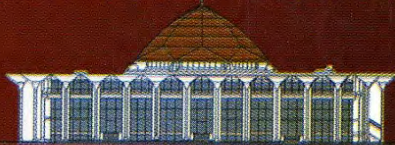


The Opening of the Legal Year 2005

THE JUDICIARY



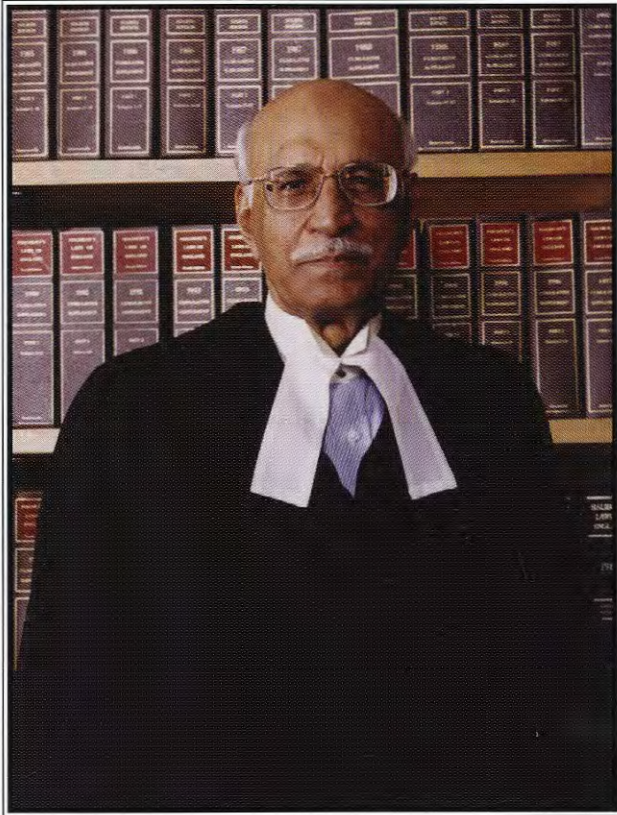
**PEMBUKAAN TAHUN
UNDANG-UNDANG 2005**

**THE OPENING OF
THE LEGAL YEAR 2005**

**1st MARCH, 2005
20 MUHARAM, 1426**



**HIS MAJESTY PADUKA SERI BAGINDA SULTAN HAJI HASSANAL BOLKIAH
MU'IZZADDIN WADDAULAH IBNI AL-MARHUM SULTAN HAJI
OMAR 'ALI SAIFUDDIEN SA'ADUL KHAIRI WADDIEN,
SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM**



THE HONOURABLE
DATO SERI PADUKA MOHAMMAD SAIED
THE CHIEF JUSTICE OF
BRUNEI DARUSSALAM

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The Judiciary as of February 2005

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Statistics.

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FOREWORD

It is always a great honour and privilege to welcome you to the ceremony marking the Opening of the Legal Year. This occasion is not only an opportunity to reflect and review on our past performances but as well to renew our commitment to continuously strive to improve the quality of the delivery of services in every aspects of the court system.



An interesting development this year has been the formulation of fresh initiatives under the new strategic plan for the court. It is timely as I believe the new strategic plan will provide more focus for the activities and direction of the court as well gives greater coherent in the work undertaken. There is a great emphasis today for courts to have strategic directions, plans and goals. With the emphasis on new management and strategic tools, no longer are Judges and Magistrates function in their traditional roles as adjudicators only, rather they also act as managers and mentors in their judicial performance and function.

The Judiciary is moving into interesting era with the up coming Computerisation Infrastructure Project and Case Management System. With these projects in placed, the court can then have the capacity to generate its own data and automate case management at the same time the ability to develop better and more complete performance indicators in order to improve the performance of the judicial system. The other challenge to our judiciary or any judicial institutions for that matter is our capability to progress in terms of human resource development. There is a need to put heavy investment in training and greater accessibility for continuing legal education at all levels in the Judiciary.

Finally, I would like to take the opportunity to pay tribute to the work done by the officers and staffs of the Judiciary. They are hard working and dedicated lot who look after a heavy and ever increasing workload.

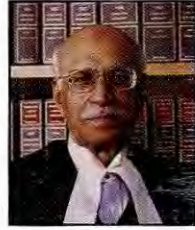
The success of this morning occasion is owed due to the effort of various people. I would like to express my sincere appreciation and gratitude to the members of the organising committee and various Government Departments in ensuring that all the arrangement today will run smoothly.

On behalf of the Judiciary, I thank you all for your presence today and offer you all the best wishes, a happy and successful 2005.

HAIROLARNI ABDUL MAJID
CHIEF REGISTRAR
(CHAIRMAN OF THE ORGANISING COMMITTEE)

OPENING OF THE LEGAL YEAR 2004
THURSDAY 27th MAY 2004

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ



The Honourable Pehin Isa, Mr. Attorney, Your Excellencies of the Diplomatic Corps, distinguished guests, members of the legal profession, ladies and gentlemen.

It is a pleasure for us in the Judiciary to welcome you all again to this rather belated Opening of the Legal Year 2004. This annual event is of importance not only to the courts but also to the profession and the community at large. I should like to think of it as a venue at which we are able to exchange views, make suggestions some of which some times are beneficial and happily carried through!

My first thought about the statistics which have been mentioned annually was to skip it all together. On second thoughts I was afraid that this omission might be misunderstood. However, criminal cases registered during 2003 totaled 2025, about 750 fewer than 2002; civil cases registered in the same year were 967, that being 14 more than the previous year. Total revenue collected during 2003 was \$4,685,958.79 which was \$443,589.56 lower than was collected in 2002.

As we all know maintenance of law and order is a never-ending task. It involves both mental and physical faculties of people from various walks of life, professionals in different fields and those who may be described as the footmen or those who work in the field to enforce policies and decision taken by policy makers. In order to succeed all these various sections of the community have to complement each other and understand that without full commitment of all to their calling their incompetence or lack of agility to keep up with the pace set by others will be a hindrance to progress towards achieving the final aim of all of them which is, as I have said, the maintenance of law and order.

It is just as important in my view as it is imperative that, as criminals become more resourceful, our crime busters are provided with modern crime detection implements and techniques. This aspect of the maintenance of law and order is not new and every one talks about it at one time or another. We attend seminars and send our up and coming young people abroad to learn more of the new inventions in this field.

The corollary to that is that we should at the same time make all those new facilities available at their disposal on their return. There are certain facilities, which are not available locally, for example samples taken from the scenes of crime and/or taken from suspects have to be sent abroad for testing or comparison. Coupled with that and this too is well known and has been harped upon in the past, is the role played by the lay prosecutors and the qualified public prosecutors. It is well known that criminal cases that appear from the evidence to be certain winners founder in court because of sheer incompetence or lack of knowledge and expertise in prosecuting or of the law.

Those ignorant of the principles, procedures and ethics of the common law upon which our judicial system is firmly embedded ask, in such a situation where the expected conviction was not achieved in spite of the strong indication from the paper evidence on record, why did the presiding judge/magistrate not help out the inexperienced prosecutor. The answer to this is obvious, that is, he simply cannot if he is to maintain the court's independence and his neutrality.

