trends before they arise. Such a structure is currently not firmly established in Nigeria and indeed probably many other jurisdictions as well. No doubt, the IOJT is well placed to establish a global consortium of judicial education institutes that meet periodically to address potential issues before they emerge, thus making the judiciary a proactive rather than reactive arm of government.

How do we remain ahead of the curve?

Research

A great deal of research is required in order to forecast the development of law. Given limited public resources, the NJI in Nigeria is largely hindered from conducting certain research without the active collaboration of international organisations. Given the paucity of funds available to the government as a whole, due to the drop in oil-related revenues, the allocation of resources

⁹ The complete guidelines can be found on the NACM website at <https://nacmcore.org/curriculum/educational-development/>, accessed 1 November 2018.

to judicial education in Nigeria has been impacted. As such, it becomes necessary to solicit for collaboration at a time when there is no research grant to augment its statutory allocations dedicated to such enterprise. This has required the NJI to look inwards and perhaps explore other local innovations to justice delivery and by extension, education as more work needs to be done to reduce the backlog of cases utilising other tools.

The aforementioned challenge must also be juxtaposed with the rise of new innovations in the administration of justice, incorporating Alternative Dispute Resolution and e-dispute resolution mechanisms such as e-courts. It is important to put the concept of judicial education in its modern context. Although the NJI boasts a comprehensive e-resource centre, the need to design and incorporate technology for a the court room setting is one step that has not yet been taken. Indeed, there are no specialised training facilities for training registrars and verbatim reporters on new technological tools that can enhance the administration of justice. Although recent Chief Justices have embarked upon wide ranging and visionary reforms that have better positioned our courts to meet emerging challenges, perhaps a new mindset on the dispensation of justice in the Nigerian courts needs to trickle down from the leadership. A key part of this will be to educate staff to be innovative in easing administrative bottlenecks rather than following a doctrinaire approach to justice delivery.

Faculty staff

For any judicial training institute to have an impact on the judiciary of a country, it must boast a cadre of well-trained staff and a pool of eminent persons. The NJI generally calls upon our own judicial officers and staff, who possess great knowledge and expertise and are equipped with the requisite gravamen and mien to conduct training. However, when it comes to training lower-cadre judicial officers, the judges are often not a panacea as they have their own core schedule in the courts as judicial officers. This has necessitated the instruction of judicial staff by faculty staff of the NJI, who are in very limited numbers compared to the number of people requiring training. During major induction and refresher courses for judges, the task of scheduling resource persons from our limited database of judges and justices is difficult because the jurists are so heavily loaded that you can only request their services on limited occasions. Similarly, the fact that they are so few in number also means scheduling constraints resulting in limited training session for participants. Accordingly, there is a need for an expanded faculty of expertise some of which are private sector players.

One way to address this dearth of trainers is by utilising synergistic partnerships between judges, judicial educators and academy. However, when seeking to build partnerships between judges, judicial educators and academy, there are three major areas of risk to consider: change management, managing expectations and managing confidentiality.

With regards to change management, the first and potentially significant barrier to be addressed is the question of cultural resistance to change. Different judicial systems will have different attitudes to the issue of collaboration. However, as change agents, judicial educators are well placed to change outdated approaches, to identify opportunities and manage risks.¹⁰ Judges who have previously worked as academics, who maintain ties to universities, or who have retired and returned to universities to teach are all potential champions for driving a culture of engagement between the judiciary and judicial educators.

¹⁰ M Connor, "Judicial educator: change leader" (2015) *Judicial education and training journal* 6 at 7 at <http://www.iojt.org/~media/Microsites/Files/IOJT/Microsite/ijournal003.ashx>, accessed 1 November 2018.

Expectation management is, in some ways, the opposite extreme to change management. Whereas change management involves persuading a system to accept a shift from the status quo, expectation management requires persuading parts of the system to recognise that the shift may not be as great as they might hope for. It is vital to have a clear vision of what collaborative partnerships are designed to achieve, along with an incremental plan which can be revisited once the foundations are established. This methodical approach to delivery provides a bulwark against scope creep along with a system to harness and contain the expectations and enthusiasm of champions.

The need to provide confidentiality within the learning environment is ever present. However, the process of building collaborative partnerships with judicial educators provides the opportunity to expand the traditional learning environment while posing fresh challenges to confidentiality. The wider the array of participants, the process of transformational learning and the use of participant knowledge and experiences as the basis for research must all be considered in the strive to manage confidentiality.

Funding

Money keeps the doors of justice open. For some providers of judicial education, budgets have shrunk and budgetary contractions have also imposed pressures on the courts to improve their own productivity. This has, in turn, increased judicial work load and reduced the availability of judges to participate in educational activities. Evidently, these financial challenges are substantive. While the adage of “doing more with less” imparts both a duty and sense of professional accomplishment, we must be mindful that even automated processes cannot replace the human interaction that is inherent in the judicial education process. Judicial leaders have been lamenting for several years now about the effects of budget cuts, furlough and staff reductions or overstaffing on the judicial system. Entire conferences and educational seminars have been dedicated to the topic on how to cope with reduced funding while streamlining the court’s operations. The NJI is not autonomous but is funded by an allocation sourced from the judiciary’s budget. With persistent budgetary constraints and the shortage of funds, the judiciary cannot fully fund the required activities of the NJI. This has compelled the NJI to embark on collaborations while managing its resources as best it can. As we all know: “He who pays the piper dictates the tune”. Consequently, the NJI has had to be sparing in its outreach because the management has to ensure that the donors are those who promote good governance while insisting on drawing and devising its curriculum so that it does not divest the judiciary of its much cherished independence.

What is the way forward?

Judicial education is now an accepted part of judicial life in many countries. It is an enhancement of the mental qualities necessary for the preservation of judicial independence. Judicial independence requires that the judicial branch is accountable for its competency and the proposition is now accepted as beyond debate.¹¹

Greater collaboration in research

As stated above, a challenge found in the education of judicial officers and staff is being proactive in the identification, research, and development of solutions to emergent legal issues

¹¹ R Nicholson, “Judicial independence and accountability: can they co-exist?” (1993) 67 *ALJ* 404 at 425.

facing the Nigerian judiciary. This requires constant research and discourse with stakeholders in the administration of justice: the Nigerian Police Force; Prosecution; Nigerian Bar Association; Prison Service, and Security Services, etc. More importantly, it will necessitate a backward integration of knowledge at the universities who can help develop greater specialisation in training lawyers on emergent issues and jurisprudence. This will also allow the NJI to help shape the curriculum in the universities and law school, thus better preparing lawyers for a potential career on the Bench at whatever level.

There is a similar need for greater collaboration with the Bar, which can drive changes to the syllabus, as barristers are often the initiators of change in terms, conditions and customs of legal practice. They are also the drivers of change in the jurisprudence by “pushing the envelope” of legal principle. There is scarcely any better collaborator than the Bar, which can generate discourse on emerging trends in law as well as possible innovations that can address these trends.

Increased finance for judicial education

Funding, like rain, may be of good quality or bad quality. Funding may be non-existent or inconsistent or even come in inconvenient torrents. There is a need for a more innovative assortment of funding that will, to a large extent, address the problems incumbent in running the NJI as a fully fledged and flexible entity. This may require exploring other statutory means of fund raising such as increased fees and concession of facilities, among other options. There may also be a need to explore the adoption of a contract with state judiciaries that will see a commitment by those judiciaries and their respective governments to training a number of staff per annum. Increased recourse to grants and endowments will also aid the funding of specific research projects, while the sale of intellectual property should be considered especially where innovative software or e-solutions are developed at the NJI.

