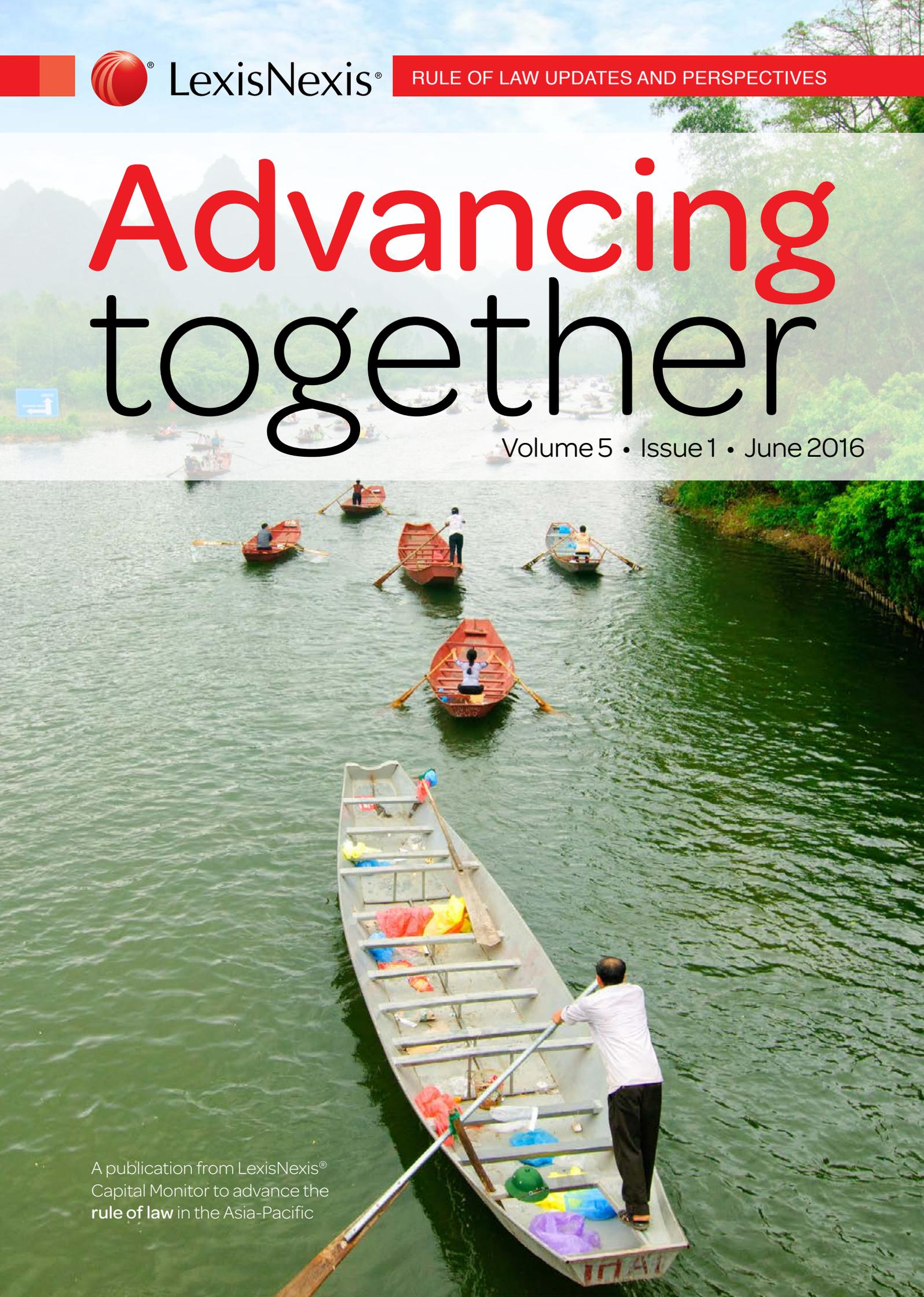


# Advancing together

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A publication from LexisNexis®  
Capital Monitor to advance the  
**rule of law** in the Asia-Pacific

# Advancing together

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Dear Reader,

Welcome to the first issue of *Advancing Together* for 2016.

There have been a number of projects continuing across the Asia Pacific region to support transparency of the law and improve access to justice, which have involved LexisNexis® staff, as well as partners, to ensure that our global vision to support and advance the rule of law is met.

We recently sponsored the launch of the inaugural Independent Lawyers Association of Myanmar (ILAM), as ILAM will play a key role in rebuilding and restoring the transparency of the legal system, and rule of law in Myanmar. The launch was held in the capital of Naypyidaw, and was attended by prominent human rights activist and Nobel Peace Prize recipient, Daw Aung San Suu Kyi.

We continue to help create a sustainable structure for legal education in the country at Yangon Law School and Mandalay Law School by providing access to resources, including law books and training. In February, we facilitated the Philippine Group of Law Librarians (PGLL) to visit the Yangon Law School Library, in Myanmar, to assist with the rebuilding and cataloguing of the library after the devastating effects of Typhoon Nargis. The Vice President of PGLL, Milagros Santos-Ong, shares her experiences in this issue.

Last year, training was conducted on legislation consolidation and structure to support sustainable legislation maintenance in the Maldives. This project highlights the necessity of accessible legal remedy, which continues on into 2016 with a production of a complete hardcopy set of Maldivian legislation from 1968-2015 in the Maldivian national language Dhivehi, as well as developing an online legal research platform, to be launched later this year.

The Australian team is continuing their work on consolidating the Laws of Fiji, which will be launching this year at Parliament House in Suva. The team has been working closely with the Fijian Attorney-General's Office in preparing and publishing the consolidated Laws of Fiji, which will also become available to the public via an online portal.

Our Hong Kong team is supporting the legal community through facilitating pro bono and volunteering opportunities, as well as providing free access to a new Lexis® Practical Guidance module on Social Justice. This extends our complimentary rule of law Practical Guidance modules, where New Zealand provides free access to the Practical Guidance Slave Free module to help end the injustice of modern slavery and human trafficking.

We look forward to continue sharing our rule of law projects and initiatives throughout the year, as it is the foundational principle that underpins all that we do at LexisNexis across the Asia Pacific region, as well as globally.

A handwritten signature in black ink, consisting of a stylized 'J' and 'B' followed by a horizontal line.

