



ASIA-PACIFIC JUDICIAL REFORM FORUM ("APJRF")
2009
Singapore Conference
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Topic:

**Judicial Administration and Management
(The Sabah and Sarawak Courts Experience)**

Presenter:

**The Right Honourable Mr. Justice
Tan Sri Richard Malanjum
Chief Judge of the High Court of Sabah and Sarawak
Malaysia**

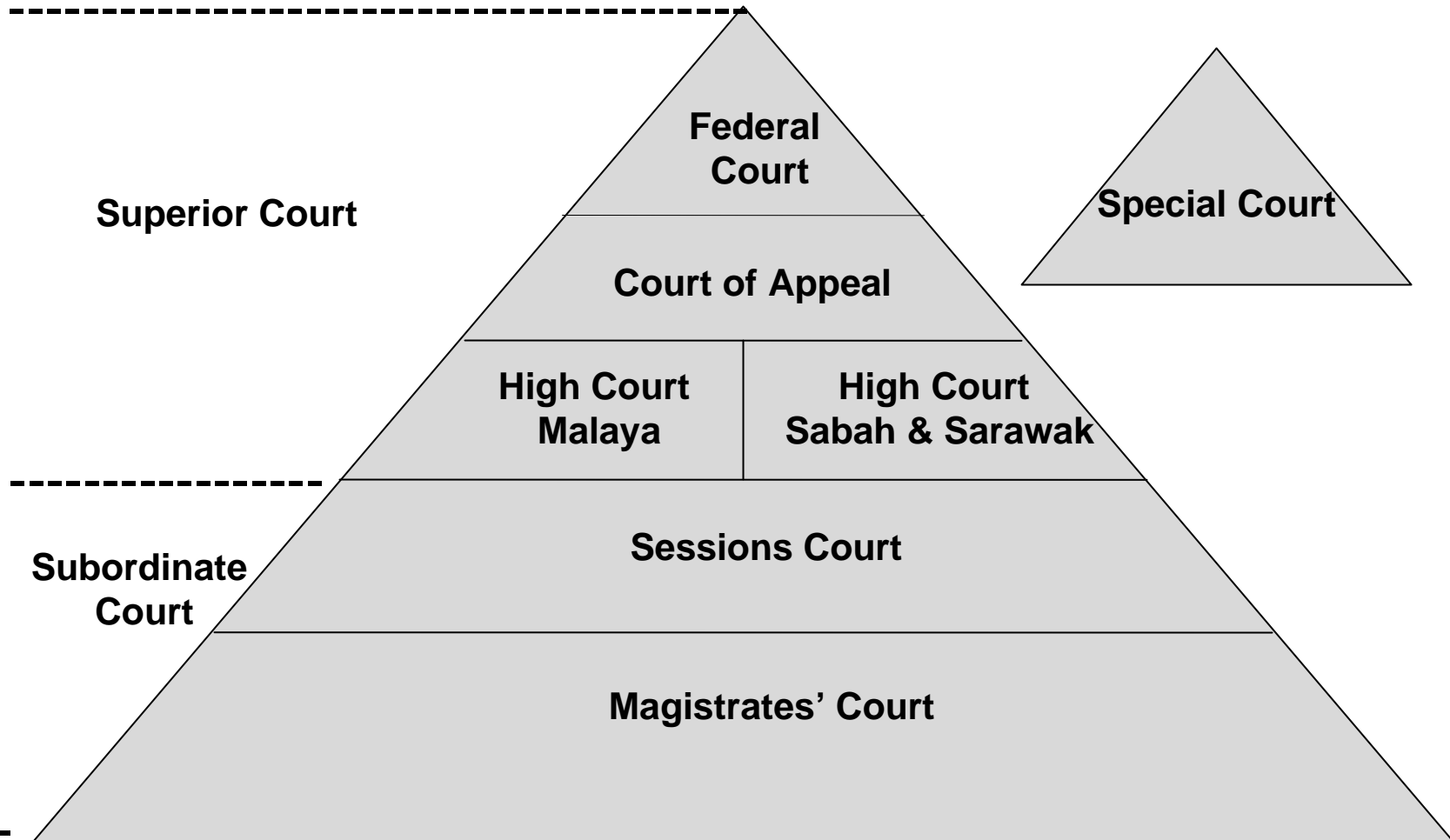


The qualities required of a Judge

- View of the Supreme Court of Canada:
 - That the judge is the **pillar** of our entire justice system;
 - That the public has a right to demand virtually **irreproachable conduct** from anyone performing a judicial function;
 - That Judges must strive for the **highest standards of integrity** in both their professional and personal lives;
 - That Judges should be **knowledgeable about the law**, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent;
 - That Judges' judgments should be **sound** and they should be able to make **informed decisions** that will stand up to close scrutiny;
 - That Judges should be **fair and open-minded**, and **should appear** to be fair and open-minded;
 - That Judges should not only be **good listeners** but should be able, when required, to ask questions that get to the **heart of the issue** before the court; and
 - That Judges should be **courteous** in the courtroom **but firm** when it is necessary to rein in a rambling lawyer, a disrespectful litigant or an unruly spectator.