Perhaps it is time now to seriously consider investing more in crime detection as well as in crime prosecuting. Not too infrequently one hears this comment: what good is to send people abroad to attend lectures, seminars or workshops if the facilities essential for the successful implementation of the knowledge and experience gained, are not made available to them on their return. After all judicial decisions are made on the material put before the courts. Judges and magistrates are incapable of providing any assistance in this regard and if the requirements of the law in any given case have not been met there is bound to be acquittal. Those bearing the heavy burden of prosecuting must be made to hone their knowledge and ability by regular refresher courses, and have at their disposal all the modern means of detection.

Staying with this topic of court work I should like to briefly touch upon the role of court interpreters. As you know English is the court language, so that where evidence is given in a language other than English it has to be translated simultaneously by the interpreter, keeping pace with the witness. Interpreting correctly in such circumstances is no mean task: it calls for more than average proficiency in both languages. It goes without saying that this is an onerous task of tremendous responsibility as it is upon the interpreter's version of the evidence that the ultimate decision of the court will depend. It is imperative therefore that we have such persons on this job who are properly trained and are well versed in local dialects and various languages of this region as well as English. As of now there are 8 permanent interpreters, all having undergone a month long training course in Singapore, and 7 on call stand by basis. Training on the job is not very satisfactory

as it slows down the progress of the case and more often than not there are objections from both sides. On the whole our courts have managed quite well and the care with which interpretation is kept under close scrutiny has been quite effective in maintaining the quality of justice. The judges and magistrates appreciate their assistance and I salute them for their contribution and determination. It seems that there is no shortage of applicants for this position. Recently two posts for interpreters and one for legal assistance were advertised. The response was staggering, over 100 applicants applied. We envisage that with the availability of new courts in August 2005 we shall need some more interpreters.

In view of the important role that they play in maintaining the standard of justice I think that it is advisable to have some proper interpreter training facility. The Chief Registrar is currently in the process of applying to the Australian Institute of Judicial Training for membership. This will enable us to avail of the training opportunities for judges, magistrates, court interpreters and court administrators.

There are some subjects that have been mentioned before, but there seem to have been no movement with regard to those topics. For example, the Small Claims Court was at one time being considered. I recall that a draft of the proposed legislation was made available but since then it seems to have been put in the freezer. There are some other services under the umbrella of the Welfare Department of the Ministry of Culture and Sports such as community service, reformatory schools, probation service and the approve schools. These are relevant to young or youthful offenders for whom prison is not appropriate. The staff of such institutions are required of necessity to be well trained. Sending such offenders to prison is not an acceptable alternative, not even if they are segregated from adult prisoners. These institutions I have named ought to be manned by fully qualified and trained staff.

Last year I touched upon the duty of citizens to assist the crime-prevention agencies in detecting crimes. That duty remains constant and perpetual and if citizens wish to live happily without fear of thugs and criminals then they must come forward and do what is legally and morally required of them, that is, identify the culprits and be willing to testify against them. Every citizen should understand and appreciate that such assistance to the relevant authorities, be they the Police, the Narcotics Control Bureau or the Anti-Corruption Bureau etc. will ultimately result in providing them and their families a safer and more enjoyable life. I think that we should put a little more effort both in terms of manpower and extra money on programs to enhance public awareness and appreciation of their obligation of assisting crime preventing agencies.

I am not forgetting that the other essential aspect lending to the success of any judicial system is the professional quality of the advocates and solicitors who represent clients at trials. They are qualified people and are referred to both in Court and outside as the learned people. Those who have had occasion to sit through a trial will recall how often lawyers representing the parties addressed each other as my learned friend. Many may wonder, after watching the performance of some of them in Court, whether that expression is truly befitting or simply is a euphemism. To be deserving of such a compliment the advocate must prove that he is in fact learned in the law and its practice, both in and out of court. Just as the judicial officers need to have refreshers to keep pace with the incessant developments in the legal field generally, so also members of the legal profession need to undergo such short refreshers so that they are able to prove themselves to the society that they indeed are learned in the law. Merely passing the law examinations of any kind does not a lawyer make, it is only by slogging through the few years after university or the Inns of court as juniors and gaining experience through sheer hard work that some, and I emphasize some, can claim to boast of being good advocates. I have not heard of the existence of any such local refresher scheme. The reason for this is not difficult to identify which is, in my opinion, the non-existence heretofore of any professional body to take care of the quality and standard of those who practice at the Bar of the Courts of the country.

This subject that had been mentioned repeatedly almost annually is now near to fruition. The relevant law has been amended to allow for the setting up of the Law Society. However, there still remains a final step before elections for the Council can be held. That is the formulation of the election rules, which have been drafted and are now the subject of final discussion by the advocates. Once this has been done I shall waste no time in approving the rules. The advocates will then be able to elect the first Council of the Law Society of Brunei Darussalam.

The importance of this Society has been discussed on a number of occasions. Perhaps it is appropriate at this juncture to remind the local legal fraternity of the words of Lord Donaldson of Lynton, former Master of the Rolls, in the foreword he gave to *The Law, Practice and Conduct of Solicitors* by Bird and Weir (1989), where he referred to the "strident demands for change ... at a time when changes already made could fairly be described as not far short of revolutionary". Admittedly we have not had any such changes, but I think that his comment is about the profession generally and may be beneficial for those forming the profession to be reminded of it.

The learned Master wrote:

"A profession neither deserves to endure, nor will it endure, if it does not adapt to the changing needs of its clients. But equally a profession neither deserves to endure, nor will it endure, if it abandons or compromises the essential characteristics which make it a profession rather than a business."

Those words encapsulate the true worth of the legal profession. Our legal profession is fused, that is, a lawyer acts in the dual capacity of a barrister and a solicitor. In that sense his responsibility may be said to have doubled. I think that it can be said with some degree of certainty as is argued by the co-authors of the book to which I have referred, that the profession insists that the conduct of advocates satisfied two fundamental principles, "the need to avoid conflict," of interest and "the requirement that for justice to be done it must also be seen to be done ... and to abrogate either for the sake of greater competition would indeed be to set the market-place above the rule of law."

I feel that there is need for our advocates to be reminded of these fundamental principles lest they let the urge to degrade and bring this noble profession down to the level of a business, where the entire human energy is geared to making as much wealth as possible within as short a period of time as possible, takes the better of them. The authors refer to "the demands of the market-place, on the one hand, and the requirement that the machinery of justice must be seen to operate in the public interest, on the other", so that as the authors say and I am certain that we all would agree, "the status of officer of the Supreme Court is an integral part of the solicitors' independence, and that it would therefore be against the public interest if that status were lowered." Surely that ought to be the goal for the profession and it must be the at the top of the priority list for the Law Society.

Advocates are bound by the ethics of the profession to guard against conduct that would bring the profession into disrepute and it is hoped that the Law Society of Brunei will be bold enough and not shirk its responsibility and duty to take care of such tendencies, should they be found to exist. It is within the framework of the rules of conduct that advocates serve the public. All advocates know but I think that it is appropriate at this juncture to repeat the words of Lord Mansfield as long ago as 1767 about the predecessors of the modern solicitor, locally he is known as advocate, that "part of the profession which is carried on by attorneys in liberal and respectable, as well as useful to the public, when they conduct themselves with honour and dignity."

We and the rest of the community expect the new Council to take heed of those words and to ensure that the profession always follows that edict, to conduct themselves with honour and dignity. I think that I have said enough but let me end on this note of warning to the first Council of the Society soon hopefully to come into existence that the community shall watch their performance closely and carefully in dealing with the rogue element within the profession, should it be detected, and the Council will certainly be held accountable in that respect.

