

**Courts Reform Programmes: The Malaysian Experience**  
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**Introduction**

[1] First of all, I wish to thank the IALS for inviting me to deliver this lecture this evening. I am honoured to be here and it is indeed a privilege to be speaking before such a distinguished audience. My subject today is Malaysian experience of courts reforms.

[2] In this lecture, I shall give a brief account of our experience of transforming our judicial landscape with the introduction of new measures to tackle massive backlog of cases and unacceptable delay in the litigation process. I will focus on the key initiatives aimed at strengthening of judicial systems and procedures including efforts to address court management systems, procedural rules, and jurisdictional limit of courts and implementation of alternative dispute resolution. I will then highlight some of the accomplishments and the resulting outcomes of the reforms. I will close by setting some directions which the court should take in the future.

[3] I became involved with the implementation of court reforms when I was appointed as the Managing Judge of the Civil Division of the Kuala Lumpur High Courts in 2012. My administrative duty as a Managing Judge requires me, among others, to assist the Chief Justice of Malaysia and the Chief Judge of Malaya to help set bench marks for efficient and equitable management of cases. I have a constant focus on how we can improve with what we are

doing by making the necessary changes to processes and procedures. So I welcome the unique opportunity to share with you my thoughts and experience on the topic of courts reforms.

**[4]** In this regard, I am most thankful that during my time as an Inns of Court Fellow, quite apart from engaging in the intellectual life of the Institute, I have the distinct opportunity to discuss with some of the judges at the Royal Courts of Justice and the Rolls Building about the way judges go about the principle business of judging in various divisions of the High Court. And over lunch and dinner at the various Inns I have had several conversations with judges and members of the Bar on how cases are dealt with efficiently, speedily and above all justly, matters which are very close to my heart. I also visited the Judicial College to study the teaching programmes, which proved to be very beneficial in respect of what to teach and how to teach judges.

**[5]** More than ever, there are now few public institutions which are subject to more public scrutiny than the Judiciary. As an institution established to resolve disputes on issues that embrace economic, social, moral and political questions, a major challenge facing the Judiciary is the ever increasing public demand for judicial accountability. There is a continuous call for a more expeditious system of delivery of justice, effective and efficient resolution of increasingly complex disputes, transparency in the appointment of judges, as well as appropriate standards of competence and ethical conduct of judges. This is very important because the right of access to justice is a fundamental right and is enshrined in the liberty clauses of our Federal Constitution.

[6] To address the call for a more expeditious and effective system of delivery of justice as well as appropriate standards of competence and ethical conduct of judges, the year 2009 will feature as an important year for our judiciary and the administration of the justice system as a whole. It was the year when under the dynamic and visionary leadership of the then Chief Justice Zaki Azmi and his team (comprising the current Chief Justice, the President Court of Appeal, the Chief Judge of Malaya and the Chief Judge of Sabah and Sarawak) embarked on a multiple initiatives and reforms with the common goal of a higher standard of justice.

[7] Prior to the reforms introduced in 2009, measures and changes introduced were few and not sweeping in nature. The 2009 reforms were extensive and wide-ranging in nature and can be divided into two broad categories. First, a diverse range of measures that are intended to promote and facilitate a more transparent, efficient and expeditious delivery system. Second, initiatives that are aimed at enhancing judicial skills in order to enhance judicial performance.

## **Judicial System**

[8] Before turning to explain the nature of some of these reforms, let me by way of introduction give you an overview of our judicial system.

[9] A significant event in our judicial history occurred in 1786 when Penang was ceded to the English East India Company. This was followed by what could be said to be the watershed of our judicial history – the granting of a Royal Charter to Penang in 1807. Upon the authority of the Charter a Supreme Court, presided over

by a Recorder, was established in 1808 where the first appointed Recorder of the Court of Judicature of Prince of Wales Island (Penang) was Sir Edmond Stanley. And ever since, the British rule has had a most profound impact on the legal development of our country with the introduction of common law well as their judicial system. Our present day judicial setting in term of structure and hierarchy as well as court procedures is very much influenced by the British model.

**[10]** Our written Federal Constitution as the supreme law of the land distinctly stipulates for separation of powers among the executive, legislative and judicial branches of the government. Though a federation, our judiciary is organized principally under a single unitary federal system, which I shall refer to as the civil courts. The Federal Constitution gives judicial power exclusively to the civil courts

**[11]** Our civil court structure is pyramid-shaped. The hierarchy of the courts begins from the Magistrates' Court, Sessions Court, High Court, Court of Appeal and finally the Federal Court, which is the final appellate court. The High Court, the Court of Appeal and Federal Court are also commonly referred to as the superior courts and the Magistrates' Court and the Sessions Court are commonly referred to as the subordinate courts.

**[12]** The huge bulk of cases are dealt with in the subordinate courts. Very few of these cases ever reaching the upper levels of the superior courts.

**[13]** Let me at the outset clarify one point. In the context of this evening lecture when I refer to court, I am referring to the civil court.

[14] A parallel sharia court system exists alongside the civil courts. The sharia courts exercise jurisdiction over Islamic law and personal laws of persons professing the religion of Islam. Sharia courts which come within the purview of each of the states in the federation are quite separate from the civil court have their own system, their own rules of evidence and procedure which in some respect are quite different from those applicable to the civil courts.