Innovative learning methodologies

Use of new technology

In the words of Chris Crawford, “Technology is a powerful enabler that can empower courts to meet core purposes and responsibilities, even while severe economic pressures reduce court staff, reduce hours of operation...”,¹² leaving no doubt that the use of new technology can enhance the training of staff especially where cost and geographical constraints are occasioned. The use of webinars and e-classrooms at individual jurisdictions can indeed assist in multiplying instruction that would otherwise require attendance at the NJI in Abuja. It also allows faculty staff to better devote their efforts to course content and addressing feedback from live or recorded sessions that they host. This will also enhance the use of e-solutions to the administration of justice. The risk lies in the primarily one off expense of equipping dedicated learning centres in the States’ jurisdictions, which might be desirable given funding limitations. In this case, partnerships with the private sector and non-profit organisations may assist in the launch of such a project.

Distance learning

In seeking to meet demand, the NJI has utilised several strategies to advance distance learning. These activities have been largely sporadic and unsustainable. It could begin with a coherent

¹² National Centre for State Courts website at www.ncsc.org/Topics/Technology.aspx, accessed 1 November 2018.

single policy document that will document the strategies needed to ensure accessibility to course content at remote locations of the country. To succeed in this policy of long-distance learning, there must be an e-portal that will house publications, law reports and manuals. There should also be a newsletter on important and current issues on law and new methods of practice as well as flexible course content and the use of e-tools as stated above. To do the above, you would need to computerise and get “on-board”. This might be difficult to achieve in a developing country where computer and internet access and even electricity supply may pose serious challenges to success.

Needs assessment and training evaluation

Traditionally, a needs assessment is indispensable in determining the baseline knowledge, skills and disposition a judge/court staff currently has and what is required for these personnel to perform their duties optimally. However, this leads to questions such as how we measure the effectiveness of training and whether they really tell us if what was taught is being utilised in the workplace. This sets the stage for the argument that there is a need for a distinctive approach to the continuing education of judges. This approach should accommodate the specific learning needs and practices of judges, and preserve judicial independence.

Conclusion

It is clear that as far as the Nigerian judiciary is concerned, more sweeping measures are required to improve the education of judges so as to improve the quality of justice delivery and to restore confidence in the judiciary. The curriculum, although properly determined based on what the Management and Education Committee of the NJI deems to be critical to the development of jurisprudence, needs to be more proactively determined. Perhaps the system of judicial education should be revamped and restructured to make judges who attend the NJI’s courses engage extensively in train-the-trainer courses, thereby empowering them to train fellow colleagues at their respective jurisdictions. Furthermore, judges identified as faculty for the NJI may require further capacity-building skills to act efficiently as educators. These would include an improvement of teaching techniques and presentation skills to include audio visual conferencing techniques, use of webinars, and other distance learning techniques. At each jurisdiction, there is an imperative to provide bespoke training on areas of law, peculiar to each court, such as employment law for the National Industrial Court or a model workshop on economic crime for courts designated to hear such cases.

Furthermore, there should be a decentralisation of judicial education in Nigeria. While common standards are researched, determined and set for addressing efficiency and ethics within the entire judiciary, individual case study training could be adopted by courts in order to further improve service delivery and build community confidence locally. This could also help the exchange of ideas because, while innovative judicial options have been initiated in jurisdictions such as Lagos State, these interventions do not exist in some courts and deepening such reforms therefore becomes desirable. Even where they exist, the sustainability of such programs is an issue and must be championed by the heads of courts as they do not require a large budget, physical and/or administrative structure to succeed.

As identified earlier, a key challenge to judicial education is keeping ahead of the curve. This is more stark given the level of innovation and increased sophistication of our modern society in the 21st century. Innovation has led to increased use and reliance on cyberspace, which has brought increased cybercrime. People no longer wish to wait for courts to act and this has led to a profusion of online dispute resolution platforms for near instantaneous adjudication of a

dispute. In the finance, telecommunication and information technology sub-sectors, financial crimes such as money laundering have become increasingly sophisticated, requiring multi levels of transactions that are designed to mask possible funding of transnational crimes such as terrorism. With complex sales of goods and services increasingly being conducted through cyberspace (Amazon, Jumia.com and Facebook), rules of engagement are evolving to take on new dimensions, which require judicial education. Information is now retrieved by various search engines like Google, and not the traditional book shelf in the library. Physical crimes are now also being committed online, such as stalking and sexual offences. Libel and slander are now routinely committed on social media, and even divorces are conducted over the internet. This is a colossal amount of content, with judges striving to keep abreast of new laws. If one connects this to the objectives of judicial education, it is clear that training in these areas must be consistent in order for our judges to squarely address such emerging challenges.

Judicial training in Pakistan: methodology and evaluation

Muhammad Shahid Shafiq*

Introduction

Pakistan is experiencing institutional changes due to ever evolving changes in global trends and transformation processes. Realisation has dawned in Pakistan that its outdated practices, procedures and approaches need to be changed to meet future challenges. The legal education sector is no exception. There are a number of law universities, colleges¹ and judicial academies² in Pakistan where much is required to be done and an emphasis is placed on the sharing of knowledge, with little weight given to the skills component. To substantiate the need for reforms in legal education, the Law and Justice Commission of Pakistan has conducted many studies and prepared reports from time to time for improving the quality of legal education. Mr Justice Zaheer Jamali, former Chief Justice of Pakistan, has emphasised the adoption of methodologies such as competency-based frameworks that focus on improving both knowledge as well as skills and attitudes.³

It appears most of the lawyers, judges, legal scholars, government legal officials and other legally trained personnel have not received sufficient training to perform their jobs professionally. They can become a hindrance rather than a support for the delivery of justice, as most of the time they focus on, and cover only, the knowledge component.⁴ The Supreme Court of Pakistan took notice of the quality of legal education imparted by the public and private law colleges and issued directions for proper planning of syllabi and teaching of law subjects in order to raise the standard of legal education.

The law students of today are the judges and lawyers of tomorrow. The performance of the justice sector is dependent on the quality of the students' professionalism, skills and knowledge. Therefore, there is a strong link between the quality of human resources available to the judiciary, and the functionality, integrity and legitimacy of the courts system. The progress of the development and implementation of professional standards in the legal education system is slow. Pakistan has realised that there is a need to adopt the good practices of other jurisdictions. The formulation of a uniform legal education policy is considered necessary. Innovative

* Senior Faculty Member, Sindh Judicial Academy, Karachi, Pakistan.

¹ There are more than a dozen colleges/law schools and universities in Karachi City where a law degree is awarded: see <http://www.eduvision.edu.pk/institutions-offering-law-with-field-social-sciences-at-bachelor-level-in-karachi-page-1>, accessed 29 October 2018.

² An academy that caters to the training needs of the justice sector institutions, in particular, judges working at district level, has been operating since 1993.

³ A Jamali, "Improving the quality of legal education", address by the Hon Chief Justice of Pakistan, All-Pakistan Educational Conference, Karachi, 4 December 2015 at <http://ljcp.gov.pk/nljcp/assets/dist/Publication/72771-3.pdf>, accessed 29 October 2018.

