

The Spring of Reform: Pakistan International Disputes Weekend 2

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In May 2023, Lahore, Pakistan's second-largest city and the capital of the province of Punjab, hosted a two-day international conference co-organised by the Chartered Institute of Arbitrators' Pakistan Branch (Ciarb Pakistan Branch) and MK Consultus LLP and sponsored by several prominent law firms, companies and organisations from Pakistan and abroad. Under the motto Review, Reflect and Revive, Pakistan International Disputes Weekend 2023 (PIDW 2023) aimed to address the issue of more than 2.2 million cases pending before Pakistani courts, which, according to PIDW's organisers, choke the justice system of Pakistan. How to reduce delays and improve access to justice in Pakistan was addressed by an impressive line-up of speakers, ranging from serving and retired Judges of the Supreme Court of Pakistan, Judges from the country's five High Courts, prominent legal practitioners from Pakistan and abroad, representatives of international ADR (alternative dispute resolution) centres, such as the Singapore International Arbitration Centre (SIAC), the Tashkent International Arbitration Centre and the International Chamber of Commerce, the Attorney General and Additional Attorney General of Pakistan, members of the construction, power and energy sectors, as well as students and teachers of law and dispute resolution.

Spread over two days and attended by more than 900 participants, PIDW 2023 generated thought-

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New Educational Resource: YMG (/news/new-education-resources-from-ymg/)

Ciarb Young Members Group (YMG) launch educational series for its members entitled "Mentorship Programme" and "YMG Regional Spotlight On".

Read in Full → (/news/new-education-resources-from-ymg/)

27 Jun 2023

CMC, Ciarb and CEDR unite to intervene in Court of Appeal critical to mediation (/news/ciarb-and-cedr-unite-to-intervene-in-court-of-appeal-case-critical-to-mediation/)

Leading dispute resolution bodies have joined to intervene in the case of Churchill v Merthyr Tydfil, heard by the Court of Appeal of England and Wales.

spread over two days and attended by more than 500 participants, PIDW 2023 generated thought-provoking discussions across a wide range of issues. For members of Ciarb, there are several key takeaways.

First, there is no simple “one size fits all” reform that could be applied universally to incentivise dispute resolution, discourage litigation and promote mediation. This fact was highlighted in the discussion of the role of court fees and the award of legal costs in order to counter frivolous litigation. Both the panel on “Promoting Better Practice in Dispute Resolution: Why Courts Should be the Last Resort?” and the panel on “Identifying Key Challenges and Weaknesses: Are Robust Reforms the Only Way Forward in Pakistan’s Litigation Landscape?” observed that for Pakistan, increasing court fees to discourage litigation, a measure that had worked well in England and Wales, would need careful calibration in order to protect and preserve the constitutionally guaranteed right to fair trial under Article 10A of the Constitution of Pakistan 1973. In Pakistan, costs sanctions can be used to counter frivolous litigation, but these sanctions need to be restricted to commercial disputes.

Second, fully integrating dispute resolution into Pakistan’s legal system requires legal reform and institutional support. With regard to legal reform, most urgent was the replacement of the outdated Arbitration Act 1940 with a Domestic Arbitration Act 2023 based on the Model Law 1985. As highlighted by both Judges and legal practitioners, the importance of legal reform is amply demonstrated by the success of the Recognition and Enforcement (Arbitration and Foreign Arbitral Awards) Act, 2011, which implemented the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958 into Pakistani domestic law. The recent case of *M/s Tradhol International SA Sociedad Unipersonal v M/s Shakarganj Limited*, decided by Justice Jawad Hassan of the Lahore High Court on 28 April 2023, demonstrates that a well-drafted arbitration law enables Pakistan’s judiciary to develop a pro-arbitration jurisprudence that favours the enforcement of foreign arbitral awards. In contrast, domestic arbitral awards rendered under the provisions of the Pakistan Arbitration Act 1940 are more difficult to enforce. With regard to institutional support, PIDW 2023 recommended the establishment of specialised dispute resolution fora based on international standards and models, such as the Dubai International Financial Centre or the Singapore International Commercial Court, as well as the setting up of an international arbitration centre in Pakistan modelled on SIAC or Hong Kong International Arbitration Centre.