[15] It is somewhat a unique and complicated arrangement because two different but unequal levels of government are administering the two systems separately. In my previous lecture and round table seminar, I have explained that as the country continues to modernize and in a more secular environment, practical difficulties and jurisdictional conflicts have arisen over the years regarding the dual system.

[16] I now turn to the subject this evening.

### **Pre 2009 Issues**

[17] A plethora of issues had dogged the civil courts prior to 2009. As in many jurisdictions, we were burdened with massive backlog of cases, unacceptable delay in the litigation process and declining delivery of judicial works. The courts struggled with a mounting workload. Matters like efficiency, quality, transparency and accountability become a major issues faced by us.

[18] There was long waiting time for trials and often parties had to wait four to five years or even longer for a trial date. The time taken to dispose of cases were too long. Delays results in distress and anxiety for the litigants. In criminal cases, accused persons, even

those on remand, had to wait for long periods for their matters to be brought up to the courts. All this led to delayed justice and frustrated litigants. Indeed, delay may defeat justice.

**[19]** It was also apparent that public perceived court litigation process as being lengthy and expensive. Such perception gave a negative connotation that access to justice was a hurdle rather than an enforceable right.

**[20]** In 2009, for example, we had 6,490 commercial cases pending in the Kuala Lumpur High Court. Most of these cases had been pending for more than five years. Some were as old as ten to twelve years old. During that period, the Malaysian Government had established a Special Task Force to facilitate business, to address the urgent need for closer collaborations between the public and private sectors and to enhance the public service delivery with the hope of improving Malaysia's business environment. A representation was made by the Task Force to the Judiciary of the need to clear the backlog of commercial cases. According to the Task Force, the delay in disposing commercial cases was not good for the business community.

**[21]** During that period, the court processes were done to a very large extent manually. Computers were used but on a very limited scope. Cases were registered and processed at the counter, where physical case files were maintained and recorded into a Register Book. Courts stored information manually, using paper and filing cabinets. This system served its purpose for many years, but over time, its limitations became apparent. There were improper organization of the court files. The sheer volume of documents made retrieval of information difficult and time consuming. Hard

copy files occupied a lot of space, and because files move from table to table, unless they were properly recorded we faced the problem of mislaid files. It was discovered that thousands of files were in fact 'effectively closed' but the record was not updated and still languishing on the courts' docket. This resulted in inaccurate reporting.

**[22]** During that time, our judges were writing notes of proceedings in long hand, which of course, slow down trial. Judges spent laborious hours to take down notes of evidence. Later the judges' secretaries would spent many miserable hours trying to decipher the handwriting of the judges. There is no way in which the system can continue. That was the state of affairs before we introduced modern technology.

**[23]** There was an increase in the judges work load without the availability of comprehensive modern technology to alleviate it. There was a demand to shift the judicial minds-sets to reflect modern approaches in tandem with global and economic changes. There was an urgent need to simplify process and procedure to bring in the much needed efficiency in the system.

**[24]** At the same time, the public was more informed and with the advancement of education levels, public expectations of the quality of justice and efficiency also increased. By then there was an urgent necessity for an efficient and effective judiciary to support both economic growth and need of the public at large.

**[25]** It was against this backdrop and set against these concerns, in 2009 the judiciary introduced a painful but a much-needed framework programme for transformation of our judicial landscape

which covers a wide-range of structural changes and reforms at all levels of our courts.

**[26]** The basic and declared aim of the reforms was to allow for better access to justice to the public at large as well as to expedite the judicial work in a fair and impartial manner. This reform can only be achieved with the full support of all those engaged in the administration of justice. Indeed, for the justice system to work effectively, it requires close working between the courts, members of the Bar, the Attorney-General Chambers and a host of external agencies engaged in the system.

### **Structural Adjustments**

**[27]** Let me now focus the method and approach undertaken at the beginning of the reform in 2009. For the first phase, we embarked on restructuring the court system at the main centre, Kuala Lumpur. A decision was made that different nature of cases should be dealt with through different procedures. Key changes were then made to implement this. The focus was to centralize the management of all cases. Prior to the 2009 reform, the High Court judges were in charge of their own registries and were thus responsible for the management of all cases registered in their individual courts until final disposal. There was no uniformity in the administration of cases between one court and another in the same division.

**[28]** The fundamental step we took was to rationalise the objective of case management. It had 2 prongs. First, it was to be used as a tool to eradicate the backlog of cases. Second, at the same time, ensuring the speedy disposal of current cases.



**[29]** The key to the changes was the division of these cases into those that were filed before a certain date, which we refer as the cut-off date. For commercial and civil cases filed before 1<sup>st</sup> September 2009 and 1<sup>st</sup> October 2010 respectively (backlog cases), they were dealt with by judges designated as judges in the Old Civil/Commercial Courts. These judges were tasked to hear all backlog cases until final disposal. For new cases filed after the cut-off date, we created New Commercial Court (NCC) and New Civil Court (NVNC).