**Joanne Beckett**

LexisNexis, Managing Director  
Australia





## Improving the rule of law in the Asia-Pacific; an essential element for a better climate



Arjuna Dibley<sup>1</sup>



Martijn Wilder AM<sup>2</sup>

In December 2015, 195 countries came together at the annual UN climate change conference and agreed to the Paris Agreement, a new international treaty which sets out the framework by which countries will take action to avoid climate change. The objective of the treaty is to try to hold global temperatures to well below 2 degrees above pre-industrial temperatures. In setting this goal, the purpose of the Paris Agreement is to avoid the worst of the calamity predicted to affect countries from a warmer climate. It is a lofty but important goal, the achievement of which will be particularly significant to developing countries least able to manage such disasters. Despite this lofty and important goal, the Paris Agreement can only be achieved if substantial thought and effort is put into overcoming some persistent problems with the rule of law in many developing countries, including those in Asia-Pacific.

The negotiators who developed the Paris Agreement did so with a view of overcoming some of the previous pitfalls of international climate change agreements. The Kyoto Protocol for instance (which is due to be replaced by the Paris Agreement in 2020), has only had a modest impact on reducing greenhouse gas emissions because, among other problems, it did not place obligations on all countries to take action on climate change. Instead, the Protocol placed obligations on certain developed nations to reduce emissions, a position which now does not reflect the realities of the modern global economy. China, for instance, now the world's largest emitter, is not subject to reduction obligations under the Protocol. The drafters of the Paris Agreement thus took a different approach, placing obligations on *all* countries - developed and developing - to put forward "nationally determined contributions" setting out their emissions cuts and the pathway

*(continued)*

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that they will take to achieve those emissions cuts. Countries are obliged to go through an UN-supported process of continual review, ratcheting up their level of ambition during the term of the Paris Agreement.

This new “bottom-up” structure has much to commend it. Climate change is a global problem, and one that requires global action. A structure which requires all countries to be actively part of a global solution is a sound approach to take, giving agency and creating buy-in for all countries of the world. There is a down-side to this structure though. That is, it assumes that all countries will have both the political will and capacity to introduce legal and policy frameworks on climate change that are effective at reducing emissions. It is at this point that climate change intersects sharply with the importance of rule of law, particularly in the Asia-Pacific.

The Asia-Pacific region, while marked by recent rapid economic development, is also marred by underdeveloped rule of law. Transparency International ranks South Asia as amongst the world's most corruption ridden regions, for instance, and in Southeast Asia, only Malaysia and Singapore score above 50 out of 100 on the organisation's Corruption Perceptions Index (where 100 is very clean and 0 highly corrupt). Research on corruption has shown clearly that in countries where rule of law is underdeveloped economically powerful individuals and corporations are able to evade regulatory obligations through bribery, corruption and patronage connections. In this context, creating effective laws and policies to reduce greenhouse gas emissions will be challenging.

Effective climate change law and policy requires that regulators are equipped with the authority and capacity to compel corporations and individuals to change their behaviour to reduce greenhouse gas emissions. This may come in many forms, by directly regulating out certain activity which is highly emissions intensive, by creating incentives to reduce emissions by adopting new technologies or by developing market emissions to reduce such emissions. Each of these approaches would (and have proven to) be undermined in contexts where



rule of law is poor. This connection is easily demonstrated by the example of Indonesia.

Indonesia is Southeast Asia's largest emitter, and a significant proportion of such emissions comes from its forests. Between July to November 2015, forest fires in Indonesia released over 1.6 billion metric tons of carbon dioxide, emitting more on several days during that period than the entirety of the United States economy. Forest fires in Indonesia are mostly intentionally lit by large commercial forest concession holders who use fire as a cheap way of clearing forested land for agricultural purposes. Indonesia does have a strict legal framework criminalising the use of fires for land clearing. For instance, Law 41 of 1999 on Forests, the main law on forests in Indonesia, includes a prohibition on “burning down forests”, punishable by up to a five year term of imprisonment. Despite the existence of these laws, they are rarely enforced, due to a myriad of rule of law problems, including corruption and underdeveloped capacities and resources of the regulators.

Under the Paris Agreement framework, Indonesia has pledged to reduce its emissions by 29 percent by 2030 and a conditional reduction of 41 percent with international assistance and cooperation. If this goal is to be realised, a significant proportion of these reductions must come

from Indonesia's forestry sector. This will only happen if the country is able to address the significant underlying rule of law problems in the country. Some innovative approaches are now being introduced to address this specific problem. For instance, Singapore has introduced an extra-territorial law in which companies listed in Singapore and operating in Indonesia that flout forest fire laws, can be criminally prosecuted under Singaporean law. Nonetheless, the issue of forest fires in Indonesia will take a long time to resolve. Without substantially more effort and energy dedicated to addressing this problem and the rule of law deficiencies in the region more generally, the lofty ideals of the “well below 2 degree” goal of the Paris Agreement will struggle to come to fruition.

“ The objective of the treaty is to try to hold global temperatures to well below 2 degrees above pre-industrial temperatures. In setting this goal, the purpose of the Paris Agreement is to avoid the worst of the calamity predicted to affect countries from a warmer climate. ”



# Crime rates fall, but Australia's imprisonment rates are soaring



**Ian Bushnell**  
Content Manager,  
Capital Monitor

You may have thought that a country with the dark history of being founded as a penal colony, and whose convict heritage is now a badge of honour for many Australians, would have a more compassionate perspective on crime and punishment.

But it seems Australia, egged on by law and order politicians and strident sections of the media, has shaken off its brief flirtation with prevention and rehabilitation to embrace a punitive tough on crime approach that has filled our prisons to bursting point, and is costing \$2.6 billion a year.

To the uninitiated, shock jocks, and law and order politicians the fact that since the turn of the century crime rates have steadily fallen across most categories is vindication of this approach.

However, the downward trend goes far beyond what would be expected by locking up more Australians than ever before.

