

**Keynote Address by Mr Bruce Davis AM, Vice President, Asian Development Bank
at the 5th Asia-Pacific Judicial Reform Forum (APJRF) Meeting
31 October & 1 November 2013
Supreme Court of Singapore**

Introduction

Good morning ladies and gentlemen. It is a great pleasure and privilege to be here today to address such a distinguished audience gathered for the 5th Asia Pacific Judicial Reform Forum (APJRF) Meeting on the theme of '*Developing Judicial Capabilities to Enhance Public and International Confidence in Legal Systems*'.

My sincere appreciation goes to the Hon Justice Kenneth Hayne AC from the High Court of Australia, in his capacity as Chair of the Judicial Reform Forum (APJRF) Secretariat, for inviting me to deliver this address. And providing the Asian Development Bank (ADB) with an exciting opportunity to engage with this Forum. I am also thankful that I am given more than the usual 20 minutes allowed by the High Court of Australia in their case management of special leave applications and hopefully will not face the red light when my time is up.

I would also like to acknowledge our hosts, the Supreme Court of Singapore, Chief Justice Sundaresh Menon and his colleagues for their generous hospitality and organization. His Honour's remarkable career is well known to ADB, as the first Singaporean-born to serve as Chief Justice and as a former Attorney-General.

We are all assembled here to discuss over the next two days very important issues revolving around public and international confidence in legal systems, including the role of the judiciary in interpreting laws, the insidious impact of corruption on public confidence in the judicial system, and necessary judicial training and skills development.

My address is structured to draw our collective attention around three key inter-related areas that contribute towards increased confidence in legal systems, which I hope will stimulate our forthcoming discussions:

- **First, the rule of law;**
- **Second, the role of judges and the judiciary; and**
- **Third, judicial capabilities.**

Examples of ADB-supported initiatives will be interwoven under each area.

However I will preface this analysis with a quick overview of ADB and its strategic framework.

Introduction to ADB & Strategy 2020

ADB's overarching goal and corporate vision is "An Asia and Pacific Free of Poverty". As a multilateral development bank (MDB), we help our developing member countries (DMCs) tackle poverty by providing loans, technical assistance and grants for a broad range of development activities. Since its founding in 1966, ADB has grown from 31 country members to 67 members, of which 48 are regional members and 19 are non-regional members. 40 of the 67 are developing members countries (DMCs) that are current recipients of loans and/or grants from the Bank. ADB employs over 3000 employees located in its Manila Headquarters, 28 Resident Missions and 3 Representative Offices in Washington DC, Frankfurt and Tokyo. In 2012, ADB's operations totalled US\$21.58 billion in approved financing, of which \$13.3 billion was financed by ADB and \$8.27 billion by co-financing partners, including governments, other international agencies, philanthropic bodies and companies.

The long-term strategic framework of ADB, *Strategy 2020*, highlights three complementary objectives for the region: **inclusive growth, environmentally sustainable growth, and regional integration**. Under these strategic objectives, ADB aims to make a real difference drawing on its unique regional experience and comparative strengths. It has an operational focus on **five core specializations**:

- ***Infrastructure,***
- ***Environment, including climate change,***
- ***Regional cooperation and integration,***
- ***Financial sector development, and***
- ***Education***

and **five thematic drivers of change**:

- ***Private sector development and private sector operations,***
- ***Good governance and capacity development,***
- ***Gender equity,***
- ***Knowledge solutions, and***
- ***Partnerships.***

These specializations and drivers of change reflect the needs of developing member countries and ADB's comparative strengths, while complementing the efforts of our development partners.

Through Strategy 2020, ADB built on the foundation of its 1995 Governance Policy¹ by recognizing good governance and capacity development as one of the five key drivers of change, because good governance - in its broader sense – is indispensable for economic development that is both inclusive and sustainable. ADB strives to bring four elements of good governance – namely **accountability, participation, predictability and transparency** – deeper into the mainstream of its operations and activities. **Predictability** in particular refers to the existence of laws, regulations, and policies, as well as their fair and consistent application, which in turn implies a requisite degree of judicial accountability and capacity.

