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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N

ASIA PACIFIC JUDICIAL REFORM FORUM

WORKING PARTY MEETING

**HELD AT WESTIN HOTEL, SYDNEY
16 - 17 MARCH 2006**

DAY ONE:

10.00 AM, THURSDAY, 16 MARCH 2006

PARTIES PRESENT:

PEOPLE'S REPUBLIC OF CHINA

Justice Sheng Deyong

Justice Hu Yunteng

Ms Yu Xiaoyu

Interpreter: Jack Meng

INDIA

Justice Arun Kumar

INDONESIA

Justice P. Lotulung

Pak Subagyo

Jamie Vueti

Ms Cate Sumner

Ibu Wiwiek Trisnohandoko

MALAYSIA

Justice D. Malanjum (Richard)

PHILIPPINES:

Justice Angelina S. Gutierrez

Justice Antonio T. Carpio

Justice Conchita Carpio Morales

Justice Adolfo S. Azcuna

Ms Evelyn Toledo Dumdum

Ms Jennifer Manalili

Mr Dennis Baldago

RUSSIA

Ms Polina Kryuchkova

THAILAND

Mr Voravuthi Dvadasin

Mr Sobchok Sukharomna

AUSTRALIA

Chief Justice Gleeson

Justice K. Hayne

Justice J. Mansfield

Justice P. McClellan

Ms Jane Probert

Christopher Doogan

Warwick Soden

Ernie Schmatt

Ms Elizabeth Connolly

Ms Helen Burrows

UNDP

Mr Jak Jabes

WORLD BANK

Mr Anthony Toft

REVIEW AGENDA/OBJECTIVES - JUSTICE HAYNE

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JUSTICE HAYNE: Good morning. Distinguished judicial colleagues, representatives of international development partners, ladies and gentlemen. May I offer to you all a welcome to Australia. Many of you have travelled considerable distances to be with us today. It is very good of you to have done so.

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May I also welcome you to this working party. The title Working Party Meeting is very deliberately chosen for we are here to carry forward work that was begun in Manila in November last year and the fact that you are here reveals for us all the importance that you attach to the work that we will do over these next two days.

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All of us who are here understand the importance of a sound judicial system to the proper governance of our societies and the importance of a sound judicial system to the governance of our societies is precisely why so many have travelled so far. All of us come today hoping of course that we may learn but all of us come believing that together we may build on the work that was done in Manila in November 2005.

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You will recall that in Manila 2005 the work then culminated in the Manila Declaration. I do not need to read to you again what that records but it is worthwhile bearing in mind all of its content but especially the last of the recitals.

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That recital recorded the belief that the challenges that face us all called for identifying and implementing effective strategies to strengthen the capacity of judiciaries in the Asia Pacific region and elsewhere, to share knowledge on good practices, to address judicial challenges and thereby to provide for the expeditious, affordable and fair resolution of disputes, to strengthen the capacity of judiciaries, share knowledge, address judicial challenges and thereby provide for expeditious, affordable and fair resolution of disputes according to law.

Before we go further it is, I think, important that we introduce each of our delegations so that we know who is here. All of you have seen the list, but let us begin not with Australia, who provide the place in which we meet, but if I may
5 first begin by asking our delegation from the People's Republic of China to announce themselves and who is here.

JUSTICE SHENG DEYONG: (China) It is my great pleasure to introduce members of the delegation of the Supreme Court of China. My name is Sheng
10 Deyong, I am the Vice President, China's Supreme People's Court. The next gentleman sitting on my right is Senior Judge, Mr Hu Yunteng. Mr Hu is an expert on applied jurisdiction and this is practical work instead of theoretical study. The Institute presided by Senior Judge Hu is also the office of judicial reforms in China. One of the most important contexts for our visit now is the
15 judicial reform in China.

The next lady sitting on the right is Ms Yu Xiaoyu, the Director of Reception Division International Exchanges and Corporation Department, Supreme People's Court of the People's Republic of China. Mr Hu Yunteng judge and professor is
20 the Deputy Director of the Research Department, Supreme People's Court of the People's Republic of China. He is also President of the Chinese Institute of Applied Jurisprudence.

We are very pleased and honoured to attend this working party meeting. As our
25 honoured Chairman pointed out just now it is very important for us to face the challenges in the Asia Pacific region and to work together in order to work out a fair and possible solution. We will undertake the opportunity to learn from other colleagues attending today and try to make our meeting a big success. Thank you.

30 JUSTICE HAYNE: Thank you very much. Justice Kumar from India.

JUSTICE ARUN KUMAR (India): I am Justice Arun Kumar from India. I am a judge of the Supreme Court of India and I represent India. We are very happy to be part of this forum and we would like to and try to contribute whatever we can to the deliberations.

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JUSTICE HAYNE: Thank you. Our development partners we shall come to at the end. Before we do can we go to Indonesia, please?

MR PAK SUBAGYO (Indonesia): Thank you. There are three delegates for the Indonesian delegation and we do apologise as the Deputy Chief Justice has just arrived and checked in and will be joining us shortly. I am Mr Subagyo head of General Affairs of the Supreme Court of Indonesia. Our third delegate is Ms Wiwiek. Thank you.

15 JUSTICE HAYNE: Thank you very much. Malaysia.

JUSTICE D. MALANJUM (Malaysia): Good morning everyone present. Good morning, Chairman. My name is Justice Richard Malanjum. I sit in the Federal Court of Malaysia. First of all I would like to extend an apology for our Chief Justice who is unable to be present here this morning. He is currently in Singapore on a State visit and also presenting a public lecture. Of course he would want to attend but unfortunately he won't make it so I have been delegated to do his Honour's job. I will try to do my best and lucky for me maybe, because I was in the Manila conference, but I notice this delegation is not as large as in Manila - a much bigger crowd, but we will do the best and we see what happens next.

25

Thank you.

JUSTICE HAYNE: Thank you. The delegation from the Supreme Court of the Philippines.

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JUSTICE ANGELINA S. GUTIERREZ (Philippines): Good morning your Honours and representatives from our development partners. I am Justice Angelina S. Gutierrez from the Supreme Court of the Philippines and may I introduce to you the members of our delegation. We have here the honourable
5 Justice Antonio T. Carpio, and the Honourable Conchita Morales, Honourable Adolf Azcuna and of course I think everybody knows our Director of our Program Management Office, Administrator of our Judicial Program, Director Evelyn Dumdum.

10 We have Jennifer Manalili, Chief Officer of the Office of Our Chief Justice and Mr Dennis Baldago, head of the Secretariat of the Office of the Program Management Office headed by Director Dumdum. Well, I hope that our delegation will be of help in attaining the goals and objectives of this forum, the reason we are all here and so I wish everyone a pleasant good morning. Thank
15 you.

JUSTICE HAYNE: Thank you. Now Russia.

MS POLINA KRYUCHKOVA (Russia): Good morning, ladies and gentlemen.
20 My name is Polina Kryuchkova. I represent the group which prepares the World Bank project and the support of the judicial reform in the Russian delegation. Unfortunately I am alone here. It is a great pleasure for me to participate in such a representative forum. Thank you very much.

25 JUSTICE HAYNE: Thank you. Thailand.

MR SOBCHOK SUKHAROMNA (Thailand): Good morning, my name is Mr Sobchok Sukharomna, Presiding Justice of the Supreme Court of Thailand. It is a great pleasure for me to be here.

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JUSTICE HAYNE: Thank you very much. Now our development partners.

MR ANTHONY TOFT (World Bank): Good morning, I am Anthony Toft, I am the Chief Counsel for East Asia and the Pacific for the World Bank and I am a part-time assistant to Evelyn Dumdum, I think.

5 JUSTICE HAYNE: Thank you. Now from Australia - no, UNDP, we have not heard from UNDP, forgive me.

MR JAK JABES (UNDP): Good morning. I am Jak Jabes, head of Governance Practice for the Bangkok Regional Centre, UNDP and unfortunately I was not in
10 Manila at the time because I was not with UNDP then but I look forward to the deliberations.

JUSTICE HAYNE: Thank you. From Australia we have Justice John Mansfield of the Federal Court of Australia, Justice Peter McClellan, Chief Justice of
15 Common Law of the Supreme Court of New South Wales. Mr Christopher Doogan, who is the Chief Executive and Principal Registrar of the High Court of Australia, Mr Warwick Soden, who is the Chief Executive and Principal Registrar of the Federal Court of Australia. We have Mr Ernie Schmatt from the Judicial Commission of New South Wales, Ms Jane Probert from the Supreme Court of
20 New South Wales, and I, as you know, am Kenneth Hayne from the High Court of Australia. Our Chief Justice of Australia, Justice Gleeson, will join us a little later in the morning for the official opening of the working party and he will then, no doubt, convey his own greetings on behalf of the Court and the Judiciary of Australia but at once I should say that you are most welcome in our country.

25

Now, how are we going to proceed today. You will see from the agenda that the way in which it is intended to go is to build on the foundations of Manila so step one will be for the Supreme Court of the Philippines to take us through the objectives of the forum, its goals, its vision to hark back a little, I suspect, to
30 Manila to record where we have got to so far, but to give us a general framework for the way ahead. After the official opening by Chief Justice Gleeson we will

then begin to attempt to identify our key themes and issues. That will take us through until the luncheon adjournment.

5 During the afternoon we will look in effect at what is out there already, what is happening already, but where we hope to go is by the end of the day to try to draw the threads together to try to understand a little better what we might agree upon as the way forward, for the program for tomorrow is devoted, as best we may entirely, to plotting the way forward. In particular what we are looking to try to achieve tomorrow is a better definition of what we may agree upon as immediate
10 objectives, immediate outputs that can be achieved.

That we think may take us a little while to refine them, to understand them, to agree about them, so the structure of the agenda is, I hope, self evident to you. Today let us look at themes, issues, what is happening out there already with a
15 view tomorrow to attempting to agree upon immediate objectives, immediate outputs and then establishing the next immediate steps that are to occur including the next meeting. Now, like all conferences, like all meetings, the Chairman has at some point to announce that there are a few housekeeping matters to attend to. At this point most delegates find that there are other more interesting aspects of
20 their papers to which attention should be given.

First item on the housekeeping was the use of the microphones, a point which alas, I should no doubt have raised much earlier than I did but which has now been solved. The next item of housekeeping is the question of transcription. We
25 are making a transcript of the proceedings today and our lady at the front is here for the purpose of identifying speakers so that our transcript of proceedings may be accurate. If, during the course of this meeting there is anything that we can do for you to assist you during the meeting or with arrangements that are to be made in respect of the meeting, ask, we will do what we can.

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In particular see Elizabeth Connelly or Helen Burrows. They will do whatever they can to assist you with arrangements. So, for example, return travel

requirements; there are, I think, some forms that need to be filled out so that we may arrange for your transport to the airport and things of that kind, see those two ladies, they will assist you. The last item I am asked to mention is the bathrooms.

5 The bathrooms, if you go out of the ballroom you will see a sign pointing upstairs to the bathrooms, that's where they may be found.

But housekeeping matters aside, this is a working party, we have work to do. We begin with the Supreme Court of the Philippines. They will take us through their presentation under the heading of the objectives of the forum, its goals and its vision, so let me give the floor to the Supreme Court of the Philippines.

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OBJECTIVES OF THE FORUM - GOALS/VISION [10.22am]

15 **PLENARY SESSION/AGREEMENT**
PHILIPPINES SUPREME COURT

PHILLIPINES:

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JUSTICE ANGELINA S. GUTIERREZ (Philippines): May we present to you Director Evelyn Dumdum, to do the tasks. Director Dumdum please?

25 MS EVELYN TOLEDO DUMDUM (Philippines): Thank you Justice Hayne, thank you Justice Angelina. Your Honours, ladies and gentlemen, on behalf of the Chief Justice of the Philippines, the Honourable Hilario G. Davide and the Philippine delegation headed by Madam Justice Sandoval-Gutierrez, a very pleasant morning. As Justice Hayne mentioned we will provide or will give you
30 the general background or the general framework of why we are here and hopefully that should commence or end with agreement on the objectives, goals and vision of the forum.

May I first of all present to your Honours, ladies and gentlemen, a 10 minute audio visual presentation of the highlights of the international conference and showcase of judicial reforms.

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VIDEO PLAYED (With music and narration) [10.23am]

10 **END VIDEO [10.44am]**

MS EVELYN TOLEDO DUMDUM (Philippines): Your Honours, ladies and gentlemen, you all have a copy of the audio visual presentation, it is part of the CD that is inside your kit. May I now quickly walk you through the Manila Declaration which was signed at the time of the International conference by 30 Chief Justices and has a delegation out of 45. The Manila Declaration for the 21st century independent judiciary started with a statement on the demise of the judiciary and given that, decided to come up with a priority. The main objective has been defined and I call to share knowledge including lessons learnt, problems faced, best practices and potential model reform experiences from the region as well as globally.

Then it is followed by first next steps and the principles. You all have copies again of this Powerpoint presentation as part of the CD. We will now go to the web page of the judicial reform network. The IGIN or the International - or the JRN rather, the Judicial Reform Network in the 21st century so I am just showing you the web page. Lastly, I would like to share with you the analysis of the results of the informal and anonymous survey of judicial participants in the international conference in showcase of judicial reforms.

The basic and recurring problems affecting the delivery of judicial services can be classified into three and I would like to mention this. First one is resource constraint, second is incentive compatibility and the general theory of the second best. The issues of judicial independence and integrity mention the following:

5 Clear rules in appointment process; adequacy of compensation and insufficiency of judicial budget. In terms of the appointment of judges 59 to 62 per cent of the respondents agree that there is a clear rule in the appointment process. 49 per cent agree that there is a difficulty in filling judicial vacancies in the lower courts.

10 On the code of ethics 75 per cent of the respondents agree that there is an existing law and professional code of ethics in their country but only 55 per cent agree that this is enforced effectively. On the issues of transparency and accountability enforcement of laws regarding recruitment of judges, compulsory declaration of income and assets and transparency of judicial processes were identified. On the

15 declaration of income and assets 62 per cent of the respondents agree that there is a clear law on compulsory declaration of judges and justices' income and assets, but only 47 per cent agree that this is enforced effectively.

On transparency of court proceedings 88 per cent agree that civil and criminal

20 trials and appellant proceedings are open to the public and the media. 84 per cent agree that decisions of higher judiciary are accessible by the public, 60 per cent agree that decisions of the lower trial courts are accessible by the public. On judicial capacity slightly more than 50 per cent agree that there is a need to increase investment in one, basic physical infrastructure, equipment and

25 technology, capital expenditures and operations and maintenance of judicial infrastructure.

On judicial capacity 68 per cent of the respondents admitted that there is a significant problem in backlog of cases. On security, a little less than per cent of

30 the respondents agree that physical security of judges and justices is a major problem. And corruption. The same number agree that corruption is a significant problem both in the higher and lower courts. These issues and concerns are

similar both in the higher and lower courts. These issues and concerns are similar in countries covered by a World Bank report entitled Judicial Systems and the Transition Economies Assessing the Past and Looking to the Future.

