



# Asia Pacific Judicial Reform Forum

## FIFTH ASIA PACIFIC JUDICIAL REFORM FORUM

### DEVELOPING JUDICIAL CAPABILITIES TO ENHANCE PUBLIC AND INTERNATIONAL CONFIDENCE IN LEGAL SYSTEMS

31 OCTOBER – 1 NOVEMBER 2013

SINGAPORE

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#### SUMMARY OF MEETING

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**31 OCTOBER 2013**

**Address:** *Welcome Address: Inspiring Confidence in the Courts through Independence, Integrity and Competence*

**Presenter:** Chief Justice Sundaresh Menon, Supreme Court of Singapore

Menon CJ observed that public and international confidence in a country's legal system is important for two reasons. First, his Honour noted that the legitimacy and acceptance of a court's authority rests on the level of trust and confidence that the public has in the judiciary and its ability to deliver and administer justice. Second, his Honour stated that a strong and effective judiciary imbues the legal system and society with stability and predictability, a vital prerequisite for inward investment.

His Honour observed that the qualities of independence, impartiality, integrity and competence are, without question, foundational to any judge's ability to fulfil the obligations of judicial office. His Honour discussed these qualities with reference to the efforts of the Singaporean judiciary to realise these values. In relation to independence, his Honour noted that, in Singapore, the judiciary's budget is subject to the oversight and control of the Chief Justice and not of any member of any other branch of government. His Honour also noted that the Supreme Court of Singapore has sought to manage the judiciary's relationship with the media by enlarging the size and remit of its re-branded corporate communications department, the Office of Public Affairs.

In relation to integrity, his Honour noted that no member of the senior Singaporean judiciary has been investigated by the Corrupt Practices Investigation Bureau, but his Honour was confident that there would be no reluctance to prosecute a judge if there was evidence of wrongdoing. In relation to competence, his Honour noted the establishment of a Board of Judicial Learning to oversee judicial learning programs

for judges at every level, and also noted the importance of the administrative competence of the Singaporean courts.

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**Address:**     ***APJRF Update***

Presenter:     The Hon Justice Kenneth Hayne AC, High Court of Australia

Hayne J noted that, at the Roundtable, participants would look closely at several issues which affect how the rule of law is administered by those who have the primary responsibility for its implementation. His Honour observed that the rule of law describes both the principle and the mechanisms which regulate the application of the power of the State to, and invocation of the application of that power by, individuals, entities and groups within the society. His Honour stated that the rule of law identifies limits to when and how the power of the State may be applied and requires that the application of the power of the State be regulated according to pre-existing generally stated norms of conduct. His Honour observed that the Roundtable was taking place at a time when organisations such as the World Bank and the United Nations were addressing issues such as the rule of law and corruption.

His Honour expressed his hope that the Roundtable might result in each of its participants leaving with a better understanding of important issues which bear upon the work of courts. His Honour suggested that if the participants left with such an understanding, they would leave with a better understanding of important issues which bear upon the rule of law. Participants would also be better prepared to engage with the issues which are at the centre of current international discussions, and better prepared to contribute to the development of judicial systems in their home jurisdictions. His Honour suggested that participants would, consequently, be better placed to develop their individual and collective capacities to enhance public and international confidence in their legal systems.

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**Address:**     ***Keynote Address***

Presenter:     Mr Bruce Davis AM, Vice President, Asian Development Bank ("ADB")

Mr Davis sought to draw the collective attention of Roundtable participants to three interrelated areas that contribute to increased confidence in legal systems: the rule of law, the role of judges and the judiciary, and judicial capabilities. Mr Davis noted the great importance the ADB attached to the rule of law as a cornerstone of good governance and as an essential element of the economic development of the Asia-Pacific region. He noted the efforts of the ADB to support, in particular, five "elements" of the rule of law: the legal framework for business; the enforcement of laws; the inclusiveness and stability of economic growth; safeguards against corruption; and the environmental sustainability of growth.

In relation to the role of judges and the judiciary, Mr Davis spoke of the paramount importance of the role of the judiciary in instilling public and international confidence in a legal system and the rule of law. He noted the work of the ADB in designing measures to promote judicial independence, including work undertaken, in partnership with the Supreme Court of the Philippines, to design a budget and

revenue system that meets audit requirements. Mr Davis also noted the increased diversity and complexity of the demands placed on the judiciary in response to emerging national and global issues such as the increased prevalence of environmental litigation.