I am sure that the honourable guests here assembled this morning would join me without any hesitation in wishing the Law Society of Brunei Darussalam all the very best and success in the discharge of their onerous burden. Let the Society acquit itself of its responsibilities without fear or favour with understanding, honour and dignity, to the full satisfaction of the citizens.

We await with anticipation and eagerness the arrival of the IT technological benefits, particularly the Court Management System (CMS), which will provide the background anchor service as well as the backbone of the computerized work system of the courts. It is our vision that once implemented, the CMS will lead the way to a full Electronic Filing System consistent with our commitment and endeavour to become a fully fledged paperless Court. We are lagging behind in law reporting since it is done elsewhere outside of Brunei. Hopefully the envisaged CMS will take care of this problem as well.

As you may have noticed there are signs of construction works in the vacant area of the left of the Law Building. This new building will house some Government Offices viz., the companies and the trade marks registries, and some courts and facilities for lawyers. The stone laying ceremony took place on 22nd April 2004 and the expected completion date of the project is 2nd August 2005. The court accommodation in this new building will ease the present shortage of courts in the Supreme Court Building, which becomes acute when the Court of Appeal is also in session. Hopefully these problems will disappear when the new building is completed.

I should not forget the Guard of Honour parade mounted by the police contingent. As usual they performed immaculately and paraded so professionally. To all of them and to the Commissioner I say thank you very much.

All that remains for me now is to offer you the sincere thanks of all those employed in this building from the humblest rank right through to the top for your attendance and for the patience with which you have sat through my address.

Before I end may I take this opportunity to publicly thank Honourable Pehin Isa who, as a member of the profession, has so ably represented the profession over the years in the absence of a body representative of the advocates. I can speak on behalf of the Judiciary with confidence and thank him for his valuable advice and suggestions from time to time. I have no doubt that I speak for all concerned in saying that the Honourable Minister has represented the profession in a very sagacious and capable manner in the absence of the Law Society.

I shall now call upon the Honourable Attorney General to express his views and he will be followed by Honourable Pehin Isa. After the speeches we shall proceed to the main lobby on the ground floor for some refreshments.

27th May, 2004

Mohammed Saied
Chief Justice

SPEECH
YANG MULIA DATO SERI PADUKA HAJI KIFRAWI
BIN DATO PADUKA HAJI KIFLI
OPENING OF LEGAL YEAR 2004
THURSDAY, 27th MAY 2004



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ

Mr Lord, Judges of the Supreme Court,

The Honourable PEHIN DATO HAJI ISA BIN PEHIN DATO HAJI IBRAHIM, (his full Malay title: Yang Berhormat Pehin Orang Kaya Laila Setia Bakti Di-raja Dato Laila Utama Haji Awang Isa bin Pehin Datu Perdana Manteri Dato Laila Utama Haji Awang Ibrahim)

Mr. David Teo

Members of the Bar,

Distinguished guests,

Ladies and gentlemen,

It gives me great pleasure to address Your Lordship again on this occasion. We are thankful to Allah Subhanahu Wataala for His blessings in making it possible for us to once again be present at this ceremony this morning to observe a very important legal tradition in Brunei Darussalam and to renew our pledges of cooperation and mutual support for the upholding of the independence of the judiciary and the rule of law.

My Lord,

New Legislation

In 2003 and early this year, several new laws have been made. As usual I would like to mention several notable Orders.

1. Legal Profession (Law Society of Brunei Darussalam) Order, 2003

This new law provides for the establishment of a Law Society of Brunei Darussalam. The Law Society is set up mainly to represent, protect and assist members of the Legal Profession and to promote the interests of the Legal Profession. The Law Society with the approval of the Chief Justice may make rules regarding the professional practice etiquette, conduct and discipline of advocate and solicitors.

My Lord

I join Your Lordship in wishing the Law Society of Brunei Darussalam all the best and success in the discharge of their heavy burden.

2. Education Order, 2003

This Order provides for the registration and regulation of all schools and educational institutions and for matters connected therewith.

This Order repeals the Education (Non-Government Schools) Act (Chapter 55), the School Attendance Enactment (Chapter 56 of the Revised Edition) and the General Regulations for Schools, 1939. There are 12 Regulations made under this Order. The Regulations deal with School Associations, Parent-Teacher Association, School Discipline, National Curriculum, Registration of Educational Institutions and Teachers and the Management of Educational Institutions.

3. Infectious Diseases Order, 2003

This Order is introduced to prevent the introduction and spread in Brunei Darussalam, and the transmission from Brunei Darussalam, of infectious diseases and any matters connected therewith.

This Order repeals the Quarantine and Prevention Diseases Act (Chapter 47). This new law should be effective to control the spread of infectious diseases especially SARS and the recent bird flue diseases.

4. Road Traffic (Seat-Belts for Children), Regulations, 2004

These new regulations commenced on 28 January 2004. The regulations make it an offence for any person who, without reasonable excuse, drives a motor vehicle on the road when there is in that vehicle a child who is not using a seat-belt. This offence

carries a penalty of a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

5. Immigration Act (Amendment) Order, 2004

The recent Immigration Act (Amendment) Order, 2004 provides for the punishment of Shipping in addition to the usual imprisonment or fine for offences of unlawful entry, overstaying and abetting illegal immigrants to contravene the Immigration Act. The punishment of Shipping will be imposed on defendants charged and convicted on and after 12 June 2004.

6. Law Revision Exercise

As usual my Chambers has been actively engaged in revising the Laws of Brunei. Since the Opening of the Legal Year last year, a number of Acts have been revised namely the Internal Security Act, Monopolies Act, Brunei Economic Development Board Act, Registration of Adoptions Act, Stamp Act, Electricity Act, Finance Companies Act, Income Tax Act, Census Act and Rules of the Supreme Court.

My Lord

As I have said before, introducing new laws do not solve all problems in life. We still have to enforce them. We have to prosecute or defend the person who allegedly breaks them. We still have to hear and decide and to make sure that justice is done and seen to be done. Those involved, namely enforcement officers, Prosecutors, Lawyers, court interpreters, court administrators and other supporting staff, Magistrates, Registrars and Judges would therefore need to be continuously trained or "refreshed", so that our machinery of justice could function efficiently.

My Lord

I agree with Your Lordship that these officers who are qualified Lawyers are expected to be learned in the law and practice.

I agree with Your Lordship that to be learned in the relevant laws and practice require sheer hard work and full dedication and commitment. It is already difficult to be learned in such relevant laws and practice. I think it would be near impossible to be learned in every area of the laws. No matter how tough the challenge before us, as I have said before, we should strive hard to remain relevant in the face of the new challenges of this century. New legal areas such as in offshore finance and banking,

Islamic/Syariah Law, Islamic banking and financing, cross-border work, intellectual property, electronic commerce, electronic Government, World Trade Organization (WTO) work and legislative drafting are amongst the many emerging new legal areas where legal expertise would have to be acquired. I would like to add to this list the need for lawyers to be knowledgeable in public international law so that they would be able to understand and help especially the politicians to resolve the current problems faced by the world today such as issues of terrorism and human rights. I believe the United Nations has just realized this and recently highlighted this need.

Liberalization of Legal Services

My Lord

The globalization of legal services in international finance and investments has increased the pace and complexity of legal practice. We can see now a growing trend for lawyers with the right legal skills and experience to become more mobile. Sadly I am only seeing a handful of our local lawyers taking up the opportunities for bigger share of the international legal market. Although I know that some law firms here are practising in offshore legal services offered by the opportunities given to them when the Brunei Offshore International Financial Centre took shape, I am yet to see them venturing outside taking the advantages of the other financial centres around the world. I urge them to take this leap as the only way for the legal service industry to expand in Brunei is for our law firms and our lawyers to expand their services outside especially in the major financial centres of the world as well as venturing into specialized legal services such as international arbitration work.