5 All these countries face different challenges in forming the judiciary but all share the need to strengthen transparency and accountability; build operational independence; improve efficiency in the courtroom; improve access, security and operation of the courts. Again, your Honours, ladies and gentlemen, you all have copies of this Powerpoint presentation and I hope that we have given you the
10 general idea of what took place during the International Conference and Showcase in Manila last November and that this will be sufficient to provide as a framework for the rest of the discussions this morning. I now turn you over to Justice Hayne.

15 JUSTICE HAYNE: Well, may I thank on your behalf the Supreme Court of the Philippines and Ms Dumdum in particular for the presentation that we have just been given. It provides us, I think, with a very useful framework from which to begin our deliberations a little later in the day. Now, we are, for once at a conference, running a little ahead of time. This is devoutly to be encouraged, but
20 I think that what may be useful is if we break now, if we re-assemble in time for half past 11 when Chief Justice Gleeson will officially open the conference, the working party, and then at quarter to 12 let us begin our discussion on key themes and issues.

25 May I in that respect suggest that the way in which we might usefully begin that session is to go from delegation to delegation asking each of you to the extent that you feel able and useful to do, to put forward what you see as being the key themes and issues that should inform our work. What are the key themes, what are the issues that will inform the development objectives and outputs that we will
30 be considering tomorrow. As I say, what I will propose to do at that time is to go from delegation to delegation, then according to the way in which it develops, perhaps open it up for more general discussion and then perhaps come back

towards the end of that delegation by delegation to see where the delegates think that we have come to, because the work of this party will come from the contributions of each of these delegations.

5 Each of us no doubt, comes here to learn but I know that each of us comes here to contribute to the work of this working party. So, ladies and gentlemen, thank you. Let us break now until a little before half past 11 when Chief Justice Gleeson will open the conference. Thank you.

10

SHORT ADJOURNMENT

[10.52pm]

RESUMED

[11.29am]

15

OPENING - CHIEF JUSTICE GLEESON

20 JUSTICE HAYNE: I wonder whether we might begin, ladies and gentlemen. Ladies and gentlemen, it is my pleasure to introduce the Chief Justice of Australia, Chief Justice Gleeson, and to ask him to officially open the working party of this group. Chief Justice Gleeson.

25 CHIEF JUSTICE GLEESON (Australia): Justice Hayne, your Honours, ladies and gentlemen, I know that this is to a large extent a nuts and bolts working activity in pursuit of the establishment and promotion of the Asia/Pacific Judicial Reform Forum, which was a conception of former Chief Justice Devidae of the Supreme Court of the Philippines, and has been welcomed and taken up in
30 various other parts of the Asia and Pacific judiciary.

I also know that the people who are here today are representing various Courts and various parts of the Asia/Pacific judiciary are people who are likely to be closely involved in the actual working and administrative arrangements that will be necessary to pursue that idea. Justice Hayne will be representing the High Court of Australia. He, as the senior member of the Australian judiciary involved in the activities of this Asia/Pacific Judicial Reform Forum, will convey to you the perspectives and the objectives of the Australian judiciary.

I should, on behalf of the entire Australian judiciary, welcome you all to Australia, and to Sydney on this occasion, and on behalf of the entire Australian judiciary I should express thanks to the Federal Court of Australia, and to the Supreme Court of New South Wales, for their contributions in these proceedings. Both of those important Courts are represented, and will continue to be represented in the work of the activities of this forum. I wanted to make a couple of general remarks to you to indicate some points of view of the Australian judiciary, in relation to an activity such as that upon which you are embarking.

One of the most obvious aspects of the organisation of the judiciaries in our respective countries is that we have two major judicial traditions at work, the civil law tradition in a number of your countries, and the common law tradition in Australia and a number of other countries of the Asia and Pacific region. And one of the most practical manifestations of the difference between those two traditions is in relation to what might be called judicial formation. Traditionally the judiciaries in the civil law tradition are career judiciaries.

People embark upon a judicial career at the conclusion of their legal studies, and are expected to continue in a judicial career until the age of retirement, whatever that might be. In the common law tradition on the other hand judges in the superior Courts at least are commonly appointed in middle age. I was appointed a judge at the age of 50, and before that I had spent 25 years practising as a barrister at the New South Wales bar, and that was typical. Justice Hayne had a similar

career. Justice McClellan had a similar career. That's the way people in our tradition tend to become judges.

5 Now, that difference in what I might call formation, or background, produces some differences in relation to the judiciaries from those two great streams respectively. And one of the most important things that we have in common is our difference. But we also have in common in recent times, whether from civil law backgrounds, or from common law backgrounds, an increasing and very important emphasis on the topic of judicial development. We have our own
10 methods of formation that differ from place to place, but it's universally recognised in judiciaries with civil law traditions and common law traditions that there is now a great need for ongoing judicial development after appointment to the judiciary.

15 In Australia, the ground breaking work in that regard was done by the Judicial Commission of New South Wales, and Mr Ernest Schmatt, who is here was with the Judicial Commission of New South Wales from its beginning in 1986, and he is probably the most experienced Australian administrator in relation to the matter of judicial development. We have recently established a National Judicial
20 College, and I mean National and not Federal, because it's a college that embraces the work of both the Federal judiciary and the State judiciary. It is important, but will take a little time, that that organisation becomes accepted by governments, Federal and State, throughout Australia, and internationally, as the key body engaged in providing judicial development for the judiciary generally in this
25 country.

Each Court throughout the country has its own programs of judicial development. Most of the Courts throughout Australia, for example, conduct regular conferences, in which the topics are selected by the members of the Courts, or by
30 education committees within the Courts. Retired judicial officers, in our tradition, play an important role in judicial development. We find in Australia that retired judges can make a major contribution to the work of post-appointment continuing

education of judges in all our Courts. In this country we very strongly take the view that judicial development will only be successful if it is judge directed. That can occasionally produce some tensions between the executive and the judicial branches of government, but it is important, in our experience, that ongoing
5 programs of judicial training be accepted by the people who are being trained, and enjoy credibility and legitimacy in the eyes of the people to whom they are directed.

The judiciary, it is important to remember, is in size a small institution. There are
10 only about 1000 judicial officers in the whole of Australia. Judges and magistrates combined don't much exceed in number 1000. There are relatively few of us. The executive branch of government in our country, and I expect this is fairly typical, has its own programs of training and formation for officers of the executive government, but we lay great emphasis on the separation of the
15 judiciary from the executive and legislative branches of government, and that we regard as an aspect of the rule of law. In every country that is represented around this table this morning, and in every country that will participate in the Asia/Pacific Judicial Forum, there is respect and commitment for the rule of law.

20 The Chief Justice of the People's Republic of China, Chief Justice Xiao Yang, made an important speech in Australia at the Gold Coast in last April, in which he emphasised the commitment of the Chinese Government and the Chinese judiciary to the principles of the rule of law. And those principles are universally espoused and respected by all the countries that will be represented in this forum.
25 It has to be emphasised to governments that acknowledgment of the rule of law, and promotion of the rule of law, necessarily involves an expansion of the importance of the role of the judiciary. In any country that acknowledges the rule of law the judiciary will be a key element in the implementation of the principles involved in that concept. The rule of law is important as a matter of principle, and
30 it is also important on pragmatic grounds.

A credible, manifestly independent, reliable, legitimate process of dispute resolution is an essential attribute of any nation that is involved in international trade and commerce. Respect for human rights depends upon a reliable, credible, legitimate criminal justice system. And as nations develop and emphasise their
5 commitment to the rule of law, necessarily involved in that will be a commitment to the role of the judiciary.

Now, that isn't always welcome information in any nation where issues of judicial development involve the application of scarce resources, including scarce
10 financial resources. It isn't easy in any country in the Asia/Pacific region to persuade governments to devote to Courts and to the work of judges extra funds, because we have to compete - Courts have to compete for scarce resources with other needs. Health, welfare, education of the general public, defence, all these activities are expensive, and represent a drain on the resources of governments.

15 But it is essential that the role of the judiciary involve recognition on the part of governments of the needs of the judiciary for their ordinary work, and for the work of judicial training and development. It is necessary for me constantly to engage in advocacy to Australian governments of the importance of the work of
20 the Courts, and the importance of the topic of judicial development, and I have no doubt that you also, in your own countries, have to engage in your own way, by whatever method is appropriate to your own circumstances, in a similar form of advocacy. But what is essential is that governments throughout the region understand that the work of the Courts, and of the judiciary, is vital to the
25 achievement of their objectives, and that the particular topic of judicial development is one that has their appropriate attention.

Representing the judiciary, the needs of the judiciary, and the aspirations of the judiciary to government is an important aspect of judicial leadership. In different
30 countries of the Asia/Pacific region there are different issues, different challenges. It is sometimes easy for us to assume that our local problems are problems

throughout the region. It is sometimes easy for us to assume that our priorities are everybody else's priorities.

5 One of the objectives of a gathering such as this no doubt is to enable the people who attend to share with one another information about their own problems, and their own priorities, with a view to working out those areas in which some common front may be productive. But the area above all that I would seek to emphasise, and offer for your consideration, is that that I have described as judicial development. What form of development of ongoing legal education is
10 appropriate will depend of course on your individual circumstances.

It will depend, amongst other things, on the matter that I referred to earlier, that is to say your systems of judicial formation. Obviously what is required in one jurisdiction, what needs emphasis, may be different from what is required, or
15 needs emphasis in another jurisdiction. But the other suggestion that I would offer for your consideration is that what we all have in common, in all of our jurisdictions, is a need to represent to government the requirements, the proper requirements of the judiciary, in terms of resources, including funding. We can't escape the responsibility of pressing our claims on government in that regard,
20 because we have to make those claims in competition with other people who have valid claims of their own. I wish you every success in the work of your forum, and I hope that you will also have a pleasant visit to Sydney. Thank you.

JUSTICE HAYNE: And may I, on behalf of all of us here, thank you, Chief
25 Justice, for what you have said. You have given us, as always, food for thought concerning judicial development and formation. No doubt these are matters that we will see taken up during the balance of our proceedings today, but in the meantime may I ask you all to join with me in thanking Chief Justice Gleeson for attending today to open our working party meeting? Thank you. Well, now, we
30 will pass to the task of beginning to identify our key themes and issues. As I said before we took our break, and after we had heard from the Supreme Court of the Philippines with their presentation, at least initially it seems to me that it would be

useful to go around the delegations one by one, asking each of you if you would willing to share with us your statement of key themes and issues that might inform the balance of our deliberations during the days.

5 Now, Australia as host should take its proper place in the queue, at the end. That being so, might we begin with our distinguished representatives from the People's Republic of China, and ask whether you would wish to make a statement concerning the objectives, the key themes and issues for the forum. And for the purposes of this, if you do not mind I will return there, we shall go around the
10 table, and see where we develop as we go, but now we are into the working session. No more standing up here and haranguing you, as though I am at the lectern of number one Court in Canberra. Rather, let us do some work. Our distinguished delegation from China.

15

KEY THEMES AND ISSUES

FACILITATED DISCUSSION - PLENARY SESSION

20 **CHINA:** **[11.51am]**

JUSTICE SHENG DEYONG THROUGH THE INTERPRETER

25

THE INTERPRETER (China): Thank you. Since the conclusion of the last year's judicial reform forum we have further strengthened our judicial capacity. As you all know, China in this world is a country recently with newly judicial reform. With the rapid development of economic reform in the last 20 years in
30 China, judicial reform has also been deepened hand in hand. Since 1999 the Supreme People's Court in China has implemented two five-year plans. In the first five-year plan the Court has raised 39 areas that need to be reformed, and so

far they have all been completed. In 2005, last year, we have started implementing the second five-year plan. Based on the first five-year plan, in the second five-year plan we have concentrated in eight major areas, and raised 50 issues to be reformed.

5

These tasks cover the judicial procedures, the litigation procedures, the sentencing, the judicial sentencing, the judicial management, and staffing of the judicial system, as well as the juvenile justice system. So looking in retrospect these two five-year plans have covered almost every aspect of the judicial system in China. Among all these issues the most concerned issues are the efficiency of the judicial system, and the safeguarding of the judicial system. As China is undergoing deep reform economic relations has been greatly changed, so one of the characteristics is that we have a huge back log of cases. Among all of our judicial system and full level of Courts, every year China is dealing about eight million cases. It has greatly increased if you compare the cases we had 20 years ago.

Among those eight million cases there are a lot of new cases with which we haven't dealt with before. For instance those cases relating to international property. And some cases with international waters with sea affairs, network crimes. So with these new type of cases it has greatly increased the complexity of our work. Under such circumstances it is quite unavoidable for us to have a lot of cases, and each Court is overloaded with these cases. As a result, the cost of the proceedings is also increased. These costs relate to both the input from the part of the government, and also the cost of the applicants and respondents. So our aim is to try to make the Court system more efficient, so as to deal with the over load of work.

So we have worked out a lot of measures in those two five-year plans, so as to solve the problem of back logging, and to improve the efficiency of the judicial system. For instance, as far as the civil and commercial cases are concerned, we are trying our best to implement a mediation program. So encouragement is made

in those cases to settle the matter outside the Court, and also to seek other options before consideration of sentencing. We put some judicial procedures on trial to try to simplify the procedures. So as far as the case is concerned, according to the nature of the cases, we try to simplify the procedures. Simplify some procedures without sacrificing the establishment of the evidence, and the fairness of the sentencing.

So with such implementations we have greatly improved the efficiency of our sentencing. We have achieved 90 per cent of the cases being finalised within the year it was lodged. The second one is to guarantee our judicial system. Such guarantee concerns the involvement of our Court and also the cost and funding from the government. With the development of our judicial reform we try to create a friendly environment for our judges to exercise their judicial discretion independently. Such independence reflects in the decision made by the judge without interference of the administration, based on the facts. In doing so we try to increase the transparency of the sentencing. So the committal hearings, preliminary hearings, and the sentencing is greatly shortened.

In doing so try to eliminate the attempt, and also the opportunity of the outside Court interference. At the same time we are trying to persuade the government to provide more fundings to our Courts. So the government is setting up a special and independent budget for the judicial system. Although we haven't achieved the fact that such budgets should be approved by the People's Congress at various levels, as a developing country China has made great progress in setting up separate independent funding for the judicial system. The Central Government has also paid attention and attached great importance to the judicial system developed in the middle of China and western part of China. So such guarantee extends to the guarantee of the judges income, and also in funding for the operation of the judicial system. The third aspect of our current reform goes to the strengthening of the local Courts at the grass roots level.

In China there are about over 3000 local courts and 11,000 peoples courts. These peoples courts and local courts are scattered in the frontier areas and remote areas of China so the conditions are a little bit harsh. The Supreme Court of China has set up some basic requirement for these courts. For instance we have specific
5 criteria in terms of the court area which is not less than 800 square metres. We have also provided adequate transportation and communication equipment. I am probably announcing here that the Central People's Government last year have approved \$270 million last year for the establishment of these local courts.