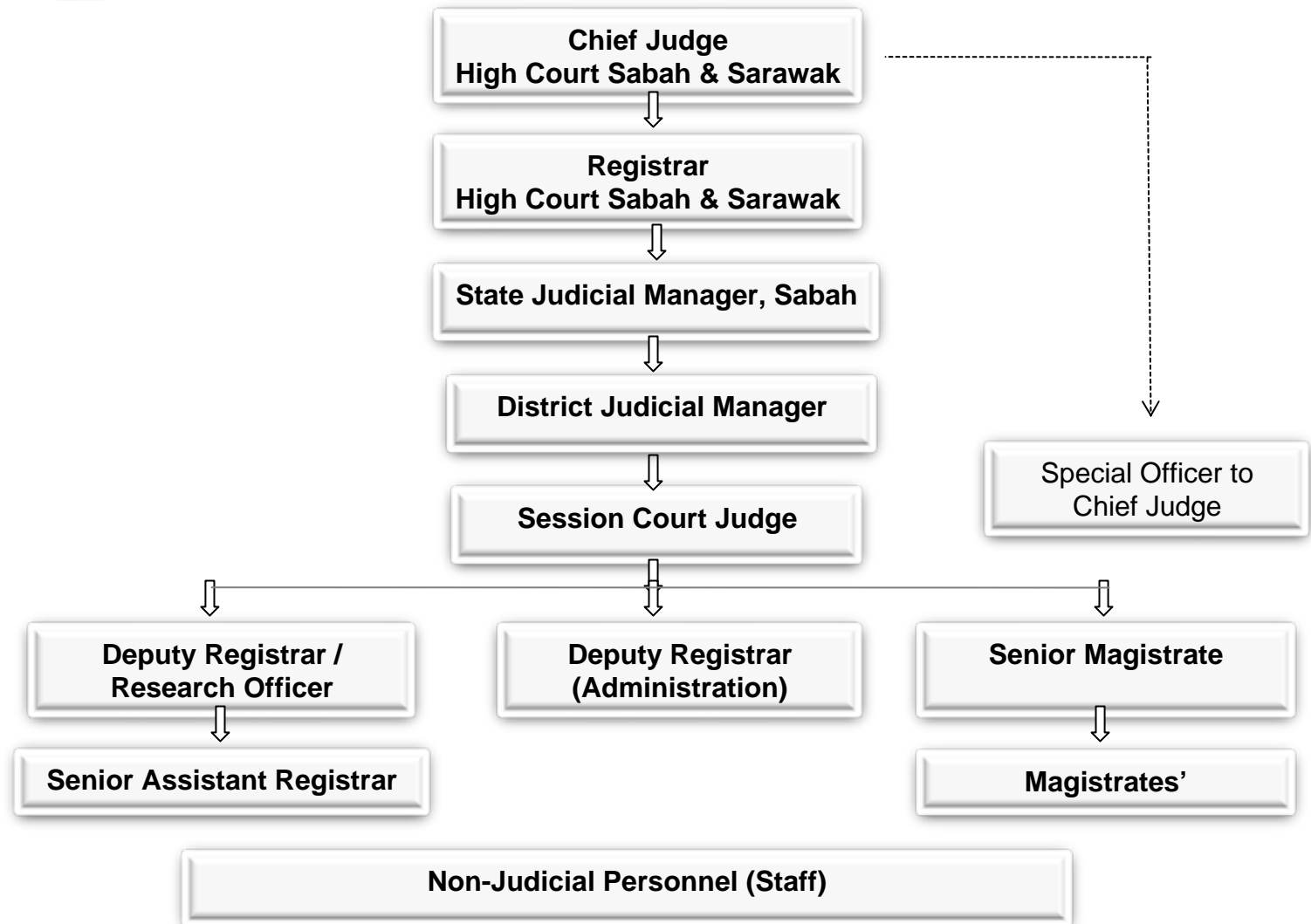


Malaysia's Court Hierarchy





Organizational Chart : High Court Sabah & Sarawak





PRIMARY OBJECTIVES

- For speedy and efficient disposal of cases without sacrificing justice
- Winning and maintaining public confidence in the judicial system



Present challenges encountered

- Minimizing serious negative public perception on the independence of the judiciary
- Sir Brennan: *‘General educational programmes about the legal process will assist, but there is much to be said for courts providing the same kind of assistance to litigants as a department store provides for shoppers: an information desk and an interactive computer screen that will answer basic questions. Canadian suggestion is that such a computer should be programmed to print out pro forma documents for use by litigants in person. That may be a false form of charity for the litigant and an unnecessary burden for the court.’ (Presentation at 15th Annual Conference The Australian Institute Of Judicial Administration Wellington, 20-22 September 1996)*



Courts' authority must be respected by all, says CJ-Singapore

- 'This is so fundamental and critical to the rule of law, and the just and proper governance of a state, that the law itself will not tolerate any attempt by any person to undermine public confidence in the courts by making false and scandalous allegations'
- 'The courts need to be protected in that regard by the law.'



Some of the negative public perceptions

- That cases before the courts involving the Executive (Government) and those in the position of authority are decided in their favour
- That the courts are there to serve the powerful, the rich and the well-connected
- That the judges, judicial officers and the courts are alienated from the normal daily life of the man on the omnibus
- That it is a norm for cases in courts to be disposed of at a crawling speed
- That one needs money to go to court
- That corruption and favouritism are prevailing amongst judges, judicial officers and court staff
- That the courts are part and parcel of the Government and cannot be expected to decide against the Government