With the growing demand from more developed countries at the World Trade Organization for the liberalization of legal services and possibly in ASEAN under the liberalization of services negotiation in the coming years, I must urge my fellow legal practitioners that you must see the world as your oysters. You cannot be overly complacent with the domestic needs for legal services and expect that our Legal Profession Act would remain protecting us against foreign competition. As Brunei wants to become a Trade and Service hub in the region, liberalization in the legal services will be the only way forward.

Transnational Organized Crimes

My Lord

The absence of an appropriate level of governance generates strong potential for countries to be exploited against the threats of money laundering and terrorist

financing and to be used as a base for trans-national crimes such as drug trafficking and arms smuggling. In Brunei, we have taken those necessary steps to ensure that we have put that strong governance in place and this is a continuing process. The Government has enacted a wide-reaching legislations to give our security agencies and law enforcement authorities the additional powers they need to detect, prevent and, where possible, prosecute these crimes.

My Chambers is also working continuously with a number of agencies and law enforcement authorities to review our present laws and to propose to the Government to enact new ones in order to ensure that transnational crimes can be detected and the perpetrators prosecuted. Such initiative includes laws to fight human trafficking and people smuggling. Although Brunei is not considered as a source country for human trafficking and smuggling, the risks of becoming a transit point and a destination country are there. It is for this reason, my Chambers is working very hard with the relevant agencies to draft this new law.

Mutual Legal Assistance in Criminal Matters

My Lord

The greatest challenge for any law enforcement agencies in addressing transnational crimes is that they transcend national borders. The proceeds of crimes in one country such as those from drugs trafficking for instance can be laundered in another country. In order to ensure that these criminals do not benefit from their ill gotten proceeds of crimes by taking advantage of the lack of extra territorial application of laws of most countries, I cannot over emphasize the need for international mutual legal assistance in criminal matters. In this respect, I should mention that a meeting of Attorney Generals of like minded countries in the ASEAN region had just been concluded in Kuala Lumpur to formulate a **treaty arrangement on mutual legal assistance in criminal matters**. With approval of His Majesty the Sultan and Yang Di-Pertuan, the Brunei Government represented by my Chambers has been party to this negotiation which we hope will be finalized soon. In anticipation of the coming into effect of this treaty, an enabling legislation is being drafted and my chambers is preparing for the setting up of the **mutual legal assistance secretariat**. With the passage of this treaty and the subsequent enabling legislation on mutual legal assistance, we will have every tool it needs to receive legal assistance in criminal matters from countries having such arrangements with us and thereby ensure that crimes would not go unpunished or proceeds of crimes would not be left unforfeited simply because we lacked the necessary jurisdiction.

My Lord

Again I need to repeat what I have said before to remind all of us here that the most perfect laws on paper are useless unless they are enforced fairly, firmly and effectively. I agree with Your Lordship's comments that maintenance of the law and order is a never-ending task. The enforcement officers also need the support of the members of the public by assisting them in carrying out their difficult task. My Lord, this is the right occasion, as usual to express my gratitude to officers of the Royal Brunei Police Force, Royal Brunei Armed Forces, royal Custom and Excise Department, the Immigration Department, the Anti Corruption Bureau, the Narcotics Control Bureau, the Internal Security Department and other enforcement agencies for their untiring efforts and dedication in maintaining law and order in sometime difficult circumstances.

My Lord

I think one of the ways to get the public to continue supporting our law enforcement agencies is to make sure that we are always sensitive to the needs of the victims of crime and the victims of abuse of power. The enforcement agencies have to establish procedures in association with prosecuting authorities for the prompt return of property to victims and for prosecutors, in so far as possible, to do away with the need for the actual physical evidence to be produced in court. The enforcement agencies should also ensure that victims of crime are periodically informed of the status of investigations. Prosecutors should also inform victims of the status of a case from the time of the court appearance to the conclusion of the case. Prosecutors should charge and pursue defendant who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses.

Subject to Your Lordship's consideration, the court should, in so far as possible, establish separate waiting rooms for prosecution and defence witnesses. The court should also consider giving substantial weight to the victim's interests in the speedy return of property before trial in ruling that the admission of photographs of that property as being sufficient evidence.

My personal gratitude also goes to all my officers from the various Divisions in the Chambers namely Criminal Justice, Civil, International Law, Legislative Drafting and Registry for their hard work in carrying out their job that is to maintain and uphold the rule of law.

I would also like to thank all Ministries and Departments in particular the Prime Minister's Office for all their support, help and cooperation.

May it please Your Lordship, this brings me to the end of my address.

I hope the good relations between my Chambers and the Judiciary as well as with the private practitioners will continue in the years to come. We are all responsible to uphold the integrity of our Legal System.

Lastly, I wish Your Lordship and everyone present here this morning a successful and prosperous year.

ADDRESS BY PEHIN ISA
OPENING LEGAL year 2004

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ



My Lord Chief Justice, and Honourable Judges of the Supreme Court

May it please Your Lordship,

May I thank Your Lordship for giving me the honour of participating in this year's Opening of the Legal year Ceremony.

My Lord,

The statistics which Your Lordship have cited pertaining to the increasing numbers of cases dealt with by the courts and the Attorney General's reference to the slow of important legislative measures passed recently are indicative of the advances being made by a developing country.

I join Your Lordship and the legal profession generally, in welcoming the newly established Law Society of Brunei Darussalam and the setting up the pro tem Committee which in due course will lead to the election and appointment of the Law Society Council under the provisions of the relevant legislation.

In the past, when invited to address the court on behalf of the legal profession I would usually have held an informal consultative session with all available members of the Brunei Darussalam's private legal practitioners prior to this ceremony.

However today, I am very happy to congratulate my learned friend Mr. David Teo on being nominated to represent the views of the private legal profession by the pro tem committee. Mr. Teo will no doubt in his address to Your Lordship be touching upon matters pertaining to the legal profession as a whole.

My Lord,

In support of some of the remarks made by Your Lordship, I believe that there is already a need to introduce some ethical guidelines and regulation to the private

practice of law, particularly from the standpoint of client satisfaction. A lawyer should not bite more than he can chew, in the sense that he or she should not take on more work than can be handled to the satisfaction of his or her clients.

The Law Society is also charged with overseeing the discipline of members of the legal profession, including their conduct both inside and outside the courtroom. This responsibility also includes the duty to take action over any act or omission by lawyers which could bring disrepute to the profession as a whole.

I am confident that the Council when established will ensure that its disciplinary proceedings will be transparent so as to avoid any suspicion in the minds of the public that such proceedings are mere whitewash.

With regard to the level of competence required of the legal practitioners in the public sector, I take note of Your Lordship's comments.

I hope newly qualified DPPs will take heed of Your Lordship's views not so much as criticism, but more as a good dose of worldly advice. Whilst passing one's Bar examinations may be regarded as an outstanding academic achievement, the real hands on conduct of criminal prosecution demands practice and experience in order to be properly mastered.

In the conduct of criminal prosecutions, I am sure that the Attorney General in his capacity as the Public Prosecutor, is constantly aware that Deputy Public Prosecutors have a duty and responsibility to direct and guide the police investigation officers, as to the ingredients of an offence required to be proven in order to satisfy a judge or magistrate beyond reasonable doubt of the commission of that offence by the accused.

