

## ANNUAL REPORT FOR THE JUDICIARY OF THE KINGDOM OF BHUTAN, 2008

The fundamental importance of the Judiciary is to sustain the whole edifice of society by upholding the rule of law. It is not only to punish the offender. It is also to protect the citizen and safeguard his or her freedom. The machinery and administration of the Courts will have to adapt from time to time through reforms, and their high place must be maintained and their functions preserved so that, right may be done to all manner of people according to Article 21 section 1 of the Constitution which states that:

*“The Judiciary shall safeguard, uphold, and administer Justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to Justice.”*

### **1 Independence of Judiciary**

The independence of Judiciary is one of the cornerstones for the national policy as mandated by the Constitution of Bhutan. Judicial power from the apex to the lowest court is separated from the other branches of the government. The independent administration of justice includes personal independence *inter alia* selection and appointment of judges on the consultation and recommendation of the National Judicial Commission, and security of tenure under the Constitution. Further, the judicial personnel are selected, recruited and appointed under the Judicial Service Act, 2007. The salient feature of the Judicial Service Act, 2007 is section 230 which provides that:

*“The amendment of this Act by way of addition, variation or repeal may be effected only when the Commission or the Council submit a motion to Parliament, subject to the requirement that amendments shall not undermine the effectiveness of the Judicial Service.”*

### **2 Access to Justice**

The Royal Courts of Justice has provided equal and unimpeded access to justice through reliable, fair and efficient justice system based on the principle of one stop window for the Registry in keeping with the policy of providing user friendly courts. Every court has a Registrar specifically dealing with complaints, counseling and the registration of cases. Miscellaneous matters are heard everyday from 9 AM to 10 AM. The admission or dismissals of matters are decided within 10 days to avoid public harassment and undue delay.

This report doesn't feature the statistics of the newly created Dungkhag Courts. The workloads of the courts in 2008 are as follows:

- (a) 18, 846 miscellaneous matters were heard by the Courts in Bhutan. Thimphu led with 3,640 matters followed by Paro with 1,515 matters;
- (b) 2,197 cases were brought forward from 2007;

- (c) 8,732 cases were registered. The highest number was recorded in Trashigang with 911 cases and the second highest was recorded in Paro with 792 cases. The lowest number was 29 cases in Gasa;
- (d) 9,388 cases were decided; Out of which, 6,319 cases were decided within 108 days and 3,068 cases were decided within 365 days;
- (e) 364 registered cases were appealed to High Court;
- (f) As on 31<sup>st</sup> December 2008, 1,541 cases were pending. Out of the total pending cases, 47 cases have been pending beyond 365 days. The responsibility and the accountability of delay in adjudication of cases beyond the stipulated period are fixed on the concerned Drangpon and the Bench Clerk. Every Drangpon has independent decision making authority. However, the report on cases delayed beyond stipulated period are reported to the Chief Justice annually in keeping with the principle of “management by exception”; and
- (g) 86,788 hearings were conducted. An average of 9 hearings was conducted per case.

### **3 Quality of Justice**

Natural justice demands that the right to appeal must be granted to correct errors, if any and to be reviewed by appellate courts. In 2008, of the total 364 appeal cases registered with the three Benches of the High Court:

- (a) 158 cases were affirmed;
- (b) 35 cases were partially reversed, while 40 cases were fully reversed;
- (c) 24 appeal cases were settled through mediation;
- (d) 1 default and 3 summary judgments were awarded;
- (e) 29 cases were withdrawn;
- (f) 15 cases were dismissed; and
- (g) 59 cases are under review.

The Review Bench of the High Court adjudicated 81 cases out of which:

- (a) 39 cases were affirmed;
- (b) 8 cases were partially reversed, while 7 cases were fully reversed;
- (c) 3 cases were resolved through mediation;
- (d) 3 cases were withdrawn; and

(e) 21 cases are under review.

#### **4 Appeal to His Majesty the Druk Gyalpo**

A total number of 25 cases were appealed to His Majesty the Druk Gyalpo.

#### **5 Trends of Cases**

Statistics show that the highest number of cases recorded were 3,768 matrimonial cases which is inclusive of applications for award of marriage certificates. The second highest number of cases recorded pertains to monetary matters totaling 1,557 cases.

**Comparative Statistics of 2007 and 2008** - In 2008, the Courts in Bhutan heard a total number of 18,846 miscellaneous matters and registered 8,732 cases. In comparison to 2007, there has been a decrease of 11.8% miscellaneous matters and a decrease of 23% in the numbers of cases being registered. The reduction may be attributed to the transfer of land cases to the Land Commission.

Of the total 305 appealed cases adjudicated by the High Court in 2008, the decisions in 230 cases were affirmed, withdrawn, dismissed, mediated or issued summary judgments. The decisions in 75 cases were partially reversed or fully reversed. The trend in the reversal of decisions rendered by the lower Courts is healthy for the functioning of the court system. The appellate courts are not only to affirm the decisions of the lower courts but to check error and injustice, ensuring that justice is accorded to the aggrieved party. It is to ensure that justice is not to conceal the judicial personnel's error but to uphold law.

#### **6 Remedial Measures**

The judicial processes were further streamlined in 2008. The procedure is a series of logical steps and chronological sequence to protect the rights of the litigants, exhaust the submissions and endeavour to find truth. The Courts were inspected from February to May 2008 to monitor the services rendered and quality related to procedure in the dispensation of justice.

The Judiciary of Bhutan has continued harnessing the use of ICT for addressing and further strengthening the rule of law, eliminate repetitive action, and usher in transparency and accountability of the judicial process by posting the judgments on the judicial website.

#### **7 Human Resource Development**

An effective justice system requires well trained judges and clerks. Judicial training is the foundation of judicial reform and a key component of human resource development as well as creating new values, attitudes and behaviours, and building a common agenda within the Judiciary. The court reform strategies have focussed on enhancing operational efficiency and developing human resource capacity. Two lawyers were sent for their Masters Degree in 2008 and a number of lawyers undertook short term courses. Avenues and funds to train more lawyers in specific legal fields in the future are being explored.

**Operational Efficiency** – To improve the efficiency and delivery of judicial services, the Judiciary periodically provides specific trainings. Statistics from the CIS (Case Information System) are generated to study the trend of cases. Repetitive and routine works are assigned through ICT and forms to avoid infraction of the procedural justice. A number of workshops were conducted in 2008 to remedy errors. The updated third edition of the Bench Book and 86 forms were published and released on 6 November 2008 coinciding with the Coronation of the His Majesty the Fifth Druk Gyalpo.

## **8 Judicial Infrastructure Development**

Judicial independence and separation of power is also manifested by the external embodiment and environment visually through independent court buildings. A visible structure of court infrastructure is vital to inspire confidence of the people. The construction of the Supreme Court is underway with the funding of the Government of India. The construction of Gelephu and Mongar Courts are nearing its completion funded by DANIDA. The foundation laying ceremony for Tsirang and Trashigang Court construction has also been carried out under the support of DANIDA, a long term development partner of the Judiciary. Further, collaboration with the Helvetas on the construction of courts in Bumthang and Trongsa has been initiated.

## **Conclusion**

The Judiciary of Bhutan will endeavour to improve its performance and work hard to gain public confidence in obedience to His Majesty's vision for a vibrant democracy and preserving the rule of law. The court system will continue to explore avenues to face the new challenges fostered by the introduction of parliamentary democracy. Further judicial reforms agendas are being considered that underscore fairness, transparency, and inexpensive delivery of both procedural and substantive justice.