Instance of a media report

Conrad Mojuntin gets 6 months' jail

- KOTA KINABALU, Jan 2 — Former Sabah state minister Datuk Conrad Mojuntin was jailed for six months by the High Court today for criminal intimidation.
- He was jailed for criminally intimidating businessman Doughty Disimon, 30, outside the SJD Cafe and Sports in Penampang near here at about 3.30am on Oct 23, 2005.
- However, Judicial Commissioner Datuk Abdul Rahman Sebli allowed a stay of execution of the sentence pending appeal and fixed bail at RM5,000 with two sureties.
- Abdul Rahman also fined Conrad, 60, and his nephew David Mojuntin, 44, RM2,000 or three months' jail each for voluntarily causing hurt to businessman Chee Hee Fatt, 45, at the same place at 4am on the same day.
- They paid the fines.
- On Dec 17, the High Court allowed the prosecution's appeal and overturned the magistrate's court's acquittal of the Mojuntins on all charges in March last year.
- In allowing the appeal, Abdul Rahman held that the magistrate had seriously misdirected himself when he ruled that the prosecution had failed to prove its case beyond reasonable doubt.
- The Mojuntins were represented by Zahir Hussein Shah while deputy public prosecutor Salim Soib appeared for the prosecution. —Bernama



Some of the comments

- written by Seberang, January 02, 2009
 - Life was lost and this super well connected politician got 6 months? Less the holiday and so called good conduct, what is left? 1 week?
- written by Chen Ching Yen, January 02, 2009
 - Where is Justice in Malaysia?
 - Only six months jail sentence for killing someone? It just shows that you can get away with murder if you are well connected in Sabah! Many criminals have heavier sentences with lesser charges.
- written by desmond, January 02, 2009
 - The whole trial has been a joke. When a death has occurred, what was the charge?..... criminal intimidation! Malaysian judiciary is a no hope case. Doubtful if the latest changes to the judiciary will change anything. Why? Because the problem is not what is available in Law, but the spirit of the Law and the proper implementation of those Law.