However, whilst I most strongly support the independence and neutrality adopted by the courts, in the sense that the court should not lean in favour of either party in a case, I hope that I will not be incurring Your Lordship's displeasure by respectfully submitting that a mere technical or procedural defect caused by the lapses of a prosecutor may properly be corrected by a judge in the interests of justice, provided of course all the evidence adduced in court, conclusively proves the prosecutions case.

I make these remarks keeping firmly in mind, the cardinal principle of our criminal law, that an accused person is innocent until proven guilty and that this principle should remain inviolate and the accused's rights in this respect should be safeguarded.

Nevertheless, in the interests of justice for all, a balance must be struck between the need to protect the accused persons rights, and the need to uphold the interests of the public at large, not forgetting the suffering of the victims of crime.

Of course, judges and magistrates are to be highly commended for their vital roles in dealing with cases involving violence against the person particularly against women and children. In most cases the courts have rightly meted out deterrent sentences to serve as clear warnings to any potential violators lurking in our society.

My Lord,

I also strongly support the sentiments of the Attorney General about laws on paper being pointless without real enforcement, particularly those relating to the safety of the public.

On the role of interpreters, I wish to echo Your Lordship's views on the importance of accurate translation, not just in the literal verbatim sense, but also in terms of properly conveying the meaning of a witness's statement.

In this regard, I would like to cite an instance in the days of the so called "confrontation" between Indonesia and Malaysia in the late sixties.

At the time, it was reported that due to damage to the British Embassy in Jakarta by demonstrators, the then British Ambassador had to leave Jakarta. During a stopover in Kuala Lumpur on the way back to England, he held a press conference during which he was asked by a reporter about why the late President Soekarno was so opposed to the formation of Malaysia.

I recall that the Ambassador's reply was as follows;

[QUOTE]

"I think President Soekarno is angry with Prime Minister Tunku Abdul Rahman because the Tunku did not him in the picture".

[UNQUOTE]

When the Ambassador's statement appeared in one of the Malay papers the next day, it cited him as saying;

[QUOTE]

"Saya percaya Presiden Soekarno marah kepada Perdana Menteri Tungku Abdul Rahman kerana Tungku tidak menyimpan gambar presiden".

[UNQUOTE]

The free translation of which is that President Soekarno was angry at Tungku Abdul Rahman for not keeping a picture of the President.

I fully agree with Your Lordship that our interpreters should be well trained in the literal as well as colloquial nuances of the languages that they need to translate, in order to avoid the serious consequences that misinterpretation can afflict upon parties in court proceedings.

To stress how vital it is to translate accurately what a witness testifies in Court, I seek Your Lordship's indulgence for me to cite an incident in a murder trial in the Federation of Malaya.

A man was charged with murder. Witnesses testified that the accused person in a frenzied attack caused the unconsciousness of a fellow worker who later died in hospital.

The presiding judge was a Malay. The DPP was also a Malay. The Defence lawyer was Chinese. The accused was an Indian of Tamil extraction.

The Court interpreter was an Indian Muslim who was experienced and qualified in the English language in addition to other languages spoken in Malaya as it then was.

The accused opted to speak in Malay in which he was proficient.

As far as the DPP was concerned the case was straight forward and he had produced all the necessary witnesses to testify regarding the incident.

The judge called for the defence. Counsel informed the Court that his client the accused person insisted on giving evidence under oath from the witness box and that he wanted to give evidence in the Malay language.

Counsel's first question was;

"Is it true that you hit the deceased until he became unconscious?."

Accused's Answers;

"Yes that was true".

Counsel;

"What caused you to do what you did to him?"

Accused;

"Because he repeatedly pulled my coat in the presence of so many other workers while we were having our meal in the canteen."

This statement from the accused when translated into English caused a gasp and an uproar in court including among members of the Jury.

Counsel;

"Will you show the Court and the Jury how the deceased repeatedly pulled your coat."

The accused hesitated, he became fidgety and looked around the Court but remained silent.

He then said he could not do the demonstration because of the presence of so many people.

Counsel asked the court for permission to take off his jacket and offered it to the accused to do the demonstration but the accused declined the offer.

The Judge instructed the interpreter to approach the witness box and ask the accused why he was so coy about giving a demonstration.

The accused whispered to the interpreter something.

The interpreter announced with a straight face;

"My Lord the witness said that what happened at the fateful incident was that the deceased had repeatedly pulled his 'Kote'."

After a brief adjournment the judge directed the jury to return a verdict of not guilty of murder but guilty of manslaughter that is to say culpable homicide not amounting to murder.

My Lord,

I cited this incident not meaning to treat this important occasion with levity.

My purpose is to strongly support Your Lordship's requirement that Court interpreters must not only be proficient in the languages they use but must also have a keen sense of hearing.

I apologise to all the graceful ladies present if I offended their feminine sensitivities. However, I am sure that being modern and educated ladies, they would not hesitate to continue to subscribe to the important principle that men and women are equal before the law.

My Lord,

With the establishment of the Law society and the upcoming election of its Council members, this will be the final occasion when I have the honour to address this court. However, I look forward to attending future ceremonies as a silent, but no less admiring spectator.

To conclude, it would be most remiss of me if I do not congratulate Your Lordship, the officers and staff of the Judiciary and the Attorney General and his staff for making this time honoured ceremony another great success.

I look forward to maintaining my close working relationship with the Judiciary in the years to come, age and health permitting and I look forward to seeing your Lordship continuing to head the Judiciary in the high office of Chief Justice of Brunei Darussalam in years to come.

May it please Your Lordship.

**SPEECH BY MR. DAVID TEO
ON BEHALF OF THE MEMBERS OF THE LEGAL PROFESSION**

I am greatly honoured to be invited to speak on behalf of the Negara Brunei Darussalam Bar at the Opening of the Legal Year.

My Lord, the Opening of the Legal year is an important event in the calendar of the courts. The ceremonies making this event are in themselves not the real essence of the matter. We are assembled here today to reaffirm our commitment to continue to uphold the rule of law and to remind ourselves once again of the vital role played by our legal system in the maintenance of the highest standards of the administration of justice. Indeed, the supremacy of the Rule of Law, which we cherish and within which we govern our lives, is a vital instrument ensuring the attainment of peace and prosperity in this country.

Ever since the 80s, when Brunei achieved full independence, the volume of statutes and subordinate legislation has increased. This has been necessary in order to keep pace with the rapid social and economical changes taking place in this country. Perhaps as legal practitioners, this also offers a fresh appraisal of the way we offer our legal services.

My Lord, a major and significant development has been the establishment of the Law Society. It is a historic event not only for the legal fraternity, but for the country as a whole. This would not be possible without the dedication and efforts of a working committee, under the inspired leadership of Datin Justice Hayati.

It is to this credit of Datin Justice Hayati that the proposal to form the Law Society finally came to fruition. We would also like to extend our profound gratitude to Datin Paduka Magdalene Chong, Awg Ahmad Isa and Mr. Y C Lee for their enormous efforts towards the establishment of the Law Society.

My Lord, the main function of the Law Society is to regulate and control the practice, conduct and discipline of Legal Practitioners.

I have little doubt that the Law Society will help create a strong independent legal profession. A strong and independent law society will not only be of benefit to the legal practitioners but also to the community at large. No doubt in the coming years the society will face many challenges but I have little doubt that with the statutory duties and powers entrusted to it, it will be able to discharge its functions effectively.