⁴ The Law and Justice Commission expressed its point of view on legal education: see www.ljcp.gov.pk/njc/legal_education.htm, accessed 29 October 2018.

methods and activities will assist law students and professionals not only to enrich their knowledge, but also to enhance the skill required to act more effectively as lawyers or judges of the future.

Legal education at law universities and college level

Only a student who has a bachelors degree in another discipline spanning over 14 years of education is admitted to law college to study for an LLB degree. In 2015, a number of law colleges and universities in Pakistan introduced a five-year consolidated law degree programme called BA/LLB degree program. The students in this program are admitted after completing 12 years of education. Legal education is generally provided through public sector universities and also by private institutions which adhere to the curriculum and the standards prescribed by the Higher Education Commission in consultation with the Pakistan Bar Council (PBC), a statutory body which regulates the legal profession and to some extent, legal education. In addition, there are a number of institutions which award law degrees, which run external degree programs in collaboration with foreign universities. The PBC has promulgated the Pakistan Bar Council Legal Education Rules 2015 which introduced the five year LLB program.⁵ The concept of law clinics, as it is understood in other jurisdictions of the world, does not exist in Pakistan. Mock/moot trial competitions are held at provincial and national level, however, there is no set procedure for participating in these. The Sindh Judicial Academy has previously invited students of law colleges and universities to their mock trials to help prepare them to face the real challenges which await them in their professional lives by equipping them with the required skill to help them discharge their duties effectively.⁶

Legislative status of judicial academies

Pakistan has four provinces and each province has set up a judicial academy of its own.⁷ Islamabad is the capital of the country and the Federal Judicial Academy serves Islamabad district judiciary, as well as the judges of the provinces. The Sindh Judicial Academy works within the scope of a provincial legislation known as the *Sindh Judicial Academy Act 1993*. The academy is governed by a Board of Governors, headed by the Chief Justice of High Court of Sindh, and its members.⁸ The Director General is the administrative head of the academy and runs its' day-to-day affairs. Every judicial academy in Pakistan has a similar structure and scope of work, however, the Khyber Pakhtunkhwa Judicial Academy has enhanced its scope by converting the academy into a Centre of Excellence. In addition to training judicial officers, they have been authorised to conduct short courses, and award certificates, degrees, diplomas and other distinctions to students and trainees.⁹ The Judicial Academy Assam¹⁰ in India is a successful example of a centre of excellence. The Sindh Judicial Academy is also in the process of amending its law. A proposal to amend the law has been placed before the Board to make a decision to this effect.

⁵ Pakistan Bar Council Legal Education Rules 2015, s 4, "Admission to LLB class: (i) A person having passed the examination of Higher Secondary Education ie, Intermediate [or equivalent], shall be eligible for admission to 1st year of (5 years) LLB program."

⁶ See <https://sja.gos.pk/wp-content/uploads/2017/09/concept-note.pdf>, accessed 29 October 2018.

⁷ Sindh, Punjab, Khyber Pakhtunkhwa and Baluchistan are the provinces of Pakistan and each has its own judicial academy.

⁸ *Sindh Judicial Academy Act 1993*, s 5, refers to the constitution of the Board of Governors.

⁹ *The Khyber Pakhtunkhwa Judicial Academy Act 2012*, s 4(b).

¹⁰ *The National Law University and Judicial Academy, Assam Act 2009* (India).

Recent activities

In May 2017, the Sindh Judicial Academy arranged a consultative workshop with the objective of identifying actions required in the next 10 years to upgrade the judicial system of the country. The workshop was attended by justice sector stakeholders including legal educators and retired and serving judges of district and apex courts. The following five areas were considered:

1. rethinking procedural framework
2. reforming substantive laws
3. transforming service delivery
4. strengthening performance and excellence management, and
5. improving coordination with other justice sector actors.

Included in the many recommendations, the following were made in relation to legal education:

1. To enhance the quality of judicial education by strengthening monitoring and evaluation systems, and to develop a pool of national-level master trainers and agreements signed between academies for the exchange of all resources.
2. To develop bench books and other publications to serve as a guidance tool for judges and relevant staff; to prepare bar books for advocates; and, create quality research on various issues by the academy to facilitate all stakeholders in building their capacity.

The Punjab Judicial Academy in Lahore arranged an “International Roundtable Conference on Judicial Education” on 14 May 2017. Attendees included the Director General of the Punjab Judicial Academy, Lahore; a member of the academy’s Board of Management; judges; members of the International Association of Women Judges; judges from the UK, USA, Ireland and the High Court of Nepal; the Registrar of the High Court of Nepal; the Managing Director of the Capacity Development Head of the Judicial Institution of South Africa; a member of the Justice Academy of Turkey; a Public Prosecutor from Turkey; the Director General of the Federal Judicial Academy, Pakistan; the Senior Director of Research and Publication, Kyber Pakhtunkhwa Judicial Academy; and senior faculty members of the Sindh Judicial Academy.

The attendees underlined the importance of adopting ways and means to enhance the capability of judicial educational institutes by learning best practices from each other through exchange programs which would lead to mutual understanding and the development of links and networks. It was unanimously declared:

- to design and develop the curricula, keeping in mind structured needs-assessment exercises, including judicial skills and ethics, and to adopt a highly interactive methodology in the training programmes
- to include information technology-based tools in the programs without making it the sole mode of learning
- to consider that a web-based portal can serve as a resource center for judges and further, a Code of Conduct and guidelines on the use of social media should be developed
- to enhance the quality of judicial education by strengthening monitoring and evaluation systems
- to develop a pool of master trainers at national level and agreements to be signed between academies for exchange of all resources (human as well as financial)

- to establish links and networks amongst national, regional and international judicial education institutes
- to develop bench books and other publications to serve as guidance tools for judges and relevant staff, along with quality research on various issues, and
- to adopt a structured approach with regard to resource mobilisation and management in order to address the issues such as lack of autonomy and complexity of administrative systems of the academies.

The Sindh Judicial Academy had earlier organised a “National Roundtable Conference on Judicial Education” on 7 and 8 May 2016 in Karachi, in collaboration with the Legal Aid Society.¹¹ The conference was honoured by the presence of the Chief Justice of Pakistan and Chief Justices of the Provinces. The conference was attended by the Head of the Federal Judicial Academy (FJA); the Sindh Judicial Academy; the Punjab Judicial Academy; the Balochistan Judicial Academy; and the Khyber Pakhtunkhwa Judicial Academy. Stakeholders from civil society organisations, human rights commissions, the Human Rights Commission of Pakistan and human rights activists and defenders were also invited to attend the conference. The following recommendations were formulated:

1. It has been emphasised that policy making should be data driven. The need for assessing the demand for judicial training has been emphasised so that what is delivered matches the actual day-to-day requirements from the target audience. Attitudinal studies and training needs analysis studies may be commissioned in provinces.
2. It has been suggested that aphorism be removed from the area of judicial training and a move made towards standardising a criterion for recruitment of permanent faculty members.
3. It has been suggested that synergies and closer coordination be developed between provincial academies with the FJA at the center in order to avoid duplication and to maximize resource, expertise and content development.
4. As far as curriculum content is concerned, the over emphasis on substantive and procedural learning has been highlighted and it has been recommended that realignment is needed with more equal emphasis on soft skills, ethics, values, interpersonal skills.
5. State mechanisms such as the Law Justice Commission of Pakistan and the National Committee on Judicial Policy Making be used to push for further reform.
6. It is necessary to tie in training needs analysis with evaluation techniques so that visible results can be ascertained and gauged to further inform this area.
7. Judicial academies are to be made autonomous from the judiciary so that desired changes and results can be achieved swiftly.