From an ADB perspective, the importance of confidence in a stable and predictable legal system with effective administration of law cannot be overstated. Without it, the orderly existence of citizens and institutions becomes impossible, and for us, investments become less effective and financially viable. As a leading regional institution, ADB must thoroughly understand the key legal institutions of the state and have direct interest in supporting the rule of law in member countries – not only because it is an integral element in understanding the region, working with the region, and in enhancing options for improving the lives of people in the region - but also because it has flow-on effects for the success of ADB-assisted projects.

In fact, as part of the annual Country Performance Assessments (CPA) for member countries eligible for Asian Development Fund (ADF) financing – that is, concessional

¹ Governance: Sound Development Management, ADB Governance Policy, 1995.

financing - ADB specifically examines a range of performance-based allocation criteria. Amongst the criteria analysed are the quality of the legislative process, the protection of property rights, the quality of the legal and judicial system, and the occurrence of crime and violence as an impediment to economic activity and citizen security. These assessments directly influence the allocation of concessional financing between member countries.

Furthermore, multinational businesses base their investment decisions in part on confidence in the domestic legal system, the quality of laws governing private, banking, and property sectors, and how effective the country's laws are perceived to be upheld and enforced. Perceived inconsistency in application of laws or inadequate and substandard local dispute resolution processes, can directly hinder international investor confidence.

Since ADB identified governance as a primary concern in 1995, it has proactively integrated a legal reform perspective into its operational portfolio, including through more than 400 law and policy reform-related technical assistance projects spanning virtually all of ADB's developing member countries². Key lessons learned from this engagement include strong evidence that law and justice reforms positively correlate with poverty reduction; and that legal and judicial reforms which promote social development, seek to protect the vulnerable and empower the poor, are crucial and complementary to those that promote pro-poor sustainable economic growth and good governance.³

Taking this context into account, let me now turn to the Rule of Law.

1. The Rule of Law

It can be argued that support for the rule of law has grown over time, to the point where it stands as the pre-eminent legitimating political ideal in the world today⁴ - a universal value which all our countries and societies share – or should share. As this Forum itself has recognized in the Manila Declaration⁵, in the 21st Century there is a clear demand for

² Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms, ADB, 2005.

³ ADB 2005, p.viii

⁴ See Preston J, *The enduring importance of the rule of law in times of change*, 13 October 2011.

⁵ www.apjrf.com/declaration.html

a civilization grounded in the rule of law and access to justice for all citizens. As we all know, the essence of the rule of law is that “all government authority is subject to and constrained by law”⁶. However mere restatement of a commitment to the rule of law can at times underplay the complexities. If I may quote Justice Preston (Chief Judge of the Land and Environment Court of New South Wales, Australia):

*“The idea of rule of law, of a government limited by law, involves two components. First, the government must abide by the currently valid law. The government may change the law, by Parliament enacting statutes or the executive exercising delegation to make subordinate rules, but until the law is changed, the law must be complied with. Secondly, even when the government wishes to change the law, it is not entirely free to change it in any way it desires because there are certain restraints on the law making power. These restraints are to be found in constitutional, statutory and common law.”*⁷

It can therefore be argued that the integrity of the rule of law must conform to certain standards so that both the government and the governed are aware and understand what they can and cannot do, and what are the sanctions and punishments for non-compliance. There is also the requirement for institutional structures and the judiciary to enforce laws with independence and impartiality, fair and transparent adjudicative procedures, constraints on arbitrary exercise of power, judicial review of administrative action, and accessible courts. Laws that are not complied with, or not enforced, make the rule of law unpredictable and directly undermines public confidence. Without predictability, the law becomes capricious and arbitrary. As some commentators suggest, ‘Rule of law institutions are only effective to the extent that the general public believes they, too, are subject to the law. If officeholders and the privileged act as if they are above the law, the rule of law becomes fragile or non-existent’⁸. In every society, the judiciary plays a lead role in shaping the normative interpretation of the legal and regulatory framework. Hence sound judgments and rules of procedure, as well as the example set by the judiciary itself, are key to the development of the rule of law.

ADB attaches great importance to the rule of law as a cornerstone of good governance, and as essential to the economic and social development of the region. Governments

⁶ Preston 2011, p.1.