10 This is the largest funding allocation since the founding of the new republic. This has shown the importance that the Central Government has attached to the establishment of the local courts in China. There are also other areas that are under judicial reform but due to the limited time I will limit my topics to these three areas. Thank you very much.

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JUSTICE HAYNE: Thank you for the contribution from the People's Republic of China. Can we move now to India, Justice Kumar.

20 **INDIA:**

[12.11pm]

JUSTICE KUMAR (India): Honourable members, ladies and gentlemen. The judiciary in India is completely independent of interference from any quarters,
25 how so ever high, and there is a total commitment to rule of law but our peculiar situation is that with the vast country having second largest population in the world our resources are eaten away by the population. The large majority of the population is illiterate and is below the poverty line. The main problem therefore that we face is how to cope with this. Large population means large number of
30 cases and the biggest problem is how to cope with this. We are continuously grappling with the problem of backlog of cases and ensuring a speedy trial and disposal of matters which come to courts is the biggest challenge.

Judicial reforms in our country are focussed to deal with the very real problem of backlog. When we talk of judicial reforms we address ourselves broadly to the following groups. First, improvement of productivity and efficiency of courts.
5 Second, improving the standards of legal education, providing of training to judicial officers, spreading legal awareness amongst our vast population. Third, finding alternate methods of dispute resolution. For ensuring a speedy trial and disposal of cases you have got to have a sufficient number of judges. So for improving productivity and efficiency in courts the following measures have to be
10 taken; coping with manpower shortage comes first.

The judge population ratio in India is probably amongst the lowest in the world. Till recently the ratio was about 12 judges per million population. The goal set for improving this ratio is at least 50 judicial officers per million population. In
15 the US, just to give you an example, the figure is about 107 judicial officers per million population. This means steps have to be taken to increase the number of judges. Litigation goes through a three tier process in our country. The cases start at the lowest level in the Magistrates Court or the Civil Court. Criminal cases are assigned to Magistrates while civil cases go to civil judges.

20 Appeals from the orders of these lowest level courts go to the courts which are known as courts of additional district judges or district judges. They are the same level district judges - one, while he has so many additional district judges but the level is the same so appeals go to that level. And from that level, second appeal
25 goes to the High Court. India consists of several states and each state has a High Court which is the highest court of that state and from those high courts appeals come to one apex court which is the Supreme Court.

30 India has only one apex court which is known as the Supreme Court of India. I am a judge of that Court so the final court of appeal is the Supreme Court but in all matters appeals cannot go to Supreme Court. It is important matters, criminal cases - especially cases where there is a death sentence - they come to the

Supreme Court as a matter of right because the life of a person is involved. The Government is willing to increase the strength of the judicial manpower but the appointment procedures are time consuming.

5 The appointment of judges up to the district level is through a competitive examination followed by interviews. Whilst appointments at superior level courts, that is the High Courts and the Supreme Court, are by way of promotions from the District Courts or from the High Courts as the case may be, and also through the members of the bar. Now, as was mentioned earlier by even Chief
10 Justice Gleeson, the financial crunch means that we can't provide enough salary and other perquisites to the lawyers whom we would like to appoint as judges of superior courts and therefore it is getting difficult to get lawyers with large practice and good lawyers to join the courts as judges.

15 The procedure regarding appointments of judges to superior courts is also lengthy because we try to ensure that the person concerned has no political leanings because, as I said earlier, we want to ensure complete independence of judiciary. These things cause delay in filling up the vacancies. On the aspect of use of technology in court, I am glad to say that almost all the courts at district level and
20 High Courts and Supreme Court, including Supreme Court, there is complete computerisation. Computerisation helps in easy access to the information relating to courts as well as - it expedites the disposal of cases. Every information is available to lawyers and litigants on the tip of the computer box.

25 And this also reduces paper work. All the High Courts and the Supreme Court are on web sites. Judgments are available at the click of this computer. Every court has its own web site. There is use of teleconferencing which avoids bringing witnesses to court every time. Sometimes it's risky also in serious criminal cases to bring witnesses to the court because they try to escape. The Government is
30 willing to spend on computerisation of courts and use of these electronics methods in courts.

Now, coming to the aspect of judicial training. We have an apex judicial training centre at Bhopal which is geographically also centrally located in the country which is called the National Judiciary Academy. It is being looked after by the Supreme Court judges. Even sitting judges frequently go there. The programs
5 are being devised in consultation with the sitting judges. Some retired judges are also helping in that. Each state has its own judicial academy to train the judicial officers at the lower end so immediately someone is selected for appointment as a judicial officer, they are imparted at training for a few months, maybe six months, for being a good and useful judicial officer.

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These academies have devised specialised courses and procedures to train the judicial officers so they are better equipped in discharging their duties. In order to deal and handle the problem of backlog of cases, efforts are being made to curtail litigation. In some measure, legislative changes have been made to reduce the
15 rights of appeals wherever it has been found unnecessary and time consuming. The Government is the biggest litigant in our country. Nearly 60 per cent of the litigation in every court involves the Government.

So there is an increasing awareness that the Government litigation should be
20 curtailed and especially measures have been taken that where the litigation involves one government department as against the other, they should settle it across the table rather than come to court. Even the Supreme Court has given decision in this in that we have created a co-ordination committee which will dispose of those cases. A remedial step in reducing litigation in court is resort to
25 matters of alternate dispute resolution. These matters include arbitration, conciliation and mediation. These concepts are well known throughout the civilised world and are being increasingly resorted to by other countries.

We in India have made statutory provisions for resort of these matters of dispute
30 resolutions so that the load of litigation on courts can be reduced. Yet another experiment tried with great benefit is the establishment of Lok Adalats, that is, people's courts. Lok Adalats is an Indian term but the translation is people's

courts. These courts are presided over by judicial officers, sometimes retired judicial officers, and the effort is to help parties in reaching an amicable settlement.

5 This has worked wonders, especially in cases of claims for recovery of money. They will come across the table and settle for less, say half or 60 per cent or 70 per cent and finish it there. Banks have been doing it; banks and other financial institutions. This helps in settling insurance claims, claims for compensation for accident, etcetera. This experiment has been very successful particularly in these kind of disputes and this has led to reduction of burden on
10 courts because the courts transfer cases to the Lok Adalats and they are accepted there so that part of the work the Court doesn't actually get and has easy and quick disposal.

15 Now, similarly for family disputes we have started the institution of Family Courts. Many states have Family Courts in which first they call the parties and try to have the matter settled amicably otherwise there will be a summary trial and disposal. These cases will include divorce matters, child custody matters or maintenance issues between husband, wife or between parents and children,
20 etcetera. About a few years ago we started an experiment of fast track courts. Normally litigation takes a long time in normal courts and so we started, up to district level, courts known as fast track courts.

25 These courts are also presided over by judicial officers but all cases from the mainstream are assigned to these courts and a summary trial and disposal is ensured. Just to illustrate the point, we had a case of a rape of a foreign tourist and the trial in that case finished within one month. One month, which for our standards, is unthinkable, in the fast track court. In the criminal courts a large number of cases are pending which are sort of involving petty offences like say
30 traffic violations or some petty thefts, etcetera.

For this we have started appointing special magistrates. Retired people or even retired officers of the court who have a law degree, they get recognition. They get some job after retirement. They are happy to be called special magistrates and they are very helpful and useful in disposing of these petty offences so both parties are happy. They get a status. The parties whose cases are disposed of quickly, they also are happy.

Now, the biggest problem which we are facing is because of illiteracy prevailing in the country which I mentioned in the opening. We have to make vigorous efforts for spreading literacy which includes legal literacy. People in the villages or remote parts of the country are just spending life for their own survival, that is getting bread to feed themselves and their families. They do not know what is law. They do not know what is their legal right and they are being exploited by some people and therefore it is very essential for making them aware of their legal rights.

There are a lot of NGOs - NGOs are these voluntary organisations which are under the auspices of the Government - they are undertaking this task of spreading legal literacy. They are young university students who volunteer to go from village to village, educating people on these legal literacy programs. With legal literacy next comes legal aid. Because of poverty legal aid has become very essential in our country and even the smallest towns today are having legal aid clinics. Legal aid clinics are manned by persons with judicial training. They are available for any legal advice, any sort of legal advice, and which is provided free and in deserving cases even for going to court they are provided with financial assistance and also assistance of a lawyer for conducting their cases in courts free of charge.

So this is something which is very badly needed in our country and which is being done on a very large scale and I am happy to say many people are volunteering for this. So in spite of all these measures we are still grappling with the problem of backlog of cases and efforts are being constantly made to improve the situation.

Recently in the Supreme Court, normally as it is coming from a British tradition, we used to have eight weeks summer holidays. We have voluntarily curtailed this period in order to provide more working days to deal with the problem of backlog of cases.

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Many of our judges in the Supreme Court have volunteered to sit the - in the remaining six weeks they have volunteered to work if the Chief Justice wants them to work during this period. So this is the spirit in which we are trying to grapple with the problem and if the Supreme Court judge does it, it gives a message to the entire country and I am sure that many more, at the lower level - the people will come forward for such measures.

The Government is equally aware of this and they are also trying to help the judiciary set up on this behalf. Only last week we had a conference on judicial reforms in New Delhi which was attended by the Prime Minister of India and various Chief Ministers. Chief Ministers are the heads of Government in the States that we have and on the judicial side the Chief Justice of India, judges of the Supreme Court and judges of the High Court participated in the conference. The effort was to find ways to improve the situation. Thank you.

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JUSTICE HAYNE: Thank you very much. Can we go now to Indonesia?

INDONESIA:

[12.29pm]

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JUSTICE P. LOTULUNG (Indonesia): Honourable ladies and gentlemen, members of the general discussion. Concern in the Indonesian system of reform of the Court reform I can give you some information about the motivation, why the Indonesian Supreme Court start with its reform. The first step was done with the transfer of the Ministry of Justice to the Supreme Court. That is what we call the “one-roof” system. Since 2004 all matters concerning the administration,

financial and personals are now transferred to the Supreme Court and that is why there will be a big task - a huge task for the Supreme Court - to help the administration of justice in the court system.

5 That is why the reform of the Supreme Court which begin since the month August of 2004 has some priorities in its blueprints so we have special blueprints of our reform and some prior task of this blueprints gives some recommendations which define the key reforms required to be undertaken in the first two years and the priorities are for the following. First is reducing the case backlog in the Supreme
10 Court. Second is expediting the “one-roof” process and strengthening the foundation for the development of the quality and integrity of judges.

Third is restoring public trust by disciplining contravening judges. That is our main problem. Fourth is information technology and publication of court
15 decisions and the fifth one was increasing the welfare in courts' budget. The welfare for the salary of judges and the personnel of the courts and also the courts' operational budget. Our challenges of this priority are firstly, the human resources reform. That includes supervision and guidance for judges. We have recently established a new institution to supervise the judges so that there is an
20 extra control which consists of some members and this is what we call the Judicial Commission in Indonesia.

That is one of our reforms concerning the human resource of judges and the second one of our reforms concerning the human resources is the continuing legal
25 education and training for the judges, as well, judges and also for courts' personnel. The second one, the final seal reform. It includes the reforms of the salary of the judges and personnel of the court, and also concerning the courts' operational costs. The third one is the information and technology or what we call there the computerisation. This includes the court case management and the
30 access of public to justice.

To reduce the case backlog we have made some efforts. First one is the limitation of cases of disputes which can go up to the Supreme Court. Up to now there was no limitation for cases who can go to the Supreme Court. As you have been informed maybe before, the legal system or the court system in Indonesia consists of four branches of jurisdiction. There is the general courts, administrative court, religious court or the Muslim courts and the military courts and all disputes, all cases, all decision of these four courts can go up to the Supreme Court.

That is why there is a huge backlog of cases in the Supreme Court. Recently, it is now between 15,000 and 16,000 per year backlog of cases and how to reduce these backlog of cases, we have to amend the regulation. It is first that we make no limitation of cases. A limitation of decision who can go up to the Supreme Court like the petty cases or the minor cases or the traffic offences etcetera, and the second one is we strengthen our case management system and audit system so the case management system is very important for our Supreme Court because it can reduce the backlog case.

And the third one is to strengthen the mediation system and the ADR system and during this last three years we have been successful in the introduction of this system - the mediation system and the ADR system - so that there are not many more cases that will go to the court and they seek the solution outside the court. However, there is still a challenge for the Supreme Court and also for all lower courts in Indonesia. There is the legal training - legal education and training, and the case management and the computerisation.

These three efforts have been done by the Supreme Court with the help of some dollars from the outside and also from our own budget but concerning the budget, we have a big challenge of this budget because even the constitution said that judicial power has its own budgets but in reality, up till now, the budget is still decided by the Parliament and by the executive forum so the proposal of the Supreme Court for its own budget is not always approved 100 per cent but as a comparison you can imagine that this year we asked the Parliament and the

present executive for a budget of six trillion rupees and it has approved only one-fifth of this budget.

5 Even though this budget must cover all jurisdiction of the whole country which I have said it consists of four jurisdiction - four branches of jurisdiction - where each jurisdiction has its own lower court, district court and high court in the provinces so in all we have approximately 6000 judges and also the other special courts so that is why our reform is concentrated in this case management and legal training for all judges, which before it was in the hands of the Minister of Justice and now it becomes the responsibility of the Supreme Court itself. That is the motivation of our reform up till now but the fact shows that the case backlog is now reduced to 12,000 to 11,000 so that is progressed with a system of limitation for cases and the mediation and ADR system. That is a general view of the reform in Indonesia. Thank you.

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JUSTICE HAYNE: Thank you very much. Now, Malaysia.

MALAYSIA:

[12.38pm]

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JUSTICE D. MALANJUM (Malaysia): Thank you, Justice Hayne. Good morning, your Honours and ladies and gentlemen. I will be brief. In response to a request by Justice Hayne I would say that there should be four broad issues that should be discussed by this working committee and I would summarise them as maybe one, access to justice; two, expeditious trial, that includes the backlog; three, independence of the judiciary, that includes the appointment and, of course, four, continuing legal education. Perhaps we can tap each other's mind on this for the benefit of everybody and by way of obiter may I add here, it is quite sad that not every one of us from the Manila conference is today present, especially the Pacific region.

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It would have been good if they were here because they may have also a common problem as us and this way maybe we have this working committee to think of how to bring them in, in terms of funding and so forth. The other thing of course is since the Manila conference, Malaysia of course yet to receive any newsletters
5 from the secretariat or whatever on the recent development of the forum. Of course it is on the web site but unfortunately not many of us maybe internet savvy.

The last thing I would add is if only we could think of a way, such as an exchange
10 program, among members, perhaps that may be one way we can continue to be more effective in our annual discussion. I will not go into what Malaysia has done. I will contribute them as we go on in this meeting. Thank you.