Third, mediation should be used proactively as a pre-trial dispute resolution mechanism to avoid having to arbitrate or litigate in the first place. In this context, the PIDW Declaration, ratified on 21 May 2023 and endorsed by 16 retired and sitting judges of Pakistan’s Supreme Court and the five High Courts, recommends that “Mediation as a pre-trial mechanism would benefit access to justice and would avoid frivolous litigation” and that Pakistan should become a member of the United Nations Convention on International Settlements Agreements resulting from Mediation, better known as the Singapore Convention on Mediation 2018.

Fourth, rather than piecemeal approaches to reform, dispute resolution should be promoted by an overhaul of judicial processes and the engagement of all relevant keyholders in the legislative reform process. The importance of this key takeaway was highlighted by the PIDW itself, which brought together stakeholders from all sectors of the legal system, including members of the superior judiciary, the Advocate General, eminent legal practitioners and Bar Associations.

Not a key takeaway as such, but most worthy of report, is the launch of Ciarb Young Members Group (YMG) (Pakistan Chapter) on the second day of PIDW 2023. Two panels were dedicated to young professionals and students titled “Navigating and Building a Career in Arbitration as a Young Practitioner” and “Upholding the Rule of Law: Perspective, Progress and Reform by the Younger Members of the Bar”. Both panels stressed the importance of training and developing local talent by encouraging young practitioners to seize opportunities and training provided by international platforms like Ciarb YMG and Young ICCA (International Council for Commercial Arbitration).

PIDW 2023 caps a busy year for Ciarb Pakistan Branch. In its first year, the Branch has organised a number of conferences, seminars, and training initiatives. For example, the recently held Ciarb accredited mediation training in Islamabad for legal practitioners is already having a positive impact on the development of Pakistan’s alternative dispute resolution landscape. In his message as chief organiser,

Read in Full → (</news/cmc-ciarb-announce-to-intervene-in-court-of-appeal-critical-to-mediation/>)

15 Jun 2023

Ciarb North America Branch Annual Members’ Retreat (</news/ciarb-north-america-branch-s-first-annual-members-retreat/>)

Ciarb North America Branch (NAB) held its 1st Ciarb NAB Members’ Retreat from Friday, 14 April to Sunday, 16 April 2023 in Santa Fe, New Mexico.

Read in Full → (</news/ciarb-north-america-branch-s-first-annual-members-retreat/>)

Barrister Mian Sheraz Javaid FCI Arb, Chair of CIARB Pakistan Branch, described the PIDW 2023 as an incredible journey of transformation. As is clear from the four key takeaways, PIDW 2023 constitutes an important milestone but by no means the end of this journey.

About the authors:

Prof Dr Martin Lau has been a member of Essex Court Chambers since 1997, specialising in Islamic finance and South Asian law. As an Independent Arbitrator at 24 Lincoln's Inn Fields, Martin sits as sole, presiding and co-arbitrator with experience under ad-hoc, LCIA, DIFC-LCIA and UNCITRAL rules, including Pakistan, Dubai, Qatar, Turkey, and England & Wales seated arbitrations. Martin is also a Professor of Law at SOAS, University of London, where he has lectured since 1990. He has held visiting academic appointments at Harvard Law School and Nagoya University. He is the Editor-in-Chief of Brill's Yearbook of Islamic and Middle Eastern Law and a Member of the Consulting Editorial Board of LexisNexis PSL Arbitration.

Fatima A. Malik is a dual-qualified international disputes lawyer admitted to practice in England & Wales, and Pakistan. Fatima, a King's College alumni, holds a Master of Laws in International Dispute Resolution and a Master's in Public International Law. Her experience in London included advising a sovereign state in an OIC investment treaty dispute, assisting on various commercial arbitrations and working with third-party funders. In Pakistan, she advised the Advocate General of Punjab, the legal office of the largest province, and represented various conglomerates before the High Courts and regulators. Fatima serves on the Governing Board of CIARB Pakistan Branch, International Law Association Pakistan (ILA-P) and on the editorial team of Delos Dispute Resolution.

[1] Judgment accessible on the website of the Lahore High Court at:

<https://sys.lhc.gov.pk/appjudgments/2023LHC2392.pdf>
(<https://sys.lhc.gov.pk/appjudgments/2023LHC2392.pdf>)

[2] Available at: <https://pidw.pk> (<https://pidw.pk>)

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