⁷ Preston 2011, p.4

⁸ Preston 2011 citing M. Levi and B. Epperly, p.14

need to be accountable and transparent, provide predictability in the application and enforcement of rules, and facilitate participation in governance by citizens. If we take the example of the our host country Singapore, there can be little doubt that Singapore's economic development success and stability has not only been based upon a combination of hard work and clear goals, but also a commitment to ethical values and the rule of law. The Supreme Court of Singapore rests upon solid 200 year old foundations and 800 years of common law development. Singapore is ranked by Transparency International as 5th out of 176 countries as one of the least corrupt in the world, and the 2013 World Economic Forum (WEF) Report ranks Singapore in the top 20 countries for judicial independence. The Singapore experience therefore offers insightful lessons about the economic and social benefits from strong and consistent rule of law.

Five elements of the Rule of Law that are supported by the work of ADB were recently highlighted by ADB President Takehiko Nakao at the 2013 Annual Meeting of the Conference of Presidents of Law Associations⁹ in Tokyo. Each element will be illustrated with practical ADB examples.

First, in some of ADB's member countries, the **legal framework for business** is still lacking. ADB advises governments in establishing and improving their legal and regulatory frameworks. To create a conducive business environment, governments must enact laws for managing land ownership and use, defining and enforcing contract rights, and regulating economic activity. Laws concerning competition, consumer protection, corporate financial disclosure, and bankruptcy all fall under this umbrella. An important component of a market economy is financial intermediation. The quality of the regulatory environment is crucial to development of the financial sector. This is also true of energy, agriculture, transportation and other major sectors.

ADB has extended significant support for strengthening of legal and regulatory frameworks to member countries at different stages of development. For example, ABD has extended legal technical assistance (TA) to the People's Republic of China (PRC) since 1986 on a range of matters including public procurement, banking and financial

⁹ Keynote address by ADB President Takehiko Nakao at the Annual Meeting of the Conference of Presidents of Law Associations in Asia in Tokyo, Japan, 10 June 2013.

sector, and insolvency reform. In Cambodia on the other hand, ADB has supported the government's 10-year rolling Financial Sector Development Strategy, which has involved comprehensive development and updating of laws regulating the banking sector. Similarly, ADB is currently assisting Viet Nam to improve its legal framework to facilitate public-private partnership (PPP) projects. We have also supported a large program to reform state-owned enterprises, in partnership with the Viet Nam Ministry of Finance. More recently in Myanmar where ADB resumed operations in January 2013 (after withdrawing from country operations since 1988), we are providing technical assistance to develop the legal and regulatory structure of its energy sector, including revision of the 1984 Electricity Act.¹⁰ The desire to update the law reflects the Government's recognition that foreign direct investment will be required to meet the massive needs of the power sector, and that the lack of a comprehensive and transparent regulatory framework is impeding private sector participation.

The second element of the Rule of Law highlighted by the ADB President was that laws are useful only when they are enforced. Most countries in the Asia-Pacific Region have already adopted essential laws in relation to matters as diverse as governance, development, investment, taxation, environment, and family law. Most countries have also signed and adopted international and multilateral treaties on human rights, trade and investment, taxation and environment. Despite excellent laws on the books, many national institutions still do not competently, reliably and predictably implement and enforce these laws. Economic actors need assurance that the entire legal system will function as mandated. Regulators must issue sound regulations pursuant to laws and must enforce them, including through the imposition of penalties for non-compliance.

ADB has recently been advising various sector ministries in Myanmar on how to improve implementation of many new and revised laws, including the land law, microfinance law, and foreign direct investment laws. At the regional level, ADB has collaborated with the Association of Southeast Asian Nations (ASEAN) Capital Markets Forum (ACMF) to promote an interlinked capital market, including joint development and publishing of an ASEAN Corporate Governance Scorecard, comprised of six country reports and

¹⁰ www.adb.org/news/adb-norway-help-update-myanmar-electricity-law, 5 November 2012.

assessments¹¹.