### **Old Commercial Courts/Civil Courts**

**[30]** Let me explain in a bit more detail how the judges in the OCC and OCvC dealt with these backlog of cases. Realising that a judge has to deal with both interlocutory matters as well as conduct full trials, we isolated these two types of work. Each will be handled by a different set of judges. The objective was to allow judges hearing full trials to focus on the disposal of the cases fixed for trial before them. They are not to be burdened by interlocutory matters. These would be dealt with by another set of judges, who would deal only with interlocutory matters without having to deal with the hearing of any case proper.

**[31]** To demarcate this, we classified cases involving the taking of oral evidence by the judge as “T-Track” cases. Since T-Track cases require more time to dispose of and usually after a full trial, we assigned these to a group of judges known as “T-Track judges”. They do not hear any interlocutory matters. Their sole duty is to dispose of T-Track cases only. These cases formed the bulk of the backlog.

**[32]** Interlocutory matters or applications generally slow down the hearing of the case proper but as they are still relevant and necessary, we classified them as “A-Track” matters. Most of these matters are decided on affidavit evidence without the need for the taking of oral evidence. As these matters can be disposed of rather quickly, an A-Track judge can deal with a few each day since he is not engaged in conducting full trials.

**[33]** Before any case or matter is fixed before an A-Track or a T-Track judge, the registrars of the court will manage the case. These are legally qualified officers attached to the judiciary. They are trained to do the following:

For T-Track cases:

- (a) Ensure that the pleading is closed and the plaintiff’s lawyer has filed a bundle of pleadings within a specified time.
- (b) Ensure that the parties agree on a bundle of documents and that this is filed by a certain date.
- (c) Ensure that witness’ statements used in examination-in-chief by all witnesses called to testify (other than those subpoenaed) are prepared and filed.
- (d) Ensure that the parties agree to a statement of agreed facts.
- (e) Ensure that the parties prepare a statement containing all the issue or issues of the case.

**[34]** Once the above are satisfied, the registrar will fix the case for trial before a T-Track judge. The registrar will also decide on the

estimated time required for the trial of the case after consulting with the lawyers involved.

For A-Track cases, the registrar will:

- (a) ensure that the exchange of affidavits between the parties is completed;
- (b) ensure that there are written submissions from both parties; and
- (c) once these are fulfilled, fix the matter before an A Track judge.

### **New Commercial and Civil Courts**

**[35]** I have mentioned a moment ago that for cases filed after the cut-off date we created new courts, the New Commercial and New Civil Courts. All cases filed after the cut-off date are handled by a different set of judges than those filed prior to the cut-off date. So this set of judges only focus on hearing of current cases. For these new courts, we introduced a new regime of case management and much stricter timetabling of cases by which different stages of litigation should be completed. The target set for them to finish the new cases filed after the cut-off date is nine months from date of filing.

**[36]** With two sets of courts operating two different systems simultaneously, this has produced encouraging results in the disposal of cases. Judges dealing with the current cases adopted an aggressive and proactive style of case management and were

able to fix cases for disposal by way of hearing within a very short time.

**[37]** The introduction of this system provided a more efficient and expeditious procedures to resolve the problem of backlog of cases.

### **Managing Judges**

**[38]** To monitor the implementation of this scheme, the Chief Justice appointed a number of “Managing Judges”. These Managing Judges are appointed among the judges of the Federal Court and the Court of Appeal. Their responsibilities are purely administrative in nature. They are assigned to look after a certain area and micro-managed the courts throughout the country. They monitor the progress of the judges in that location by conducting periodical visits and continuous supervision to assess their performance. The Managing Judges monitor meticulously the time different types and categories of cases take, the time that passes from the date of filing to the date of hearing, the number of interlocutory hearings, the workload of individual judges and the time taken to deliver decisions and written judgments.

**[39]** We also have the E-daily reporting system which is an electronic daily report on cases fixed in all courts across the country. The daily feedback enables Managing Judges to oversee the performance of courts throughout the country. This feedback is useful for planning purposes. With this supervision of the Managing Judges there was uniformity in the implementation of the scheme and any weakness detected was immediately corrected. Problems were identified and solutions were immediately put into action with

the assistance of the Bar, the Attorney General's Chambers and all other stakeholders.

### **Culture and Mind-set**

**[40]** Let me turn to say something about mind-set. We recognized that if reforms were to work, they would require a change not just in the structure of the court but also in the culture and mind-set of judges as well as lawyers. There was a period of time last minute application for adjournment of hearing was often readily entertained by the court on flimsy ground. This contributed to the waste of judicial time and hence delay in disposal of cases. Unless a judge is strict in refusing postponement and is committed to disposing the case or matter before him expeditiously, this system of case management aimed at eradicating the backlog of cases will fail. So it is necessary to convince the judges and the lawyers to change their mind-set.

**[41]** Under the new regime courts are strict in the granting of adjournment and cases are managed to proceed to its completion in a single sitting where possible. When this was strictly enforced, quick protests came from the members of the Bar. Much was said about the injudicious exercise of discretion by the court on one hand and flimsy applications for adjournment by members of the Bar. But in the end both parties understood that for a proper functioning of the system, adjournment of cases should only be granted very sparingly.

