

Human Rights Resource Centre (HRRC)
in collaboration with the
Asian International Justice Initiative (AIJI); and
WSD Handa Center for Human Rights and International Justice (Handa Center)

**Judicial Training in ASEAN:
A Comparative Overview of Systems and Programs**

April 2014



COUNTRY FACTSHEET 1: JUDICIAL TRAINING IN BRUNEI DARUSSALAM

A. Training Organization and Institutionalisation

1. *Relevant Recent Legal and Judicial Reforms*

The British had managed to establish a legal system in Brunei styled after their own legal system.⁹⁸ The country, which gained its independence from the United Kingdom in 1984, traditionally heavily relied on the British and Hong Kong jurisdictions as sources of its senior judges.⁹⁹ Brunei Darussalam has no law school to provide formal education or an academy of law to formally train would-be practitioners in the civil law courts.¹⁰⁰ Thus, those in the legal profession usually attained their qualification from either Malaysia or England.¹⁰¹

There is an on-going process to transform the legal system into one that is unique to Brunei, with Brunei slowly developing to put in place its own sets of laws and precedents. For example, the Sultan announced that a Syariah Penal Code would be implemented beginning April 2014. Under the Code, the jurisdiction of the Islamic Courts will expand to deal with offences and penalties prescribed in the Code.¹⁰² Previously, Syariah was mainly restricted to dealing with family law and disputes. These developments may affect considerably the form and content of judicial training to respond to new challenges.¹⁰³¹⁰⁴

2. *Institutions Responsible for Judicial Training*

Institution	Responsibility	Training Oversight and Trainers of the Institution
State Judiciary Department, at the Prime Minister's Office.	The State Judiciary Department was established in 2002 to oversee matters pertaining to administration and finance of the Civil and Syariah Courts. ¹⁰³	This Department is within the Prime Minister's Office. ¹⁰⁴ It is headed by a Director, currently Hj Mohd Serudin Hj Timbang. The State Judiciary Department appears to have discretion in the selection of trainers and has invited lecturers who are not part of the

98 Azrimah Binti Haji Abdul Rahman, Legal Counsel, Attorney General's Chambers. "Working Paper for National Day Seminar 2006, 'Legal System in Brunei Darussalam after the Signing of the Supplementary Agreement 1905/1906 between Brunei and Great Britain.'" 28.

99 See e.g., Simon N. M. Young. "The Hong Kong Multinational Judge in Criminal Appeals" (September 1, 2008). *Law in Context (Special Issue on Criminals Appeals 1907-2007)*, Vol. 26, pp. 130-150, 2008. Available at SSRN: <http://ssrn.com/abstract=1317178>

100 Nabil Daraina Badaruddin. "Legal Education in ASEAN in the 21st Century: Brunei Perspective." N.d. Available at: http://www.aseanlawassociation.org/9GAdocs/w2_Brunei.pdf (accessed 31 January 2014).

101 "Legal Systems in ASEAN." *ASEAN Law Association* Webpage. Accessed 31 January 2014. http://www.aseanlawassociation.org/papers/Brunei_chp5.pdf. See also "Find Legal expertise in Brunei Darussalam." *Nexus Commonwealth Network Brunei Darussalam*. http://www.commonwealthofnations.org/sectors-brunei_darussalam/business/legal/.

102 "Brunei Darussalam country brief." *Australian Government: Department of Foreign Affairs and Trade* Webpage. Accessed 1 April 2014. http://www.dfat.gov.au/geo/brunei/brunei_brief.html; and "Monarch calls public to unite as one to support Syariah law." *Borneo Post Online* (7 March 2014). Webpage. Accessed 22 March 2014. <http://www.theborneopost.com/2014/03/07/monarch-calls-public-to-unite-as-one-to-support-syariah-law/>.

103 Datin Paduka Hayyati Saleh. "Brunei Darussalam: Independence of The Judiciary Revisited and Towards More Effective Case Management." *ASEAN Law Association* PDF. Accessed 31 January 2014. http://www.aseanlawassociation.org/docs/w1_brunei.pdf

104 "The Brunei Civil Service Heads of Government Ministries and Departments." *bruneiresources.com* Webpage. Accessed 1 April 2014. <http://www.bruneiresources.com/civilserviceheads.html>

	Sources indicate that this Department provides training for court officers and staff, such as court interpreters. ¹⁰⁵	government, including representatives from judicial training institutions of other countries, such as Malaysia. ¹⁰⁶
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3. *Participants of Judicial Training*

Requisites for Participants	Recruitment Process	Annual Average Number of Graduates
As completing a pre-judicature training program does not appear to be mandatory, only persons who have been appointed to the Bench undertake judicial training.	The State Judiciary Department appears to decide who are able to take part in the training courses it holds within the country. There is little information on the recruitment process and there is no information on criteria for the selection of candidates.	Not adequately identified in available literature.

4. *Necessity of Undergoing Pre-Judicature Training*

Literature does not indicate prior judicial training as a precondition for appointment as a judge. It appears that a judge essentially learns more about his/her functions by himself or herself as he/she carries out his/her work or through in-service training courses.