Just think of all the good Laws that are there, but their implementation?



Present challenges encountered... Cont.

- Financial constraints on the courts
 - One-line budget or Ministry controlled
- Excessive bureaucracy
- Choice of administrators
 - Legally qualified or trained judicial administrators?
- Adapting Court Rules to the changing times
 - Public find Court Rules too alien



Present challenges encountered... Cont.

- Changing the mindset of Judges and personnel
 - Inadequate in-service training on case management
 - Lack or limited exposure to other jurisdictions
 - Not receptive to changes
- Changing attitude of the members of the legal profession
 - Commercial thinking and greed prevail
 - Not receptive to changes
- Society's changing norms towards litigations
 - The increasing assertion of rights through the courts
 - Poor use of Alternative Dispute Resolutions (ADR)
 - Sir Brennan opined: *'Culture of rights expressed in litigations'* and *'No controversy breaks out without an expectation that, if need be, litigation will solve it. Perhaps this is the inevitable consequence of the loss of a moral consensus which, in earlier and simpler times, either stilled many controversies or referred them for resolution according to the advice of parliamentarian or priest, doctor, lawyer or sergeant of police.'*
- Increasing costs in litigations – inhibiting access to justice



Speedy and efficient disposal of cases

- Backlog of cases is the perennial problem
- Speedy disposal of cases the main target
- Solutions
 - Set target for disposal of cases
 - Reduce waiting period
 - Use of technology
 - The use of ADR
 - In-house training of judges and officers on case management
 - continuous staff training