**[42]** Practice Directions were issued by the Chief Justice, the President of Court of Appeal, and the Chief Judge of Malaya and by

the Chief Judge of Sabah and Sarawak to regulate the handling of cases and fixing the time. This in turn has brought about in some changes of the mind-set of both Judges and counsel on the issue of adjournment. But still even today the never-ending adjournment of cases would not go away completely. Judges and members of the Bar must do all they can to bring about the required change in culture to overcome this problematic issue.

**[43]** Meanwhile, it is also necessary to ascertain a reasonable number of cases or matters for each judge to handle. One of the most notable features of our reform is that we set performance indicators and measurable bench marks so as to meet the need for timely access to justice. Judicial accountability has been, and continues to be, addressed by the introduction of performance indicators. Time goals have been implemented to measure the time taken for the disposal of a matter from the date of filing to its completion. The time taken for the delivery of reserved judgments is specifically limited and monitored.

**[44]** The Chief Justice called for a meeting of the judges and by a common consensus it was agreed that for T-Track cases, there should be an average disposal of four cases per month per judge. For A-Track, it was fixed at a maximum of six matters per day. To keep track of this, a chart was designed showing a comparative study of the cases disposal of each judge per month. Upon the first quarter of implementing this scheme all judges achieved their respective targets. With subsequent review, the number of cases or matters set for each judge to complete was increased.

[45] The introduction of a system of active case management by judges represents a significant change in the litigation culture. Under the old regime, litigation process operated along traditional adversarial principles and left entirely the control of the litigation to the parties. They took a passive role in the trial and pre-trial process. Judges generally saw their job as that of neutral umpire whose procedural role was largely restricted to resolving disputes between the parties. Most of the issues arising to pre-trial preparation and handling of the case at trial were left to the lawyers.

[46] Under our reform, however, we encouraged judges to be involved in the decision making process from the moment the claim is filed. Judges are expected to spend a much greater of their time reading and preparing for cases. The aim is to encourage the parties to settle, to use alternative dispute resolution and to identify real issue.

### **Modern Information Technology**

[47] Once the structure of the court was reorganised, we upgraded the computer elements in the courts by installing and applying a comprehensive use of modern court information and communication technology to improve efficiency, access and speed. It is inevitable that the judiciary must invest in modern technology in order to become more business-like approach.

[48] The initial priority was to strengthen the infrastructure so as to create a system that was fast, efficient, modern and secure. This was achieved by ensuring that there was an adequate provision of hardware for all courts throughout the country in the form of laptops,

personal computers and printers for all judicial officers and supporting staff.

**[49]** Bold use of technology is essential as the judiciary focus on improving the way we operate and the quality of our service and meet growing expectations of transparency. Presently, the technology which is utilised is the **E-Court System** comprising four main components. Let me say a word about each of the components:

(a) **Case Management System (CMS)**, which is the main component of the E-Court System. This is a software programme specially designed for the Malaysian courts, which enable us to record and track the progress of cases. This system features a computer network which allows access to information on the network at a click of mouse. CMS provides an integrated system for managing the cases that allows for computerizing file tracking, scheduling or trials, retrieving of statistics, managing reports and monitoring the cases.

Previously, as I have mentioned earlier, all cases were registered manually at the registration counter and were recorded in a cause book'. The CMS creates a detailed record of a case, doing away with the manual process. The information is retrievable at any time.

The CMS system offers the following benefits:

- Complete automation of court case management and related operations.
- Electronic information of case progression at all stages.



- Document management in electronic formats.
- Court session planning and scheduling fully automated.
- Comprehensive reporting.
- Creation of any necessary documentation through template system.
- Workflow optimization and acceleration for court supporting staff.
- Comprehensive registration of case.
- Automatic allocation of case according to predefined orders and policies.
- Complete reduction of routine, repetitive operations.
- Reductions of errors caused by human factor.
- Increase of court operation transparency and accessibility to the public.
- Robust security and access control.

(b) **Court Recording and Transcription (CRT).** This system, installed in all courts, records the entire proceedings in court electronically in an audio-visual format. The court proceedings are recorded by five cameras installed at strategic locations in the courtroom to focus on the person who is speaking. It automatically edits the visual to facilitate the person who subsequently transcribes it into print by identifying the speaker.

Previously, the recording of the proceedings was done manually, that is in handwritten form. The video recording of the court proceedings may be converted into various forms, such as CDR, DVD or in a thumb drive. So the sight of a judge laboriously taking written notes is already disappearing.

So judges can just sit back, listen, observe, contemplate, deliberate and decide. No hearing can be more well-organized and efficient than that.

The CRT system offers the following benefits:

- Judges and lawyers are no longer distracted with the ongoing written transcription and are able to concentrate on the hearing.
- If need be, the note of proceedings can be prepared instantly or on the same day.
- Trial time is considerably shortened because judges are relieved from the tedious task of recording the evidence in writing.

(c) **E-Filing System.** By this system documents are now filed electronically, thus taking up very little physical storage space. This system provides an avenue for lawyers to file their court documents through the Internet via E-filing Portal. We also provide service bureau for lawyers and litigants to bring in the hard copy of their documents to be scanned into the court computer server.

In order to start E-Filing, each legal firm must have one organisation certificate purchased from a designated company for digital verification of the electronic filing of court documents. Each legal firm also has to purchase at least one individual roaming certificate in the name of the owner/partner/counsel in charge of litigation of the legal firm, for digital signature.