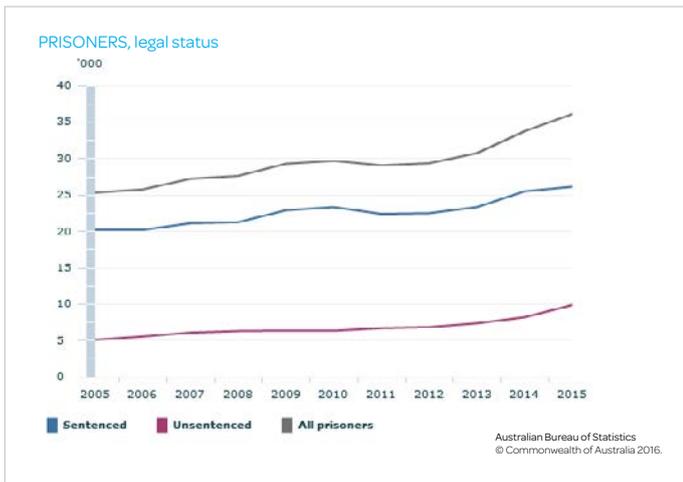
The legal and human rights community has become increasingly alarmed at the sheer cost - both economic and human - of the situation, as well as the damage being done to the rule of law and the erosion of faith in the criminal justice system.

And on the 25th anniversary of the handing down of the report of the Royal Commission into Aboriginal Deaths in Custody, the running sore that is the number of Indigenous Australians behind bars is of particular concern.

Public perception though remains divorced from statistical reality.

According to the Australian Bureau of Statistics, the number of prisoners in adult corrective services custody at June 30, 2015 increased by 7 per cent on the previous year to a record 36,134. The national imprisonment rate was 196 prisoners per 100,000 adult population.

*(continued)*



"You'd think this dramatic fall in crime would bring with it a dramatic fall in imprisonment rates and a dramatic turnaround in public attitudes towards offenders, but you'd be wrong," Dr Weatherburn, the director of the Bureau of Crime Statistics and Research, told the Conference.

"Having pushed the law and order merry-go-round as hard as they could for more than 15 years, politicians found to their surprise that it was hard to get off. So the tougher laws kept coming."

This proliferation of law and order politics, with a focus on mandatory sentencing, longer jail terms, and tighter bail and parole conditions, combined with fewer sentencing options, court delays and the pursuit of minor offences, have sent imprisonment rates soaring, higher than that of the UK and Canada.

Aboriginal and Torres Strait Islander persons accounted for 27 per cent of these, despite being only 3 per cent of the population. In 1991 when the Deaths in Custody report was handed down Indigenous people were seven times more likely than non-Indigenous to be imprisoned, 25 years later that figure is now 13 times.

In 2000 there were 21,714 adult prisoners and the imprisonment rate was 148 prisoners per 100,000 adult population.

There was also a surge in the number of unsentenced prisoners (on remand awaiting trial or sentence), who now make up more than a quarter of the total Australian prisoner population - the highest proportion since 2005.

Yet Australia is hardly in the middle of a crime wave with the latest ABS crime figures showing robbery, homicide and motor vehicle theft across the nation at five-year lows (assault and sexual assault against women being the exception), confirming a long-term trend from about 2000 attributed to rising incomes, greater employment and the demise of the heroin trade.

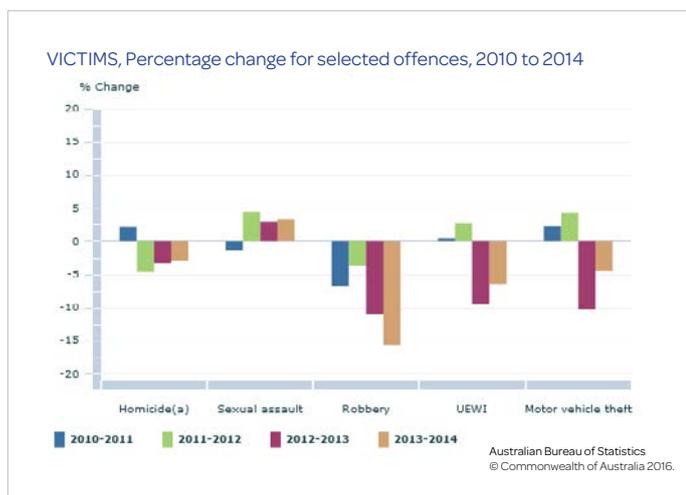
The justice system and those who administer it have been under siege from media campaigns against "soft" laws and sentences and those more than willing to make political capital out of sowing what Dr Weatherburn called "fear and loathing" in the community.

Dr Weatherburn called for an overhaul of the state's approach, including abolishing suspended sentences, which he called "speed humps on the way to prison"; not locking up minor assault offenders, more discretion for courts in sentencing and parole, and changing the approach to community corrections orders by increasing supervision and making the penalties for breaches lower.

He urged our leaders to "tone down the political rhetoric" but the stock response is that governments will do what is necessary to keep the community safe.

However politics is colliding with fiscal reality.

Dr Weatherburn told the conference that within three years Australia would have more than 43,000 prisoners, costing \$3.5 billion a year if the trend continued.



For Ben Schokman, Director of Advocacy at the Human Rights Law Centre in Melbourne, the prison system is not only "stupidly expensive" but failing.

"[It] costs on average about \$120,000 a year to keep someone in prison and you can double that for youth detention," he says.

"If you look at recidivism rates or repeat conviction rates once people are released it tells you that the prison system is one which is failing."

He says a much more effective and more economically efficient way to reduce crime and prison rates, and promote better community safety, is to invest money in stopping people coming into contact with the justice system in the first place.

New South Wales' top crime statistician Don Weatherburn told the Applied Research in Crime and Justice Conference in Brisbane earlier in the year that research had shown a 10 per cent increase in imprisonment only delivers a 1-2 per cent fall in crime, which doesn't account for the 40 to 70 per cent falls, depending on the offence, recorded over the past 15 years.

Ironically it was the conservative US states of Texas and Kansas, with "lock 'em up and throw away the key" policies, which pioneered the concept of justice reinvestment as an alternative to prison. Mr Schokman says corrections' spending was literally sinking their state budgets so they looked at ways to divert non-violent offenders from the prison system and the results have been quite remarkable.

(continued)



He says Texas saved about \$US1.5 billion in a five-year period “purely by rethinking the types of crimes they were locking people up for and investing money into those particular communities where they knew most of the criminal offending was coming from”.

Offenders didn’t get off scot-free but were given community-based work to do.

In Australia there are several justice reinvestment trials being conducted, including Bourke in NSW’s north-west where there is a large Indigenous population and statistics showed that “a very large number of people were ending up in prison for very low-level offences such as unpaid fines and driving offences”.

“So they started designing localised tailored solutions to stop people going to prison for those kinds of offences,” Mr Schokman says.