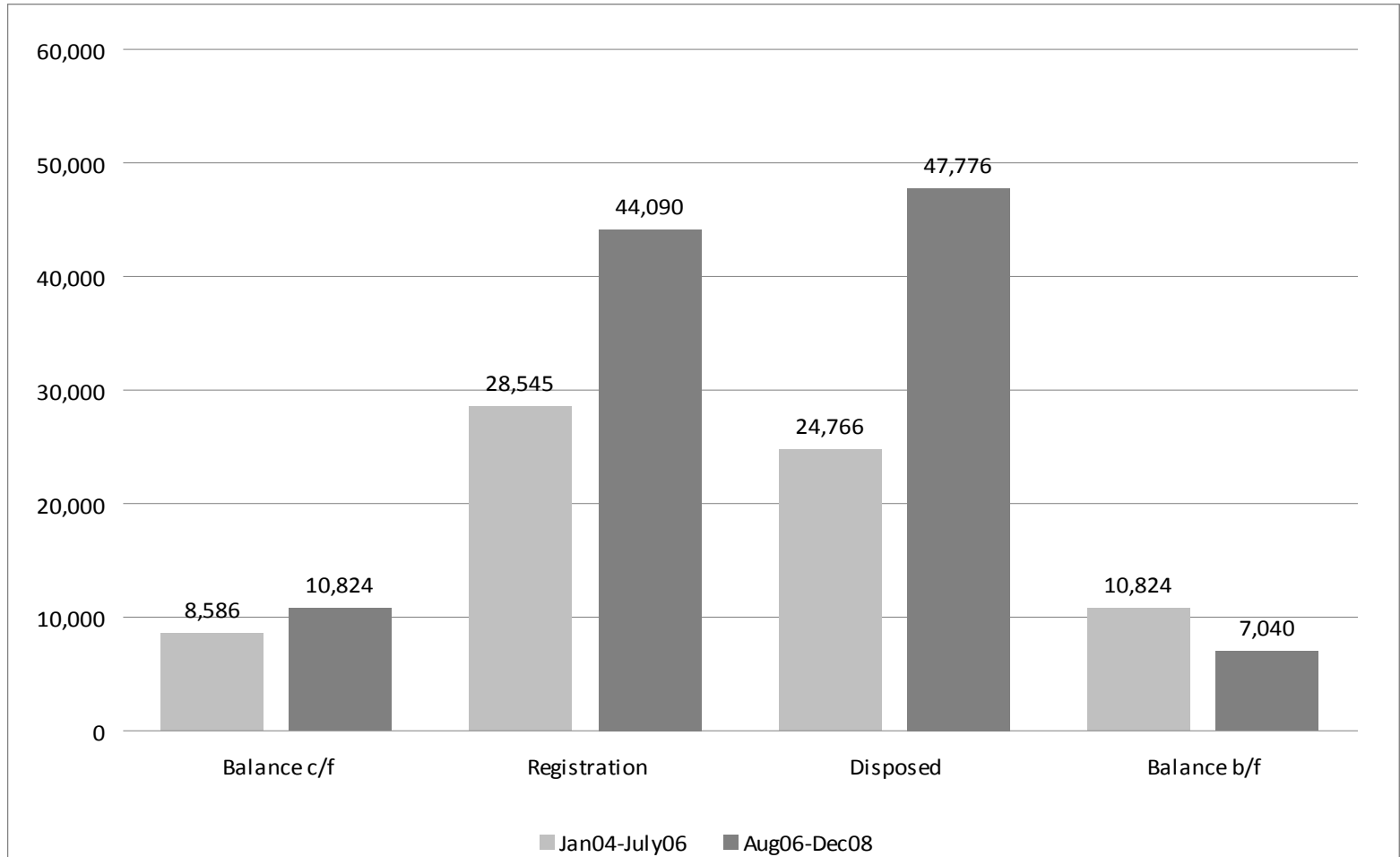


Speedy and efficient disposal of cases....Cont.

- With strict implementation of policies and introduction of computerized system in managing the courts has produced some positive results:
 - Disposal of cases which had been pending for years
 - Targets set for acceptable waiting periods
 - Judges and judicial officers motivated
 - Delay in delivery of judgments brought under control