The greatest advantage of this system is the ability to recall any document filed in court without the need of a physical file. This has substantially reduced the time taken for the disposal of a case or matter. In addition, there have not been complaints of lost files nor that files cannot be located. E-Filing is designed to improve court efficiency and provides the following benefits:

- Online registration of cases.
- Online verification of documents.
- Online submission of documents.
- Allow counsels to do file search online.
- Payment to the court can be made online via internet banking.
- Retrieval of court documents online.
- Interactive alerts and online notifications of filing status.
- Allow counsels to correspond online.
- Eliminate incidents of missing files and documents.
- On security, the e-Filing system has a backup system.
- On authenticity, Digital signatures provide “non-repudiation”, the ability to identify the author and whether the document has been change since it was digitally signed.
- Documents submitted to and issued by the court will be in PDF format to eliminate editing to the original.

(d) **Queue Management System** is designed to manage the scheduling and waiting time for cases which are fixed for case management before the registrars. Previously, lawyers

and members of the public had to wait for their cases to be called out by staff members of the Court. Much time is wasted waiting for their cases to be called and the waiting may take hours.

With the implementation of this system, lawyers are able to record their attendance using the kiosk provided in the Court premises. The kiosk will provide confirmation of whether the case is listed and provides information in relation to the venue of the hearing. Lawyers have the option to also register for a short messaging system (SMS) alert, which means that they will be informed via SMS when their case is ready to be called. With this system, lawyers and parties involved in a case may, in the meantime attend to other matters.

**[50]** The success of the reform strategy and programme initiated in 2009 can be attributed in large part to the introduction of a cohesive modern technology which was closely matched to the Judiciary's core objectives. Our E-Court System, has made the biggest impact in enhancing the judicial delivery system and in dealing with our backlog of cases. In fact, there is a steady increase in the number of requests from foreign jurisdictions to study our E-Court System. The E-Court System has transformed the adjudication system, enabling the public to gain significant benefits while modernising the judiciary. Initiatives and efforts continue to be implemented to allow for an optimum utilisation of the system. But technology alone does not improve the justice system. It is the dedicated and hard-working supporting staff, who make the E-Court system work.

[51] We are also mindful that technology alone does not improve the entire system. At the same time, in tandem with the application and extensive use of modern technology for courts, the changes and reforms also span across other dimensions.

### **Redeployment of cases away from the High Court**

[52] One of the most notable general trends in the civil justice system of most common law jurisdictions including UK has been to redeploy cases away from the High Court. Cases which previously would have been heard by a High Court are now routinely tried by a judge of the court subordinate to High Court. We followed similar trends by way of amendments to the Subordinate Courts Act 1948. The relevant amendments, which came into force on 1 March 2013, increases the jurisdiction of the Subordinate Courts. The civil jurisdiction of the Sessions Court is increased to RM1 million from RM250,000.00. It now also has the jurisdiction to grant injunctions, declaration specific performance and rescission of contract which was previously under the exclusive jurisdiction of the High Court. The civil jurisdiction of Magistrates Court was increased to RM100,000.00 from RM25,000.00.

[53] With the amendment, there was a reduction of more than 50% in the number of writ actions filed in the High Court. The High Court could therefore concentrate more on hearing and disposing the more complex matters falling within its jurisdiction.

## **Court-annexed Mediation**

**[54]** Although dispensing justice in civil and criminal litigations remain the core judicial function, we introduced court-annexed mediation as an alternative to litigation in 2011 to encourage parties to engage in mediation to settle disputes. This alternative mode has since then been integrated into the court process. Mediation processes are widely practiced in Malaysia and exist alongside the traditional dispute resolution process of having a dispute adjudicated in the courts. There has been an increasing emphasis on the development of alternative dispute resolution methods which avoid the time, cost and stress of a formal court hearing. The court-annexed mediation program is a free mediation program using judges as mediators to help disputing parties in a litigation to find solution and to encourage settlement of disputes without trial.

**[55]** A Practice Direction was issued in August 2010 by the Chief Justice of Malaysia directing all levels of courts to facilitate the settlement of disputes or matters before the courts by way of mediation. Every judge now plays an active role in facilitating and promoting mediation. Judges may suggest mediation to the parties and encourage them to settle their disputes at the pre-trial case management stage or at any stage in the proceedings, even after a trial has commenced. It is a service provided by the judiciary as an alternative to a trial at no costs of the parties and nothing is lost by attempting to mediate a resolution.

**[56]** Through mediation, the court attempts to help the parties to reach a settlement by acting as a go-between, articulating and explaining the views of each of the parties. The court fulfils an

intermediary role rather than being an active participant in the resolution process.

### **Specialised Courts**

[57] Specialization of courts is another important step which has been initiated by the judiciary to tackle case backlog and to expedite the disposal of cases. Specialisation promotes speed, expertise and efficiency. Certain types of cases are to be heard and decided in dedicated courts such as Intellectual Property Court, the Islamic Banking Court (Muamalat Court), the Admiralty Court, Construction Court, Environmental Court, Coroner's Court and Anti-Profiteering Court. With specialist courts, cases are resolved faster than they were before.