Justice sector institutions such as the police, prosecutors, court systems and judges must be fair and efficient in enforcing laws and resolving disputes. At times, implementation of laws must take into account particular socio-cultural contexts, such as in some Pacific countries where land may be communally owned or transactions are subject to customary practices. In such cases, the implementation of formal laws may need mechanisms and processes in place to enable them to co-exist appropriately with traditional forms of alternative conflict resolution.

A note of caution in regard to enforcement. By the very nature of the state of development in many of our poorer, or smaller, or vulnerable members, there are genuine limitations on the affordability of all legal instruments that we might find in a more advanced legal system. Part of our job must be to prioritize, to develop fit for purpose and to encourage at times regional and cost-effective solutions to meet the important needs (e.g. through use of travelling judiciaries).

The third element: the Rule of Law supports the inclusiveness and sustainability of economic growth that are increasingly important objectives of ADB and other development partners. The Rule of Law requires that all citizens have effective access to justice. Laws providing equal opportunity and gender equality are important not only to individuals but to society as a whole, because they enable society to tap all of its resources for development. Laws requiring transparency and accountability of governments and public companies facilitate their better performance, and hence, promote sustainable growth. In all these areas, civil society participation should be encouraged to support the Rule of Law, access to justice, and improvement of development outcomes.

Improving access to justice for all is critical for ADB's focus on inclusive growth, particularly when it has been recently noted that the three factors that fuelled the region's economic growth over the past decade – globalization, technological

¹¹ ADB & ASEAN 2013, ASEAN Corporate Governance Scorecard, Country Reports and Assessments 2012-2013: Joint initiative of the ASEAN Capital Markets Forum and the Asian Development Bank

innovations and market reforms – seem to have also exacerbated inequalities¹². The ADB Access to Justice Program in Pakistan helped to strengthen the enabling environment for justice through: greater budgetary allocations for the judiciary and the police; enhancing freedom of expression through revision of oppressive contempt of court laws; and increasing transparency of the judiciary through publication of annual reports¹³. It also assisted with the success of delay reduction strategies in pilot courts¹⁴. ADB has supported several other inclusive legal reform initiatives to promote gender equality, such as: removal of discriminatory provisions in existing laws through the Nepal 2006 Gender Equality Act, and introduction of an affirmative action policy to increase the representation of women in the civil service in Nepal; preparation of comprehensive Gender Equality Laws in Viet Nam and Mongolia; preparation of the Family Law Act in Fiji; and introduction of the Protection of Harassment of Women at the Workplace Bill in Pakistan. Current support is being provided to draft a Maldives Law on Gender Equality;

Fourth, corruption is a scourge that drains a country's resources available for sustainable development. Implementation of the Rule of Law safeguards precious resources for use in social and economic development, for the benefit of all citizens, especially the poor. Here, again civil society organizations have an important role to play. In ADB's view, fighting corruption is crucial to effective, transparent and accountable aid. ADB has an internal Office of Anticorruption and Integrity (OAI) that was established in 1999, subsequent to the approval of ADB's Anticorruption Policy in 1998. It is mandated to ensure ADB and its partners maintain the highest ethical and professional standards, and to prevent resources intended to improve the lives of the poor from being used to line the pockets of the unscrupulous. As such, it acts as the point of contact for allegations of integrity violations involving ADB-related activities or staff, conducts independent investigations of such allegations, and presents findings to an Integrity Oversight Committee (IOC). Any party found to have committed a fraudulent or corrupt practice - or any of the other integrity violations identified by ADB - risks being sanctioned as ineligible to participate in ADB-related projects (also known as 'debarment'). In 2011 for example, the Office received 225 new complaints of integrity violations - investigations resulted in the debarment of 31 firms and 34 individuals.

¹² ADB 2012, Asian Development Bank Outlook 2012: Confronting Rising Inequality in Asia.

¹³ A copy of the 2010-2011 Annual Report is available

<http://www.supremecourt.gov.pk/web/page.asp?id=1466>

¹⁴ Report from ADB Symposium of Challenges in Implementing Access to Justice Reforms, ADB, 2005, p.3

Through its operations, ADB has assisted the People's Bank of China to strengthen the anti-money laundering regime and implementing a legal framework for financial sanctions to freeze terrorism-related assets.¹⁵ In addition, ADB is extending regional technical assistance to accelerate law enforcement of and compliance with provisions in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in response to demand from member countries.