These are focusing on employment and keeping young people in school as preventative measures, as well as early intervention and diversionary and community-based programs that strengthen ties in that community.

“A community-based order puts them on some form of community work where they are effectively being punished on one level but at the same time they’re also doing things that are productive for that community, they’re staying in that community and not being exposed to prison.”

He says despite the rhetoric state governments are now becoming increasingly interested in what alternatives exist.

“Victoria for example now for the first time is going to be spending close to a billion dollars a year on corrections, they’re building new prisons, imprisonment rates are increasing substantially in particular for women and young people,” he says.

“It’s becoming an unsustainable system and its impacting more and more on the budget so the Government now is actively looking for what new and different approaches might exist. How do we structure service delivery so that it caters in a more appropriately and tailored way for people who experience multiple and complex needs?”

Associate Professor Mark Nolan from the Australian National University’s College of Law agrees that prisons can sometimes be ineffective places for rehabilitating people, and in an environment of shrinking judicial discretion points to the use of Intensive Corrections Orders (ICOs) as an emerging trend in sentencing options.

New South Wales and Victoria have had ICOs as a sentencing option for several years and the Australian Capital Territory has just introduced the measure.

He says ICOS can be more difficult for offenders than community service orders. “You’re actually ordered to a whole range of programming that you wouldn’t otherwise get access to in prison and much more intensive correction but it’s a community corrections outcome. It goes a long way to improving program delivery and that marries up with justice reinvestment.”

*(continued)*

“ According to the Australian Bureau of Statistics, the number of prisoners in adult corrective services custody at June 30, 2015 increased by 7 per cent on the previous year to a record 36,134. ”



He suspects ICOs, like some restorative justice orders, will be much more emotionally engaging than any probation has ever been for an offender, and that being on remand, or a sentenced prisoner may be less engaging than having a scheduled program of education and direct confrontations by specialists as to why a person is offending.

The failure of suspended sentences, identified by Don Weatherburn, lies with the fact that there isn't the level of programming over time that may prevent reoffending.

Professor Nolan says populist policies – such as mandatory sentencing – have to be watered down if custodial imprisonment is to be controlled.

“Other attempts to legislate discretion away are not going to improve the problem at all. What you really need are community-based sentences like Intensive Corrections Orders that are more easily sentenced with the discretion of a judicial officer - think of those options first rather than incarceration.”

He says the atmosphere in an overcrowded prison is not rehabilitative. “You won't be able to service programs, case manage individual prisoners, and won't be able to do the therapy that they need.”

Dr Lorana Bartels, Associate Professor at the University of Canberra says that we should be using community, corrections orders much more extensively, with offenders required to do some form of work and participate in programs such as drug and alcohol treatment, anger management, or parenting.

“It's a win for everyone – win for them and their families, and a win for the community because they can become functional members of society. And it costs an awful lot less.”

Most offenders serve 3-6 months and will return to the community at some point “so what's the point of putting them away in the first place rather than keeping them in community and rehabilitating them there”.

She says sending these offenders to jail means they are going to get stuck in a cycle of offending without treating the underlying causes.

“For most offenders it's mental illness, lack of education, employment, poor housing, and substance abuse issues. The overwhelming majority have some combination of these issues.”

She sees a need to explain to the public what sentencing is actually about, saying there are about 300 factors that judges and magistrates have to take into account.

“They don't just pick a figure out of thin air. When people are informed about those complexities they become more accepting,” she says.

World-first research from the University of Tasmania involving 987 jurors who returned guilty verdicts in 124 criminal trials from the County Court of Victoria between 2013 and 2015 supports this.

When asked to say what sentence they thought offenders should have received 62 per cent delivered more lenient sentences than the judge.

Governor of Tasmania, former director of the Tasmanian Law Reform Institute and Professor of Law at University of Tasmania, Kate Warner is the lead author of the Victorian Jury Project, which is currently undergoing peer review.

She told the ABC's Law Report program in April: “I think that just suggests then to judges and to policymakers that the public when they are informed ... are not really clamouring for heavier sentences, and that perhaps judges and policymakers shouldn't necessarily respond to calls for heavier penalties.”

Perhaps appealing to our better angels and informing the public more may not only salvage lives but save the community a lot of financial pain as well.

“ Associate Professor Mark Nolan from the Australian National University's College of Law agrees that prisons can sometimes be ineffective places for rehabilitating people, and in an environment of shrinking judicial discretion points to the use of Intensive Corrections Orders (ICOs) as an emerging trend in sentencing options. ”



# A historic breakthrough to develop the rule of law in Australian criminal appeals



Robert N Moles<sup>1</sup>



Bibi Sangha<sup>2</sup>

In our modern democratic societies, one imagines that the legal system itself will be both the personification and the embodiment of the 'rule of law'. It was Lord Bingham, one of Britain's most senior judges, who pointed to the observation by Alan Greenspan (former chairman of the Federal Reserve Bank of the United States) that the single most important contributor to economic growth was the rule of law.<sup>3</sup>

As legal academics, we tended to assume that if we were to identify an area or an issue where the law had failed to follow its own guidelines, one would only need to point it out for it to be immediately corrected.

After taking up positions as legal academics in South Australia, we came across a number of criminal convictions there which undoubtedly constituted serious miscarriages of justice. We first broadcast a national television program on the cases in October 2001<sup>4</sup> and subsequently published two books setting out the details of the cases.<sup>5</sup> In addition, every available avenue was pursued in an attempt to obtain a formal review of the convictions. To our surprise, all the pathways for review were closed off by formal rules of the system which were not themselves consistent with the rule of law principles.

The intermediate appeal court said that it could not re-open an appeal or hear a second appeal – and this ruling was based upon a strict interpretation of the legislation granting the appeal rights. But when we looked at that legislation it said nothing about the number of appeals which were to be allowed.<sup>6</sup> The High Court of Australia said that it could not admit fresh evidence on an appeal, for constitutional reasons. Yet, instead of rejecting appeals on this basis, it could have remitted such cases to the intermediate appeal court to allow the fresh evidence to be admitted and for the case to then be returned to the High Court for review.

The final avenue involved a petition procedure which requested the Attorney-General to refer the matter to the intermediate appeal court for review. In accepting the unavailability of judicial review the judges had previously stated that this form of executive review was sufficient to deal with deserving and exceptional cases where errors had occurred.