This conference objective was to take a practical approach towards creating a sustainable and improved judicial education in Pakistan. Dr Livingston Armytage, an expert on international judicial education, attended as the special guest speaker. He emphasised the need for structured training programs through the use of skills-based teaching methodologies which are missing in most judicial academies.

¹¹ The Legal Aid Society is a non-governmental and non-profit organisation headed by the ex-Chief Justice, High Court of Sindh and former judge of Supreme Court of Pakistan.

In November 2015, Dr Armytage conducted a Training of Trainers at the FJA, by bringing together judicial trainers from each academy of Pakistan. At the end of the training, Dr Armytage prepared a strategy paper for the improvement of judicial education in Pakistan. The training quality has been improved, however, there is still much to be done. There is still no concept of lesson plans for training. Trainers mostly share and discuss their personal experiences or share apex court decisions.

The National Judicial Education Coordination Committee was formed on 11 February 2015. The first meeting was convened on 29 October 2016 with the following agenda:

- annual and periodic review of training syllabi and teaching methods with a view to reform and improve the quality of judicial education
- preparing and implementing a judicial education strategy for the future growth and development of judicial education
- preparing plans and strategies for maximum utilisation of logistic and academic facilities in the academies
- resolving the issues of overlapping and duplication of training programs, if any
- conducting research on legal and judicial issues for publication in a research journal, dissertations, treatise and in books etc
- holding seminars, conferences and workshops for improvement of the legal and judicial system
- systematising the process of nomination of judicial officers, court staff and other professionals for pre and in-service training
- suggesting requirements for judicial training or for confirmation/promotion of judicial officers and court staff, with suitable incentives for the trainee officers/officials, and
- improving the format of annual confidential reports/performance evaluation reports for judicial officers/court staff, in line with their stipulated functions.

As a result of the formation of the committee and its first meeting, each academy formally started interaction with the others. Upon the Punjab Judicial Academy's request, Sindh Judicial Academy shared the format of their performance evaluation report and their District Court Bench Book.

The object of referring to and discussing the above activities is to demonstrate how Pakistan is cognisant of the need to design an effective policy for the improvement of judicial education. Judicial educators have also raised points which were covered as sub-themes of the IOJT 8th International Conference on the training of the judiciary in 2017.

A number of conferences at national and international level have been arranged in different jurisdictions over the past three years and, on most occasions, it has been stated that besides knowledge, emphasis is to be placed on skills and attitude. In most countries, judges and senior advocates are invited to impart training. While addressing the trainees, they use the lecture method and by this method only knowledge is shared. Sometimes discussion is initiated and the speaker feels that he/she could conduct an interactive session. Discussions clarify concepts on the subject, and the skill that newly appointed judges need cannot be fully inculcated by using the lecture method alone. Judges are appointed after undergoing extensive selection steps whereby their knowledge component is sufficiently assessed. Only a candidate who satisfies the

selection authorities is appointed as a judge. Therefore, during training at the judicial academy, an adequate knowledge component should not be the only object of the training. Keeping in mind the judicial officers' new role and responsibility, some skills need to be developed to meet future challenges.

As many academies do not have enough members to form a permanent faculty, they are dependent on visiting faculty. Many academies are hesitant to ask a senior retired or serving judge of an apex court to prepare exercises and case studies for enhancing the capacity of trainee judges. A solution needs to be found and perhaps an institution like IOJT could set some minimum teaching standards. To this end, a few lesson plans may be prepared and shared with member organisations. Lesson plans should include PowerPoint presentations, handouts and reading materials which may cater to the knowledge component. Similarly, exercises, case studies and mock/moot trial practices would prove beneficial in developing skills and improving attitudes.

The judicial academies' main function is to arrange training programs for judges. In Pakistan, justice sector stakeholders such as prosecutors, investigators, members of the PBC and parole and probation officers are rarely associated with matters relating to policy making. Although they, no doubt, receive training by their respective departments, they receive criticism from the judicial department through court verdicts. To avoid this unpleasant situation, the judicial academy should play an effective role by arranging training programs for them, including what is expected from them by the courts. Relevant laws, rules and apex court judgments may also be shared with them in developing their understanding of what is required of them. The Sindh Judicial Academy has taken a step towards this. The head of Sindh police and the academy's Director General have agreed to arrange training for investigators at the academy. During this training, courts verdicts on effective and defective investigation are shared with them. To date, two groups have been trained and this practice shall continue throughout the year.

The academies may also play a key and leading role in facilitating law students to become part of law clinics and mock/moot trials. The Sindh Judicial Academy has initially invited students of State-funded law colleges and universities located in Interior Sindh to practice mock trial sessions to enable them to participate in provincial and national level competitions. The process of setting up law clinics is also in process, and in this regard necessary rules have been drafted and will be shared with the PBC for consideration.

The academies working at national and international level find difficulty conducting their business due to a lack of administrative and financial independence. As the scope of the academies vary, it would be appropriate if universal legislation is passed to cover all academies. This initiative may be taken up by the IOJT.

A monitoring and evaluation policy is another effective tool for an organisation to improve its effectiveness and avoid external criticism. Training, trainers and trainees' assessment is to be made mandatory as a matter of policy and the authority should provide exemplary assessment at the end of the training programs so that necessary decisions may be taken in light of such an assessment.

Conclusion with recommendations

Too much time and resource is consumed in discussion, and not enough in execution. Consultative meetings often generate very useful recommendations but most of the time these are not implemented. The academies, working at national and international levels, should

develop close working relationships and continue exchanging activities undertaken by them, and where legislative environments are similar, share research studies. The following joint initiatives are suggested to improve Pakistan judicial academies' working/operations:

1. **Drafting a universal legislation to run the affairs of judicial academies** — a committee consisting of three members of the IOJT may be constituted to work jointly to draft the universal legislation. The draft may be shared with all members for comments and may be finalised at the annual meeting of the IOJT.
2. **Preparing (subject and cadre wise) model training manuals containing lesson plans** — each academy has its own training manual and follows different teaching methodologies. Sometimes training manuals contain subjects and topics only. These documents lack the necessary information that may be helpful for speakers and trainees. The IOJT may play an effective role in designing training manuals, following the format suggested by Dr Armytage. The Sindh Judicial Academy would like to be made part of such activities.
3. **Minimum standards may be fixed to monitor training programs, trainers and trainees** — in Pakistan, a committee has been set up at national level to improve judicial education. The committee needs to work more effectively and regular meetings should be held so that co-operation within the academies may be developed. At present each academy has its own method of training assessment. Trainers' assessment needs to be given greater weight as they are the key person in the training process. The IOJT may, in consultation with its member organisations, fix minimum standards of monitoring and evaluation.
4. **Bench books for trainees** — bench books have been designed by many academies. These books need to be reviewed from time to time. Bench books may be prepared subject and cadre wise. While reviewing the books, relevant stakeholders may be consulted and their comments should be incorporated in the bench book.
5. **Administrative set up in the academies** — each academy is too dependent upon an authority which is not directly part of the academy. In Sindh, the Board of Governors, headed by Chief Justice of High Court of Sindh, makes all the decisions for the Sindh Judicial Academy's affairs and limited powers are assigned to the Director General of the academy. The situation is similar in the other three provinces. To improve the working of the academies in Pakistan, the Director General should have more financial and administrative control in running their affairs.
6. **Collaboration with national and international academies** — study tours for regular faculty members are to be planned by the academies so that they may adopt good practices from each other. The faculty members may also be assigned to teach during their visits and to participate in common interest research studies. Technological aids, such as video conferencing, may be used to develop cooperation and the exchange of legal information and juristic views.