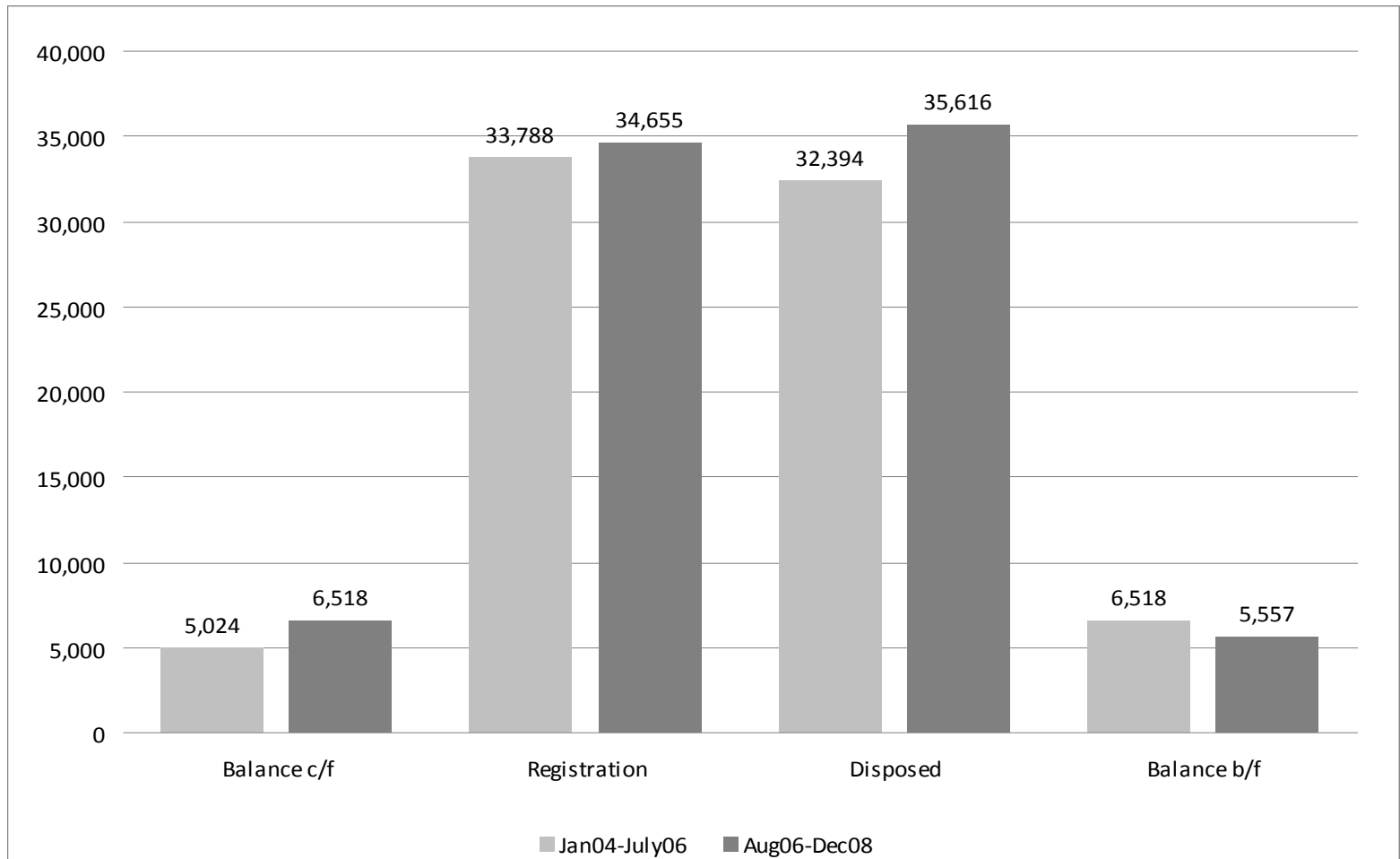


Sarawak - Civil Cases as at 31.12.2008



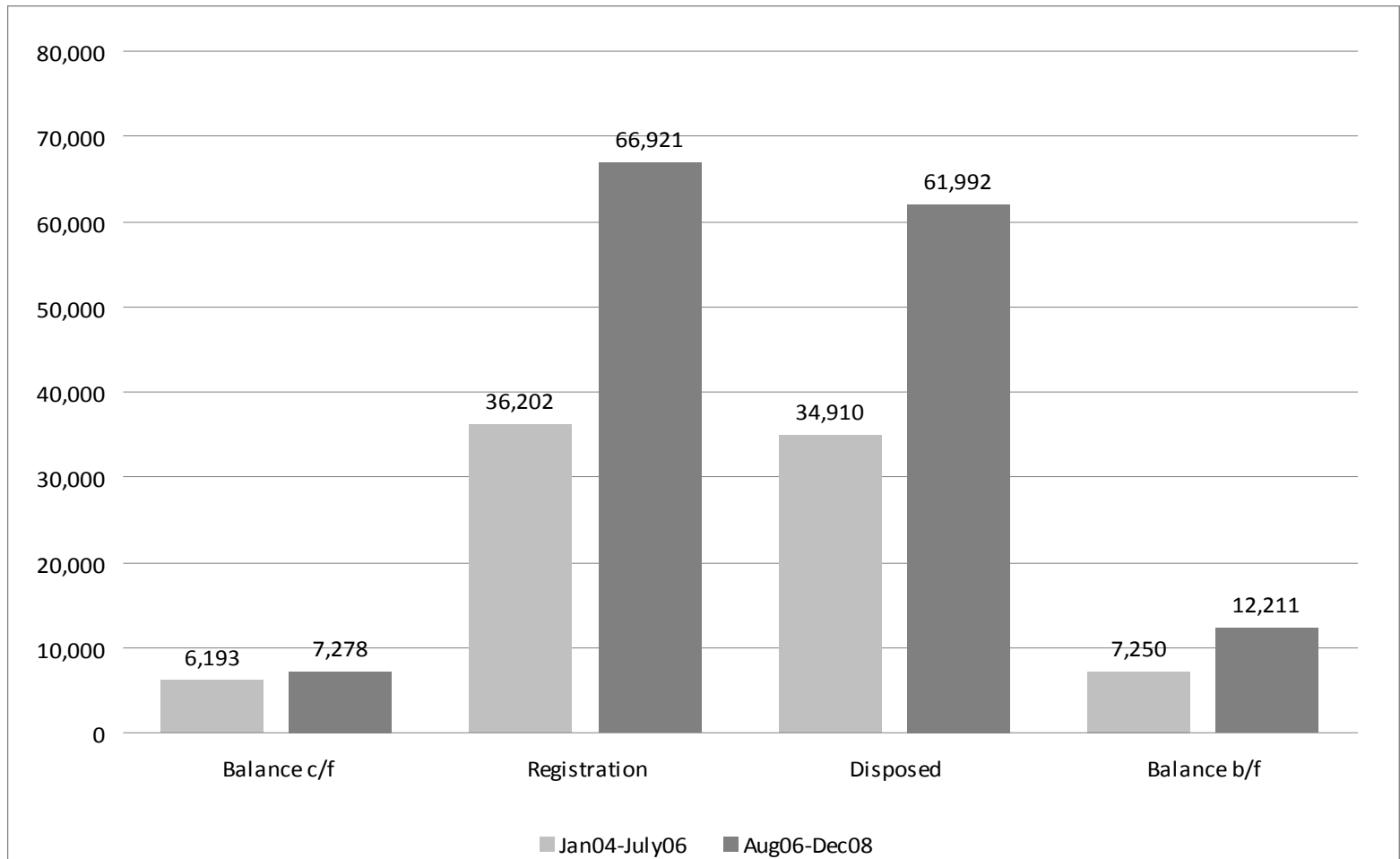


Sabah - Civil Cases as at 31.12.2008



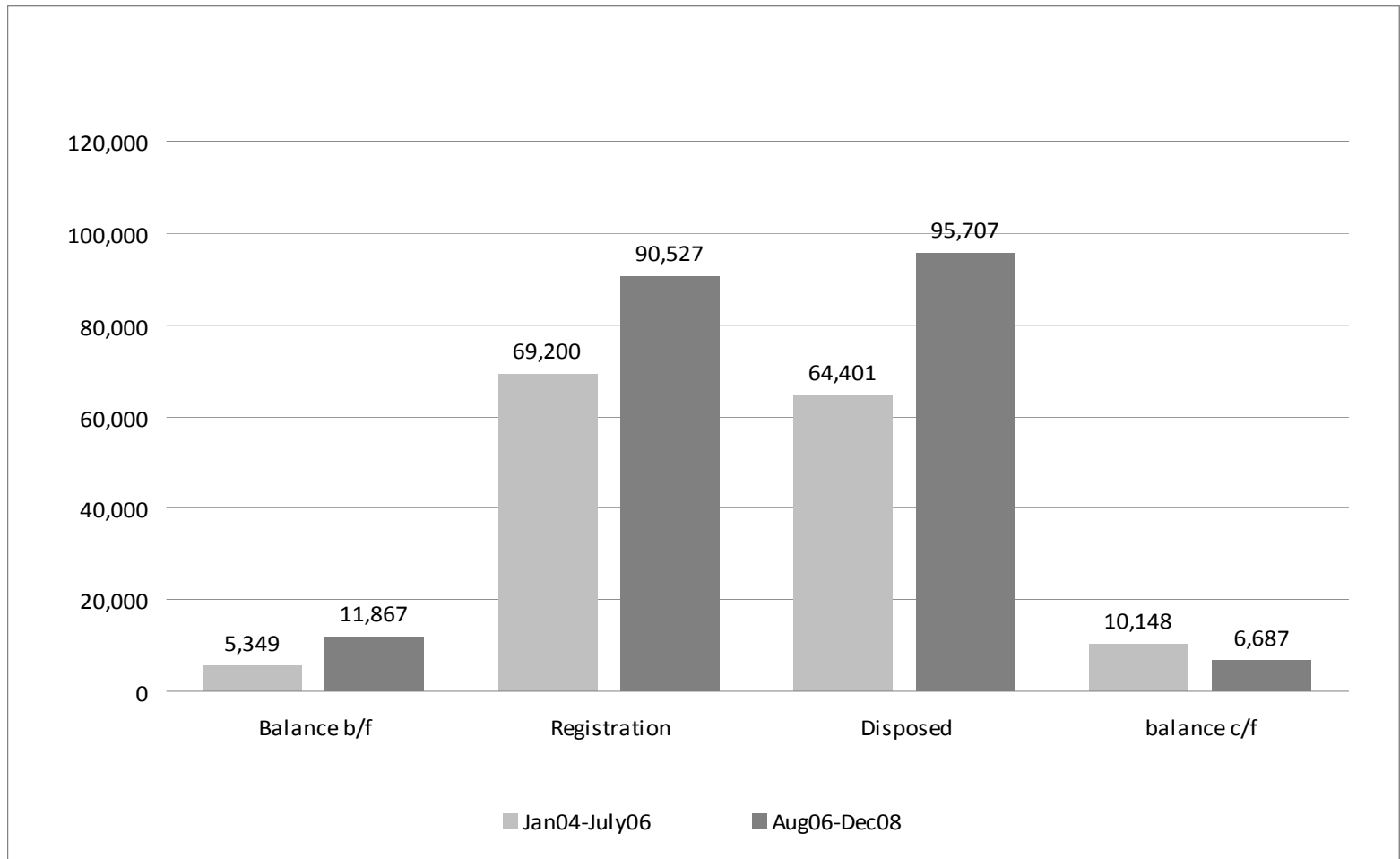


Sarawak - Criminal Cases as at 31.12.2008





Sabah - Criminal Cases as at 31.12.2008





The Case Management System (CMS) in the courts of Sabah and Sarawak

- Only pilot computerization project initiated due to absence of selected system at national level and lack of funding
- System built from bottom-up
- Involvement of judges and officers in creating the system
- Gradual introduction
- Importance of continuous users' feedback



The Case Management System (CMS) in the courts of Sabah and Sarawak..Cont.

- Problems encountered
 - Slow in adopting technology
 - Mindset of judges, officers and staff
 - Substantial reference materials e.g. books are still in hard copies
 - Costs factor
 - Physical infrastructure



Present expectations from Judges and Judicial Officers in the courts of Sabah and Sarawak

- to take charge on the management of cases soon after filing
- schedule hearing dates well in advance
- be strict with adjournments of hearing
- encourage parties to go for ADR (Mediation)
- extensive use of computers and the CMS
- practice the concept of helping one another and multi-tasking
- keeping a good record management in areas where the CMS is not available



