

Discussion in Session I

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Outline of the Discussion

There was consensus among the participants on the importance of judicial reform, which has been taking place since the late 1990s in each country, as a key to success in today's world. It was pointed out that international organizations such as the IMF have played a significant role not only in restructuring economic related laws but also in reforming judiciary systems in developing countries. However, some participants expressed doubt regarding this fact, insisting that solutions had to be found from within rather than from the outside. It is true that the international organizations are making efforts to achieve uniformity throughout the world so that the trade can be carried out smoothly in the economy of each and every country. Nevertheless, it was stressed that to the extent that local needs prevail against economic globalization, the reforms must be thoroughly indigenous.

What are the reasons for delays in civil cases in Asian countries? Some participants argued that one reason was economic crisis and another debts. Others opposed this interpretation, arguing that the main reason was the laxity in the implementation of laws and court procedures, claiming that this was why civil procedure reforms and the establishment of special courts were frequently observed in the 1990s in Asian countries.

Special courts such as the commercial court in Indonesia and the intellectual property court in Thailand were established to deal with matters that were expected to arise with the establishment of a more market-oriented economic system. The problem pointed out was how judges, who were not familiar with economic and financial corporate business, could issue decisions on these cases. From this point view, the device of appointing ad hoc judges for particular cases gathered the interest of participants. For example, Thailand has introduced some ADR schemes involving specialists (non lawyers) into procedures not only as witnesses, but also as a kind of arbitrator.

In addition, special quasi-judicial institutions such as the National Human Rights Commission in India have come into existence in the 1990s, and Indonesia is

preparing to form a special court which will have some jurisdiction on human rights. However, the jurisdictions and procedures used in these courts are often different from ordinary courts. For example, the National Human Rights Commission in India, like international human rights instruments, is limited to issuing recommendations. The Ombudsman system is a part of good governance, although it seems that the political pressures are heavy and little action has been taken in the case of Indonesia.

There was also debate on the prosecutors system (procuracy) in Vietnam and China. The system was adopted based on the system used in the former Soviet Union. The prosecutors in those countries do not only act as the public prosecution for crimes, but also supervise the judgments in civil cases, administrative cases and other cases. This is quite different from the system used in market economy countries. In socialist countries, many people perceive the procuracy, rather than the judiciary, as the top level of the judicial system. It is clear that this system is quite different from the Ombudsman system, too.

A question was raised from the floor regarding the proper balance between control over the judiciary and its independence. One answer was to have a Code of Judicial Conduct, and the other was to ensure that proceedings were open in order to permit oversight by citizens.

Finally, one participant stated in order to achieve reform in the judicial system from the perspective of judicial independence, transparency, accountability and the quality of the legal profession, what is needed is something called inventiveness. This point appears to give meaning to exchanging views on judicial reforms.