JUSTICE HAYNE: Thank you very much. Now, the Philippines?
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PHILIPPINES:

[12.40pm]

20 JUSTICE ANGELINA S. GUTIERREZ (Philippines): Your Honours, ladies, and gentlemen, the Philippine delegation would like to submit for your consideration the following themes and issues which we believe are common to all jurisdictions and which need to be addressed by this forum. The first issue is judicial independence transparency and accountability. We propose the following
25 issues under this theme. They are individual independence, institutional independence, budgetary issues, identification and application of appropriate performance indicators, selection and appointment, tenure, compensation and discipline, and removal.

30 The second theme, your Honour, ladies, and gentlemen, is access to justice and under this theme we propose the following issues. Affordability constraints, high vacancy rates, information, education, and communication facilities and capability

of the Courts, high case load, alternative dispute resolution, and ratio of judges to population. The next theme we propose is judicial infrastructure and the issues under this theme are ICT as a tool for judicial efficiency, funding issues, lack of professional people in the judiciary to manage the operation and maintenance of
5 judicial facilities, lack of Courthouses, basic requirements of a Courthouse.

The fourth theme is judicial education and the issues under this theme are strengthening judicial academies in the region capacitating the judicial academies to deliver quality and effective judicial and legal education and e-learning. The
10 last theme is judicial management Court administration. And the issues are Court-management systems and procedures, case flow, financial and asset inventory and personal administration systems. Given these theme and issues we propose some possible methodologies in addressing these themes and issues. Therefore may I request my colleague, Supreme Court Justice Antonio T. Carpio,
15 to explain this. Thank you.

JUSTICE ANTONIO T. CARPIO (Philippines): Thank you. To address the themes and issues just discussed, we propose some possible methodologies and the first one is what Chief Justice Gleeson mentioned earlier, it is judicial
20 advocacy. The leaders of the judiciary must actively engage the legislature for budgetary support, for enactment of laws to institute legal reforms. The leaders of the judiciary will have to engage actively the executive department to allocate other resources like land for Courthouses. The leaders of the judiciary must actively engage the public for general support for the reform programs. The
25 second methodology is a global knowledge sharing system. There are several things we can do on this.

First, are international conferences like this where we share ideas. The second is visits to the judiciaries of other countries. A lot of justices from our country have
30 been visiting judiciaries of other nations and they have learned a lot from the reforms program being undertaken by other countries. The third approach will be across-border training. These are long-term training seminar programs on Court

management. There are many countries which have good programs on Court management and other countries do not have this. So countries can send their people to attend training on this.

5 The fourth is - well, we have that now - the judicial information sharing through the website, the JRN21, where papers on judicial reforms, judicial management can be up-loaded and can be accessed by anyone, any time. And the fifth is something similar to what the legislatures of other countries have done. The legislatures of the countries of the world have formed the global legal information
10 network (GLIN). Where all laws passed by legislatures are deposited and the repository country is the United States, particularly the US Library of Congress.

So if a legislator in the Philippines wants to find out how other countries have addressed drug trafficking, he can go to the website of GLIN and just down-load
15 all the laws of countries that have enacted legislation against drug trafficking. And it gives the legislator in the Philippines a wide perspective of how other legislators have tried to solve the problem. We can have a similar system, all the decisions of the Supreme Courts of member countries can be deposited in a repository country and any judge or justice, let us say, wanting to find out how
20 other countries have resolved issues like extradition, he can just down-load cases on extradition and he has a wealth of information how certain disputes were resolved by other jurisdictions and this will help him in deciding his case. So those are the two possible methodologies, there will be many, but we would like to bring this - thank you.

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JUSTICE HAYNE: Thank you very much indeed. Can we go now to Russia?

RUSSIA:

[12.47pm]

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MS KRYUCHKOVA (Russia): Thank you very much. I will say a few words about the general problems of the Russian judicial system - the main points of interest for us. In fact, the new judicial system in Russian was built through the last 15 years after the collapse of the Soviet Union. Now, we can say that the main institutional changes of the judicial system in Russia are finished. But there are a number of issues which is very important and which require some additional steps and activities. I will mention just some of them which are vital for all judicial systems and for all the countries in Russia. The first important point and important issue is the transparency of the judicial system.

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Transparency is vital for the general efficiency of the system, for the improvement of public attitudes, the judicial system, and for general economic development as well. There are many aspects of the program of transparency and again I just mention one of them. The task of organisation of publication of all the Court decisions in Russia. Now, this task is very important and in fact it's very complicated. First of all is the problem of the scope of the Russian judicial system. The system is rather big. There are more than 4000 general jurisdiction Courts in Russia and there are more than 20,000 judges. That's on the one hand.

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On the second hand, you see that the territory of Russia, a rather big country, there are many small Courts with only two or three judges and there is almost no communication tools, computers and so. Thus, there is a big technical problem of organisation of public access to Court decisions - publication of Court decisions. In fact, all the Courts, including low-level Courts and the small Courts, need modern communication equipment and they need people who can use this modern equipment. Thus, this is a big task and a big problem which should be solved in Russia in the next two, three, or more years.

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The second aspect of the problem of transparency of publication of Court decisions is not a technical issue, it's the problem of mentality. And unfortunately, many judges don't want that their decision to be published. And the task of changing of mentality is more complicated than the task of establishing

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new equipment or training the people to use this equipment. And even if the technical aspects of transparency will be solved, the problem of mentality will still exist.

5 And in fact we're very interested in the international experience, both on technical aspects of transparency and publication of Court decisions, and on the institutional aspects how to establish the system which creates the stimuli to publish all the decisions to - or exchange the experience between judges and to do the judicial system more transparent and open for the public. The second big
10 problem which is very important in Russia now is the problem of training. Training of judges and training of the other Court staff.

The Russian Federation has the civil law system, there is almost no career judges in Russia. The person who wants to become a judge has to have at least five
15 years' experience - legal experience and has to pass some qualification exams. In fact, most Russian judges now are former attorneys or former investigators. Unfortunately, some of them have never been in Court before they're appointed as judges. Thus, there is a vital need for the special training for people who became
judges.

20 The other problem now in Russia is there are more judge vacancies than the people who want to become judges. But anyway all newly appointed judges need to be trained and unfortunately, now there is no special program of training. There is only some short-term courses for these people. Maybe three weeks or
25 four weeks, which is not enough. Now, there is a draft of special legislation about the training of newly appointed judges which include - and this draft supports at least a year of a training program. For the newly appointed judges, there is appropriate finance from the State budget and so on, but of course the legislation itself is not enough. It is necessary first of all, some resources and the second one,
30 special programs, teachers who can train these people and so on and so on.

The estimation of people who need such training is about 1000 persons per year. That figure on the one hand is not too big. On the other hand, it's rather big. It's maybe a special faculty in some law schools. Thus, it's also the point of our primary interest how to organise the training of newly appointed judges - how to do it in the most efficient way or - both from the point of view of organisation and the point of view of curricula.

The other problem in training is the training of older judges. The Russian legislation changed rather quickly and in fact all the judges need some training - some exchange of experience rather often. Russian regulation, the judges should be trained every three years, and it's rather reasonable rule taking into account all the legislation changes and all the other renovation in the system. In fact, there is a special institution for training of judges in Russia, the so-called Academy of Justice.

It was founded by the Russian Supreme Court and the High Arbitration Court of Russian. It was founded about seven years ago. Now, the academy trains about 2000 judges per year, but we need to train about 4000 judges per year. Thus, we need not only resources but also teachers, programs, and so on to train all the judges that need to be trained a year. Thus, the problem of optimum organisation of training of judges and the training of the Court staff is also very important and very interesting for Russian part.

And it's not only the problem of finance, it's also the problem of qualified teachers, using modern communication tools and so on and so on. Of course, transparency and training are not the whole problem of Russian judicial system. There are many other problems. But this point is very important now and this problem mentioned is very important, both by the Russian Supreme Court and the High Arbitration Court and by the Russian executive power. Thus summing up. We are interested in information and in the lessons we learn from other countries, these points mainly. On the other hand, all the issues which our Philippine colleagues mentioned are also interesting for us and I hope that maybe not now

but in some years, the Russian experience will be interesting for other countries too. Thank you very much.

JUSTICE HAYNE: Thank you very much. Now Thailand?

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THAILAND:

[12.58pm]

10 MR SOBCHOK SUKHAROMNA (Thailand): Thank you. Honourable
Justices, distinguished guests, ladies and gentlemen, I am honoured and delighted
to be here, to be able to share with you some experience regarding how the
judiciary of Thailand has applied to this process and measures in administering
justice with independence. I would like to divide this topic into five issues as
15 follows. The effective organisation structure for judiciary independence, the
development of human resources, the infrastructure, management, and the
autonomy of Court financial administration.

Effective organisation structure for the judiciary independence: the role for the
20 Courts of Justice is consistent with the fundamental constitutional concept of
stipulation of power that recognises the judiciary branch as one of the three
independent Thailand's Government in accordance with the Constitution of
Thailand early 1997. The organisational structure for the judicial independence of
the Courts of Justice is that judges are independent in trial, and adjudication of the
25 cases. In addition the office of the judiciary, which is the independent secretariat
of the Courts of Justice has autonomy in personnel, administration, budget and
other activities as provided by law.

Therefore the judiciary power delegating the Courts of Justice could establish a
30 and independent judicial authorities immune to political branch in closed
bench, even though the organisational structure of the judiciary independence of
the Courts was guaranteed by the constitution and the laws. It is effective in some

degrees as the new organisational structure just has been assessed for the Courts approximately five years. The Courts objectives still continue to assess the consequence of the new structure. So as to this provide a better way to progress the organisation, the attitude, and even the culture, so that of course you have the most effective organisational construction to ensure that judiciary independence, effective case management and termination. Case management is considered as one of the most significant means to progress efficiencies of the Courts of Justice.

In order to be convinced that the technique could be used effectively in Courts, a pilot project was conducted by the Office of the Judiciary. The Office of the Courts of the Justice Legion 1, and a provision Court. However, after the Courts have utilised measures of the pilot project it is necessary to assess and implement the information and the comments from the Courts, and all our first stake holders will be valuable to progress the implementation plan. There will have been of human resources: the Courts of Justice have been continuously developing a number of training programs for availability of judges and Court officials, to be able to apply the law effectively, performing and supporting the objectives and the goals of the vision, mission and judicial administration of the Courts.

However, the costs to develop and expand effective process for evaluating this program, so as to enable human resources and Courts to serve most effectively with the changing environment in the society. Infrastructure management, the Office of the Judiciary has furnished the Courts of Justice with more facilities, technologies and equipment, to ensure that judges and Court officials could perform their duties effectively, and could fulfil the aim of judicial administration. Accordingly, in order to improve the Courts infrastructure management the more actions of legal information and technical knowledge with us the most domestic and intelligent organisation should be provided. The Constitution of Thailand 1997 guarantees the independence of the financial administration of the Courts of Justice, by stating that the Office of the Judiciary has autonomy in administration, personnel, budget and other activities, as provided by law.

For tomorrow, in order to ensure the given autonomy of the Courts the constitution highlights the accountability of the state to allocating adequate budgets for the independent administration of the Courts. Therefore it should be the duties of the executive and legislative branches to fulfil their obligation to support the constitution. I would like to further express about the specialised Courts. In Thailand we have juvenile and family Courts, tax Courts, labour Courts, bankruptcy Court, IP Court, and in the Supreme Court we have established environmental section, environmental matter sections in the Supreme Court, just established. That is the preview of the judiciary reform of Thailand. Thank you.

JUSTICE HAYNE: Thank you very much. We come then to Australia. Justice McClellan.

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AUSTRALIA: **[1.04pm]**

JUSTICE McCLELLAN (Australia): Thank you, Justice Hayne. I am a member, as you know, of the Supreme Court of New South Wales. New South Wales is one State of Australia. Chief Justice Gleeson said there are about 1000 judicial officers in Australia. A third of those are in New South Wales. The Supreme Court performs two functions in the system. It conducts the major criminal and civil trials, but it also provides the resources for the intermediate appellate structure within the State. Of course the ultimate appellate Court being the High Court, of which Justice Gleeson is the Chief Justice. Listening to those who have spoken so far, it is plain that although New South Wales, and indeed Australia, does not share all of the problems which some people have expressed, we can identify within our processes a number of issues which are reflected in matters that other people have spoken about.

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If I can just mention them briefly, as far as delay is concerned, over the last decade the Courts in Australia have applied significant resources to delay problems, and many of them have been alleviated. They have been assisted also by the reforms of some areas of the law in Australia, particularly the tort law,
5 personal injury area of disputation, where there has been significant legislative action, which has taken many of the cases out of the Courts. However, in common with many, we have a problem with the cost of justice, which of course translates into access to justice, and also of course running with that issue is the question of legal aid, and sufficient resources being provided to the legal aid
10 system. We also are just beginning to address, and I was interested in the comments from India, the question of using technology in the most effective way in the Court process.

It is plain that we have much to learn I suspect, particularly from India, in the use
15 of technology in dispute resolution mechanisms. We also have, although we have developed, with the help of Mr Schmatt, significant capacity in judicial education. We also have to face an increasing need for judicial education of differing forms. Although we have been reliant in the past upon judges being drawn from experienced advocates, there is increasing pressure in Australia for appointments
20 of people to Courts from diverse backgrounds. Of course, always lawyers with the relevant requisite qualification as a practitioner, but they may not be people who have practised in the Courts, or - and this is perhaps more of a problem - they may be people who have only practised in a particular area of litigation. They may be specialists in one area, but unfamiliar with many other areas of litigation.

25 That is giving rise to a need in Australia for review, and constant reworking of the judicial education programs, and I suspect that, like Russia and other places, we have a lot to learn about how to undertake those tasks. Briefly, can I mention some of the other areas where we are looking at the need for examining reform
30 processes? One of those is the effective use of expert knowledge in resolving disputes in the Court room. As the level of knowledge of science and other specialities increases at an extraordinary rate we, in Australia, are addressing the

problem of how best to use that knowledge in the resolution of disputes in the Court room. 100 years ago perhaps judges could be expected to know generally the knowledge which was available in the community from ordinary experience, and from their reading.

5

That is not possible today, and Courts are now dependent upon experts in a multitude of areas for the resolution of many disputes. We in Australia have also addressed the question of alternate dispute resolution, but I don't think we pretend by any means that we have taken those processes as far as they may be taken.

10 While we have processes of mediation in place, we only have infant processes of neutral evaluation, and we haven't yet worked out how to use that process effectively. We also at this stage have not approached, except in the most minor way, the use of mediation in relation to criminal matters. I know that some of you have advanced those processes particularly, and I think probably the most
15 advanced place in the world in the use of mediation in criminal matters is in Canada.