The fifth and final element highlighted by the ADB President, is that growth must also be environmentally sustainable. This requires a strong legal framework for environmental protection, including strong environmental laws and diligent enforcement of them.¹⁶ There is no doubt that the region is at considerable risk from environmental factors and that climate change, including increasing incidence of natural disasters, threatens social and economic stability. Access to food, energy and water is becoming a major challenge across Asia and the Pacific. ADB can assist to share knowledge gained from our operational experience in these emerging areas. For example, in 2009, ADB financed the publication of a report on environmental courts and tribunals (ECTs) entitled "*Green Benches: What can the People's Republic of China Learn from Environmental Courts of Other Countries*".¹⁷

I now turn to the vital role of judges and the judiciary in upholding and maintaining public and international confidence in the Rule of Law.

2. Role of Judges and the Judiciary

I don't need to tell this audience that the role of judges and the judiciary is paramount to instilling public and international confidence in the legal system and Rule of Law. First and foremost, judges must have independence and be seen as free of undue influence. Implementation of law is as important as the law itself, and this requires an unwavering commitment from the judiciary, should a matter come to court. It is vital that judiciaries uphold their role of transparent decision making aligned with principles of natural justice. Only then will public confidence in judicial capabilities be maintained and enhanced. If

¹⁵ ADB 2012, p.21.

¹⁶ Keynote address by ADB President Takehiko Nakao on 10 June 2013 at the Annual Meeting of the Conference of Presidents of Law Associations in Asia in Tokyo, Japan

¹⁷ Tun Lin, et al, ADB, 2009.

rule of law is perceived to be enforced through judicial decisions. this will automatically strengthen all public institutions and will create an enabling environment for local and foreign investment.

Despite the differences with the formal structure of the legal systems across the Asia-Pacific Region, key consensus views on the role of the judiciary in creating a level playing field for confidence is emerging. At the international level, there are the *United Nations Basic Principles on the Independence of the Judiciary*, The *Universal Declaration of Human Rights* (Art. 10), and the *International Covenant on Civil and Political Rights* (Art. 14(1)), which proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.¹⁸ Furthermore, the *Bangalore Principles of Judicial Conduct 2002*, highlights six core values – independence, impartiality, integrity, propriety, equality, and competence and diligence¹⁹.

Justice Weeramantry, Chairperson Judicial Integrity Group and Vice-President of the International Court of Justice, in the Commentary on the Bangalore Principles of Judicial conduct observed that “*A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on rights and freedoms under the law.*” Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.²⁰

Similarly, at the regional level there is the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, which makes clear that judges “be chosen on the basis of proven competence, integrity and independence”.²¹ More recently this very Forum (APJRF), adopted the *Manila Declaration for a 21st Century Independent Judiciary (Manila Declaration)*, re-affirming the core principles of judicial independence and accountability²². Additionally many individual countries have adopted

¹⁸ Beijing Statement, Article 2

¹⁹ http://ijtr.nic.in/Bangalore_principles.pdf

²⁰ Commentary on Bangalore Principles of Judicial Conduct, Preface, UNODC, September 2007.

²¹ Article 11.

²² Manila Declaration for a 21st Century Independent Judiciary, www.apjrf.com/declaration.html

their own statements and codes of conduct on the judiciary to reinforce independence, integrity, and other judicial values, which inherently engenders greater confidence.

In terms of implementation, the *Bangalore Principles* make clear that by reason of the nature of judicial office, it should be for national judiciaries to provide mechanisms to implement these principles on the ground. Translation of international and regional commitments into nationally owned roadmaps for implementation can only enhance confidence in the integrity and commitment of the judiciary.

Much of the work of ADB on promoting judicial independence stems from the conviction that ‘*without addressing judicial independent issues, other forms undertaken in the judicial sector will yield marginal results.*’²³ In the Philippines, ADB has a long-term partnership with the Supreme Court. This has included a program to Strengthen the Independence and Accountability of the Judiciary, through for example, development of a framework to define the overall scope of judicial independence and accountability; and design of a budget and revenue system that meets audit requirements, performance based accomplishment reporting to Congress, and revenue generation action.