However, in the leading case on the petition review procedure the judges also stated that it did not involve any legal rights on behalf of an applicant. It assumed that all legal rights had been exhausted, and that an Attorney-General had an 'unfettered discretion' when considering a petition.

*(continued)*

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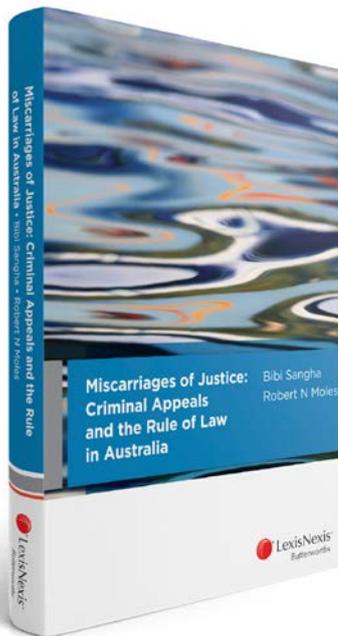
<sup>2</sup>BA, LL.M, Senior Lecturer in Law, Flinders University, South Australia, 'bibi.sangha@flinders.edu.au'

<sup>3</sup>See T Bingham (The Rt Hon Lord Bingham of Cornhill KG), *The Rule of Law*, Penguin Books, London, 2010.

<sup>4</sup> 22 October 2001, ABC Four Corners, 'Expert Witness', available at <http://netk.net.au/Media/2001-10-21-ABC4Corners.asp>

<sup>5</sup> Robert N Moles, *A State of Injustice*, Lothian Books, Melbourne, 2004; Robert N Moles, *Losing Their Grip: the case of Henry Keogh*, Elvis Press, Adelaide, 2006. The full text is available at <http://netk.net.au>

<sup>6</sup> These issues are set out in Bibi Sangha, Robert Moles, *Miscarriages of Justice: Criminal Appeals and the Rule of Law*, LexisNexis, Sydney, 2015 (*Miscarriages of Justice*).



“ To our surprise, all the pathways for review were closed off by formal rules of the system which were not themselves consistent with the rule of law principles. ”

Petitions, it was said, could be rejected arbitrarily, and the judges had no powers to review such decisions.

Of course, as we explained in *Miscarriages of Justice: Criminal Appeals and the Rule of Law*, all of this was quite contrary to the most basic rule of law principles.

We managed to persuade the Australian Human Rights Commission (AHRC) that this combination of legal rules amounted to a breach of Australia's international human rights obligations under the International Covenant on Civil and Political Rights.<sup>7</sup> The rule of law principles, of course, require compliance with such principles, unless expressly derogated from, which was not the case here. The AHRC made their views known to the Parliament of South Australia which had established a Legislative Review Committee to consider a Bill to establish a criminal review commission.

Thankfully, the parliamentary committee recommended the establishment of a new statutory right of appeal.<sup>8</sup> The Attorney-General told Parliament that the existing process of executive referral was 'mysterious' and unacceptable because of its lack of transparency. He said, quite correctly, that these were the sort of decisions which should have been dealt with by the open process of judicial proceedings.<sup>9</sup> A new statutory right of appeal came into force in South Australia on 5 May 2013. It was the first substantive change to appeal rights in Australia in over 100 years.

The first case to come before the appeal court under this procedure was that of Henry Keogh.<sup>10</sup> Applications for executive referral of his case had been continuously refused or unanswered during the previous 13 years.<sup>11</sup> The appeal was allowed on the basis of information which had been known to the Solicitor-General since 2004 but was not disclosed to the defence until the formal appeal process commenced in 2013.<sup>12</sup> Other grounds of appeal were successful based on 'recantations' which had been made by the forensic experts before the Medical Board in 2004, nearly 10 years after the trial and 10 years before the appeal was to be allowed.<sup>13</sup> The appeal court, when finally given an opportunity to consider the matter, concluded that the 'mechanism of murder' which had been put forward at the trial amounted to no more than 'speculation'.<sup>14</sup> There will be many more such cases.

On 15 October 2015, the Parliament of Tasmania passed legislation similar to that which existed in South Australia to create a new statutory right of appeal.<sup>15</sup> We now have two Australian states which have recognised the need for this historic change to bring their appeal provisions into line with the rule of law requirements.

The only question which remains is why other Australian states, four years after being informed that their criminal appeal provisions do not comply with international human rights obligations, or the rule of law, have done nothing to correct that situation.

<sup>7</sup> See Australian 25 November 2011, *Human Rights Commission Submission to parliamentary inquiry*. This report and the following references regarding the new right of appeal are available at <http://netk.net.au/AppealsHome.asp>.

<sup>8</sup> 18 July 2012, Final Report of the Legislative Review Committee.

<sup>9</sup> 7 February 2013, House of Assembly, Statutes Amendment (Appeals) Bill.

<sup>10</sup> R v Keogh (No 2) [2014] SASCFC 136, 19 December 2014.

<sup>11</sup> The various petitions are available at <http://netk.net.au/KeoghHome.asp>.

<sup>12</sup> This issue is discussed in *Miscarriages of Justice* at 10.13 and 10.14.1.1.

<sup>13</sup> See for example the discussion in *Miscarriages of Justice* at 10.13 and 10.14.1.2.

<sup>14</sup> See for example the discussion in *Miscarriages of Justice* at 10.14.1.5 and 10.14.2.1.

<sup>15</sup> The Bill and other relevant materials are available at <http://netk.net.au/TasmaniaHome.asp>.



## Advancing the work of pro bono practitioners in Hong Kong

One of the most promising global developments in the field of law in recent years has been the growth of pro bono practice. Provision of legal services to those who cannot afford a lawyer helps expand access to justice and supports the humanitarian missions of communities that find themselves outside the umbrella of the protection of the rule of law. In the Asia-Pacific region in particular the potential for pro bono advice and representation as mechanisms to advance social change is enormous.

In tandem with the rise in awareness of the legal needs of non-profit organisations, in Hong Kong there is also a discernable trend towards skills-based volunteering. It is increasingly recognised that one-off donations alleviate only a small fraction of the complex issues faced by social groups. Lasting difference in the community requires provision of long-term support, tools and resources that empower these communities to drive positive change. One of the best ways to do that is by utilising one's unique skills and resources.