Finally, an issue which we have not really begun to address effectively in Australia is the question of sentencing, and the best means by which to provide
20 both for punishment, but more particularly for rehabilitation. We have undertaken some early work in those areas in relation to drug matters, providing special drug Courts, but I am sure that we have much to learn from others in relation to those areas. Turning then, if I may, very briefly to the process by which this forum may assist all of us forward, it seems to me that we need to identify two themes.

25 Firstly we need to ensure that we maintain a whole of region focus, and it will be very important for us to maintain in some form an executive capable of providing a coherent way forward for the whole of the region.

30 But secondly, and as importantly, through that regional process we need to develop sub-regional contacts, which will include the exchange of information, but more particularly I suspect, or just as importantly, sorry, we need to ensure that we develop processes as has been mentioned for the exchange of people for

contact between judges at a sub-regional level, so that there is a capacity for all of us to talk to each other on a regular basis about the programs we have in place, those which are effective, those which we might adopt for our own jurisdictions, and suggestions we might make to others about the best way forward, based upon
5 our common experience and knowledge. It seems to me that ultimately the development of effective outcomes is dependent vitally upon us ensuring that we have put in place mechanisms whereby we can maintain real and personal contact between judicial officers across the various jurisdictions. Thank you.

10 JUSTICE HAYNE: Do either of World Bank or UNDP want to make a comment at this point?

WORLD BANK: **[1.12pm]**

15

MR ANTHONY TOFT (World Bank): Thank you very much. I am going to say very little. I have enjoyed the presentations. I was actually particularly proud of the Philippines presentation, because it seemed to me they set out an agenda
20 which is needed for making this forum a truly productive occasion, and a series of occasions for promoting reform. I am not here by the way as a funder. The World Bank of course is a funder, and has supported judicial reform programs in the region, and in other countries in the world, and we are proud to support at the moment the Philippine program. But our interest in judicial reform stems from
25 our role as a development agency. We have not always given the emphasis that we should do on the contribution of the judiciary to development, and I hope I don't need to persuade anybody here - I do need to persuade some of my colleagues in the World Bank - as to how vital to the development process the judiciaries really are.

30

And so our interest in this forum is to see how the judiciaries of this region can work together. And that's not an easy task, because, as we all know, while there

are common problems, and if you listen to the various presentations this morning, pretty well everybody has a similar set of concerns. They may vary in their detail, but we also know that each country's judicial system ultimately is a pretty home spun affair, and very quickly issues become very local. And that poses a
5 challenge for a gathering like this, when the whole objective has to be how one can work together and learn from each other, and get some value added out of such a forum. I mean, to me the objective for all judiciaries is how they gain the trust of the people, and not just poor people, but everybody.

10 And most people are not going to be convinced that judiciaries are to be trusted, because courthouses are nicely appointed, so while I absolutely understand the focus on the assets of the Court, the physical attributes of a Court, I mean, I have been to a number of Courts in Indonesia and the Philippines where courthouses are incredibly bad, and it's very, very difficult to think how one can work really
15 effectively, when you see some of the conditions of Courthouses. But I do not think that people in Indonesia or the Philippines ultimately assess the value of judiciaries by the courthouses they walk into, and the issue of how you develop the trust of people is going to be a real challenge, and it's multi-faceted.

20 And if I was trying to pull together the various needs and concerns that people have expressed I would - I suppose I would urge you to look at it through the prism of do you have the confidence of the people that you should be serving? I would like to think that the World Bank can help, but obviously this forum, and the distinguished people in this room, this is about how judiciaries help each
25 other, and find the way forward. To the extent you think we, in the World Bank, or Asian Development Bank, UNDP, to the extent you think we can be of assistance, we are more than glad to try to be, but I do not think that at the end of the day fortunately the burden doesn't fall on us. The burden really does fall on you. Thank you.

30

JUSTICE HAYNE: That, if I may say so, is a perfectly sound and appropriate note to try and bring this morning's proceedings together. The burden ultimately

does fall on us. The test that has been stated, do you have the confidence of the people, is a test which ultimately every judicial system has to confront. As we have gone around the table this morning all of us will have seen that the problems many of us face are common to many places. They may present in slightly different forms. They may present with a different degree of pressure. We may rank the problems that confront us in a different order. But all of us are struck by the similarity of concerns. Each of us organises our thinking about those concerns in slightly different ways inevitably.

10 You may perhaps, however, think of them in two separate but necessarily related streams. There is a stream of concerns about the work of the Courts, back logs, procedures, resources, those issues. But there is another stream mentioned first by our representatives from China, and repeated around the table, safeguarding the system. Now, this afternoon we will go on and we will learn a little more of what is out there already. At the end of the afternoon we will try to draw the threads together, to work out where we are, but we will do so with this in mind, tomorrow we are going to have to confront directly the question, what are we going to do together to advance solutions to these issues? This morning we have heard something of the problems, something of the solutions that are there.

20 This afternoon we will hear some more of possible solutions, possible things, but all of this is preparation. What are we going to do together to advance solutions to these issues? Issues that have to be solved if we are, as has been said, to have the confidence of our people. Now, ladies and gentlemen, it is near enough to the luncheon adjournment for the traditional question to be asked of counsel in an Australian Court, as the judge looks longingly at his or her watch, and says, is this a convenient time, regardless of the answer that counsel may give, convenient or not, the judge says, yes, well, thank you very much. We will now adjourn for lunch. And I suggest we do likewise. Let us adjourn now, and we shall resume if we could, please, at 2.30, when our colleagues from the Philippines will engage in mapping judicial reform products already in existence. Thank you very much.

LUNCHEON ADJOURNMENT

[1.23pm]

5 **RESUMED**

[2.33pm]

JUSTICE HAYNE: Now, ladies and gentlemen, we have reached the appointed
hour. Now, instead of following precisely the order in which we had intended to
10 go after lunch, for a number of reasons it's thought that it may be useful to turn at
once to the presentation by UNDP leaving over to follow the presentation by
UNDP the mapping of judicial reform products by the Philippines Supreme
Court. So let us welcome, please, our representative from the UNDP, Jak Jabes,
practice team leader, democratic governance and co-ordinator for the Asia
15 Regional Governance Program for the United Nations Development Program.

20 **TITLE: DEVELOPING A JUDICIAL REFORM HANDBOOK**

PRESENTATION BY THE UNDP/PLENARY

25 MR JABES (UNDP): Thank you very much. Let me start by extending a warm
note of appreciation to the Australian colleagues for organising this meeting. I
guess I volunteered to be the after-lunch speaker and I know the danger. We will
see what we can do to keep you all awake. I have a sense listening to the
discussion this morning, which was very rich - I have a sense of deja vu and I
30 would like to share this deja vu, I would like to share a story with you.

On 29 January 1994 - I always remember significant dates. For example, September 1, 1985, at 7 o'clock in the evening I stopped smoking, that was a momentous sort of - when people ask me I say 7 o'clock in the evening. The 29th of January, I was working at the time at the OECD and my boss said you have to
5 go to Bratislava, there's a meeting that - countries similar to Australia often confuse Austria, is as cold - and they're bringing some institutions around the table, you should go and see what this is all about.

Anyway, it was a meeting of public administration institutes from Central and
10 Eastern Europe. The Austrians had called a dozen or so institutions and basically the meeting - the first day - basically progressed like this one with each institution talking about on the one hand what it did but mostly laying out the difficulties it had and the problems it had. Now, there was one thing in common which was they were all transition economies, they were all countries from Central and
15 Eastern Europe, they had just undergone this transformation or were in the process of undergoing this transformation and they shared a lot of common problems.

By the end of that meeting an organisation which I humbly fathered called the
20 Network of Institutes and Schools of Public Administration in Central and Eastern Europe, known as NISPAS, was born. The Austrians promised to put a bit of money and then we started looking for more money. We chose a steering group, we had a professional secretariat, but it was transition countries. I mean, the secretary didn't know what her role was but she learned as the years went by.

25
When I left working in Central and Eastern Europe in 2000, NISPAS had grown from a 12 member to over a 200-member institution network and had nearly half a million dollars in the bank. All this to say, that if countries that have so much in similarity can reach that kind of a network, imagine countries of Asia Pacific
30 which are quite different in many, many ways but which also share the problems, if we put our minds together what we can do.

I want to talk about issues and lessons that can be applied to knowledge networks in several areas of governance. Most of the lessons below have been drawn from parallel experiences of professional or knowledge networks in public administration reform as well as training and education with which I am familiar.

5 Most of my examples will come from three networks with which I have a very close association most of the time because I instigated their beginning, at least.

In the end, I will add some specific lessons arising from the Asia Pacific Rights and Justice Community of Practice which by the way produced the access to

10 justice practitioners' guide of which you have a copy and I think the presentation this morning of the Manila conference also made reference to this document. Now, the Asia Pacific covers a wide geography with countries of varied political systems. Established democracies, monarchies, small-island States, and so-called transition economies in the process of changing from command to a socialist

15 market economy dot the landscape.

Most of the countries, except the very small ones and most of the island States of the Pacific, have legal institutions but sometimes these institutions are recent, some in transition themselves, and a certain number are well-established, solid

20 institutions with a proud history and a strong legal culture. The Asian crisis of 1997 has shown the degree to which the region is vulnerable in its march towards economic growth and development. The more developed countries also suffered from this crisis. Lack of good public management and deficiencies in the regulatory environment and its enforcement may to some extent have played a

25 role. Strengthening of the judiciary systems in Asia Pacific is key to growth because as countries move more and more towards degrees of liberalised economies the regulatory function of Governments becomes the key to success.

Now, if we consider geography in sub-regions there are countries where many

30 similarities exist both historic and systemic. For example, Central Asia Republics are characterised often by their Soviet past over-centralised system which continued to have birth pains with the market economy and degrees of linguistic

and religious commonalities. The countries of the Mekong region are experimenting with a mixed political system which keeps political control within the State apparatus while bringing in elements of the market.

5 In South Asia, extensive moves are afoot to open economies further in pace with emerging economies in East and South East Asia such as Malaysia and Thailand. In each sub-region, the similarities militate for some degree of regional co-operation in order to capitalise on regionally available capacity and respond to market efficiency. This then is to set the stage for the need for regional co-
10 operation. For the purpose of this presentation a network is not confined to an email network but entails a group of like-minded professionals moving towards the same goals through agreed outputs and activities.

These professionals may come into a network like this representing themselves or
15 representing their institutions. A network can be facilitated inter alia by email exchanges as a platform for exchange of ideas, but there are other ways to facilitate interactions, including face-to-face meetings for planning, writing, review, validation processes, websites, including web blocks, etcetera. Now, objectives for a possible professional network can be listed as follows.

20 Dissemination of information and best practice on locally appropriate approaches to judicial reform and Court management. The problems are similar but as my colleague from the World Bank clearly said, "It's all homespun." So you need to take similar problems and then reduce them to - or apply them to the national
25 system. Promoting regional and sub-regional co-operation, developing judicial reform in an Asian Pacific environment, fostering comparative studies on good judicial reform practice, promoting application of technology and particularly ICT in Court management and case management training and building long-term capacity of the participants by ensuring participation and direct involvement in the
30 process of sharing and building knowledge.

Now, creating a network takes time. It takes funding and it takes energy. First it can only be undertaken if sufficient interest exists among potential members. Especially important is the interest of stronger, well-established judiciaries with a regional representation. Only to the extent that well-established judiciaries see a benefit in working with their less developed neighbours can the network function and become viable. Second, are the issues that have to be addressed in order to make such a network itself sustainable. A third issue is membership.

In any event, there are a number of steps to be followed. First, one needs to agree on a plan of action, objectives, outputs, activities, time-line resources needed, members' responsibilities. One needs to put in place a secretariat and choose a steering committee, if needed. I mean, one needs to agree whether a steering committee to oversee the work is needed. A network such as the Asia Pacific Judicial Reform Forum being discussed here requires initial funding. Member institutions can be recruited and kept interested in the project to the extent that a professional secretariat to manage the network exists.

A commitment to have seed funding for the first few years would be necessary. A small secretariat could be the first step towards making the forum sustainable. The forum's activities in turn would be geared to make the legal judicial profession sustainable in members' institutions home countries. Now, in order to reach such objectives the different national partners could be networked so that in a cost-efficient way they can enter into a lot of different activities. This is a long list and I've put it together from my experience with three - as I said, three different networks.

One is to hold regional or sub-regional meetings whenever appropriate to meet action-plan targets. For example, a network with which I'm associated is known as the ADB. I was associated of course in a previous life time, before joining the UNDP, I was with ADB. It's known as the ADB OECD anti-corruption initiative. It has 25 member countries that have endorsed an action plan which is similar to an international agreement.

There what the initiative does is have a conference every two years to report on developments and progress in the region while holding smaller meetings once a year of the steering group. One can exchange staff within the region and host
5 staff from outside the region. I think these type of exchanges are extremely useful. Many of you suggested that going to other countries where judicial reforms are taking place is a very, very useful learning experience and one way to learn is to spend time - not a simple visit, but to spend time in another institution.

10 Seminars for staff development. Now, one of the ideas - I mean, one of the needs that really came clear was training, education, capacity, whatever you will - whatever name you want to give it. Virtually every country said that it was really important to spend time on education and training of judges and people working in Court administration. A wonderful possibility in my mind would be to have a
15 regional training facility. Now, again let me give you an example from the ADB OECD anti-corruption initiative.

We started with countries reporting progress, but soon the steering group members which is made of focal points from all the 25 countries that have
20 endorsed the agreement, told the secretariat - and the secretariat is made of ADB and OECD - that a significant need was training and so we started looking into possibilities of - and asking the type of training needs. And started with a first workshop in India in 2003. A couple of years ago, Malaysia, who is also a member of the initiative, came to the steering group and said we are in the process
25 of creating the Malaysian Academy for Anti-Corruption Training. It's going to be a national academy but we would like to make it a regional hub and why don't you, ADB OECD, from now on offer your seminars in our facilities.

The first such seminar will take place in a couple of weeks and it's going to
30 continue on different subjects, everybody benefits. The facility is there. This does not have to be of course in one country. One can move it also, but the reason we went with Malaysia is because Malaysia was building this facility and it was,

sort of, state of the art. Establish relations with other networks. We will see what is available there. It's the following presentation. I think it's important to see what links can be forged.

5 Working groups. The creation of working groups. Sub-regional project work. Informing members about our newsletter. A publication program. Something like programming for justice access for all, something like this could certainly be - or other projects like this could certainly be part of a publication program that a network can do. Facilitate fellowship, establish relations with donors, develop a
10 database of regional resources, produce any journal. These are all possibilities. Raise funds. Raise funds because the secretariat would need funds. And the best way to raise funds is to come up with viable projects.

I gave the example of NISPAS. I started with the story, I went on a cold January
15 day to Bratislava. That network for the first four or five years of its life depended on donor largesse. Basically, donors gave it money. Not much. It wasn't costing much. But it's very strange in the donor business you find - or when you're going out looking for money, sometimes asking a little creates a lot of problems. You can ask for millions and get it. You can ask for a few thousand dollars and it's
20 very difficult to get it.