### **Judicial Training Program**

[58] We are conscious that in our quest for greater efficiency and speed in the disposal of cases, justice cannot be compromised. This is addressed by emphasising the importance of the quality of judgments handed down at all levels of the judiciary. It is therefore vital that a judge should accept that continuing legal education is part of the job. We observed that most countries with well-developed legal system and judiciary have judicial training institutes or colleges. We realised a continuing judicial training is important to enhance the skill and compatibilities of our judges to meet new challenges. It important therefore that judges spend time in learning their craft.

**[59]** To this end, the Judicial Academy was set up as a training institute in 2012 with the objective to ensure that judges acquire and develop the skill and knowledge necessary to perform their role to the highest professional standards. The teaching programmes include the teaching of substantive and procedural law, the teaching of judgment writing, the teaching of judge craft, the teaching of legal ethics and the teaching of management and interaction skills. Each educational and training programme is designed on a need to learn basis. It is either taught in small groups or to the entire judiciary in a single session. This is to cater to the different and differing levels of judicial knowledge, experience and background of the judges.

**[60]** The training programmes presently run by the Judicial Academy fall into the following two categories. First an in-house training sessions conducted by senior appellate judges. In their capacity as facilitators, these appellate judges conduct face to face training on substantive and procedural law that is regularly or might be raised in the court. The in-house courses are meant to be interactive which requires active participation by judges. Second is a programme run by the Judicial Academy in collaboration with bodies such as Securities Commission, Central Bank and Kuala Lumpur Regional Centre for Arbitration. Under this category, the Judicial Academy invite eminent local and foreign speakers who are expert in their respective field to conduct workshop and to give talks to judges in specialised area of law.

**[61]** Judicial training and learning is an on-going exercise for every judge throughout his judicial career. Judicial training and education has now come to be an integral part of judicial life.



## **Unified Procedural Rules**

**[62]** To improve our service to the public and stakeholders, we introduced a unified and simpler procedural rules for the High Court, Sessions Court and the Magistrates' Court. The Rules of Court 2012, which came into effect on 1 August 2012, standardise the rules of procedure relating to civil cases where only one set of rules apply to both the High Courts and the Subordinate Courts alike. In effectuating a simplified court procedure, the new Rules provide the public an expeditious and simple mechanism to litigation. Under the new regime, one obvious benefit for legal practitioners is that they will only need to keep one set of rules and forms in civil litigation for all Courts, in either paper or electronic form.

**[63]** The Rules have paved the way for more judicial intervention in the court process. We have moved from the system where the litigation process was controlled lawyers. The litigation process is no longer controlled by lawyers. Previously there was very little judicial management and because of that the process often degenerated into an excessively adversarial content. With more judicial intervention at pre-trial stage, we reduce adversarial techniques by encouraging full disclosure of evidence by both sides. The Rules provide the extensive powers given to the court in case management and the willingness of the justice system to involve mediation as part of dispute resolution mechanism.

**[64]** Amongst the important changes in the new Rules are: to streamline the procedure in both the High Court and the Subordinate Courts; the modes of commencement of action are now reduced from four to only two, that is either by writs of

summons or originating summons; all interlocutory applications in the High Court and the Subordinate Courts are standardized by replacing the summons in chambers with notice of application; and the language of the Rules and the prescribed forms are also simplified. The simplicity of the court process is now in place which would hopefully make easier access to justice. The new Rules is one of the continued steps undertaken by the judiciary to change the mind-set and culture of dispensing justice and to reflect the prevailing environment of transparency, accountability and efficiency.

### **New Criminal Justice Regime**

**[65]** In 2010, the Criminal Procedure Code which governs criminal trial was substantially amended. These amendments had a significant impact on the landscape of our criminal litigation process as well as the administration of criminal justice. The concept of pre-trial procedure as well as case management are well entrenched in civil litigation. But the concept of pre-trial process and case management are never heard of in the context of a criminal trial. The amendments, among others, for the first time introduced the concept of pre-trial conference and case management in the criminal litigation process.

**[66]** This new criminal process is aimed to resolve the backlog of criminal cases by providing a concept of 'speedy trial/speedy disposal of cases'. It specifies the timeline for the pre-trial conference, case management and plea bargaining for the criminal cases. The new amendment introduced the process of plea bargaining involving the accused, the prosecution and the court. It

allows a witness statement to be admissible without the need for the maker to be examined in court. There is then a very interesting provision which brings a dramatic change with regard to proof in criminal trial by way of formal admission. All this have brought a radical change to criminal procedure practice.

## **Judicial Appointments**

**[67]** In 2009, the government enacted the Judicial Appointment Commission Act 2009 (the 2009 Act), which established the Judicial Appointment Commission (JAC) to address the issues relating to appointment and promotion of superior courts judges. It has been debated that the previous system of judicial appointment did not satisfy the element of transparency in the selection process.

**[68]** A great deal has changed in the selection of judges since the JAC was established. The JAC was intended to provide greater transparency in the appointment of the judges. Among the functions of the JAC are to select suitably qualified persons who merit appointment as judges and to formulate and implement mechanisms for the selection and appointment of judges. The JAC now makes recommendation to the Prime Minister for any appointment and promotion of Judges.