Providing a Mongolian legal education system and its future direction

Volodya Oyumaa*

Historical outline of Mongolian legal education

In the first half of the 20th century, Mongolia began educating its legal professionals abroad. In particular, the Soviet Union became the most common destination for legal education due to the country's political, social and economic systems of that time. Starting in the late 1940s, people who completed secondary education were able to obtain a legal education in Mongolia, and the demand for highly qualified law graduates has increased constantly.

As a consequence, the Central Committee of the Mongolian People's Revolutionary Party and the Cabinet Minister of the People's Republic of Mongolia decided to establish the so-called "state law department" at the National University of Mongolia in 1957. Three years after this resolution, the legal department had its very first enrolment, which included only two teachers and 35 students. In 1990, the name of the legal department was changed into "Law faculty" and finally in 1994 it obtained its current name "the Law School".¹

The continuous development and immediate modernisation of the education system of Mongolia coincided with the changes and reforms of the legal branch. The country's legal education can be considered to have achieved an appropriate and adequate level.

Within its main framework to improve the legal education system and to make the skills and abilities of lawyers comparable with a modern legal profession, there were several reforms on enhancing the professionalism of lawyers. For instance, the National Center for Research, Training, Information and Promotion of Legislation and Court Jurisdiction² was established in 2002 and the *Law on Lawyers' Qualification* was adopted in 2003.

Previously, law school graduates were eligible to work as a prosecutor, judge and attorney without any further criteria. The introduction of the new law meant law graduates, depending on what job they want to acquire, were also required to pass the legal professional exams for judges, prosecutors, attorneys and notaries, as well as specialise in specific legal fields of criminal, civil and administrative laws. Upon the adoption of the new *Law on Legal Status of a Lawyer* in 2013 by the Parliament of Mongolia, the *Law on Legal Qualification* became void.

Within the framework of legal reforms, this new *Law on Legal Status of a Lawyer* ensures high standards for judges and other lawyers taking part in the court litigation. According to the

* Member, Judicial General Council, Mongolia. This article gives a brief presentation of the results from the research conducted by the National Legal Institute within the framework of the Action Plan of the Government of Mongolia for 2012–2016.

¹ D Solongo, "Comparison of the model of the legal education system and modern trends", paper presented in *The Legal Education Reform*, 2013, Ulaanbaatar.

² Approved by Resolution No 121 of the Government of Mongolia, 2002 and Order No 222 by the Minister of Justice and Internal Affairs, 2002.

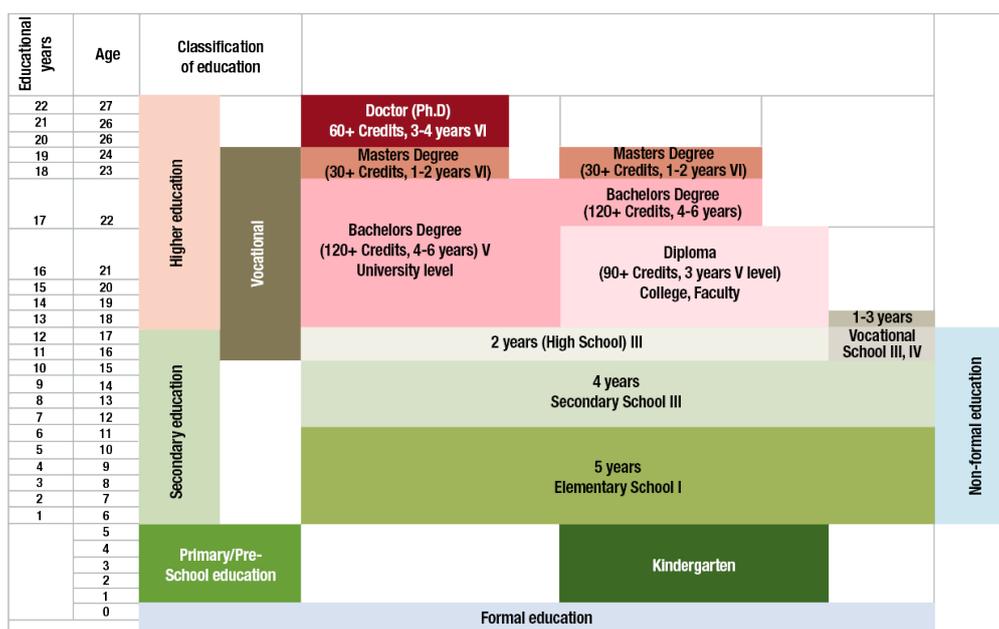
principle of this law, all judges, prosecutors and attorneys have a uniform system of standards and liabilities, while at the same time all the related activities including legal education, bar exams and continuous training of lawyers are united under one central organization.

In spite of its relatively short history, the legal education system of Mongolia has produced a sufficient number of legal professionals to meet the country’s demand in criminal, civil, constitutional, public administrative, international or commercial laws. However, public administration still lacks legal professionals specialising in public administrative areas (ecology, industry, agriculture, health, education, construction, transportation etc). Both public and private sectors similarly have an inadequate number of specialised lawyers in economics (trade, stock, banking, finance, tax etc).

Therefore, there is a great need for a state policy on improving the quality of legal education systematically and developing the legal science. This policy should include both formal and non-formal educational methods, continuous training for law students and lawyers and campaigns and workshops for the general public to raise awareness of the legal profession.

In order to improve the standards of legal education, it should be incorporated into the general education system of Mongolia and introduced into both formal and non-formal education. It is more effective for legal education to be maintained within the education system, and this is where the state support plays an immense role.

Mongolian legal education system



Legal knowledge is necessary for society and each individual, and obtaining this knowledge is the duty of not only lawyers, but of every person.³ The legal education system is classified as follows:

- public (general) education
- professional/specialised/education.

³ B Chimid, *Challenges of the state and political parties’ reformation*, 2nd edn, Ulaanbaatar, 2008, p 60.

The legal education system forms part of the process of providing legal education in Mongolia. It is regulated by the relevant legislative Acts. According to Art 7 of the *Law on Education*, legal education is composed of formal and non-formal education systems and is classified as follows:

1. primary
2. secondary
3. vocational
4. higher education.

Under this law, the content and standard of formal education is regulated in accordance with legal procedure, while the content of the non-formal education may be independent.

The formal legal education system

Under Art 3.1 of the *Law on Education*, a “formal education” means “an organised activity, enhancing a certain level of need for possessing education through the official organisations”.