Mr Davis observed that improved judicial capabilities can generate greater international confidence by reassuring foreign investors that property rights will be upheld by a court if challenged. He noted the technical assistance projects undertaken by ADB to build judicial capabilities, including the provision of training to judges in the People's Republic of China in relation to the implementation of economic laws.

Mr Davis reinforced the notion that 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 in the Asia-Pacific region. He observed that all participants in the Forum have an important role to play in that process.

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**Session:** *Public and International Confidence in Legal Systems*

**Chair:** Judge V K Rajah, Supreme Court of Singapore

**Panel:** The Hon Chief Justice Md Muzammel Hossain, Supreme Court of Bangladesh  
Mr Fikrat Mammadov, Minister of Justice, Azerbaijan  
Mr Bruce Davis AM, Vice President, ADB

Hossain CJ observed that community confidence in the judiciary rests on four matters: the capability of the judiciary to deliver affordable and quality justice without delay; the ability of judges to deliver decisions and verdicts which are consistent and in accordance with laws and constitutions; the independence and impartiality of judicial decisions and the existence of an open and transparent process; and the undisputed integrity of judges. His Honour discussed the need, going forward, for the Bangladeshi judiciary to identify and adopt best practice to eliminate case backlogs and further improve its case management and court administration processes. His Honour noted that the Supreme Court of Bangladesh had begun to make progress on such matters by undertaking the Judicial Strengthening Project with the support of the United Nations Development Program ("UNDP") and the Government of Bangladesh.

Mr Mammadov outlined examples of innovative reforms that have been undertaken in Azerbaijan, since regaining its independence, to create an independent judiciary. In particular, Mr Mammadov noted that an independent body known as the Judicial Legal Council was created to deal with issues that arise in the judicial system. He also noted that the number of appointed judges has increased twofold and that an independent body has been established to select judges. Mr Mammadov also noted that a new concept of judicial training has been developed, which involves both training and internships in courts. In an attempt to improve access to justice, up to 20 regional courts and five courts of appeal have also been established over the last three to four years. Mr Mammadov also stated that to avoid corruption, judicial salaries have increased thirtyfold within 10 years, and anticorruption laws and strategies have been implemented. He stated that despite the progress made,

Azerbaijan intends to continue further reforms to improve access to, and the efficiency of, justice.

Mr Davis posed a number of questions for the consideration of participants at the Roundtable who were members of national judiciaries. In particular, Mr Davis asked participants to consider: the meaning of public confidence in legal systems; the reasons why public confidence is important, particularly from a foreign investment perspective; the ways in which confidence, and the perception of confidence, is best promoted; the manner in which the region can build public confidence; and the most important steps that can be taken to improve judicial capabilities.

In the discussion following the presentations of the panellists, participants addressed a number of issues relating to the manner in which national judiciaries can build international confidence and attract foreign investment. It was noted that a prerequisite to the building of international confidence in judiciaries is the existence of domestic confidence in those judiciaries. It was suggested that not only is it important to build public confidence, it is useful to identify strategies to measure public confidence. It was noted that, in Singapore, surveys are conducted on the perceptions of court users and members of the general public of the effectiveness of the court system. It was also noted that Vietnam has piloted a program measuring the public's understanding of the legal system in certain of the country's provinces.

It was suggested that when measuring public confidence in the judiciary, it is important that reliable information be obtained and that the results of the measurement be shared with judiciaries. Those results will offer judiciaries useful information to improve court administration and tackle issues of corruption. It was suggested that organisations such as the World Bank and ADB might be able to help jurisdictions in the region to develop strategies to measure domestic confidence.

The session was followed by a presentation delivered by Ms Serene Wee about the work of the Singapore Law Academy.