**[69]** In performing its function in selecting candidates, the 2009 Act expressly requires the Commission to take into account, amongst others, the following criteria: integrity, competency and experience; objectivity, impartiality, fairness and good moral character; decisiveness, ability to make timely judgments and good legal

writing skills; industriousness and ability to manage cases well; and physical and dental health.

### **Ethics of Judges**

[70] The Judges Code of Ethics 2009 renews our statement of values that the judiciary should always maintain the highest standard of probity in keeping with the principles espoused in the Bangalore Principles. The Code is instrumental in the maintenance and enhancement of judicial independence, competence and integrity. The Code requires a judge to uphold the integrity and independence of the Judiciary, avoid impropriety, perform judicial duties fairly and efficiently, and minimize the risk of conflict with the Judge's judicial obligations while conducting extra-judicial activities. The Code requires a judge to declare his assets on his appointment.

### **Results of the Reforms**

[71] In the initial stage of the 2009 reform there was the inevitable confusion and teething problems as well as IT glitches. It will take some time for the reforms to completely settle in. Many were concerned that the cases seem to be rushed through. At the beginning, because the reforms were judge-led, one of the biggest challenges was to change the mind-set of the lawyers and their instinctive resistance to change. The stricter timetabling of cases by which cases should be conclusively concluded and the setting-up of performance indicators and bench marks were at first greeted with much scepticism. But there is no turning back. Litigants and the lawyers have to keep pace with the changes that are taking place.

We have set the time line cases to be disposed, be it at the High Court, Court of Appeal or the Federal Court. We are also moving towards 100% certainty on hearing dates, i.e. when a case is fixed, there will be no adjournment. One positive development in this regard has been the growing willingness of the judges lawyers to accept these changes. The key to accomplishments of the reforms is a change in culture in the conduct of litigation and judging both on the parts of the judges and members of the Bar.

**[72]** Judges too in the beginning had some reservation to embrace modern technology. It is a distressing experience for some to move away from familiar paper based case files. Most judges are very used to handling physical papers and to see the words on paper rather than on computer screen. But, technology has no respect for legal traditions. Judges progressively adapted to handing e-documents. After some initial hesitancy, judges agreed that the use of these systems enabled them to conduct hearings and trials more rapidly and efficiently. It was a welcome change not to be overwhelmed with loads of physical papers. They have changed their mind-set. The use of modern technology has now become entrenched in judicial culture.

**[73]** We have extensively and intensively embraced modern technology to enhance the delivery of justice and improve internal administration and operations. This process is marching on with an ever increasing momentum.

**[74]** After a period lasting less than three years, these broad range of reforms have showed a positive and promising results in our judicial works. We have managed to finally eliminate our age-old

affliction, i.e. the backlog of cases that beset the judiciary and the administration of justice.

**[75]** As a result of all this, we now have a bench mark or yardstick by which cases can be resolved. Generally for all new civil cases filed in our subordinate courts today, they will be dealt with, resolved and disposed of within six months from the date of filing and twelve months for criminal cases.

**[76]** For the High court, all new civil cases will be disposed within nine months from the date of filing and criminal cases within twelve months.

**[77]** For the Court of Appeal, interlocutory matters appeals and leave applications will be heard within three months from the date of registration. Full trial civil appeals, will be dealt with within six months from the date of filing. In respect of criminal appeals, the focus is to reduce the waiting period to no more than one year.

**[78]** The following timeline has been set with regard to the disposal of matters in the Federal Court: leave applications and civil appeals within six months from the date of registration, criminal appeals within three months from the date a complete record is received and appeals on writs of habeas corpus within three months from the date of registration.

**[79]** The World Bank in its August 2011 Progress Report entitled **MALAYSIA-Court Backlog and Delay Reduction Program** stated that although conducted over a very short period, this reform has been able to produce results rarely reached even in programmes

lasting two or three times as long. The Progress report further stated that the reform provided a counter-example to contemporary pessimism about the possibility of the judicial improving its own performance. The World Bank noted that our reform, which is not radical in its content, offers a model for other countries dealing with similar problems.

**[80]** In **Asian Courts in Context**, edited by Jiunn-Rong Yeh and Wen-Chen Chang, Cambridge University Press, the writer has analysed the reforms introduced in 2009 and the resulting outcomes. At page 403 the writer observed:

*“Within a relatively short period of three years, Chief Justice Zaki Azmi overcame the problem of backlog of cases and has put in place a system where all new commercial and civil cases are now disposed of within nine months. Chief Justice Zaki Azmi achieved this by taking a step to understand the underlying problems and then set out to work tirelessly with his fellow judges to overcome these obstacles. The strategies adopted by Chief Justice Zaki Azmi were not by any definition radical. They were in fact very simplistic and straightforward. However, these strategies were highly effective. The success of these reforms can be attributed to the unwavering commitment and desire on the part of the Chief Justice and his fellow judges to improve the overall system.*

*Chief Justice Zaki Azmi did not merely address the problems that had beset the administration of justice in the country but went beyond that. He laid the groundwork to*

*ensure that the judicial systems and procedures were up to date and on par with those in other developed nations. In the words of one commentator, he restored faith in the judicial system.*