Lessons learned: Essentials for effective judicial administration and management

- Team work essential
- Having a good case management system in place which should include effective monitoring feature
- Changing the mindset of judges, judicial officers and staff from reactive to proactive approach and setting down the parameter of accountability



Lessons learned: Essentials for effective judicial administration and management...Cont.

- Continuing judicial training for judges and judicial officers
 - Knowledge sharing among Judges and Judicial officers
 - Use of ADR tools such as Mediation and Early Neutral Evaluation
 - Enhancement in technology knowledge and training
- Putting judges and judicial officers at suitable and appropriate places



Lessons learned: Essentials for effective judicial administration and management...Cont.

- Reception of reform is effective when introduced on gradual basis
- Users of the courts should be prepared for changes
- Strict selection process in recruitment of judicial officers and staff



Lessons learned: Essentials for effective judicial administration and management...Cont.

- Administrators and managers of the courts should be selected among the senior judicial officers
- Continuous training for staff
- Systematic manual records management



How can the Forum members contribute?

- Systematic and meaningful follow up with Forum members in the introduction of suggested reforms
- Continuous exchange of ideas and knowledge amongst Forum members in judicial administration and management
- Assistance to Forum members which are still lagging in the use of ADR
- Setting up of study group to be led by more successful Forum members to come to any Forum member country on invitation and to come up with findings and suggestions on how to improve the administration and management of the courts in that Form member country



Donor community contributions

- To set up a Fund to be managed by the Forum Secretariat to assist some Forum members in updating their judicial administration and management directly or by way of advisory



Fundamental flaws and how can they may be addressed

- Need more training for Judges and judicial officers on the use of ADR
- Need for ADR to be understood and accepted by the courts users



Improving access to justice

- Costs in litigation should be made affordable
- Court Rules should be simplified
- Public assistance by the courts to be made available to self-representing litigants
- extension of court services to the rural areas and the less fortunate
 - Introduction of visits by judicial officers to rural areas to provide court services for rural folks and the poor



Conclusion

- Successful judicial administration and management depends on:
 - Good leadership
 - Team work from judges, judicial officers and staff
 - Good working relationship with other agencies in the country



THANK YOU