The formal legal education system covers any person involved in legal education regulated by the *Law on Primary and Secondary Education*, *Law on Vocational Education and Training*, *Law on Higher Education* and *Law on Science and Technology*.

According to the *Law on Primary and Secondary Education*, formal legal training is conducted in the form of a “lyceum” (Art 6.1.3 and Art 9.4). Ikh Zasag University operates a lyceum school in Mongolia.

According to the *Law on Vocational Education and Training*, apart from vocational training centers, colleges and universities may also operate vocational educational activities in Mongolia. With regard to the legal profession, the *Law Enforcement University of Mongolia* conducts vocational education classes and training.⁴

According to the *Law on Higher Education*, as at 2017, there are 13 public and private universities⁵ providing diploma courses and bachelor, master and doctoral degrees in legal science. According to the *Law on Higher Education*, universities and colleges provide diploma courses, bachelor, master and doctoral classes in the form of day, evening, correspondence and external classes. Day classes are regarded as formal courses, whereas evening, correspondence and external classes constitute the non-formal type.

Due to the lack of lawyers specialised in certain legal fields, it is of a crucial importance to establish training for legal specialisation.

The non-formal legal education system

Article 3 of the *Law on Education* defines “informal education” as “education as an organized activity of offering an education service to people besides the official education system”.

⁴ The Sergeant School of the Law Enforcement University of Mongolia provides legal education. In the school year of 2014–2015, a total of 499 students were enrolled and received the capacity certificate: 104 students were enrolled in a one-year course for “policeman”, 153 students for vocational training for “policeman and driver”, 62 students for a one-year training as “border patrol”, 42 students for a one-year course “Rescuer of the Emergency Agency”, 99 students for “rescuer, firefighter” and 39 for “court decision executive agent”.

⁵ In 2013–2014 there were in total 11 schools, while two additional schools were granted permission to provide legal education in 2015: National Legal Institute, “The current situation of the legal bachelor education system of Mongolia”, Ulaanbaatar, 2015.

The government of Mongolia adopted the first National Non-Formal Education Program in 1997. The program covers various types of non-formal training on legal education, which is implemented by means of specialising the graduates from the professional upper secondary and higher educational schools.

Non-formal legal education procedure is classified as follows:

1. *Raising public awareness campaigns and promotional works*: This is part of the “directives for improving the general education level of the population” and it has evolved in both public and private sectors. Within the framework of this project, the government of Mongolia and the public administration have made substantial achievements, for example, the Information Center of the Ministry of Justice and the National Legal Institute (NLI) organise the dissemination of information to rural and capital city citizens.
2. *Continuous training for lawyers*: This focuses on the enhancement of professional knowledge and skills for lawyers. Since 2003, the NLI has been in charge of organising legal training, and since the adoption of the *Law on Legal Status of Lawyers* in 2012, the Mongolian Bar Association currently organises the continuous training, where lawyers may obtain continuing legal education credits.
3. *Correspondence, evening and external classes*: The main directive for “re-education of population”, which is part of the “National Program on Non-Formal Education System”, covers general education and literacy. Within this framework, the National Program provides that all schools shall establish open classes offering course work and evening schools in the subjects of public interest. Such schools shall also issue certificates to the qualified students. In this regard, any legal education course conducted through correspondence, evening and external classes can be classified as non-formal educational courses.
4. *Others*: This type of example refers to any other previous types that provide citizens non-formal legal education and extracurricular activities aimed at giving knowledge and practice of law. This includes any legal entity which organises courses on creative activities or research methods, provides legal advice, co-ordinates and conducts research, seminars, conferences, symposia and exchange experiences, establish programs, writes handbooks, offers methodological advice, builds databases for self-study and provides other activities by taking into account the interests and needs of the people.

Vocational training may be introduced at any level of an education system and can be provided in a non-formal manner. It is provided outside the formal education system. Pre-bachelor programs or post-qualification training in legal education is almost non-existent,⁶ therefore there is a great need to expand the non-formal legal courses through the formal education curriculum of higher education.

This can be achieved through the positive changes in the reorganisation of the legal education system by using and expanding non-formal training in the following manner: develop the secondary level education in a form of lyceum training and develop higher education and vocational training in compliance with the university programs. In particular, the “Introduction of non-diploma based legal education” will enable the expansion of vocational training such as legal clinic classes.

⁶ Besides the lyceum and bachelor program of Ikh Zasag University, no other legal schools exist.

Methods to introduce non-diploma based legal education system

The demand for the introduction of non-diploma based legal education system in Mongolia

According to the *Action Plan of the Government of Mongolian* for 2012–2016, the government set the goal to develop law schools and improve the quality of training for professionals by using the examples of the best international modern trends, meeting the actual needs of public and society, closing the gap between legal education and professional demands, improving the quality of the legal profession and introducing non-diploma education system.

Within its role to support the Ministry of Justice with studies and researches, the NLI conducted a number of research studies concerning the introduction of a non-diploma based legal system as well as a specialised lawyer training system. Furthermore, the NLI organised various international conferences and panel discussions to learn about international practices and to exchange ideas.⁷

The assessment of the skills and integrity of today's young lawyers, determination of the demand and modification and renewal of training institutions, as well as comparative studies of international practices on non-diploma based education systems and specialised training of lawyers serve as crucially important tools aimed at improving the quality of the lawyers' capability building training and building the solid foundation for a specialised lawyer-training system.

Current situation of Mongolian specialised lawyer's skills, integrity and legal education

Specialised lawyers' skills and integrity

The purpose of the research was to investigate the professional skills, integrity to legal principles and the approach to human rights of young lawyers working in 2013.

In the survey, experienced lawyers assessed the skills of young lawyers working under their supervision. 37.6% of the survey respondents assessed young lawyers' skills as good and 62.4% as average or lower. While in contrast, 54.3% of young lawyers assessed their own skills as average and low.

In today's rapidly transforming world, specialised skills and expertise are demanded more often. It means that the gap between theoretical knowledge and practical knowledge should be as small as possible.

⁷ These include: 1. *Young lawyers' skills and value assessments*, a sociological study examining the current attitudes of young lawyers in terms of professional skill, integrity of their professional values, human rights attitudes, and attitudes towards professional lawyer development; 2. *Current issuance of bachelor's degree of law in Mongolia*, which examined the publications on education, articles and works carried out by researchers in the field of legal special education in Mongolia and legal regulations on specialised education; 3. *Competent Lawyer's Preparation System*, a comparative study examining how lawyers train and prepare in the US, Federal Republic of Germany and the Republic of Korea and its regulation. 4. *Reference to foreign universities*, which examines the legal status of foreign universities and their structure from overseas countries such as USA, Hungary, Germany, Korea and Japan. 5. A proposal on the improvement of legal education system has been submitted to the working group. This proposal was developed to examine the system of legal education of USA, Japan, Australia and the Republic of Korea. 6. *International scientific conference on legal educational reform*, where the methods on the introduction of foreign expertise system and experience in the field of non-diploma education system and the conference speeches were compiled in the *Legal Education Reform* bulletin.

Larry Ribstein states that:⁸

You can not fix a problem by trying to harmonize two completely different approaches such as theory and practice. The problem is not the fact that it is hard to align the legal education system with practice, but rather the fact that the law schools do not provide the legal education that the real-world market demands. In fact, the interests of educators and legal experts may be different, but the common interests of the legal sector should drive their interest into one direction.