But anyway, we were able to find money for this institution from different sources. Not - as I said, not much. About \$50,000 got it going. But after a while, George Shorocht, through his open-society institute, who was the main funder,
25 said, "Look, you know, if we continue to give you this donation every year, you're never going to become sustainable." So he says, "You need to be sustainable. You need to support yourselves. So we're going to work differently from now on. You will suggest projects to us and if we like them, we will approve them, we will give you the money, and you can take an overhead and the overhead will get
30 the secretariat - will provide the resources for the secretariat."

And that's how in a number of years a lot of money was put in the bank in case George, you know, changes his mind. And another thing is to lobby Governments because again this was an idea that really was put on the table today, that one needs to have representation for the judiciary in Governments and
5 a regional collective perhaps can do this - I won't say better, but it could be a second force besides the national level. Let me turn to some lessons learned from Asia Pacific access to justice initiative and the knowledge network that UNDP put in place.

10 If you want a more detailed discussion of this there is a paper that was distributed with the material this morning and so you could consult that. Now, COP - the word COP there stands for Community of Practice. Working through networks and Community of Practice can be resource intensive. Now, UNDP found out that the undertaking took three-and-a-half years - this basically took three-and-a-
15 half years and \$570,000. This included three workshops, a planning workshop, a validation stock-taking workshop, and a launching of the guide workshop.

And the experience taught us that funding is necessary but not always from the beginning. What is important at the beginning is to have an agreement around
20 that action plan and then allocate responsibilities. It was necessary to have a full-time facilitator to ensure that deadlines were met, drafts were circulated, workshops prepared and documented. In actual fact, we believe that if a real secretariat with appropriate human resources had been established the initiative would have been able to deliver faster.

25 Again, to say that, the secretariat is useful. Face-to-face meetings are important. Bonding is important for a thriving network where the purpose especially is to create tools that are contributed and owned by the participants because this process ensures that they will be used. Face-to-face interaction helps building
30 trust among contributors. Now, we're not talking here of the necessity of having large meetings rather smaller workshops on specific items usually are more effective.

I think if this forum becomes a reality, larger meetings are possibly necessary, but perhaps once every three years or so when both the funding and the energies can be harnessed to get a lot of people around the table. In-between smaller meetings
5 which are organised around specific goals probably are more effective. Ownership is necessary both at the planning and delivery stage. For us there was the issue of facilitation of the contribution from members.

Now, while it is preferable to do the job internally - and I'm really a strong
10 believer in that - rather than hiring external expert consultants, whatever, to do the entire job, in the case of the Asia Pacific access to justice it was important to have external experts at the planning workshop and to allocate some of the work to these external experts and institutions because UNDP practitioners did not have the necessary know how. In the end, however, the pieces produced by these
15 experts were again compiled in the overall product in a way that was useful for the network members. And all that information is available on our website.

Knowledge development needs a delivery mechanism to be applied, tested, and revised. It is important to have direct involvement by those who need the
20 knowledge in all stages of developing both the concept for a network and in producing its products. This way the knowledge produced has a high likelihood of being applied in practice which is the ultimate aim of any collaborative knowledge-sharing initiative. Knowledge needs have to be assessed before qualifying. One needs to define what knowledge is needed, identify whether it is
25 available within the organisation or the network, and identify how it can be provided. I think the discussion today was a lot about the needs - about what is needed which can be turned into knowledge products and I think there is already a list of approaches and directions one can go for the production of this knowledge, for example, in the presentation by the Philippines.

30

Of the material that was scanned and used for access to justice practitioners guide only a percentage - a small percentage was internal UNDP knowledge. However,

what was important was that the scanning, deconstructing, and compiling was done by UNDP practitioners and experts so that it was presented in a way that is useful for its principal users. After all, when we did this, we did it for internal purposes. We did it for our own Community of Practice.

5

Research support is necessary for an endeavour of this nature. Research support needs should be realistically assessed from the beginning and ideally be provided throughout the process through the secretariat. Fellowships. We at UNDP provided fellowships to a number of practitioners with the secretariat - that means
10 to our regional centre - and sometimes to other UNDP country offices. It is also a good incentive for country offices, practitioners, learning tools development and especially to build ownership in the initiative.

Let me entertain the following hypothesis. E-networks - electronic networks
15 alone may be efficient for queries and dissemination of information but they are possibly not adequate for the production of knowledge. For this purpose, it may be better to use very small virtual teams or workshops backed up by strong incentives. Now, what are the results from the Asia Pacific rights and justice initiative? Knowledge qualification and production of tools were tailored to
20 UNDPs needs.

These tools include first access to justice practitioners' guide. This is a comprehensive tool-kit to help understand, design, and run a program on access to justice using the human-rights based approach. Case studies compiled by UNDP
25 practitioners on several topics pertaining to access to justice. Out-sourced research papers. We had papers that we had prepared by others - outsiders - on police, prison reforms, etcetera. Lesser known papers and presentations on the initiative for further knowledge sharing on the process followed.

30 A website. A dynamic home-base for wider information sharing on which all of the above are posted. An electronic network of practitioners from UNDP, other agencies, and partners and NGOs providing a platform for exchanges and

discussions. Also in preparation are a fact sheet of ongoing activities, documentations of lessons from ongoing projects, a simplified brochure for wide dissemination, fund raising, and e-discussions. Capacity development of UNDP practitioners. Through participating in these activities of the network and in the
5 initiative, practitioners developed interest and knowledge of the subject matter. Now several countries are using the practitioners' guide as a basis for their development programs in the sectors. I mean, UNDP country officers.

Afghanistan has just launched an access to justice at district level program.
10 Bangladesh has conducted a police-needs assessment. Cambodia has produced an in-depth assessment of access to justice constraints for women, indigenous, and other disadvantaged groups and is finally a program on access to justice. And there are many other examples like this. For India, Sri Lanka, and others. Increased UNDP staff satisfaction and motivation. Practitioners involved in this
15 initiative have felt that this was an opportunity to really participate meaningfully in something of substance in an area that they were interested in.

In general, they are mostly program officers, both national and international, and they would not otherwise have many opportunities of developing their substantive
20 skills in a hands-on way. In addition, the face-to-face interactions in large workshops, smaller-group meetings, etcetera, gave them the opportunity to learn from each other and from the resource persons. Credibility and visibility of UNDP in this area. Developing a visible product with the collective strength of several country offices has helped UNDP to have concrete tools and lessons on
25 which to build programs to understand the importance of developing applied knowledge relevant locally and regionally.

This initiative now has been replicated in the Latin American context with two manuals being produced in a very similar process. And UNDP has gained
30 credibility with other development partners. Organisational learning for UNDP in terms of operationalising, especially a regional bottom-up practice approach. Documenting the development of the initiative papers such as the one circulated

to the delegates has contributed to UNDP learning from this experience and replicating the good lessons and hopefully avoiding the mistakes.

5 In the future, the effort and process of collecting the lessons learned in a paper we
hope will ultimately benefit other endeavours in that the shared collection and
production of knowledge such as the Asia Pacific Judicial Reform Forum today.
Now, an appropriate network model to link judiciaries in this region needs to be
found. This may take the form of a loosely knit membership organisation with
perhaps a steering organ and the secretariat. The forum would distinguish itself
10 only after this regional consultation. Over the longer term such a network would
need to have a longer-term strategic view based on the need to find diversified
resources, respond to member needs and sustain judicial reform in the region.

I haven't studied law, I'm not a legal scholar, as some people say. My brother-in-
15 law is a judge and that's good enough, I think. This type of organisation, I think,
is a serious business. I think one needs to get into it if it can be sustainable. My
view is that unless some initial funding is available it is difficult to get it going. It
needs, again in my view, a professional secretariat which is neutral of the
membership and it needs to develop projects on which the network comes
20 together.

I think this morning's discussion suggests that there are many projects in the sense
that the needs are so common that if we can reduce it to four or five main topics
and each of the countries around the table are sharing those topics. So my view -
25 and that's why I told the story of Bratislava, there really is a good reason to launch
an institution like this - a network like this and I hope that the discussions
tomorrow on modalities will help us all advance in finding a way to do that.
Thank you very much.

30 JUSTICE HAYNE: Thank you very much indeed. Would you be willing to take
questions, Jak? Are there any questions from the floor?

QUESTIONS FROM THE FLOOR:

[3.03pm]

- 5 JUSTICE McCLELLAN (Australia): Can I ask Jak this? You speak of the need, and I share your view, that it is essential to identify funding, seed funding. I suppose a question in everyone's mind is are there places one can look for that seed funding?
- 10 MR JAK JABES (UNDP): Well, if we look at - if I look at - I was not in Manila, I saw the video tape today and I am truly impressed by the program and by the participation. I think some stronger well-known personalities participated but more importantly I saw the lists of international organisations, whether they are donors or not one can argue sometimes but the international organisations that
- 15 participated, and I think that shows interest. I think they can be approached for support but to approach them for support you need to have a project. I think even my colleague across the table who said I am not going to, if you put an interesting project, may.
- 20 What I am trying to say is there needs to be a project on the table and then funding certainly might be possible. There needs to be an institution. I don't think anyone will say, okay, this is a very interesting idea, let's put some seed money and have this network going but I think if the group finds a modality and then that modality produces - you know, we are going to do - again, I am taking examples, I don't
- 25 know whether this makes sense or not but we are going to look at higher reduced backlogs and to do that we will do research, we will do some training or we will analyse - through the research we will analyse what the constraints are and see what kind of administrative measures might be taken to reduce that. It may - why not?
- 30 JUSTICE D. MALANJUM (Malaysia): This establishment of a network. One may have to assume that everyone is equal in terms of structure, development and

all that but there is this teething problem of how do you reconcile? Say one jurisdiction may have one type of a system, say the continental or the civil law system and the other is the common law system, yet we have this backlog so how do you - how to come to a certain standard of rules to approach it for the - in order to solve the problem? That is one problem that I could foresee and the network may have something to think about. Any comment on that?

MR JAK JABES (UNDP): No. From my end no comment, just that all of you share the same problem and a number of them are approaches from the common law, the other are approaches from the civil law tradition. So Maybe two research projects, but if you look at the stated training needs, for example, clearly there is scope to do this kind of capacity development at the regional level, not only for judges but also for improved court administration from management of courts, which is one problem, I think, that every country in Asia Pacific shares and there I am not sure whether the civil and common law distinctions become that important as opposed to good management issues or good management of courts. Yes, sir?

JUSTICE A.T. CARPIO (Philippines): UNDP has produced this handbook on access to justice. Would you think it is good to come out also with a manual or handbook on judicial reform so that countries which are just starting or still going on with their judicial reform can look at this like, first you must have an office, dedicated office, project management office; second, you must have a - you must partner with the developmental agencies; third, you must learn from the lessons of other countries so this can be put in a manual just like the handbook on access to justice. Would you think that would be a good idea for this network - - -

MR JAK JABES (UNDP): I think if you think it is a good idea then it is.

JUSTICE A.T. CARPIO (Philippines): - - - bit of a project with it on that?

MR JAK JABES (UNDP): I think if you think it is - I think if the collectivity thinks that it is a good idea then I think it is. Again, in a previous life time I was

involved in producing manuals and check lists for central eastern European countries on how you write this type of law, how you write - and one of the concerns was civil service laws. They didn't exist and so we produced civil service law check lists for example, and these were not huge documents but they
5 were - they provided someone who wanted to work on this issue with at least a check list of what different countries and different legal systems had done in writing a decent civil service law, so if the membership, if the countries around the table think that it is useful to have a manual on judicial reform certainly.

10 MR ERNIE SCHMATT (Australia): Jak, you said it was necessary or should be a professional secretariat. Why would that be necessary to the success of a network?

MR JAK JABES (UNDP): Many years ago when I was a poor professor in
15 Canada, there was a movement called the Quality of Working Life and this was an academic research applied science movement, and the Ontario Government provided a hefty sum of money at the time over \$CAN100,000, we're talking 25 years ago, it was big money for Canada, to help basically seed money to do something like this. Unfortunately the people decided that they would do this on
20 a volunteer basis. We never found out what happened to the money and as volunteers they never provided anything.

Now, this touches me because I contributed \$24 as a member to this organisation. It always hurt me that I didn't get anything for my \$24 and when I said that to the
25 head of the Public Service Union he got very upset with me and told me that I should not insinuate that he had done anything with the money and I said, "I didn't, you just didn't give me service." But volunteering doesn't work. I find that, especially professionals, have a lot of work to do, have a lot of demands on their time and would have difficulty giving their time to do this.

30

I have always said that one of - as you know, electronic networks are very, very much in vogue, professional networks. The UNDP has 17 of them and I am sure

the World Bank must have many and other people are part of it. My first research project as soon as I retired is how many electronic networks on average, professionals, participate actively in during an eight hour working day? I am very curious. These things take time, they really take time and if someone is paid, held
5 accountable for the work, controls it much better. That is a very personal view by the way.

JUSTICE D. MALANJUM (Malaysia): Yes, sir, I have one question. Would it be a good idea to have instead of now being a very ad hoc system, to have as you
10 say, steering committee and possibly we have a chairman or the chair to be looked at, whatever, so at least there is a kind of a leadership.

MR JAK JABES (UNDP): It is a possibility. I have been involved in two different models. In one case there was a steering group and then a professional
15 secretariat. In the second case there was a steering group, as I said, of all the countries that endorsed this agreement but the secretariat was ADB and OACD. Now, it wasn't volunteering, we were paid, or at least part of our salary went to ensure that this initiative was well nourished and so there was in each of the organisations, one person part time, full time devoted to this and it is a lot of
20 work, and because we had these people in the secretariat it works superbly well and if it doesn't, you know, they're out the door, so everybody knows the rules.

MR ANTHONY TOFT (World Bank): I am just wondering whether we are not putting the cart before the horse here. I think it is worth first thinking what can
25 you learn from each other. I mean, what can the Philippines learn from India and vice versa, and then figure out what sort of organisation or - I mean, how do you - what are the mechanisms for facilitating the points of common interest and the learning? I don't pick out Philippines and India for any other reason than why not, but what does this - what can - I mean, the challenge for everybody here is how -
30 what can you get out of each other, what do you think you can get on a sustained basis from each other.

I hope, by the way, you don't come out and say training. Training is always useful but it is a little bit of a cop out in terms of if that is all you are aspiring to. I hope there is more that you can gain from each other than simply becoming another training course.

5

MR JAK JABES (UNDP): I think you are absolutely right in terms of gaining from each other and I think one good way is by spending time in the other's organisation, in a really well organised visit. How that happens, I think there are different means, different ways of knowing who can learn from what. One is through workshops where this information surfaces; one is through meetings; one is through simply hearsay that country X is doing something interesting and I would like to go through organisations like mine, like yours, that facilitates it because we know that we are doing work in two different countries where there are learning opportunities and for that there are different ways and I think it is very useful. I also think that a secretariat can facilitate these exchanges, just as well as our own organisations.