With over 6000 NGOs operating in the city, the LexisNexis Hong Kong office is not short on opportunities to organise and participate in philanthropic activities; indeed our annual record in this regard has always been impressive. One thing we noticed time and again however in our interactions with local charities and NGOs was their pressing need for professional legal assistance. As the flagship provider of legal resources in the region, we recognised there was an enormous opportunity to leverage off that wealth of experience and facilitate access to materials which would assist the pro bono community in taking up the charge to represent these clients.

In November 2015 our free solution, Lexis® Practical Guidance - Social Justice, made its debut. Modelled on our commercial product

solution of the same name, the Social Justice online platform provides Practice Notes, Precedent documents, and checklists focused on issues such as human trafficking, gender and diversity in the workplace, and legal issues commonly encountered by charities in Hong Kong. It is a broad range of subjects, brought together by a common characteristic – they are issues which the legal community can impact.

In the human trafficking topic, information is provided on the theoretical and legal frameworks, its relevance to the private sector, the obligations of corporations and data protection for victims of trafficking, including a model personal information collection statement. The gender and diversity section covers nomination and diversity on Hong Kong boards, including local and overseas regulation and measures for listed companies to improve nomination process and board diversity. In the charities regulation topic, guidance on tax regulation and fundraising, and corporate governance for non-profit bodies is provided.

By providing free access to the unique platform of Lexis® Practical Guidance – Social Justice, we aim to support the legal community by facilitating their pro bono work, and to increase their efficiency and productivity when they do choose to volunteer their time. Practitioners and NGOs alike have already expressed keen interest in the potential for the module as a training tool.

Such immediate and positive feedback from our stakeholders has reinforced our belief that we can act as a catalyst for change in the way that the pro bono community works. By engaging and supporting their important role we are encouraged that this initiative can result in real social impact for Hong Kong.

Providing you with free resources for your pro-bono work  
**Lexis® *Practical Guidance Social Justice*** facilitates and  
encourages work for the public good



The rule of law is a theme that unifies LexisNexis® across the globe. In Hong Kong, this organisational principal is now embodied in our new service, *Lexis® Practical Guidance Social Justice*. Free to access, the materials contained in this service represent a broad range of subjects brought together by a common characteristic – that they are issues the legal community can impact.

We hope that you will find this new service a useful source of both foundational and practical content to help you actively address issues live to the pursuit of social justice.





# Does strong rule of law prevent the onset of civil armed conflict?



**Juliet Ramzan**  
Product Developer,  
Practical Content  
LexisNexis® Pacific

Working in fragile and post-conflict environments, I have been surprised to hear the term “rule of law” used so commonly. In my prior work as a lawyer in Australia, the term had seemed somewhat confined and definable as a means of ensuring that no person was above the law. In the humanitarian environment however, it seemed that the term “rule of law” was used as a catch-all solution to a society’s problems. I heard the term used in lieu of “human rights”, “democracy” and even “gender equality”. At a meeting of civil society organisations, the speaker purported that rule of law was the new hot ticket in international development and suggested that the term be included in all new grant proposals.

Given the amount of international funding that is being dedicated to advancing the rule of law in fragile and post-conflict countries, there is very little literature that accurately defines (and confines) the term. Further, there are very few studies, which objectively measure whether advancing the rule of law in a country really creates better outcomes for that country.

In 2014 I completed the Masters of Peace and Conflict Research at Uppsala University in Sweden. My thesis topic was inspired by a desire to quantitatively define and measure the effect of rule of law. Given the extreme increase in civil armed conflict across the world in the past 50 years, it seemed a good place to start was to examine whether strong rule of law can prevent the risk of the onset of civil armed conflict.

The thesis developed a new quantitative measure of rule of law and examined data on rule of law and civil conflict from 112 countries over the period 1970 to 2005. Using the statistical tool of logistic regression and controlling for the effect of other institutional and governance indicators, the results showed that strong rule of law does have a dampening effect on the risk of civil armed conflict.

## **Defining and measuring the rule of law**

In its most confined definition, the rule of law means that no person is above the law. Broad definitions of rule of law include concepts such as free and fair elections, civil liberties and human rights.

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While those concepts may, and probably do, have an effect on a country's risk of civil armed conflict, including such concepts into a rule of law measure, in my view, overly complicates the concept. From an empirical perspective, defining the rule of law more narrowly will lead to stronger results because we can better confine the indicators which are causing the effect on the other variable, here being the risk of civil armed conflict.

Because the thesis examined long time series data across 112 countries, developing a measure of rule of law was limited by the available data. The thesis adopted a measure of rule of law which considered that countries that scored highly for the following indicators enjoyed high levels of rule of law:

1. The government is bound by the law;
2. There is formal legality, or a requirement that laws should be clear prospective and accessible;
3. There is an independent, efficient and competent judiciary;
4. There is court-led conflict resolution.

### Measuring civil armed conflict

In order to measure whether a country had suffered from an incident or incidents of civil armed conflict, the thesis made use of the civil armed conflict database developed by Uppsala University<sup>1</sup>. The database measures and records all onsets of civil conflicts across the 112 countries included in the thesis from 1970 to 2005.

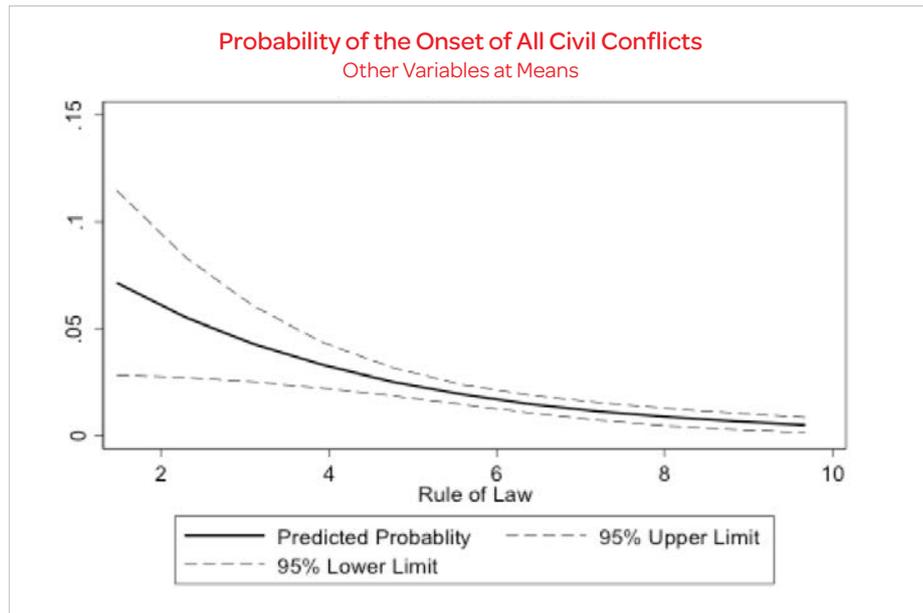
### Controlling for other variables that may prevent civil armed conflict