Currently, in order to obtain a degree in law, it is a requirement to have taken case study, simulation class and legal clinic classes for three years after which you will be eligible to take the bar exam and become a certified lawyer.

Current situation of legal education

In 2014–2015, research was conducted on the topic “Current Situation of Bachelor Law Degree in Mongolia”, which looked at different aspects of bachelor law degrees. The study examined the undergraduate law degree in Mongolia in three areas:

1. legal regulation on the education of legal bachelor degree in Mongolia
2. research on resources
3. classification of a bachelor degree in law.

Firstly, the study on the education of Mongolian bachelor degree in law covers 540 laws and 7482 Acts.⁹ Of these, seven international treaties, 15 Mongolian laws, seven State Great Khural resolutions, two Presidential decrees, 35 government resolutions, 26 ministerial orders and one Supreme Court resolution were directly connected to the purpose of governing the legal relations of the education-related groups. These are as follows:

- content, methods and forms of education (formal and informal diplomas, bachelors, master’s and doctoral courses in morning class, extensions of evening and later external classes)
- education and training institutions (formal, informal, governmental and non-governmental organisations and all levels of schools, academic, methodological, evaluation or accreditation bodies)
- management of the training institution (founder, board, director and board of directors)
- staff (scholar professor, senior lecturer, teacher, assistant teacher, researcher, etc)
- learner (vocational training/VTPC training course), general education (grades 9–12), (preparation for universities and colleges)
- economy and financing (donations, concessional loans and educational activities for government and non-governmental organisations, self-financing, state budget, local and foreign enterprises, organisations and individuals, investments, tuition fees, salary, social security etc).

There are in total 93 legal Acts directly related to the education of a bachelor degree of law in Mongolia. Such degree of legal knowledge is integral for graduates with an undergraduate degree in the Mongolian education system. Therefore, the Constitution of Mongolia, the Law on Education, the Law on Higher Education and other relevant legislative Acts shall regulate its relation, which can be improved and narrowly regulated by other branch legislative Acts.

⁸ L Ribstein, “Practicing theory: legal education for the twenty-first century” (2011) 96 *Iowa Law Review* 1649.

⁹ See <http://legalinfo.mn>, accessed 2 November 2018.

Since 1990, legal Acts allowing the establishment of educational institutions, in particular the institutions of higher education, in both governmental and non-governmental legal entity forms, creation of founders and boards of directors, the classification of diploma, bachelor, masters and doctoral degrees, and the creation of assessments and accreditation bodies for education have been enacted. Furthermore, the right to education and social security were also set in the related legal Acts.

In spite of the fact that the education branch have been striving to enhance the quality of the bachelor's degree program and the legal framework in recent years, many scholars agree there is still more room for improvement.

Secondly, research conducted by our legal scientists mainly focused on improving the quality of the higher education law and reducing the gap between education and employment.

Professor Chimid, scholar and lawyer, said:¹⁰

The main content of the legal education reform shall concentrate on preparing the new generation of Mongolian lawyers, who are capable to meet the needs of the new century and this can be achieved by continuous up-to-date trainings. Whether you want or not, the new generation will arise from the bottom to perfection and you should not watch or wait from an aside. As the legal profession once was a trend in our society, many poorly qualified schools and classes were created. It is better to halt this situation and concentrate on the preparation, re-training, and specialization of highly specialised and qualified lawyers at proper universities. In current post-modernization times the quality should have much more value than quantity.

There are many quotes and articles written by excellent lawyers, academics, scientists and researchers.

The government of Mongolia, the Ministry of Justice and the Ministry of Education, Culture and Science work hard to optimise the situation of undergraduate legal education by means of providing funds from state budgets and donors. In 2002, "The Legal Justice Reform" project was commenced and the "Standard for undergraduate legal education" was officially adopted in 2007.

In addition, many surveys and studies with funds from international organizations such as the United States Agency for International Development GIZ,¹¹ UNISEF and JICA¹² have been conducted. In 2004 the *Research of result-based law* comprised of 748 law school graduates and the study on the *Situation of tertiary education in Mongolia* was conducted by the East Asia and the Pacific region human development sector unit of the World Bank in 2010. This helped to make positive changes and progress in undergraduate law programs in Mongolia.

Thirdly, the study focused on schools that educate lawyers. As of 2013–2014, a total of 11 universities provided undergraduate legal training. The schools were compared regarding their training content, teachers or professors, enrolment procedure, students and graduates.

In terms of the actual resources required for training, the schools vary regardless of whether it is a university or a college. Regarding training content, currently there are 56–97 class subjects. The result of the study shows that the number and title of each course differs in schools, and that the mandatory and optional modules also vary. General courses have a higher percentage

¹⁰ n 3, above.

¹¹ Deutsche Gesellschaft für Internationale Zusammenarbeit.

¹² Japan International Cooperation Agency.

of other subjects in their undergraduate program. Ten out of 11 schools offer clinical training and eight schools offer a free legal counseling center. With these training centers, students are given practical skills, which enable them to interact and solve practical legal disputes.

As for teaching, there are in a total 262 teachers in all law schools, of which 210 are full-time, 38 are part-time and 14 are contract-based teachers. Seven per cent of all teachers at private universities have doctoral degrees, while at the national universities the number of teachers with doctoral degrees reaches 56%. The age of teachers also vary, ranging from 22 to 85 years of age. The age of the part-time teachers is over 40 years old, as experience and academic degrees are main factors of this group. The working load of teachers differs since one in every five teachers works part-time.

The law school of the National University of Mongolia is the highest-ranking university with its average score for enrolling students with 600 points. In other schools, the average score ranges from 450 to 580 points. In the academic year of 2013–2014, 1514 students were enrolled in regular day classes, while 517 studied in evening classes, out of which 70% study in extension class forms and the remaining 30% in evening courses.

The total number of students graduated in 10 out of 11 law schools with bachelor degree is 1810. The law class of the Ulaanbaatar University was recently established and does not have any graduates yet. About 75% of total law graduates studied the general courses of their schools.

Foreign countries' practice of non-diploma based legal systems or specialised training system

In the framework of introducing a non-diploma based educational system, the NLI has undertaken several workshops and organised international conferences. Furthermore, the NLI released comparative studies including *Legal status of universities*, following the example of Hungary, Germany and Japan in January 2013, *The development of the proposal on the enhancement of legal education system* following the example of the USA, Germany and the Republic of Korea in February 2013 and *Specialised lawyer training system* based on the practice of the USA, Germany and Republic of Korea in 2015.

The aim of the international conferences was to find the best international practice that would suit the Mongolian situation, to evaluate the situation in an objective manner and to figure out solutions to existing challenges. Mongolian scholars presented reports on the practice of our and other countries, and legal specialists were involved in discussions on many crucial topics such as law enforcement and specialised training.

A comparative study *Specialised lawyer training system* based on the example of the USA, Germany, and Republic of Korea was developed in 2015. It compared the basic issues of specialised lawyer training systems of foreign countries, examined the current situation and the future direction of the system by analysing their strengths and weaknesses, and issued recommendations for the best practices to be adopted by Mongolia.

This study compared specialised law training from foreign countries and covered the most prominent legal systems from Anglo-Saxon and civil law system countries. For example, the USA was chosen from the Anglo-Saxon system, whereas Germany and the Republic of Korea represented the civil law system.