My Lord, our courts have been coping well with the increase in the volume of criminal cases brought before them. However, there is one area in the administration of criminal justice which concerns us. That is criminal offences committed by young children or juvenile delinquency. The question that arises is, whether our system places too much emphasis on the criminal aspects of the offences committed by young children rather than the possibilities of correction or reform.

This is certainly not the place for an in depth analysis or discussion of the problem but I propose, in all humility, that we should look at the possibility of reform in this important area.

My Lord, I have in my speech at the opening of the 1998 Legal Year, referred to the Reciprocal Enforcement of Judgment Orders 1996 Singapore of Judgments in any Brunei which provides for the enforcement in Malaysia and Singapore of judgment in any Brunei Court and vice versa and proposed that amendments be made to include other countries.

I also referred to the subject of Motor Insurance Bureau. It is unfortunate there are still people driving on the roads without being covered by a valid insurance policy. Under the law at present, an insurance company is not liable to pay compensation to a person killed or injured in a road traffic accident if the driver responsible is uninsured. The solution clearly lies in the setting up of a fund or a Motor Insurers Bureau, to be financed by levies made on insurance companies, to meet the claims against uninsured drivers.

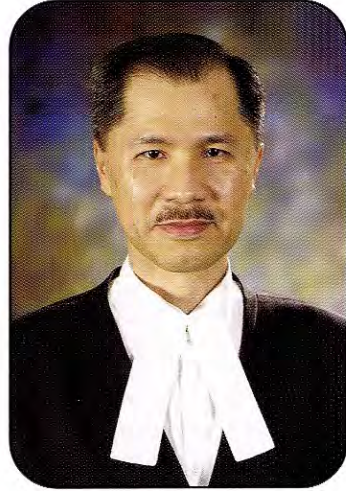
We thank Your Lordship and your registry for all the assistance rendered to us during 2003 and assure Your Lordship of our responsibilities to the courts and the public.

And to the Attorney General and his staff, we offer our gratitude for their cooperation and assistance in 2003 and assure them of our continued cooperation and support in the years to come.

OFFICERS AND STAFF OF
THE JUDICIARY
BRUNEI DARUSSALAM
AS OF THE YEAR
2005



Justice Datin Hjh Paduka Hayati POKS
DSP Haji Mohd Salleh
Judge, High Court



Justice Dato Paduka Steven Chong
Wan Oon
Judge, High Court



Hairolarni Haji Abd Majid
Chief Registrar/Intermediate
Court Judge



Liew Siew Yen
Deputy Chief Registrar/
Intermediate Court Judge



Dk Rostaina binti Pg Hj Duraman
Chief Magistrate,
Subordinate Courts



Dk Hjh Hanani binti Pg
Haji Metussin
Senior Registrar, Supreme Court



Ramzidah PDKD Hj Abdul Rahman
Acting Senior Registrar,
Supreme Court



Pg Masni binti Pg Hj Bahar
Magistrate, Subordinate Courts



Lailatul Zubaidah binti Hj
Mohamad Hussain
Magistrate Subordinate Courts



Dk Hjh Norismayanti Pg
Hj Ismail
Registrar Supreme Court



Hazarena POKSJ DP Hj Hurrairah
Registrar Supreme Court



Hj Abdullah Soefri bin POLSM DSP
Hj Abidin
Senior Magistrate, Subordinate Courts



Radin Safiee bin Radin Mas Basuini
Senior Registrar, Supreme Court

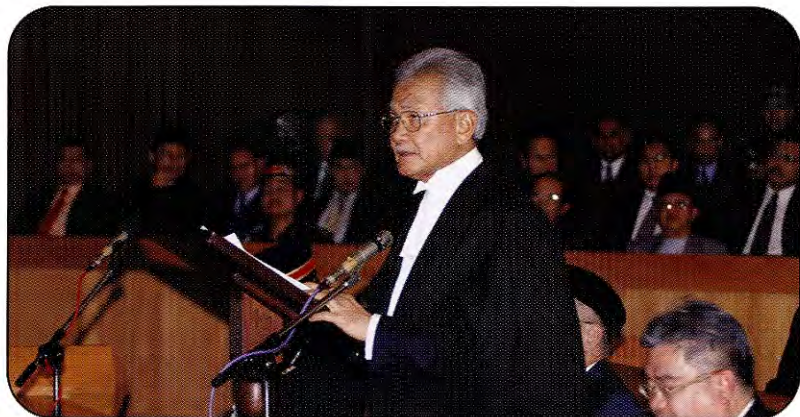


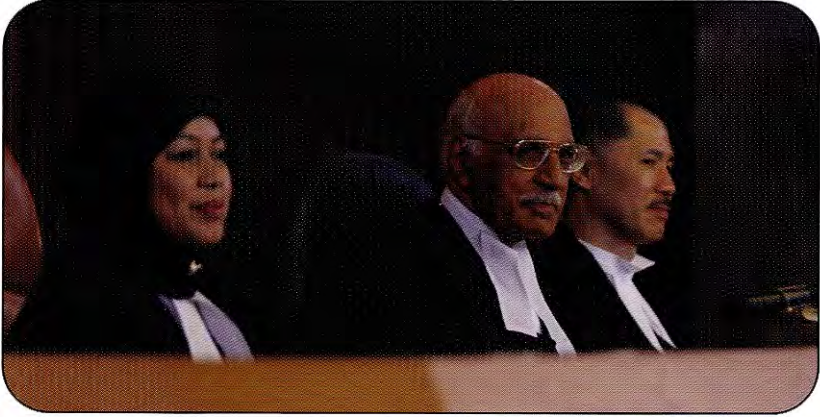
Muhammad Faisal bin PDJLDSP
Hj Kefli
Senior Magistrate, Subordinate Courts ^S

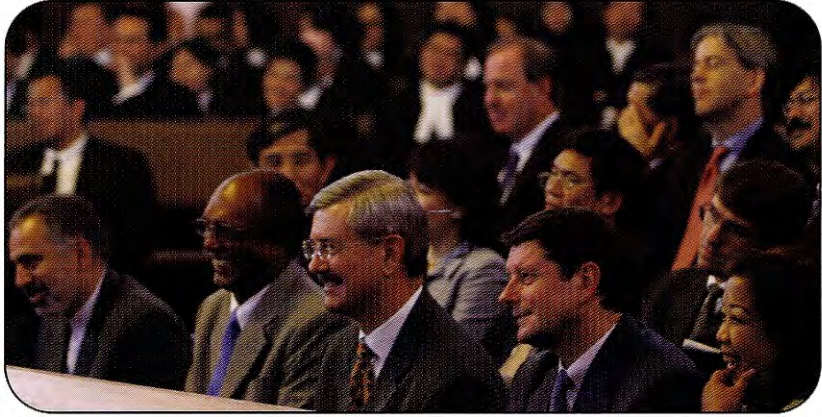


PEMBUKAAN TAHUN
UNDANG-UNDANG

OPENING OF LEGAL
YEAR 2004









STATISTICS

STATISTICS

MAGISTRATES COURT CRIMINAL CASES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
BSB	2044	2469	1880	1660	1973	2382	2774	2025	2180
Kuala Belait	699	546	508	524	481	381	461	496	340
Tutong	108	132	152	171	128	124	151	194	103
Temburong	17	29	34	36	34	16	20	41	15