JUSTICE ANGELINA S. GUTIERREZ (Philippines): Can you make suggestions how this network of the forum, the judicial reform forum, can be more effective and can be implemented for the benefit of all members?

MR JAK JABES (UNDP): I think tomorrow we have a lot of time to look at modalities for that and I think we should work in the way suggested in smaller groups and look at - across the table, I think is an interesting hypothesis. Do we really need a network or not in a sense. Anthony is raising the question of well, maybe one needs to learn from each other and then in due time think whether a larger forum is necessary. I am not really sure what the answer is.

My reaction basically was to listen to what different countries put on the table this morning and to say there is a lot of similar problems and is there a willingness - then the next question is - is there a willingness to address some of these problems mutually through some kind of mechanism, whether this is a very loose network,

whether this is a very formal mechanism, I don't know the answer to that. The only thing I know is that usually if it is left to function on a voluntary basis most of these die. That is my experience. Unless there is somebody that really takes the effort to fuel the discussion, to bring issues to the fore, to bring people together when it is necessary, it loses momentum.

I think there will be more opportunities to discuss this tomorrow, so why don't I exit at this - while maybe I am still a centimetre ahead. Thank you very much.

10 JUSTICE HAYNE: Thank you very much. I am sure that that too has given us much food for thought. Now, if we are to give due time for the Supreme Court of the Philippines after the break what I suggest we do is that we break now, it is 3.20. If we come back at, shall we say, 3.35, if the Philippines Supreme Court then runs on as long as it needs to complete its presentation, we then have, I think, 15 enough flexibility at the end with the attempt to sum it up, to finish in due time to enable us to break in time for this evening's activities. If we break now and perhaps if we resume at 3.35, 3.40; good, thank you.

20 **SHORT ADJOURNMENT** **[3.20pm]**

RESUMED **[3.48pm]**

25 JUSTICE HAYNE: Well, ingenuity has been brought to bear. Let us begin. Ms Dumdum.

30 **TITLE: MAPPING OF JUDICIAL REFORM PRODUCTS
ALREADY IN EXISTENCE IN FORUM COUNTRIES**

**PLENARY SESSION - DISCUSSION FACILITATED
BY PHILIPPINES SUPREME COURT**

5 MS EVELYN TOLEDO DUMDUM (Philippines): Thank you, Justice Hayne.
Your Honours, ladies and gentlemen, good afternoon. After the discussions this
morning and early this afternoon I think your Honours and our development
partners will agree with me when I say that despite the diversity in the political,
social, economic, judicial and legal systems of our countries I think we are bound,
10 by common or similar challenges and issues, that confront the judiciaries in first,
delivering efficient and effective administration of justice and second, gaining the
trust and confidence of our people in our respective judiciaries.

To start the discussion this afternoon on mapping of judicial reform products
15 already in existence in foreign countries, the Philippines Supreme Court, through
its action program for judicial reforms, would like to share with your Honours,
four specific projects that it is implementing to address such issues as access to
justice, competence of judges, integrity issues such as alleged graft and corruption
in the judiciary and such issues as work flow efficiencies. Our Supreme Court
20 Justices will now present, through three to five minute power point presentations,
the following.

Mr Justice Adolfo Azcuna will present our justice on wheels or mobile court
project to be followed by Justice Conchita Carpio Morales who will present our
25 code of conduct for the Philippine judiciary, to be followed by Justice Angelina S.
Gutierrez who will share with your Honours our Philippine judicial infrastructure
and to be followed by Mr Justice Antonio Carpio who will share with you the
Philippines judicial electronic library.

30 JUSTICE ADOLFO S. AZCUNA (Philippines): Thank you. We will start with
the justice on wheels project in the Philippines. This is a project funded by a
self-loan from the Royal Bank and this is part of the APJR, the Action Program

on Judicial Reform. The entire project is funded with a \$120 million US self-loan and this is a small part of that project. A Justice on Wheels Project bus would cost something like \$120,000 US fully furnished, custom built to be made into a travelling justice on wheels. Accessibility to justice by the poor and disadvantaged remains a world wide problem despite diverse approaches and strategies that have been formulated and employed to address it.

When the honourable Hilario G. Davide Junior, assumed the post of Chief Justice in 1998 he vowed in his Vida Vida Watch (?) to make access to justice by the poor a major thrust of the Court. Through his initiative an action plan for judicial reform was developed and in the area accessibility to justice, one of the recommendations proposed was the creation of special courts for the poor and disadvantaged. On an official visit to Guatemala in 2003, Chief Justice Davide was briefed on the experiment by the Guatemalan Government of bringing justice to the grass roots through the mobile court system.

On his return to the Philippines the Chief Justice and World Bank arranged for, and made possible, two study and observation trips in January and May of 2004 by officials of the Philippines Supreme Court to go to Guatemala to look into the possibility of establishing a mobile court system in the Philippines as a means to bring justice closer to the people by providing a fast and free resolution of conflicts through conciliation, mediation or adjudication.

In May 2004 a concept paper on the feasibility of establishing mobile courts in the Philippines was prepared and submitted to the Court. The following month the Court launched the justice on wheels project and for this purpose created an ad hoc committee and assigned me as its chairperson. The Court then directed the committee to prepare forthwith a design of the vehicle that shall serve as the justice on wheels and to formulate rules governing the implementation of the project.

In August 2004 the Court approved the proposed implementing rules and regulations of the justice on wheels project. The committee then organised three technical working groups for the preparation of the design and purchase of the mobile court vehicle, the Court's jurisdictional structure and the operation details respectively. On December 20, 2004, barely six months after the Court decided to implement the project, the first mobile Court was rolled out. That was the birthday of Chief Justice Davide by the way so it coincided with his birthday.

The mobile court or justice on wheels is custom built efficiently to serve its functions. It is divided into two main sections. The front section serves as the court room - there is the bus - while the rear section serves as the mediation room so it is a two-in-one design. The Court section is in the front and to the back is the mediation room. It is fully air-conditioned and equipped with amenities for the judge and the personnel, the litigants and their lawyers although initially no lawyers are encouraged.

The mobile court is provided with the following personnel complement; the presiding judge, the clerk of court, a prosecutor, a public attorney, a court stenographer, docket clerk, a process server, a driver of course, and a security guard. The judges of the designated Family Courts in the national capital region at matrimony level are assigned to the mobile court on a rotation basis. The judge on duty brings with her the branch clerk of court, the stenographer, the docket clerk, process server, a prosecutor and public attorney assigned to her sala. A mobile court calendar is prepared for each hearing day for each assigned presiding judge.

As part of the implementation pilot project of the justice on wheels the mobile court was initially assigned to hear cases involving juveniles in conflict with the law. The main purpose was to hear cases involving these juveniles who wanted to plead guilty and who had over-stayed already their possible maximum sentence or who wanted to be therefore released or at least released on recognisance. More

importantly the mobile court prioritised the hearing of cases of those who have been in detention for more than the maximum penalty for their particular cases.

5 This strategy was intended to help decongest the various youth reception and detention centres in Metro Manila which were holding up to five times their designed capacities. This is also aimed at decongesting the heavy case loads of the designated Family Courts in Metro Manila. I am pleased to inform this body that in its 70 days of operation from December 20, 2004 to December 6, 2005 the justice on wheels was able to visit several youth reception centres, juvenile
10 detention facilities and gaols in eight municipalities and cities in metro Manila. Within the same period the justice on wheels was able to hear a total of 1175 cases and secured the release of 423 detainees or around 36 per cent of the total number of cases heard.

15 In view of the unprecedented accomplishments and impact of the pilot implementation of the justice on wheels project, the Supreme Court of the Philippines decided to procure two more buses to be used as mobile courts. These buses will be deployed in the major island groups of the country. One in Luzon, another in the Visayas and the third one in Mindanao. They will be considered as
20 extensions of first level courts and will travel from town to town, village to village, and hear cases within the jurisdiction of the first level court. The two additional buses have been delivered to the Court last month.

25 These early discussions are already ongoing for the acquisition of more buses for the justice on wheels program. Considering the number of municipalities without regular courts and the number of detention facilities that are over-crowded the justice on wheels has indeed demonstrated its usefulness in addressing at least partly these problems. Thank you.

30 MS EVELYN TOLEDO DUMDUM (Philippines): Thank you, Mr Justice Aczuna. May we now request Justice Carpio Morales to present the code of conduct for the Philippine judiciary.

JUSTICE CARPIO MORALES (Philippines): Good afternoon, ladies and gentlemen. It is my pleasure to present to you the code of conduct for the Philippine judiciary but first allow me to give you a brief historical background of the code. In April 2000 the United Nations Centre for International Crime Prevention and the UN Congress on the Prevention and Treatment of Offenders graded a judicial group on strengthening judicial integrity which recognised the need for a code of judicial conduct universally acceptable and applicable to all judiciaries.

10

In drafting the basic code around 30 existing codes and international instruments were considered. The Philippine judiciary contributed two materials for consideration; one, code of judicial conduct of the Philippines which was adopted in September 1989 and two, canons of judicial ethics of the Philippines. In February 2001 at a judicial conference among Chief Justices held in Bangalore, India, the co-ordinator of the judicial integrity program submitted to the judicial group a draft report which identified the core values and formulated the relevant principles hence the Bangalore draft code of judicial conduct.

20 The draft code was thereafter disseminated among judicial justices of both common law and civil law systems and likewise discussed at several judicial conferences. In November 2002 at a round table meeting of Chief Justices held in the Peace Palace, The Hague, Netherlands, the revised Bangalore draft was further discussed and adopted. This later became the Bangalore Principles of Judicial Conduct. Our Philippines former Chief Justice Hilario G. Davide Junior was one of 17 signatories to the covenant.

The Bangalore Principles of Judicial Conduct is a universal declaration of judicial standards for all judiciaries founded upon a recognition that; one, a competent independent and impartial judiciary is essential if the Courts are to fulfil the role in upholding constitutionalism and the rule of law and two, public confidence in the judicial system and in the moral authority and integrity of the judiciaries is of

utmost importance in a modern democratic society and last, judges, individual and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

5 The new code of conduct for court personnel was promulgated on April 13, 2004 pursuant to an administrative matter, case number 030613 of the Supreme Court and made effective on June 1, 2004. Moreover, pursuant to another administrative matter, the Supreme Court promulgated the new code of judicial conduct on April 27, 2004. The code, which covers justices and judges, was
10 likewise made effective on June 1, 2004. As soon as copies of the codes were furnished on all employees, there was an immediate call for enlightenment clarification to address this and consideration of the formulation of the code of ethics was also a subcomponent under the action program for judicial reform or APJR. Orientations were then proposed to be conducted.

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The objectives of the orientations were; one, orient and inform all judiciary on the provisions of the new code of conduct for the Philippine judiciary and code of conduct for Court personnel; two, make clear to the participants the expected norms of behaviour in conducting themselves as personnel of the judiciary and;
20 three, instil in Court personnel the duties and responsibilities in maintaining the integrity and independence of the judiciary.

Orientations on the Court personnel covered all personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, Philippine Judiciary,
25 Office of the Court Administrator and first and second level Courts who are not justices or judges. Court personnel who are no longer in the judiciary but who acquired, whilst still so employed, confidential information as the filing of the canons are also covered under the code. The orientations started in the second quarter of 2004 and then the World Bank Judicial Reform Support Project, a
30 target of 50 per cent of judiciary personnel shall be oriented on the codes by June this year.

With a total number of 27,000 personnel in the judiciary, we should by that time, be able to reach 13,500 personnel. As of February 28, 2006 we have already conducted 98 orientations for a total of 11,844 personnel. The remaining 50 per cent of the personnel to be covered is proposed to start in July this year until June 5 2008. As part of the component on integrity, infrastructure development of the action program for judicial reform, the dissemination of these two codes demonstrates the firm resolve of the Philippines Supreme Court to pursue relentlessly the pronouncement in *Vida Vida Watch* (?) that is honesty, immorality, incompetence, integrity and other forms of unbecoming conduct are 10 impermissible and will not be tolerated in the judiciary and the legal profession. Thank you and good day everyone.

MS EVELYN TOLEDO DUMDUM (Philippines): Thank you Justice Morales. May we now call on Justice Angelina S. Gutierrez to share with your Honours, 15 ladies and gentlemen, the Philippines judicial infrastructure.

JUSTICE ANGELINA S. GUTIERREZ (Philippines): Your Honours, and members of our development parties, good afternoon. The topic I will discuss with you is the status of the Philippine judicial infrastructure. This morning we 20 mentioned that the judicial infrastructure is one of the things of my country's action program for judicial reform and so may I let you know that this dream is gaining momentum in the Philippines.

One indispensable stage in the reform process is the incisive diagnosis of the 25 pertinent reform area. Like in the field of medicine where the recognition of the symptoms is the key to the cure, the identification of the causes and effects of identified strengths and weaknesses, gaps and opportunities for change is the key to a successful reform program. With this in mind I believe it is necessary to give you an overview of the state of the Philippine judicial infrastructure system so that 30 you can understand the rationale for the reforms that we are now implementing.

The Philippine Islands are clustered into three groups, Luzon, Visayas and Mindanao. The seat of the Government is in Manila, the capital city. As in other countries the winds of progress blow from the capital city to the outskirts. This means that the conditions of our halls of justice worsen the further they are from
5 the capital city. To be found in Metro Manila are the four appellate courts.

First is the Supreme Court which is the highest court of the land. Its building houses 15 justices including of course the four of us. It has a session hall and a conference room. Each Justice has a chamber and a staff room. Second is the
10 Court of Appeals which houses 64 justices. Considering the number its session hall is definitely larger than that of the Supreme Court. Also each justice has a chamber and a staff room.

Third is the Sandiganbayan which is of the same level as the Court of Appeals
15 except that its jurisdiction is limited to cases against Government officials and employees accused of corruption and other office related offences. It houses 15 justices. Just like the Court of Appeals it has a session hall and each justice has a chamber and a staff room and fourth is the Court of Tax Appeals which is also at the same level as the Court of Appeals.

20 The Court of Tax Appeals building houses six justices. It has a session room and each justice have a chamber and a staff room. All these appellate courts also house officers for the respective personnel. It can be fairly said that the appellate courts are housed in halls of justice that befit the dignity and majesty of its users.
25 This is because these halls of justice are the results of the initial wave of judicial reform, however, the bulk of the problem is in the trial courts. It has been reported in 2000 that the 271 existing halls of justice for trial courts have provided offices only for 448 salas or 51 per cent of the total 876 organised salas of the regional trial courts and 251 salas or 22 per cent of the total 1124 salas of the
30 metropolitan trial courts, municipal trial courts in cities, municipal trial courts and municipal trial courts.