At the same time, ADB recognises the role of judges as playing a role beyond the courtroom. As noted by Mulqueeny, Bonifacio and Espenila in the *Journal of Court Innovation*, “the Chief Justice and senior judiciary lead the legal profession in their respective jurisdictions in shaping normative interpretations of legal and regulatory frameworks. They also issue rules and directions to lower courts, which affect their priorities, and often play a role in judicial education. Thus, their influence is both direct and indirect. It affects not only the courts, but the way the legal system operates, the way sector lawyers - such an environmental, water, and energy lawyers - understand the legal and regulatory frameworks and how they should be enforced”²⁴. Judges play a critical role in interpreting and applying legislation as a core component of the rule of law, including to create law where none exists.

As the *Manila Declaration* recognized, the demands on the judiciary have grown

²³ ADB 2005, p.viii.

²⁴ K. Mulqueeny, S. Bonifacio, J. Espenila, *Asian Judges, Green Courts, and Access to Environmental Justice: An Asian Judges Network on the Environment*, Journal of Court Innovation, Winter, 2010, PACE University.

exponentially and in complexity in recent years, in response to emerging national and global issues. To this end the Judicial Reform Forum (APJFR) publication '*Searching for Success in Judicial Reform: Voices from the Asia-Pacific Experience*'²⁵ provides valuable background to understanding of the changing role of judges in the 21st century. It shows that courts are increasingly required to be dynamic and responsive to economic, social, technological and ecological challenges. This is reflected in increasingly complex legal cases as economies diversify, technology brings us closer together, and the demands on our time become greater. Perhaps it is this aspect of the judiciary that has required the most significant adjustment, both in the role of judges and also the development of judicial capabilities²⁶.

One example is the area of environmental jurisprudence, which has evolved from the increase in public interest in environmental litigation in courts in Asia during recent years. This has in turn led to the establishment of specialized environmental courts or tribunals and legal procedure. Over the past 3 years, we have seen the establishment of a National Green Tribunal in India, Green Benches in Pakistan and Malaysia, the beginning of a certification scheme for environment judges in Indonesia, and new rules of practice and procedure for environmental matters in the Philippines and Thailand. ADB has a growing focus on the role of senior judges as leaders of the legal profession, in improving environmental enforcement, not only by their direct action in making decisions on environmental cases and developing environmental jurisprudence, but also indirectly, by leading legal professions in their countries towards legal systems that promote environmental sustainability.

ADB in collaboration with the United Nations Environment Programme (UNEP) jointly held the first Asian Judges' Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in July 2010. This symposium gathered about 110 Chief Justices, senior judges and Ministry of Environment officials. At the sub-regional level, the First South Asian Conference on Environmental Justice was convened by ADB, the International Union for Conservation of Nature (IUCN), the United Nations Environment Program (UNEP) and the Supreme Court of Pakistan, concluding with the adoption of the *Bhurban Declaration 2012: A Common Vision on Environment for the South Asian*

²⁵ <http://www.apjrf.com/publications.html>

²⁶ www.apjrf.com/declaration.html

*Judiciaries.*²⁷ One important outcome from this Conference was the establishment of Green Benches in Pakistan. Some of you also attended the Second South Asia Judicial Roundtable on Environment that was hosted by the Chief Justice of the Supreme Court of the Royal Kingdom of Bhutan and ADB in August 2013. That Roundtable concluded with the adoption of the *Thimphu Declaration*.²⁸

Delving deeper into the role of judges and the judiciary naturally leads to a discussion of judicial capabilities.