If we find that a country with high levels of rule of law is at less risk of civil conflict, how do we know that the reduction in risk is being caused by strong rule of law and not other factors such as GDP per capita or democracy? One way to know is to control for those other factors in the statistical model. That is, to use the statistical model to exclude the effect of those factors on the relationship between rule of law and the onset of conflict. The statistical model in the thesis controls for the effect of other commonly studied causes of civil conflict. These are: democracy, GDP per capita, population size and oil exporters.

### Results

The statistical model found that that the predicted probability of the onset of civil conflict in countries that have the highest level of rule of law is 7 per cent lower than in countries that have the lowest level of rule of law. The model is demonstrated in the graph below which shows that the predicted probability of civil armed conflict decreases as rule of law scores increase.

Public support allows governments to better address grievances and to develop solutions to problems that may otherwise escalate into violence. Further, where citizens feel that they have access to peaceful means of addressing grievances and disputes, the community is less tolerant of violence and rebels face difficulty in recruitment.



### How does Rule of Law protect against civil conflict?

This thesis writing is not in business of pointing out correlations and relationships between variables without suggesting that those two variables are indeed causally linked. The results above merely show us that the rule of law and the onset of civil armed conflict have a relationship. We can only theorise that one variable causes the other to happen. So how can we explain this relationship? With the help of many theorists, the thesis suggests that strong rule of law raises the opportunity cost of conflict. That is, that where there is strong rule of law, would be rebels, have a means of resolving conflict peacefully and hence it is less costly to pursue peaceful conflict mechanisms than it is to engage in violent conflict. Citizens have a means of peaceful conflict resolution with each other and with the government. Where there is strong rule of law citizens tend to have greater trust in their government.

### Future steps

While quantitative political science studies are quick to receive the tag of being overly scientific and out of touch with the real world, quantitative analysis is important in really understanding whether policies can make a difference to communities. Given its popularity in the policy building world, the rule of law is an under-researched concept. With the emergence of new rule of law data and measurements, future studies should be able to disaggregate the data to be able to better understand the effect of each rule of law indicator on other variables such as development and health.

For now however, the results show that higher levels of rule of law decrease the risk of civil conflict. That result in itself is enough to corroborate funding rule of law projects in fragile and post-conflict environments. Another question all together is whether that funding is translating into better rule of law outcomes.

<sup>1</sup> Gleditsch, N. P., Wallensteen, P., Eriksson, M., Sollenberg, M., & Strand, H. (2002). Armed Conflict 1946-2001: A New Dataset. *Journal of Peace Research*, 39(5), 615-637.



## Philippine Group of Law Librarians working for the rule of law and for law libraries



Milagros Santos-Ong  
Vice-President,  
Philippine Group  
of Law Librarians

“ Since its establishment, the PGLL has consistently been working to meet this primary purpose through seminars and congresses, fellowships/scholarships, and cooperative activities among law librarians and law libraries. ”

The Philippine Group of Law Librarians, Inc. (PGLL) was established in 1981 with the primary purpose of working for the interest of law librarians, law libraries and maintaining the highest standards for law librarianship. Since its establishment, the PGLL has consistently been working to meet this primary purpose through seminars and congresses, fellowships/scholarships, and cooperative activities among law librarians and law libraries.

International linkages were made by attending international seminars and participating as resource speakers (American Association of Law Librarians, Australian Association of Law Librarians, CONSAL, and Internet Librarian). Through these linkages, the article entitled, “[Philippine Legal Research](#)”, was published online. This is also the time I met Mirela Roznovschi of the New York University Hausar Global Law School Program, Globalex, at the American Association of Law Librarians (AALL) Convention in Boston in 2004.

After 36 years, the PGLL decided to venture into a new international linkage. “Advancing Together” best describes how PGLL and LexisNexis started this new linkage, through a study tour to law libraries in Malaysia. In this study tour, LexisNexis assisted PGLL to contact and coordinate with the libraries visited.

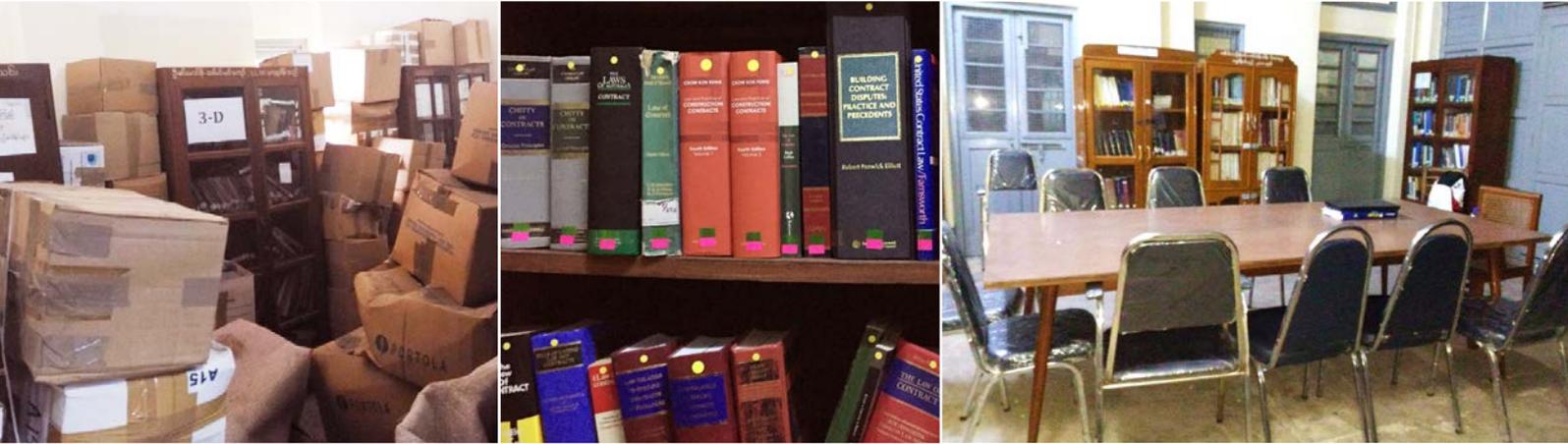
It was after this that Nicholas Koo, a friend of Filipino law librarians, introduced Head of Market Development Gaythri Raman to its next international project, the outreach in Yangon Law Library in Myanmar. PGLL shared the plight of the Yangon University Law School which, after being severely damaged due to Typhoon Nargis, received boxes full of donated books from international publishers such as Oxford University Press, but did not have the resources to unpack, arrange and utilise the books.