*In the opinion of this author, the singular brilliance of Chief Justice Zaki Azmi lies not just in the fact of the results achieved and the system put in place but in his ability to convince the judiciary, the bar and the public at large of the need for these reforms. This change in mind-set will ensure that the reforms will not be undone in the future but instead will continue with more vigour.”*

**[81]** We have come a long way since the start of our reform in 2009 in bringing the judiciary to the level it is today. Although these judiciary-led initiatives were introduced primarily to address the problems of backlog of cases and delay in the civil litigation process, what may not be apparent is that these reforms also have an impact on matters such as culture and mind-set, efficiency, competency, transparency and technology. Modern technology promotes and facilitates accessibility to justice, transparency, ensures the expeditious and timeous processes, which in turn contribute to public trust and confidence as well as judicial independence and accountability. In short the optimum utilisation of information technology in the administration of justice contributes to the integrity of the Judiciary.

**[82]** However, we are mindful that litigants come to courts not only to have their cases disposed of fast but more importantly to be disposed of justly. Expeditious disposal of cases should never be at



the expense of justice. It is very important for our judges to work hard at this. It is all a question of balancing the need to dispose of cases expeditiously with that of fairness to prevent miscarriages of justice. The challenge facing any justice system is where to find the balance between efficiency and justice (see Professor Dame Hazel Genn in Hamlyn Lectures delivered in 2008). The issue of balancing the competing interests was underlined by the Right Honourable Tun Arifin Zakaria, Chief Justice of Malaysia in **The Malaysian Yearbook Judiciary 2013**. His Lordship described it in these words:

*“This programme to clear cases will continue unabated and will be all-encompassing if we are serious in lending credence to our guiding light that justice delayed is justice denied. As clichéd as it might seem. I might add that in our firm commitment to clear them, we must not lose sight of our guiding philosophy that justice must not be sacrifice.*

*Our concern to constantly be on top so to render the best possible service to the public means that there is no respite from hard work. In this, we are conscious that enhanced judicial output would not run counter to the requisites of good, substantive judgments.”*

**[83]** In this regard, the writer in **Asian Courts in Context** said: *‘Chief Justice Arifin Zakaria succeeded Chief Justice Zaki Azmi in September 2011. Prior to his elevation to Chief Justice of Malaysia, Chief Justice Arifin Zakaria was the Chief Judge of Malaya. He had worked very closely with Chief Zaki Azmi censuring that the reforms of the Zaki court were appropriately implemented. Thus, it is to be*

*expected that the reforms introduced by the Zaki court will continue to be pursued and not abandoned. One such example is the Judicial Academy.*

*During the 2013 Judges' Conference, the Chief Justice outlined the policies to be pursued by the Arifin Court. One of these concerned the issue of transparency, integrity and the public's confidence in the judiciary. Chief Justice Arifin Zakaria has been reported as saying that he will have judges declare their assets. He has also announced that all criminal and civil appeals at the Federal Court will be heard by a five-man quorum instead of a three-man panel. The Chief Justice explained that "it was better figure as all the reasoning would be applied in the judgment and would improve the judicial system." The Chief Justice has also announced the establishment of a special court to deal with matters concerning the environment. The above developments bode well for the state of the judiciary and the administration of justice in the country.'*

## **Future of the Judiciary**

**[84]** In closing, let me say this. Today more than ever, we are facing a more challenging legal landscape. The judiciary is faced with an ever-growing complexity in the way we carry on our core business of judging.

**[85]** We live in time of change. The justice system is changing with public demand and technology fundamentally changing the way justice is delivered and the way we work. The administration of justice is a dynamic and constantly evolving process. The demand

on the justice system is increasingly greater as our nation progresses economically.

**[86]** In a period of deep-rooted changes, reform is inevitable and significant changes must continue to improve access to justice for all levels of society that will have the effect of improving public trust and confidence in the judiciary, while having as its primary objective the goal of continued adherence to the rule of law. We must do our best to cope with and anticipate changes. In the future, where information technology spread through the entire realm of human activity there are greater expectations that justice is delivered efficiently, transparently and promptly. If courts do not respond to the need to adapt changes, public confidence in the judiciary will be eroded.

**[87]** The judiciary must play its leading role and intensify efforts in ensuring that justice is efficiently, speedily and above all justly. The task cannot be left to others. As stated by the Right Honourable Tun Arifin Zakaria, Chief Justice of Malaysia in his speech at the opening of the legal year 2014 on 11<sup>th</sup> January 2014:

*“The primary duty of the Judiciary is to dispense justice as entrusted upon us by the Federal Constitution. I, on behalf of the Judiciary, wish to reaffirm our commitment to uphold the rule of law and to dispense justice without fear or favour. This pledge of ours would be meaningless if there exist excessive delay in the justice delivery system. Since however good our laws may be and however independent and impartial our judges may be, justice*

*cannot be achieved if it takes too long or too expensive for the people to have resort to it.”*

**[88]** I hope this brief account of our experience of courts reforms will be of some interest to you. Thank you.

Note:

This is the edited lecture delivered by Justice Azahar bin Mohamed at the Institute of Advanced Legal Studies on 1 December 2015.