MAGISTRATES COURT CIVIL CASES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
BSB	868	1277	2411	2771	1266	1032	953	967	872
Kuala Belait	66	158	325	325	164	187	132	227	120
Tutong	3	4	13	13	1	8	10	25	7
Temburong	0	0	0	0	0	0	0	0	0

CHAMBER HEARINGS BEFORE SENIOR REGISTRARS AND REGISTRARS

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Cases Dealt With	486	510	368	872	777	636	604	254	253

INTERMEDIATE COURT CRIMINAL CASES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Heard	38	34	22	18	8	14	9	11	16

**CIVIL AND CRIMINAL APPEAL CASES
[FROM MAGISTRATE'S COURT TO HIGH COURT]**

	1996	1997	1998	1999	2000	2001	2002	2003	2004
High Court Civil Appeal	5	5	3	5	8	11	14	19	7
High Court Criminal Appeal	56	54	51	57	67	130	159	75	41

HIGH COURT CRIMINAL CASES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Heard	9	21	17	19	101	147	124	22	42

HIGH COURT CIVIL CASES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Registered	155	176	330	352	245	208	211	214	316

**CIVIL AND CRIMINAL APPEAL CASES
[FROM HIGH COURT AND INTERMEDIATE COURT TO COURT OF APPEAL]**

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Court of Appeal (Civil)	8	8	15	14	15	20	17	11	16
Court of Appeal (Criminal)	14	24	8	14	30	19	16	10	20

LEGAL AID FOR CAPITAL OFFENCES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Granted	6	6	3	2	3	1	0	3	1

LETTERS OF ADMINISTRATION

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Received	385	274	247	253	275	363	343	381	294
Issued	253	251	223	180	130	276	254	286	206

PROBATE

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Registered	7	6	4	5	9	13	4	12	5
Issued	2	6	4	4	1	12	3	7	2

BANKRUPTCY

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Bankruptcy Notice	103	111	242	308	326	350	261	343	281
Receiving Order	48	71	73	168	203	165	181	218	161
Adjudication Order	3	13	29	28	15	32	80	59	41
Recission	6	4	3	8	6	13	19	26	23
Discharge of Adjudication Order	-	-	-	-	-	-	-	-	1
Winding-Up Orders	1	2	2	8	4	6	5	4	3

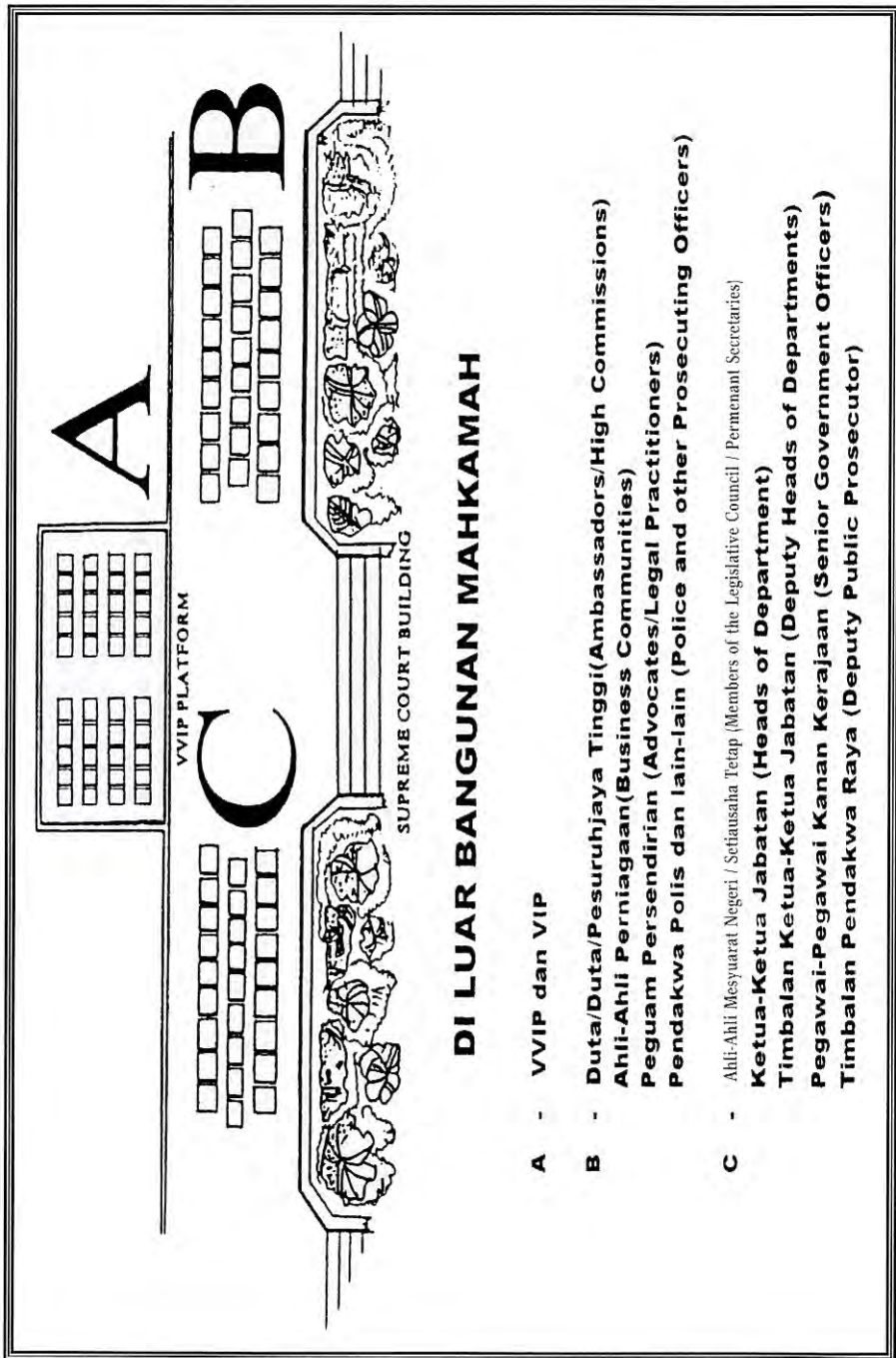
MARRIAGES

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Marriages	191	212	198	178	198	152	168	167	140
Divorce		19	27	37	19	26	16	25	20

THE REVENUE OF THE SUPREME COURT BRUNEI DARUSSALAM

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Revenue	3,250,970.80	3,870,114.67	3,642,234.54	4,146,204.02	4,196,403.49	4,388,148.76	5,129,548.35	4,685,958.79	3,706,381.84
Miscellaneous	14,485.89	14,795.00	10,922.50	13,961.09	14,582.54	8,758.31	12,999.53	9,433.24	22,088.09
Estate Duty	400,540.77	497,860.68	808,593.43	968,869.59	517,675.31	851,719.62	281,198.54	1,010,928.40	122,783.23
Stamp Duty	676,386.74	664,848.99	450,855.17	572,068.86	1,059,582.50	901,465.97	1,677,089.80	1,103,952.54	1,051,265.32