The Law School could not afford to employ a librarian and therefore law professors organised the library during their spare time. The books were arranged by subject in cabinets, and students could borrow books through the professors.

I told Gaythri that I would volunteer to help once I retired. However when PGLL President Nora Rey heard, she suggested PGLL help out immediately. PGLL’s Myanmar outreach was held at the Yangon University Law Library from February 16-18, 2016. The volunteer PGLL outreach team was composed of seven PGLL incumbent officers and members including myself, Nora Rey (PGLL President), Vivia Lirio (Secretary), Maria Luisa Madlangbayan (Auditor), advisers Emma Rey and Helen de Castro, and member Edeliza Gallo.

The PGLL volunteer team was willing to pay its own way to contribute to this worthy cause.

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L-R: Donations of books from international publishers and libraries after Typhoon Nargis unopened and unused; Implementation of simple catalogue system; Yangon University Law Library following PGLL's help.

When searching for flights and accommodation, the team reached out to Veronica Rios, who heads the Rule of Law program for LexisNexis. To our surprise she said LexisNexis®, in support of the work to be done, would sponsor the accommodation, food and transport to and from Yangon University for our entire trip. To our even bigger surprise, in appreciation for our contribution LexisNexis funded sightseeing for PGLL so we could explore more of Myanmar.

Once more, PGLL would like to extend heartfelt gratitude to LexisNexis for all their support - we particularly thank and commend all the help provided to us by Head, Rule of Law & Emerging Markets Veronica Rios, who represented LexisNexis throughout the completion of the outreach project in Yangon. Veronica was with us the whole time, encoding, sorting and classifying thousands of books.

When we arrived on the first day of the outreach tour, we were introduced to the Head of the Law Department, Dr Khin Mar Yee who provided an overview of the status of the law library, and some history as to how the library had been operating, and the situation that left donated books in their boxes unable to be accessed by students.

“ This outreach has shown that different people and cultures (Burmese, Filipino, Australian, Malaysian), and different occupations or professions (professors, lawyers, librarians and students) can work effectively and harmoniously towards a specific goal. ”

Our challenge was to understand the library's needs and devise a simple workable library system including organisation and cataloguing. The PGLL team consulted with the Law Faculty to understand the best way to classify their law books. Books were classified under the topics of: 1) Domestic Laws consisting of Civil Law, Criminal Law, Labor, Procedure and Taxation, 2) Commercial Law 3) International Law and 4) Maritime Law. As we were under time pressure to create a new classification and catalogue system, PGLL implemented a colour-coded classification system (using coloured stickers) to ensure ease of identification. The team created a simple catalogue with details of each book, enabling users to search by author, title, subject and donor. At the close of our project, the Law Faculty received a simple manual and the electronic catalogue was formally handed over.

Given more time and access to supplies, we could have done more. We would have loved to have included labels and book cards for each title, along with document boxes for different articles and files. However, we made use of what we had on hand. This outreach has shown that different people and cultures (Burmese, Filipino, Australian, Malaysian), and different occupations or professions (professors, lawyers, librarians and students) can work effectively and harmoniously towards a specific goal.

The work was physically taxing, especially for some of our senior members, such as a retiring librarian like me. We also worked in challenging conditions. The library was hot, with no working fan or air conditioning and no time to even use hand fans as we worked. There was no cold water to quench our thirst in the heat either. Yet all of the challenges were immediately forgotten when we saw the smiling faces of the students and faculty members of the Yangon Law School.





## Fiji set to launch consolidated laws



Karen O'Connell  
Internal  
Communications  
Specialist, APAC

“The rule of law is a very practical application of how people are treated under the law. People need to be treated equally before and under the law. If people for example, do not get access to legal aid, or if they do not get access to justice, you can say that in a way, the rule of law is being undermined.”

The revised Laws of Fiji were announced at the April sitting of Parliament in the nation's capital of Suva – thanks to the help of LexisNexis® Rule of Law program.

LexisNexis has been working closely with the Fijian Attorney General's Office to prepare and publish the consolidated laws, which were last revised over three decades ago in 1985.

Anupama Bhattacharya, Executive Director of Asia Pacific Editorial Operations LexisNexis, visited Fiji to take part in a press conference to announce the details of the upcoming launch, and was joined by Fiji's Attorney General, Aiyaz Sayed-Khaiyum.

“LexisNexis is honoured to partner with the Fijian Government in our drive to support the Rule of Law and make access to law easier for everyone. To this end, we are helping to consolidate 30 years of Fiji legislation,” said Anupama.

Amendments were made to the Revised Edition of Laws Act 1971 in the February sitting of Parliament in preparation for the upcoming launch.

“The consolidation is very important because it does contribute in a practical and tangible sense to helping build the rule of law. Many people in Fiji mention the rule of law without understanding what it means,” said Mr Sayed-Khaiyum.



Attorney-General Aiyaz Sayed-Khaiyum with LexisNexis Asia Pacific's Executive Director Editorial Operations Anupama Bhattacharya at a press conference in Suva to announce the details of the consolidation. Photo: Office of the Attorney-General.

“The rule of law is a very practical application of how people are treated under the law. People need to be treated equally before and under the law. If people for example, do not get access to legal aid, or if they do not get access to justice, you can say that in a way, the rule of law is being undermined.”

The laws will soon be available in a three ring binder folder, which will allow for easy insertion of any future amendments. Previously, they were printed as books in several volumes.

The consolidated laws will also be available to the public through a dedicated website.

Several local media outlets covered the press conference, including the [Fiji Sun](#) and [Fiji Live](#).