The concept of a “specialised lawyer training system” is defined by each country in its own terms, and has not yet reached a single global understanding. Therefore, within the framework of this study, the different legal training between a German lawyer who completed professional training of at least nine academic semesters, passed such exams and practised for two years

in Referendum (Vorbereitungsdienst) and lawyers in the US and South Korea, who completed a bachelor's degree and obtained a lawyer's license, were compared. There is still a need to design an up-to-date consistent policy on the specialised training of a lawyer.

Ways to improve specialised training of lawyers

According to the survey data, the number of people interested in working in the legal sector and attending the law schools is increasing, not only in our country, but also in other parts of the world. Thus, the government should assist in the enhancement of knowledge, skills, and competitiveness of lawyers by improving the educational system in this area, increasing the requirements for training institutions and improving the quality of the training in direct and indirect ways. Moreover, it is also essential that policy makers and law enforcement agencies create relevant Acts which meet the needs of the community.

Legal framework for non-diploma based educational system or the continuous trainings for lawyers

Legal training in Mongolia cannot be considered separately from the education system. They developed and evolved together, and the research of the legal scholars has been a major factor in the development of legal training in the education sector. There are many issues to refine by incorporating the needs of the Mongolian society now and in the future. One example is the establishment of a non-diploma-based education/specialised training system, which is currently comprised in the Action Plan of the government of Mongolia.

The educational system takes place in formal and informal ways. While the non-diploma-based training is a totally new term undefined by law, it is conceivable the new term will be regulated under the informal education system in accordance with the Law on Education and implemented through certified training outside of the formal training courses.

The Ministry of Justice, the NLI and the Mongolian Lawyers Association jointly organised a discussion on the "Law on specialist training in Mongolian education" in November 2015. The aims of this discussion were to: improve the legal education system; create a new system of preparing professional lawyers; train the legal and institutional staff about international standards; adopt international standards and their requirements of knowledge and qualifications in domestic law schools and universities; introduce the most advanced legal education courses; and, adopt the most applicable form of Mongolian law on higher education. The views and opinions of scholars, teachers and professionals involved in the discussions were considered. The aim was to meet society's needs by minimising the gap between legal education and professional practice.

In recent years, there have been varying opinions over jurisprudence and legal education, including the improvement of the methods of programs and activities at universities, and criticism of the lack of supervision by the Ministry of Education, as well as the proper preparation of specialised lawyers, the training content, standards and accreditation system. For such reasons, it is still necessary to examine, study further and develop solutions to all these issues.

In order to create a comprehensive system of legal education, the "adoption of non-diploma-based educational system" should be regulated according to the *Law on Science and Technology*, the *Law on Education*, the *Law on Higher Education* and the *Law on Lawyer's Legal Status*.

It is crucial to investigate the unique characteristics of the country in order to domesticate the experience of foreign countries and introduce good international practices in the most

suitable way. There is also a need to introduce a system of non-diploma-based system or a specialised lawyer training system to Mongolia, as it will be an effective method to distinguish law graduates (lawyers) from licensed lawyers.

Conclusion

This article provides a brief overview of legal education and the legal framework for education systems in Mongolia and studies the appropriate methods to introduce and promote a non-diploma-based education system and finally to ensure its co-ordination on the grounds of research results. We also developed a recommendation to establish legal regulations on the training of professionals in Mongolia.

Legal education in Mongolia is in line with the current global education trends. Since the adoption of the framework of the government in 1994, the government of Mongolia has been working with international project teams in the field of preparing and re-training lawyers, and jurisprudence with an aim to build highly professional lawyers in the country.

With globalisation, countries worldwide are striving to modernise and update their educational systems to meet social needs. It is necessary to increase the quality and content of specialised education in Mongolia and to improve the legal environment and education of professionals.

As the legal education system forms an integral part of the education system, it is being constantly developed in both the domestic and the global education systems.

Pursuant to the *Law on Education*, the education system in Mongolia shall be composed of formal and non-formal ones. It will be useful to include the term “non-diploma-based education” into “non-formal” system of the law and operate this system in constant manner.

With this aim in mind, the study of formal and non-formal education systems for each level, the correlation and difference between them shall form the beginning phase in the reduction of the gap between lawyers specialised in specific fields and other lawyers with general legal knowledge.

Besides law schools, both the government agencies as well as the private sector, should play a significant role in enhancing the skills of current lawyers in Mongolia and provide professional and internship opportunities at internal and international levels.

Our country’s legal training system is unique in its approach and it includes some features of American and Germanic systems of continuous training. In 2007, Art 3 of the *Law on Higher Education* stated, “the content of high education consists of general basis, professional basis and professionalism” and in 2011 the clause was expanded and “legal clinic training” was added to the standard of professionalism.

Therefore, we can conclude that the Mongolian system contains both the clinical training, that is part of the Doctor of Jurisprudence training in the USA, and the internships for the judiciary, prosecutors and other legal entities of Germany. This training helps to expand legal training content, improve the legal training system, lengthen the training time and enhance the skills of students. According to the current legislation, a two-year internship before taking the bar exam and obtaining a lawyer’s license is required. The introduction of a non-diploma-based legal system will fill the training gap for lawyers.

Most countries emphasise the lawyers’ training system since it has direct impact on the public, the development and security of the country.

Proposals and recommendations

The Mongolian lawyers' training system has been developing in recent years as it became gradually evident that it affects the quality and evaluation of the legal profession. Therefore, when a non-diploma-based legal training system is introduced and implemented, there are several Acts that need to be reviewed and enacted by the State central administrative body in charge of those matters. Furthermore, there are several additional issues that need to be further researched.

In any country, the attention and focus of the government on the development of the legal education system, the qualification and development of the legal training system will increase the quality and levels of public education, cultivation and remains an important factor of the country's security.

The establishment of a non-diploma-based legal system or the implementation of specialised lawyers training should be considered as follows:

1. Law schools, universities, research institutions and the Bar Association upon the request of the Ministry of Justice shall develop the content of the training. The training program shall be reviewed, approved and enforced by the Jurisprudence Council. The content of the training shall be designed in a way that matches the specific needs of legal practitioners. The Bar Association will include training in its curriculum and law schools are responsible for the implementation of the content.
2. The Bar Association and law schools shall jointly develop the method for implementing the training content in practice. The Ministry of Justice and the Bar Association shall be responsible for the delivery of training manuals and recommendations to law schools.
3. Preparation and development of required personnel for training will be managed as follows:
 - the legal universities shall organise training of lawyers upon the requests from courts, prosecutors and defense organisations of state and private entities
 - law schools shall be responsible for the internal training of qualified and experienced teachers and lawyers
 - experts from other sectors who have legal education backgrounds, specialists who have completed bachelor's degree, extension, evening classes, etc, from national and international universities and are interested in internship should be trained as teachers
 - cooperate with foreign professional entities and study from their experience and practices
 - introduce and implement training methodology for teachers' training and content/curriculum.

Issues for further research:

1. Determine the content of the subjects based on knowledge, skills, content and programs provided by undergraduate law programs
2. Establish specialised legal training programs based on the model of clinical trainings
3. Define the level of qualifications of a lawyer and their needs and labor market research
4. Determine the target participants of bar exam by examination of lawyers and their needs
5. Establish/provide related legal regulations necessary for proper implementation.