3. Judicial capabilities

Judicial capabilities can be viewed both narrowly and broadly. In narrow terms, it can be seen as the ability of judges to perform the task of interpreting and applying the relevant law to the specific case before the Court, to facilitate justice between parties. A broader way relates to the ability of judges to fulfil their obligations to the development of appropriate jurisprudence and to be able to resist pressure against judicial integrity and independence. For example, it is not uncommon for gaps to exist between the adoption and implementation of laws, which may in part reside in judiciaries that are insufficiently equipped and require additional training to translate laws in new areas into effective implementation. As new laws are passed judges need to be able to access the law, and, if necessary, be given the background materials to assist in the application of the law. This may include parliamentary speeches, briefing notes, expert opinions, and relevant texts. In common law systems, it is important to ensure that judges have access to relevant precedents. Civil law systems, without the system of precedence, still allow for cases of similar fact to be used to assist in judicial reasoning.

Unless decision-making is up to the highest standards, judiciaries will not be able to develop public and international confidence in their abilities. Evidence and perceptions of enhanced judicial capabilities will encourage citizens to make more use of courts to resolve civil disputes, seek administrative justice, and have greater faith in a criminal law system where victims are protected and accused are given a fair trial. Improved judicial capabilities can also generate greater international confidence by reassuring foreign investors that investments are safe and their property rights will be held up by a court of

²⁷ Annex 1.

²⁸ Annex 2.

law if challenged; as well as providing credibility that national legal systems respect and protect intrinsic human rights. It is therefore incredibly important for judicial capacity to be continually developed through continuing education and training, international exposure, cross-country dialogue and information exchange. This will help ensure that judges are equipped with up-to-date knowledge and skills to deal with ongoing and emerging needs, and are ready to uphold the rule of law as required.

ADB has been a long-time supporter of judicial capacity building through technical assistance projects. For example, judicial training was provided in Beijing and provinces of the Peoples Republic of China (PRC) in 2008 for implementing economic laws. Support to Governance in Justice Sector Reform in the Philippines has helped pilot seminars for Judges, Prosecutors, Public Defenders, Police and NGOs on the New Rule of Procedure for Environmental Cases, as well as the design and conduct of a Pilot Training Program for Family Court Judges and court personnel on gender sensitivity. ADB's long-term partnership with the Supreme Court of the Philippines has also contributed to enhancing the effectiveness and coordination of justice sector agencies, strengthening the judiciary's fiscal autonomy²⁹, and improving administrative and financial management systems, procedures and processes. It has also assisted to reengineer the judiciary's administrative structure to achieve suitable skills-mix and organizational and functional configurations for the courts, including the establishment of a pilot regional court administration office, and development of a framework for a national justice information system (NJIS).

This reflects the reality that capabilities for organizational management of large-scale national public institutions has to be factored into judicial capacity building. In the case of the Philippines for example, Chief Justice Sereno - who has developed and adopted a reform agenda for the courts - is the CEO ultimately responsible for a massive number of people within the judicial system, equating to approximately 30,000 staff throughout the country, from fellow Supreme Court justices to administrative clerks in remote rural provinces.

²⁹ The Government now provides the judiciary with budget releases on a regular and single line-item basis providing it with full autonomy in reallocating expenditure for items under its budget as needed. The budget allocated to the judiciary has increased from 0.85% of the national budget in 2008 (prior to the Program Loan) to 0.96% in 2009 and 1.03% in 2010.

On the other end of the spectrum, such as in Pacific Island Countries with very small scale judiciaries, it may be more effective to pursue regional approaches to judicial strengthening through the pooling of human and financial resources for regional judicial mechanisms, and harnessing of regional knowledge for legal reform.

In addition, when addressing capacity in areas such as criminal law, holistic approaches which go beyond the judiciary may be required to instil wider public confidence. For example, in Pakistan and the Philippines, ADB has adopted a holistic approach to capacity building for access to justice by strengthening police forces and the prosecutors' offices to curtail the backlog of criminal cases and address the issue of prison overcrowding.³⁰ Similarly, in Nepal, ADB support for the establishment of Women and Children Service Centres (WCSC) at police and district headquarters, accompanied by the simultaneous training of police and civil society, is proving to be culturally appropriate and effective in increasing both the reporting of crimes against women and children, and public confidence in such centres as supporting agencies for redress³¹.

