

**REPORT ON FACT FINDING VISIT TO CHINA BY SOUTH AFRICAN  
HEADS OF COURTS' DELEGATION LED BY CHIEF JUSTICE  
MOGOENG: APRIL 2018**

**A BACKGROUND**

[1] One would generally not be attracted to study a legal system such as China that does not recognize the doctrine of separation of powers, where the Chief Justice is a member of the ruling political party (in this instance, the Communist Political Party), which recognizes the supremacy of Congress (Parliament), and not the rule of law. However, there are still profound lessons to be learnt from other legal systems even if their norms and principles do not tally with ours.

[2] At the instance of the President of the Supreme People's Court of the People's Republic of China, Chief Justice Zhou Qiang, Chief Justice Mogoeng, in the company of President Maya and Judges President Leeuw and Mbenenge, travelled to China, to study the digitization model (especially in relation to judicial case-flow management) and court proceedings in the country's various judicial institutions.

**B INSTITUTIONS VISITED**

[3] China Court Museum, Supreme People's Court, Beijing High People's Court, the Political Bureau of CPC Central Committee and Secretary of the Political and Legal Committee, National Judges College, Zhejiang High People's Court, and Hangzhou Internet Court.

## **C FUNCTIONARIES INTERACTED WITH**

[4] Mr ZHOU Qiang, Chief Justice and President of the Supreme People's Court; Hon HU Yunteng Justice, Permanent member of the adjudication committee of the Supreme People's Court; Hon PEI Xianding Justice, Permanent member of the adjudication committee of the Supreme People's Court; Mr YU Housen Director-General of the General Office of the Supreme People's Court; Mr HUANG Yongwei Chief Judge of the Administrative Tribunal, Senior Judge; Mr LU Xiaolong, Senior Judge, Vice Director-General of the International Cooperation Department of the Supreme People's Court; Mr Guo Shengkun, member of the Political Bureau of CPC Central Committee and Secretary of the Political and Legal committee; Mr Sheng Yongqiang, Executive Deputy President of the Shanghai High People's Court.

## **D OBSERVATIONS MADE**

[5] The following observations were made:

- (a) The quality, size and resources of the infrastructure of the institutions are exceptional.
- (b) Court modernization is advanced and the following features deserve mention:
  - monitoring of the courts by a functionary who is able to electronically access the various courts for the purpose of tracking progress in the running of cases;
  - the courts' capacity to capture all judgments and statutes, rendering them accessible to all interested parties, including members of the judiciary and the public;

- the development of in-house capacity to store court judgments, rendering same accessible to judges, legal practitioners and other interested parties – all this within seven days of the handing down of the judgment;
- electronic filing system is standard;
- the ability of the electronic system to have an audio-visual transcript of the record of the court proceedings generated simultaneously with the giving of *viva voce* evidence and such record being immediately available;
- the ability to try an accused person whilst he is at a venue other than the court room via a television link (this reduces the possibility of prisoner escapes, attacks on court officials and the general inconveniences of bringing all the relevant parties to court);
- the capability to obtain evidence from a competent and compellable witness even from outside the particular court's area of jurisdiction (this obviates postponements and incurring of unnecessary legal costs and improves the finalization rate of cases significantly);
- the ability to trace the development of a case from its institution to the execution of the judgment by any interested party (a system that curbs inordinate delay in the delivery of judgments);
- the live broadcast of cases *via* television and social media which creates an online platform for members of the public to access court proceedings.

- (c) The creation of specialised courts such as intellectual property courts, maritime courts, the financial disputes court (to be established in May 2018) and the internet court.
- (d) The preservation of historic assets. The Chinese have preserved literature (eg. statute books, legal texts, law reports etc) dating as far back as the Chinese Dynasty. It was interesting to view the very first written court judgment penned by the Emperor in manuscript, the court robes worn by judicial officers and court officials and instruments that were used to punish offenders, including those used to mete out capital punishment.

## **E HANGZOU INTERNET COURT**

[6] The Court was established on August 18, 2017 in accordance with the proposal reviewed and approved by the Central Comprehensive and In-depth Reform Leadership Team. It deals with six kinds of civil and administrative cases involving the Internet and has jurisdiction over the basic people's courts in Hangzhou, Zhejiang Province and has ushered in a new chapter in the centralized jurisdiction and professional trial of China's Internet cases.

[7] Through the innovation of the system and the application of information technology, the court breaks the space-time restrictions, realizes the whole process of online handling of cases, facilitates the litigation of the people, and improves the effectiveness of trials.

[8] Once logged into the litigation platform of the Hangzhou Internet Court, the party can completely file a lawsuit within 5 minutes by following the structured options. After the case is set up, the system automatically generates a corresponding legal instrument and stamps the official seal of the court to deliver it by electronic means such as text message, voice, and email. In evidence-producing and cross-examination, the system will automatically prompt the exchange of evidence so that the party can use their free time to complete the proceedings. The trial is conducted in video mode. The party needs only one computer or mobile phone to participate in the trial without travelling to the court. The duration of court trials is significantly shortened by presenting electronic evidence on this litigation platform; both parties conduct investigations and debates online and electronic records are generated simultaneously by voice recognition system. The procedures of internet-related case trials, which are devised and issued by the court based on the characteristics of internet-related cases and the requirements on trial, such as the Trial Procedure of the Litigation Platform of Hangzhou Court of the Internet and the Hangzhou Court of the Internet's Notice Regarding the Parties' Rights and Duties, solve difficulties relating to the confirmation of the litigation subject's identity, online cross-examination of parties and online behavioral control, and provide the basic litigation framework of Internet-related cases.

[9] The court received 6,516 cases and finalized 4,532 cases accumulated from May 1, 2017 to March 23, 2018. Court trials took 25 minutes and lasted for 46 days on average. The court continues to review and explore the laws governing the trial of internet-related cases in judicial practice, comprehensively reconstruct the litigation process, improve and perfect the related systems and rules, and explore the application of artificial intelligence and the application of information technology,

so as to build an efficient, convenient, and low-cost trial system involving online cases to make positive contributions to maintaining network security, resolving disputes involving the internet, and promoting the integration of the internet and economic society.

## **F CONCLUSION**

[10] The visit was a useful exercise. It presents us with an informed chance to properly assess the strengths and weaknesses of our legal system as we seek ways in which to develop it, within our limited means.