This shows a great shortage of halls of justice in my country. the outward appearance of the halls of justice in Luzon, in Visayas and in Mindanao Bares. Halls of justice in Mindanao are mostly in deteriorating conditions. This can be attributed to the distance from Manila where administrative and financial policies are shaped. What are the issues. The action program for judicial reform, a six year plan outlining a comprehensive set of reform projects and activities aimed at enhancing judicial conditions and performance, identified certain issues confronting the halls of justice.

10 First is the inadequacy of plans to complete the construction of new halls of justice and to maintain existing ones. Second is the disjointed project management. Where, how and when to source the funds? What officers should be housed in the halls of justice and what the space allocation and facility sharing arrangements should be are some of our problems. Later on the Supreme Court became more acquainted with the reform processes. The issue of a uniform design for halls of justice are faced.

This became the third issue that confronts the court and lastly of course there is the issue of geographical inaccessibility. The location of some of the halls of justice renders it difficult for the Supreme Court to fully address the construction and maintenance problems. Often times, before solutions are implemented, damage to the halls of justice have already worsened. And our response to the issues.

25 Since the affectivity of the action program for judicial reform in 2000 the Supreme Court has undertaken impressive strides in addressing these issues. With respect to the inadequacy of fans, the Court has gained the support of official development assistance institutions such as the World Bank and the United Nations Development Program. Also, a greater portion of our judicial development fund, or JDF, the collected court fees is allocated to the construction and renovation of various halls of justice.

At the moment our major infrastructure projects consist of the construction, renovation of four pilot model halls of justice in some of our major cities such as Angeles City, Lapu-Lapu City, Cagayan de Oro City and of course Manila. The construction and renovation of six halls of justice and courts in the autonomous region of Muslim Indon and the construction of two court of appeal buildings in Cebu City and Cagayan de Oro City. In the construction or renovation of the four pilot model halls of justice we ensure that the second, third and fourth identified issues are fully addressed thus avoid disjointed project management and dissimilar designs we got on board a design engineering project and a project management consultant.

At the same time we conducted several focussed group discussions with the stakeholders or end users to hear their suggestions and observations. After the design phase is completed the procurement for a building contractor took place. For the four pilot model halls of justice the Supreme Court's policy is to follow a uniform facade. The general architectural concept of the building shall be classical using a specific rendition and motif of the Baroque arch, Romanesque architecture combined with a post modern style. The planning and design effort shall be focussed on the following criteria; dominance of the main entry, auxiliary and symmetry of elements and overall simplicity.

The most noticeable portions of the facade are four pillars which represent the prosecution, law enforcement, corrections and the community. The Philippine flag is a work of art depicting nationally same. The entry wall shall be an imposing high arch representing the sun and above the arch are eight sets of groove lines outlining a classical wall design representing the eighth rays in the Philippine flag. In the overall structural design your consideration is given to the following design objectives. Number one is accessibility, aesthetics, cost effectiveness, functionality, productiveness, security and sustainability.

Having seen the cramped up court room and the staff officers' space and the absence of a storage area and information technology room, the design consultant

prioritised his space allotments to the venues of legal proceedings in the areas of circulation. It also provided areas for a mediation office, information and technology room, clinic, judges' conference rooms, judges' lounge, library, main holding area for detainees with separate entrance, dining area, executive dining room, room for child witnesses and social workers, lawyers' business centre and open function desks.

The design consultant likewise enhanced provisions for light, ventilation and safety. The same grinding principles are being observed in the two other projects. Significantly, the four pilot model halls of justice and the two Court of Appeals building are strategically located in the three major island groups, Luzon, Visayas and Mindanao. This is purposely done to slowly give way to the decentralisation of administrative and financial functions from the head offices to the provinces. This answers the issue of geographical inaccessibility. This is one way of reaching out and providing better infrastructure for halls of justice in the far flung areas particularly in Mindanao and on top of this the Court created the office of the Hall of Justice, a permanent office which function is to co-ordinate efforts on a day-to-day basis and develop strategic plans and operating mechanisms to improve, maintain and support justice on a sustained basis.

I regret that I do not have enough time to cover all concerns in the judicial infrastructure system. For now it is enough that I have given you an overview of the matter. One last word, let me just express that we are glad to be with you today. Indeed, judicial reform is not the work of a single nation, but of the world. For as one judge, learned, had described in his discourse on liberty, right knows no boundaries and justice no frontiers. The brotherhood of man is not a domestic institution. Thank you.

MS EVELYN TOLEDO DUMDUM (Philippines): Thank you, Justice Gutierrez. May we now call on Mr Justice Antonio Carpio, to share with us the Philippines judicial electronic library.

JUSTICE ANTONIO T CARPIO (Philippines): Good afternoon. Let me discuss with you the Supreme Court's e-library. We have a simple vision for our electronic library. Our vision is this. We want every judge to have at his finger tips all the laws, all the decisions, and all the regulations that he needs to decide a case. And the e-library is supposed to do that. The e-library has two versions: The CD version - we have one CD for laws and one CD for decisions of the Supreme Court. We mail this to all the judges in the Philippines. We used to ship books, and it took us time to print the books, load them on vessels, and the books would get lost from time to time, so now we just mail this to all the judges. It costs less than \$1 to reproduce the two CDs, so if the CDs get lost we can easily send them again.

The other version of the e-library is the electronic version in the internet. So for Courts which have internet connection they go to the internet, to the web site of the Supreme Court, they click the bar on e-library, and they type their user name and password, and they get to the e-library. The e-library is a full text search library. This means that if you type a word or a phrase and you click the search bar automatically all decisions of the Court containing the word or phrase appear on the screen of your computer. And the cases are run according to the number of occurrences of the word in a decision. So the first decision that comes out is the decision that contains the most occurrences of the word you are looking for.

Now, what are the contents of the e-library? Well, we have the decisions of the Supreme Court, we have the laws of the land, we have the rules and circulars of the Supreme Court, and we have the regulations of the executive departments. Right now we have decisions of the Supreme Court from 1996 to the present, and every decision is up loaded within 48 hours. For the decisions from 1901 to 1995 we have out-sourced the digitisation to a third party with World Bank funding, and they are two thirds completing their work, so within a few months from now we should be able to up load all decisions of the Supreme Court from 1901 to 1995, the complete, the entire decisions. For the laws of the land we have now in the e-library decisions laws from 1986 to the present.

Laws enacted from 1901 to 1985 are being digitised in house by our E-library. We have purchased open book scanners with World Bank funding, so we are doing it ourselves. All the rules and regulations of the Supreme Court are of course in the e-library right now. Now, who are the authorised users of the e-library? We have of course the judges. They have their user name and password, but we have given access also to law libraries of law schools, all over the Philippines, so a law student will just go to their law library, and go to the computer, and they can access our e-library for free. We have given this privilege to our law schools, so that the law students could easily access our decisions. We have also given for free access to all government prosecutors all over the country, and also the Office of the Solicitor General, which their lawyers appear before the Supreme Court to argue government cases.

Eventually we will open this to the private sector on a subscription basis, so that we generate income to maintain the cost of digitising the decisions and maintaining the e-library. How do you set up an E-library? Well, there are four components in an e-library. You have the search engine, you have the digitised decisions, you have the web site, and you have the technical people to put this all together. The search engine used to be very expensive, costing millions of dollars, but now prices have gone down dramatically. We bought ours for only \$10,000 off the shelf, down loaded from the internet. And the digitised decisions are not a problem with respect to current decisions. When we submit our decisions, the printed copy, we submit also a diskette of the decision, because the printed copy is generated from Microsoft Word, which means you have already a digitised copy of your decision.

So we submit our decision, together with the diskette, and it's immediately up loaded, and enters the e-library right away. The third component is the web site. It's very cheap and easy to put up a web site, and for all the technical people you don't need the highly skilled people. If a person knows how to put up a web site he knows how to put these four elements together. So it's very easy, very cheap to

put up an electronic library using your current decisions. The difficult part is to digitise all decisions. It's very tedious. So you digitise all decisions, either in-house or contract it out. We have done both. I don't know if we have the internet connection now. Well, I would have wanted to show you how to use the - how we use our e-library, but I guess we have some technical difficulties. So thank you, and good day.

MS EVELYN TOLEDO DUMDUM (Philippines): Thank you, Justice Carpio. If your Honours believe that the just recently presented projects would be beneficial in your own jurisdictions, in meeting your own challenges and issues in terms of delivery efficient and effective administration of justice, and in meeting the expectations of your people, the Philippines Supreme Court would be very honoured to host knowledge sharing and technological visits to our country. Thank you, and we now turn you over back to Justice Hayne.

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WHERE HAVE WE GOT TO TODAY? - JUSTICE HAYNE [4.28pm]

JUSTICE HAYNE: Now, ladies and gentlemen, we have as much as three quarters of an hour, but I hope that we may be a little more efficient than that. What I want to do is to try to get you to reflect on where we have got to today, and I want to try to get you to reflect on where we have got to today, so that we may make best use of tomorrow. Tomorrow is the day, I think, when really we have to start making decisions which are of critical importance to the future of this body.

Now, where have we got to today? We began by hearing from each delegation. We identified problems. We saw that much more often than not the problems that each delegation spoke of were problems that had fundamental similarities with problems spoken of by other delegations. What is the nature of those problems? As I said earlier this afternoon you could see them perhaps as falling into the

groups of problems about safeguarding the system, problems about doing the work. Other forms of classification were offered.

5 The problems were seen as, one, access to justice, two, expedition, three, independence, four, continuing legal education. Access, expedition, independence, education. We have discussed questions of organisation. We have had examples given to us of the way in which knowledge sharing networks can be developed. Perhaps we may take from what we had heard the proposition that the organisation must, to a large degree, follow the definition of the task.

10 Establishing an organisation without knowing what your task is presents great difficulty. But certainly we take, do we not, from what we have heard today, that the organisation must be professional? The volunteer organisation seems doomed to wither.

15 Now, that may be the substance of what we take from what has been said today, but there is, I suggest to you, a single, much deeper question that we must take away tonight, and come back tomorrow prepared to answer. What can we do together to address the problems that have been identified? What is it that the judicial system of your country would want to get out of this forum? What is it

20 that the judicial system of your country would want to get out of the network that sits around this table, and may be so much larger? At one level the answer to that I suppose is very easy. Oh, well, we would want to solve the problems that confront us.

25 Yes, no doubt that is so. Of course. But how would dealing with other countries go towards solving those problems? How would dealing with the other countries represented around this table, or some of them, set about addressing the problems we face? What are the projects that you see this body undertaking? That is, what is it that this body can do for you? What is the order of priority that you would

30 apply to those projects? What is it that you need most, soonest, out of a body like this? Let me try to push your thinking just a little further down the path. Let me take one example that was repeated through all the presentations we heard today,

the problem of back logs. I do not think there is a judicial system in the world which does not confront a problem of speedy access to justice. There is always a problem of back logs.

5 Now, what is it that this body, or a sub-set of this body can do for you in addressing that problem? What is the use that you would make of this body to address that kind of problem? The answer, I suggest to you, is not simply, oh, well, we could sit and talk about the problem. Oh, well, we could study the causes of the problem. Oh, well, we could see what solutions are adopted
10 elsewhere. Those may form part of an answer that you properly give, but the answer, if it is to be useful, has to be fuller than that.

What I want from this body is to study the problem because - because that will help my judicial system in this way, and address the problem in a tangible way.
15 So, as I say, tomorrow we begin to address the questions, what is it that you want from this group, or from some sub-set of this group, from some regional pairing, triplet, quadruplet, whatever it may be, of this group, and what are the priorities?

Identifying the problems has been important today, but it's importance is as a
20 preface to what we do tomorrow. Now, tomorrow I am not quite sure how we will order things. I think I will have to be rather more flexible than is my normal want. For this is going to be a task which, if it is to be solved, will be solved by you. And the normal controlling impulse of a member of a Court of Final Appeal, whose informing principle like every judge of every Court of Final Appeal is, be
25 reasonable, do it my way, will have to be suppressed. For this will be down to you.

Now, tomorrow we will begin at 8.30. Forgive the unseasonably early hour, but if we are to do this task let us set about it, and set about it at a suitably early time.
30 We will commence at 8.30. Tonight however we have a number of points to make. First, we are to go to the reception at Government House. The buses will leave at 5.45. The wheels will be turning at that hour. Might I, with great respect,

suggest that you are in the foyer no later than 5.40. That will perhaps assist in that respect. Dinner tonight is at 8 pm.

5 It is one of the rooms along the corridor here, named The Barnett Room, which is
along the corridor that you came in along here. Now, are there other
housekeeping matters that I should have? I see the CEO and principal registrar of
my Court about to pull me into line yet again. All comes to those who wait. Even
the internet comes to those who wait. Even the internet supplied by an Australian
internet service provider comes to those who wait. We now have an internet
10 connection, and I think, Judge, that you would dearly love to show us the e-
library. Is that right? So before we are diverted by the e-library, as I say,
tomorrow is your day, it's not mine. Thank you.

JUSTICE ANTONIO T. CARPIO (Philippines): This is the Supreme Court
15 e-library. The judge will go to this page in the internet and then he will click this
e-library bar here, which brings him now to the e-library. He types his user name.
So he is now in the search page of the e-library. Let us say he wants to find out
decisions of the Supreme Court on extradition. He types the word extradition,
and he can choose decisions or resolutions or admin matters, so it should be
20 decisions. He clicks search. Okay. Let us check. This one should come out with
a lot of decisions. So if you type the word rape, you have here 2068 documents,
roughly 2068 decisions on rape, and it says here 100.

That means this is the case where the word rape most appeared, and it has the
25 most occurrences of the word rape, going down, so you click this page and there it
is. And the word rape is highlighted all throughout. Now, if you want to be
specific about it, you want to find out about child rape, you can choose here the
exact phrase, so it will choose only that phrase, child rape, and you click search,
and you come out with six decisions only. And there it is. So you can choose any
30 of the words, child rape, or the exact phrase child rape, and it will come out. It
works like any other search engine, like the West Law or the search engines of
universities. So thank you. By the way, this is for the judges.

For the general public, they can go to the public web site. They click
jurisprudence decisions and let us say for February of 2006 you have hear the
decisions of the Supreme Court. This is for the public. They can check the latest
5 decisions of the Supreme Court, and we have in the jurisprudence section
decisions from 1996, going to 2006 by the month. You click the month, and
decisions for that month will appear on the left side of the screen. That's for the
general public. But there is no search engine. They have to go one by one. We
are going to put up the google search bar here, so that you can type the word, and
10 the decision also will come out using the google search engine, which is standard
for all web sites. So thank you.

JUSTICE HAYNE: Well, we have done a day's work, let us go and enjoy the
hospitality at Government House tonight. Thank you, ladies and gentlemen. We
15 shall see you at 8.30 tomorrow.

**MEETING ADJOURNED AT 4.47 PM
UNTIL FRIDAY, 17 MARCH 2006**

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