SEATING PLANS

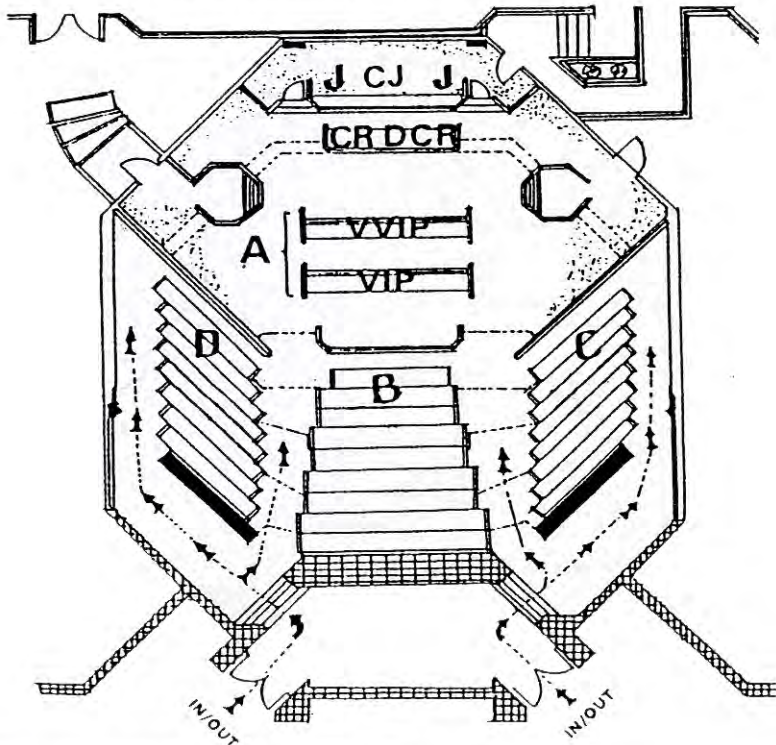


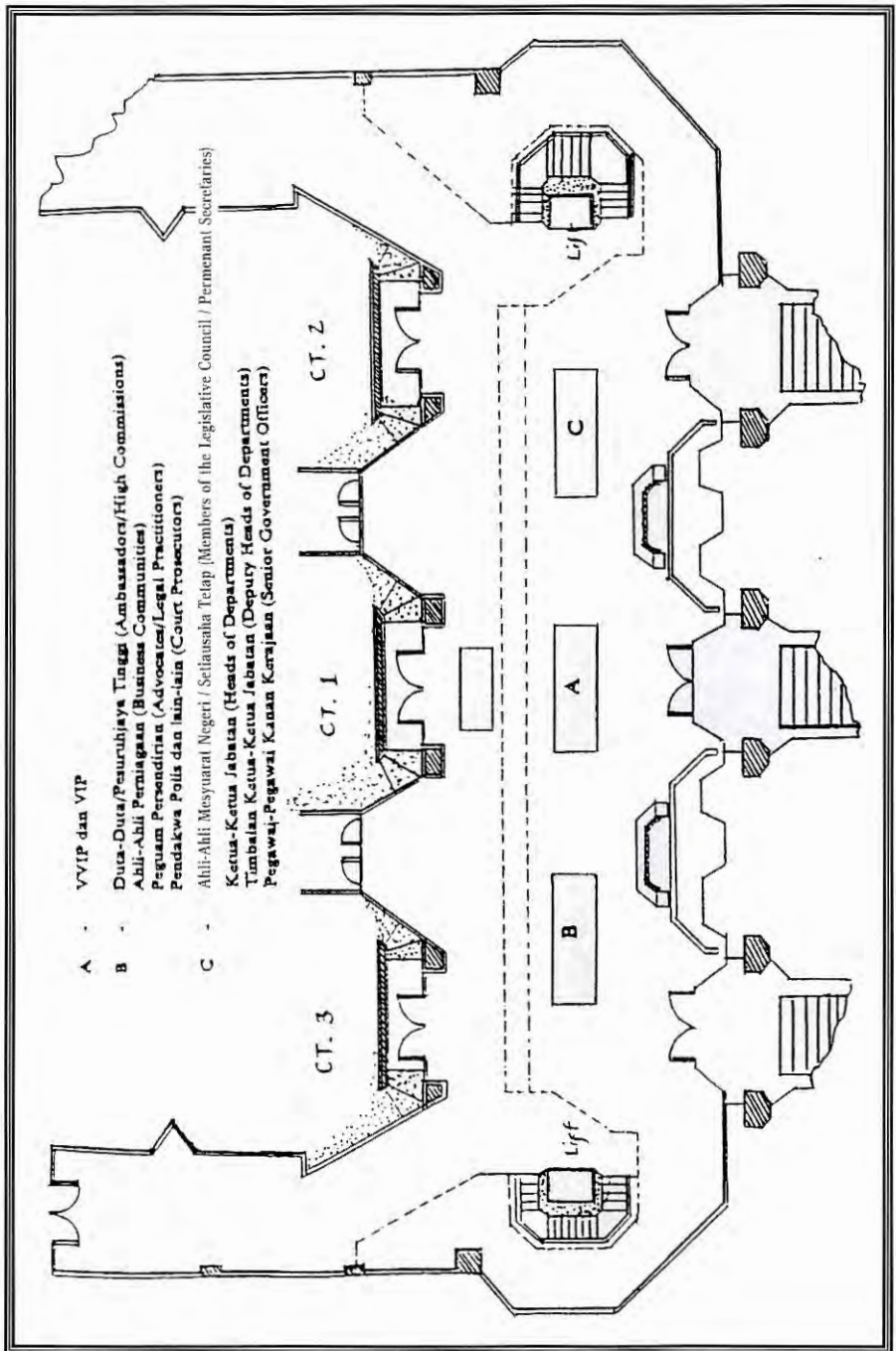
DI LUAR BANGUNAN MAHKAMAH

- A - VVIP dan VIP**
- B - Duta/Duta/Pesuruhjaya Tinggi(Ambassadors/High Commissions)
Ahli-Ahli PERNIAGAAN(Business Communities)
Pegawai Persendirian (Advocates/Legal Practitioners)
Pendakwa Polis dan lain-lain (Police and other Prosecuting Officers)**
- C - Ahli-Ahli Mesyuarat Negeri / Setiausaha Tetap (Members of the Legislative Council / Permanent Secretaries)
Ketua-Ketua Jabatan (Heads of Department)
Timbalan Ketua-Ketua Jabatan (Deputy Heads of Departments)
Pegawai-Pegawai Kanan Kerajaan (Senior Government Officers)
Timbalan Pendakwa Raya (Deputy Public Prosecutor)**

DI MAHKAMAH TINGGI

- A -** VVIP dan VIP
- B -**
1. Ketua Majistret/Majistret Kanan/Majistret dan Pendaftar-Pendaftar Mahkamah Tinggi
 2. Penolong-Penolong Peguamcara Negara/ Penasihat-Penasihat Undang-Undang/ Penolong-Penolong Pendakwaraya
 3. Ahli-Ahli Peguam Persendirian
- C -**
1. Ahli-Ahli Mesyuarat Negeri / Setiausaha Tetap
 2. Ketua-Ketua Jabatan
 3. Timbalan Ketua-Ketua Jabatan
 4. Pegawai-Pegawai Kanan Kerajaan
- D -**
1. Duta-Duta
 2. Pendakwa Polis dan lain-lain
 3. Ahli-Ahli Perniagaan
 4. Pegawai-Pegawai dan Kakitangan Jabatan Kehakiman





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DEPARTMENT OF PRIME MINISTER
MINISTRY OF FOREIGN AFFAIRS
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PUBLIC WORKS DEPARTMENT
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FIRE SERVICES
ORGANISING COMMITTEE FOR THE OPENING OF
THE LEGAL YEARS 2005
AND OFFICERS AND STAFF OF THE JUDICIARY

NOTE

NOTE

NOTE

1st MARCH 2005
THE JUDICIARY

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