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**Session:** *Public and International Confidence in Legal Systems*

**Chair:** Chief Justice Mohan Pieris, Supreme Court of Sri Lanka

**Panel:** Mr Haemiwan Fathony, Deputy Coordinator of the Judicial Reform Team Secretariat, Supreme Court of Indonesia  
Mr Jakhongir Khaydarov, Chief Technical Adviser, Judicial Strengthening (JUST) Project, UNDP Bangladesh

Mr Fathony discussed efforts in Indonesia over the last decade to build confidence in its judicial system. He emphasised that in order to tackle the problems facing judiciaries, it is important to identify correctly the problem. He pointed, in particular, to issues relating to delay in court processes, access to justice and corruption. Mr Fathony suggested that in order to address such problems, it is important for courts to know the characteristics and concerns of their clients: court users.

Mr Fathony suggested that when seeking to begin judicial reforms, it is necessary to start with a simple approach that is easy to develop and implement, and focus on issues of transparency. From there, it is possible to focus on issues such as

performance management, improving court processes, promoting a meritocracy in the court and improving knowledge management. To manage judicial reforms effectively, Mr Fathony suggested that it was important to "tap" into local resources and to communicate with stakeholders. He noted that whilst efforts to reform can seem overwhelming, persistence pays off. Mr Fathony also offered to make available, at no charge, to other participants a case management system developed in Indonesia that encourages transparent court processes.

Mr Khaydarov discussed the relevance and importance of judicial capabilities and what could be done to improve those capabilities by reference to the Judicial Strengthening Project that was being undertaken in Bangladesh. Mr Khaydarov discussed some challenges to the operational efficiency of courts and in human resource development, and also some strategies to address those challenges. He also suggested strategies to enhance the independence of courts, including reforms to the process of judicial appointment and promotion, and to support the development of judicial ethics. Mr Khaydarov also outlined the progress that had been made in Bangladesh to improve the case management, strategic planning and administrative capacity of the Supreme Court. He noted the leadership and commitment of the Chief Justice of Bangladesh to the reform process.

In the discussion following the presentations of the panellists, participants addressed the importance of, and the need for, judicial reform, and for persisting with reform in the face of institutional resistance. It was noted that for reform efforts to succeed, strong leadership is necessary not only from Chief Justices, but from other members of the senior judiciary. It was also recognised that for reforms to be effective, adequate funding must be provided to assist such reform efforts. It was noted that there is merit in understanding better the reform experience of other jurisdictions and that some reforms, including the use of particular case management systems, might usefully be tailored to suit local requirements.

Participants also discussed issues of corruption in courts. It was noted that judicial corruption may take the form not only of accepting money or favours, but also intellectual dishonesty; that is, not deciding cases in a consistent manner according to law. The corruption of court staff was also discussed and examples were given of strategies to address such corruption. It was noted, for instance, that the effective use of case management systems and the public availability of decisions help to increase the public availability of information and therefore reduce the monetary value that might otherwise attach to that information. The participants expressed hope that strategies of this kind would lead to a more robust judiciary.

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**Session:**        ***Judicial Role in Interpreting Constitutions and Laws***

Panel:            The Hon Justice K M Hayne AC, High Court of Australia  
                      The Hon Chief Justice Mogoeng Mogoeng, Constitutional Court of  
                      South Africa  
                      The Hon Chief Justice Tom Bathurst, Supreme Court of New South  
                      Wales

Hayne J discussed the dangers that arise when courts must make decisions about the constitutional validity of government action in relation to matters which are the subject of intense public and political debate. His Honour observed that the chief

danger which the courts run in cases of that kind is the danger of going beyond the boundaries of how and why the court can reach its decisions. His Honour observed that a court will cause great damage to confidence in the legal system if it goes beyond the limits of its functions and powers, or if it makes its decisions for improper reasons. His Honour pointed to the need to consider whether, in constitutional litigation in particular, the considerations which are taken into account in applying principles and reaching decisions are compelling. His Honour suggested that in order to preserve public confidence in the legal system, a court must ask itself: what will a dispassionate external observer make of the reasons which are given for resolving the case this way?

Mogoeng CJ discussed the challenges faced in South Africa in preserving public confidence in constitutional and statutory interpretation. His Honour referred, in particular, to public reactions to decisions in South Africa relation to the death penalty, same-sex marriages, the imposition of road tolls and the funding of legal representation for victims of a mining accident. His Honour stated that it is not the public which interprets laws and constitutions, and that judges must maintain fidelity to constitutions and to oaths of office. His Honour observed that it is also of central importance that there be predictability and transparency in decision-making, and that judges must make a deliberate effort not simply to find reasoning to support a pre-determine outcome.