The Sultan of Brunei appoints members of the judiciary usually in consultation with the Chief Justice.¹⁰⁷ While Section 7 of Brunei’s Supreme Court Act¹⁰⁸ and Section 10 of the Intermediate Courts Act¹⁰⁹ require seven or five years of experience respectively as a judge, advocate or solicitor to be appointed, Section 9 of the Subordinate Courts Act simply requires a person to be “fit and proper” to be a magistrate.¹¹⁰

For Chief Syar’ie Judges, Appeal Court Judges, or High Court Judges, under Sections 8-11 of the Syariah Courts Act, the requirement is seven years of experience as a Judge of a Syariah Court, or Kadi, or being learned in *Hukum Syara’*. For High Court Judges, experience as Registrar, or Syar’ie Prosecutor is also considered. For Subordinate Court Judges, appointments are simply made on the advice of the President of the Majlis and after consultation with the Majlis.¹¹¹

105 Quratul-Ain Bandial. “Court interpreters need more training.” *The Brunei Times* (30 October 2010). Webpage. Accessed 2 April 2014. <http://www.bt.com.bn/news-national/2010/10/30/court-interpreters-need-more-training>

106 Ibid.

107 Datin Paduka Hayati Saleh. “Brunei Darussalam: Independence of The Judiciary Revisited.”

108 Supreme Court Act (1984 as amended in 2001), Brunei Darussalam. Available at <http://www.commonlii.org/bn/legis/sc5226/> (accessed 1 April 2014).

109 Intermediate Courts, Cap. 162. Available at http://www.agc.gov.bn/agc1/images/LAWS/ACT_PDF/cap162.pdf (accessed 1 April 2014).

110 Subordinate Courts Act. Available at <http://www.commonlii.org/bn/legis/sc6271/> (accessed 27 February 2014).

111 Syariah Courts Act. Available at http://www.agc.gov.bn/agc1/images/LAWS/ACT_PDF/cap184.pdf (accessed 17 March 2014).

B. Structure and Content of Training Programme for Judges

1. Structure of Training Curriculum

Literature does not mention any training curriculum for the past or recent years. Training seems to be *ad-hoc* in nature. For instance, to improve case management, plans were developed for both the judicial officers and staff to undergo constant training in judicial administration.¹¹² In the past, the training topics have included alternative dispute resolution.¹¹³ Judges are also sent abroad for brief training. For instance, senior judges attended a forum on “Judicial Protection of China-ASEAN Free Trade Area” in Nanning, Guangxi province, China, from 8-12 October 2008.¹¹⁴ A delegation from Brunei also attended the inaugural Alternative Dispute Resolution Conference at the Supreme Court in Singapore on 4 and 5 October 2012.¹¹⁵

2. Content of Training Curriculum: Selected Specific Topics

a.) Judicial Ethics

There is no available literature to indicate that judges are specifically trained on judicial ethics. Nonetheless, on the occasion of the Opening of Legal Year 2004, the Chief Justice cited the “principles, procedures and ethics of the common law upon which our judicial system is firmly embedded.”¹¹⁶ Thus, to the extent that the judiciary considers judicial ethics important, there may have been courses covering the topic.

b.) Human Rights and/or Fair Trial Rights

No available literature indicates that judges are specifically trained on human rights or fair trial rights. However, the oath of a member of the Supreme Court is to “do right to all manner of people after the laws and usages of the country, without fear or favour, affection or ill-will.”¹¹⁷ Additionally, according to its website, the goal of the judiciary is “securing justice, enhancing access to justice and preserving public trust and confidence.”¹¹⁸ Training courses may thus take or have taken human rights principles into account. In relation to international human rights treaties, it could be noted that Brunei has been among the “most reluctant ratifiers” of the ASEAN, together with Singapore and Myanmar.¹¹⁹ Brunei has ratified only the Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of the Child.¹²⁰

112 Pg Rostaina Pg Duraman, Chief Registrar, Supreme Court Brunei. “The Framework of the Judicial Cooperation in ASEAN in Case Management The Brunei Darussalam Experience.” 12. Available at <http://www.aseanlawassociation.org/11GAdocs/workshop2-brunei.pdf> (accessed 17 March 2014).

113 Judicial Brunei Darussalam. “Judiciary Brunei Darussalam.” Website. Accessed 31 January 2014. <http://www.judicial.gov.bn/>

114 “Judges agree to create conducive environment for China-Asean FTA.” *The Brunei Times* (16 October 2008). Webpage. Accessed 1 April 2014. http://www.bt.com.bn/home_news/2008/10/16/judges_agree_to_create_conducive_environment_for_china_asean_fta

115 “Judiciary Brunei Darussalam.” Website.

116 Ibid.

117 Datin Paduka Hayati Saleh. “Brunei Darussalam: Independence of The Judiciary Revisited.”

118 “Judiciary Brunei Darussalam.” Website.

119 European Parliament, Directorate-General for External Policies, Policy Department. “ASEAN Citizen’s Rights, Rule of Law, Judiciary, and Law Enforcement” (July 2013). 8.

120 Ibid., 16-17.

c.) *ASEAN Instruments*

No available literature indicates that judges are specifically trained on the ASEAN Charter or other regional instruments. Nonetheless, cooperation with ASEAN counterparts appears to be valued. Senior judges attend annual ASEAN Law Governing Council meetings that discuss topics of common interest in the areas of Judicial Cooperation, Legal Profession, Legal Education, Legal Information, International Law, Alternative Dispute Resolution and Business Law.¹²¹

d.) *International/Comparative Law and Conflict of Laws*

No available literature indicates that judges are specifically trained on international or comparative law and conflict of laws. These issues may be dealt with in the same way as other legal issues, with topics included in training courses when the State Judiciary Department appreciates the need for doing so.

3. Continuing Judicial Education

There does not appear to be any systematized judicial training programme in Brunei and there does not appear to be any curriculum. Training does happen through in-house training, training abroad, and visits from trainers and experts of other jurisdictions.

121 “Brunei attends Asean Law meet.” *The Brunei Times* (8 March 2011). Webpage. Accessed 1 April 2014. <http://www.bt.com.bn/news-national/2011/03/08/brunei-attends-asean-law-meet>