



Action Report

Bar Associations and the Pandemic Response Webinar Series

On September 15, 2021, LawAsia and the American Bar Association (ABA) coordinated a dialogue on the challenges legal communities face because of the pandemic and how bar associations are responding. The discussion in this session, the first in a series of four dialogues, centered around challenges in three main topical areas: **access to justice**, laws adopted via **abbreviated legislative processes**, and challenges faced by **individual bar members**.

Opening Remarks

- Mr. Chunghwan Choi, President of LawAsia
- Mr. Reginald Turner, President of the ABA

Rapporteurs

- Sara Sandford
- Annalee Patel

Facilitator

- Mr. Alberto Mora, Associate Executive Director, Global Programs for the ABA

Presenters

- Ms. Lisa Sam, Vice President of the Law Society of Singapore
- Mr. Saliya Peiris, President of the Bar Association of Sri Lanka
- Ms. Eugene SOHN Member of International Committee, Korea Bar Association
- Prof. Juliet Suzanne Sorensen, ABA Task Force on Legal Needs Arising from the Coronavirus Pandemic



Below is a summary of the actions analyzed during the session, followed by specific recommendations from each panelist.

Access to Justice

Delays in hearings due to court closures and postponements during lockdowns adversely impacted access to justice and timely consideration of cases. Prolonging pre-trial detentions and preventing people in urgent need of assistance from authorities – forced evictions or abusive relationships, for example – affected people’s human rights and safety. Court re-openings were backlogged, stretching the bandwidth of judges and lawyers, leading to concerns about responding to the above needs while maintaining the quality of legal representation and decisions.

Recommendations

Hybrid virtual and in-person hearing structure was an effective way to improve the efficiency of courts and access to justice.

Successful strategies to capitalize on this innovation could include:

- Training court staff, judges, and lawyers on how to use the technology. Digital security and effective communication techniques are also recommended for improved digital advocacy.
- Tasking lawyers to help resolve commercial disputes timely through a non-mandatory adjudicative process and mediation that can be done virtually.
- Setting standards for when virtual hearings are permissible/required. For example, in ex parte and chambers hearings and mediation.
- Hybrid models must be sure to balance the need for improved efficacy with the right of defendants to challenge accusers in relation to virtual cross-examinations.
- Standardizing forms and filings required for virtual and asynchronous (email) hearings.

Bar Members

Across the region, lawyers reported feeling isolated and burdened by increased workloads— remaining abreast of changing laws and filing requirements, dealing with new technology, and addressing the backlog of cases after courts re-opened. Burn-out and financial uncertainty pose significant personal challenges to members of the legal community across Asia.

Recommendations

Establish support systems for lawyers including but not limited to:

- Financial supports: waiver or reduced fees for certain members and unemployment support.

- Mental support: virtual psychologists; virtual huddles to provide social interaction and venting.
- Offer mentorship programs to support newly admitted lawyers and developed expanded legal education offerings (conducted virtually).
- Capitalize on opportunities of the virtual era -- expanded legal education offerings; exchanges with legal communities in other countries; and virtual exhibitions to promote domestic lawyers abroad.

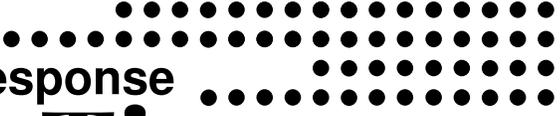
Legislative Process

Transparency and due process was undermined by a lack of involvement by constituencies typically afforded input on legislation. Lack of involvement by legal experts and bar associations resulted in a variety of issues – including ambiguities and inconsistencies in new regulations – making it difficult for the public to understand and comply with new laws. In some cases, concerns arose about the enforceability and constitutionality of legislation adopted quickly. In other cases, new legislation allowed for human rights abuses and safety risks, without concomitant benefit to society that was the original basis for adopting the law. For example, some governments have used lockdown laws to stifle dissent when similar activities of pro-government activists were not restricted.

Recommendations

Develop stronger institutional working relationships with government departments, in particular health departments, to develop laws to prevent and respond to future health crises. Particular attention should be paid to potential human rights and constitutional impacts of legislation such as:

- Health discrimination in treatment and vaccine distribution.
- Certain individuals/businesses taking significant losses for the benefit of all without compensation.
- Establish committees or working groups within bar associations to address specific challenges enables input from diverse sectors of the legal profession and can lead to more comprehensive solutions in a shorter timeframe.



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Speakers' Action Tips

Offered by Vice President Lisa Sam of Singapore

To Help Members

- Consider relief for new lawyers – reduced bar dues, stipends, mentoring, free CLE/CPD.
- Help firms hire – advertising subsidies and other financial support.
- Seek government support for unemployed – including staff.
- Establish a compassion fund for emergency one-off needs of lawyers and law-related staff.
- Establish periodic “virtual huddles” – Zoom gatherings to share best practices, see one another, and avoid isolation.
- Acknowledge and address the technology gap – including equipment, infrastructure, and training – they could have done more for senior attorneys on this point, in retrospect.
- Offer confidential mental health counseling.
- Survey members to understand their needs.
- Establish methods to carry on existing benefits programs virtually, if needed.
- Establish methods to conduct associations business virtually.
- Liaise with the government to help address the needs of society members and the broader legal community.

To Help the Public

- Balance speed with the importance of access to justice. Virtual hearings are one answer, in some cases.
- Help with hearings and ADR virtually to help resolve disputes even if not, in person.
- Consider having experienced lawyers decide contract disputes in lieu of court proceedings, in certain instances.

Offered by President Saliya Peiris of Sri Lanka:

To Help Members

- Make sure the judiciary and bar are prepared for the possible need to operate via remote technology to avoid the stress on all participants from delay and compacted schedules resulting from backlogs.
- Consider tolling of time bars (statute of limitations) in connection with claims.
- Offer lawyers with less than five years' experience “kind hands” – financial support.
- Take advantage of the delays to offer more CLE online, including in multiple languages.

To Help the Public

- Balance interest in timely hearings with interest in fair hearings, especially in the criminal law context.
- Consider the bar association's obligation to challenge non-scientific based decisions of the government that affect individual rights and freedoms, such as the mandated cremation that was in place in Sri Lanka for almost a year.
- Take the lead publicly to remind the authorities of their obligation to honor human rights even during a pandemic, including the right to protest.
- Work with authorities to establish protocols to better protect individuals from domestic violence and address acts of violence that do occur.
- Work with the government to make sure health laws are up to date and fairly address the needs of society in a present-day health crisis, including a system of administering required vaccines or healthcare fairly and efficiently.



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Speakers' Action Tips

Offered by Ms. Eugene Sohn of South Korea:

To Help Members

- Develop a handbook (the KBA's was 400 pages) on advising clients on COVID-related disputes and issues.
- Consider member fee reductions but leave such decisions to regional leaders who can decide on a case-by-case basis.

To Help the Public

- Establish a process to learn from experience in the pandemic (like post-MERS in 2015). Assess whether human rights were adequately protected, for example in the how private information was used and disposed of in the government led tracing and tracking program.
- Support legislation for those businesses that disproportionately bear the brunt of the economic consequences, for the benefit of all.
- Prepare the court system to deal with the backlog that develops on cases affected by sick participants.
- Raise money to help those in need and distribute masks by increasing pro bono efforts to support the legal needs of those impacted by illness.

Offered by Professor Juliet Suzanne Sorensen for the United States:

To Help Members

- Address the digital divide of parties and lawyers with varied technological facilities through training, etc.
- Educate members about the impacts of the pandemic and the needs of the community that they can help serve.

To Help the Public

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