Bathurst CJ observed that it is vital that courts be seen to be impartial and independent. His Honour suggested that this is especially true for countries undergoing economic and political change, particularly those with new constitutions. His Honour observed that even though judicial decisions on constitutions give rise to controversies of a political and social nature, if the court as an institution is respected, the decision will also be respected. His Honour emphasised that whilst this proposition was true of legal systems in transition, it was not confined to such systems; there remain in all systems constitutional questions that give rise to disagreements. His Honour observed that, ultimately, judicial decisions are accepted because the courts are seen as being impartial and independent.

In the discussion following the presentations of the panellists, participants addressed the fact that although judicial decisions may have political consequences, the remit of courts is to decide controversies about the law. That remit entails the determination of controversies concerning laws or constitutions, but does not extend to the determination of political issues which might be determined by other fora. It was suggested that even in, and perhaps especially in, times of national and political instability, it is essential the judges hold true to their oaths of office and act with integrity.

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1 NOVEMBER 2013

**Session:** *Corruption in Legal Systems*

**Chair:** Chief Justice Fredrick Martin Egonda-Ntende, Supreme Court of Seychelles

**Panel:** The Rt Hon Chief Justice Tun Arifin Bin Zakaria, Federal Court of Malaysia  
Mr Nick Booth, Policy Advisor – Governance, Access to Justice and Human Rights Asia-Pacific Regional Centre, UNDP  
Mr Anthony Toft, Deputy General Counsel Operations Legal, World Bank

The Chief Justice of Malaysia spoke of the danger of corruption in hampering the achievement of good governance. His Honour noted that corruption, in general, acts as a major obstacle to poverty alleviation and economic development, and that judicial corruption, in particular, undermines justice in many parts of the world. His Honour suggested that for the judiciary to address corruption, it is necessary for judges to understand what is meant by "judicial corruption". His Honour noted that judicial corruption generally involves an act through which employees in the justice system are influenced negatively for the purpose of obtaining an illegitimate benefit for themselves or for others. His Honour observed that judicial corruption can be seen as falling into two categories: political interference in judicial processes and bribery. His Honour noted that although the level of judicial corruption in Malaysia is low, the Malaysian judiciary faces a major challenge in eradicating negative public perceptions of the judiciary.

Mr Booth discussed perceptions of judicial corruption in the Asia-Pacific region by reference to a number of key indices. He observed that such indices are based on perception and that although perception is not a reliable indicator of actual corruption, the mere perception of corruption undermines public confidence in the judiciary. Mr Booth suggested that for countries to understand better corruption in their judiciaries, they should consider undertaking their own contextualised surveys. He gave the example of UNDP's Justice Index ("JUPI") project in Vietnam, which sought responses, in a third of Vietnam's provinces, from citizens about issues concerning law enforcement and rights protection, including issues relating to judicial corruption. Mr Booth observed that the data generated at a provincial level can reveal differences in regional practices within a country and also generate competition between regions. He noted that JUPI is to be extended to the whole of Vietnam in 2014. He also expressed UNDP's willingness to discuss with Forum participants the possibility of UNDP sharing information with, or providing assistance to, countries that are interested in undertaking similar citizen surveys.

Mr Toft discussed the importance of the "justice sector" of an economy to economic development and to development institutions such as the World Bank. He observed that the institutions of the justice sector are of central importance because they concern justice, a fundamental condition for a decent and fair society. Mr Toft stated that corruption subverts justice and that justice and corruption cannot coexist. He stated that the fact that corruption is regarded as a fact of life does not mean that it should be tolerated. He suggested that judicial institutions need to produce independent and objective decisions and that negative public perceptions of the

justice sector can be particularly damaging. Mr Toft stated that although the responsibility for eradicating corruption from judiciaries lies with many players, it lies first and foremost with Forum participants.

In the discussion following the presentations of the panellists, participants addressed measures that could be implemented to improve transparency in judicial systems. It was noted that greater efficiency in the lodgement of documents and the management of cases, through the increased use of information and communication technologies, was a way in which transparency could be improved. It was also suggested that it is particularly important that Chief Justices demonstrate appropriate leadership in the establishment of strategies to tackle with corruption. It was noted that issues of corruption extend beyond the judiciary and court staff, and that it is important to engage with Bar associations to ensure that Bar members act in accordance with their ethical obligations.