Further, it is important to acknowledge that judicial capacity is not just about developing the knowledge and skills of judges, but about also enabling and facilitating their networking. ADB supports the facilitation of judicial networking at regional and sub-regional levels. Due to capacity and resource constraints, and in some cases, cultural and political barriers, an intermediary like ADB is well placed to add advisory value and facilitate these initiatives. This can include assisting legal networks to become more formal and sustainable entities for regional cooperation and provision of leading capacity development training and dialogue. For example, ADB supports judicial strengthening through the Asian Chief Justices Network and South Asian Association for Regional Cooperation in Law (SAARCLAW). ADB looks forward to welcoming a SAARCLAW delegation in the coming weeks to discuss potential further cooperation. We will also be jointly hosting the 2nd Asian Judges Symposium in Manila in December 2013.

Our most extensive legal program in the specialized area of environmentally sustainable growth is the Asian Judges Network on the Environment (AJNE), which helps to strengthen the ability of judicial bodies across Asia to enforce environmental laws, by

³⁰ ADB 2005, p.3

³¹ ADB, 2011, Nepal: Establishing Women and Children Service Centers, Additional Financing

providing a forum where senior judges can share experiences and expertise and learn from experts. In spite of advancements, more work needs to be done in institutionalizing environmental adjudication, including building capacity of judges to resolve environmental disputes and to ensure that all appropriate environmental cases get to court and contribute to the evolution and strengthening of environmental law.³²

It is clear from ADB's experience that effective capacity development support for judiciaries needs to be pursued over a long-term time frame, rather than through short discrete projects, and that judges need continual access to sufficient resources to manage legal institutions to deliver legal process. This was reinforced by the review of Cambodia's experience by Justice Sathavy Kim and Secretary-General Ky Tayseng in *Searching for Success*. They said that "the resources required to support the rebuilding the Cambodian judiciary have been underestimated by the international community"³³. Not only a shortage of judges, but a lack of lawyers, trainers, academics all contributed to the lack of capacity. Lack of or weak coordination of donor-support has also been highlighted as inhibiting the creation of judicial capacity³⁴. Regional gatherings and dialogues of this nature can therefore go a long way towards improving development partner coordination and national ownership for externally financed support.

Conclusion

In conclusion, I hope that the preceding discussion has illustrated, at least from an ADB perspective, the inextricable and reciprocal link between the rule of law and judicial capacity building - whereby the role of the judiciary is central – for building and maintaining public and international confidence in the legal system. This in turn increases access to justice for all, as well as attracts economic activity from local and foreign investors. This then subsequently facilitates sustainable and inclusive development, which serves and enables the more effective pursuit of ADB's mission and role as a development finance institution.

³² ASEAN Chief Justices Roundtable on Environment Background Paper, 2011 (Mulqueeny 2011), p.5

³³ *Searching for Success*, p.21.

³⁴ *Searching for Success*, p.23.

'*Searching for Success in Judicial Reform: Voices from the Asia-Pacific Experience*' is an important contribution to future directions for judicial capacity building³⁵. As observed in the preface to this publication:

"We do this because we recognize that our judicial systems are defining characteristics of the way in which our societies are governed. The improvements we make in our judicial systems will have direct effects on fundamental aspects of national stability and on social and economic progress."

ADB as a multilateral development bank responds to the needs of our members. Lessons can be learned to support judicial capacity development from the experiences contained in *Searching for Success* - as well as from the work of ADB, other development partner agencies, and most importantly, from within individual countries' own analysis and advocacy.

The 5th Judicial Reform Forum meeting will build upon the existing strong regional network. Our shared objective must be even greater collaboration and coordination. Over the next two days, I hope as distinguished members of a regional judicial community – as well as thought-leaders of the region – you can take the debate forward. You have a good opportunity to reflect on, and discuss the capabilities of the region's judiciaries. A greater shared vision contributes to instilling public confidence in the countries in the Asia Pacific. Beyond national boundaries, it is critical to positively influence international perceptions of respective legal systems.

An effective, efficient and just legal system that promotes and supports the rule of law and access to justice is one of the essential mechanisms for eradicating poverty for people in the Asia-Pacific Region. We all have an important role to play in that process.

Thank you very much for the opportunity to share my thoughts and best wishes for an effective forum.

³⁵ <http://www.apjrf.com/publications.html>