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**Session:**        *Judicial Training and Skills Development*

Chair:            The Hon Justice Takdir Rahmadi, Supreme Court of Indonesia

Panel:            Hon Justice Jinghong Gao, Supreme People's Court of China  
                      Mr Amit Mukherjee, Lead Public Sector Specialist & Task Manager,  
                      JUSTPAL Network; Europe & Central Asia Region, World Bank

Mr Gao explained the manner in which Chinese judges are trained. He focused, in particular, on the training of judges by the National Judges College and by the College's municipal branches. Mr Gao noted that judicial training is targeted on the basis of the identity and level of the judges, and on the basis of judicial capability. He also noted that the nature of the training is adjusted to reflect feedback from, and the needs of, training participants. Mr Gao suggested that efforts are underway to expand the types of training that might be offered online. He emphasised the importance of continuing judicial training as the needs of judges change.

Mr Mukherjee considered how the training needs of judges might be identified in an environment in which fiscal constraints limit funds available to courts and require courts to demonstrate "value for money". He suggested that it was, in particular, important to recognise the needs of judges in the courts of first instance, as it is in those courts that the public first interacts with the justice system. Mr Mukherjee observed that training in such courts must help judges and court staff solve practical problems, and might include training in relation to matters such as sensitivity to gender issues, equal treatment of lawyers and litigants, and court administration and management. Mr Mukherjee suggested that the Forum could play a useful role in compiling and disseminating training resources and also noted the existence of other regional networks, such as the World Bank's JUSTPAL Network, which might also be able to assist Forum participants.

In the discussion following the presentations of the panellists, participants addressed, in particular, the importance of training judges in courts of first instance. It was noted that judges in such courts, particularly in career judiciaries, often benefit, and require, training on technical matters of law, analytical skills and ethical conduct. It was also suggested that it is useful for newly appointed judicial officers to be coached by more senior judicial officers. In preparation for the final Roundtable session, participants

were asked to consider what kind of training or education programs they would want for their jurisdictions, and also what forms of assistance or expertise participants might be able to offer other jurisdictions.

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**Session:        *Where To From Here?***

Chair:            The Hon Justice K M Hayne AC, High Court of Australia

Participants considered what steps might be taken to capture, manage and disseminate useful information to Forum members, and to build on the existing work of the Forum. Participants agreed to the taking of the following steps:

1. By 15 November 2013, the Secretariat of the Forum will provide a letter to all Forum members, including those who were unable to attend the Roundtable, and to representatives from ADB, UNDP and World Bank recording what happened and what was decided at the Roundtable. The letter will also invite recipients to participate in the steps agreed upon at the Roundtable.
2. By 15 November 2013, the Secretariat will aim to publish the presentations made at the Roundtable, together with a summary of the proceedings at the Roundtable, on its website.
3. By 30 November 2013, each Forum member will identify to the Secretariat, by email, two or three specified kinds of programme for training, education or development of the judiciary which are its immediate priorities. Each member will also identify any area which it believes it has useful programmes available for use by other members.

Examples of assistance, training or development programs that were offered to the Roundtable include case management, alternative dispute resolution and mediation, computerisation and technology, and more specific technical areas of law including the New York Convention and the Model Law on International Commercial Arbitration.

4. By 30 November 2013, each Forum member, who wishes to do so, will indicate to the Secretariat, by email, the individuals who will be willing to participate in a working group developing responses to specific requests made by Forum members. It is hoped that the working group will report to the Forum no later than 30 April 2014, and on a six-monthly basis thereafter.
5. By 30 April 2014, the Forum will build the beginning of a library of resources on its website to which Forum members can have resort. The World Bank has expressed its willingness to provide reference to the extensive materials that it has assembled.
6. By 30 April 2014, the Forum will build the beginning of a system which will facilitate the exchange of ideas, information and training opportunities between Forum members.

No formal decision was taken about when and where the next Roundtable should take place. It is expected, however, that the next Roundtable will take place in approximately two years.

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