Chapter 4

Judicial Reform -- Issues to Consider: The Philippines and Indonesia

by

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NOTE: *This lecture was the eighth in the Chief Justice Hilario G. Davide Jr. Distinguished Lecture Series. It was delivered by Anthony Gerald Toft on August 24, 2005, at the Freedom Hall of the Lyceum of the Philippines. I have included this "guest chapter" in my book to demonstrate how the outside world, particularly the international developmental institutions, look upon our Action Program for Judicial Reform (APJR).*

To introduce the readers of this book not only to the lecturer, but also to the World Bank, the "Introduction" I delivered on that occasion has been reproduced in the footnote.[*] *In deference to the author, this chapter has not been edited to conform to the style of this book.*

It is truly an honor to be invited to speak to this very distinguished audience. I feel among friends. And I am particularly honored to be speaking about a matter to an audience amongst whom there are world leaders on the subject: the challenge of reforming judiciaries. I want to make it very clear, however, that I speak today for myself, and not on behalf of the World Bank. The views I give are mine. If I mischaracterize situations or misstate facts, I alone am responsible for such!

As Justice Panganiban has just mentioned, I had the good fortune to attend a meeting of chief justices in New Zealand in 2001. It was just after September 11, and my boss the general

counsel of the World Bank had to stay in Washington. I was given a speech to present that I frankly thought could have been better. And I was further expected to speak about matters I didn't really feel too qualified to do. So I took some liberties and spoke a little about a matter that I had some knowledge about, namely the judicial reform program then getting under way in the Philippines – and the prospects for such reform in Indonesia. And it is concerning the former, judicial reform in your country, that I want to make some remarks about today. I'm going to commence by talking a little about aspects of the governance challenge in Indonesia, not just because that is a situation that I know rather better -- but because sometimes comparing situations can be illuminating. I will to a significant extent leave it to you to draw comparisons between what I say about Indonesia and your situation in the Philippines, and to draw your own conclusions from that comparison.

I want to start by what may seem like a digression from my theme about judicial reform. I want to tell you why I came to be interested in judicial reform in Indonesia. For in that story I like to think there is something of a parallel with why the World Bank itself is interested in judicial reform.

I went to Indonesia on a leave-of-absence from the World Bank at the very beginning of 1997. I wound up staying there more than 7 and a half years, the last five and a half back with the World Bank. It was a fascinating time for it was [a time of] huge changes in that wonderful country:

- Indonesia was booming when I arrived – to work with a law firm there: hotels were loaded with foreigners seeking deals; many of my law firm's

clients were investment banks servicing corporate investors; friends working for Indonesian conglomerates were being courted, wined and dined; Indonesia's judiciary was widely regarded as rotten, and the prosecutorial service was considered as a tool of President Suharto. There was no bankruptcy court. But: no one cared much. Investment was still pouring in. Commercial disputes were rarely, if, ever, settled in the courts: domestic commercial disputes were largely resolved behind closed doors, where financial muscle and/or political connections were the key determinants of outcomes. Foreign investors almost always had local partners, typically well-connected ones – and these individuals took care of disputes.

- Then . . . financial trouble in Thailand and Korea in July and August 1997 quickly spread to Indonesia: loans were not rolled over, creating immediate liquidity problems for local banks and companies, leading to a snow-balling depreciation of the rupiah (Indonesia's currency), which in turn exacerbated the problems of the banks and corporate sector, with large lay-offs picking up; political cohesion began to fray badly, and finally President Suharto fell in May 1998.

- One interesting question is the extent to which, if at all, Suharto thought, after his fall, that his decision to turn to IMF in the fall of 1997 contributed to that fall – because reform benchmarks were established that one way or another threatened the fabric of wealth and privilege that surrounded the

Suharto family and its crony network, benchmarks that were only partially met, resulting in further losses in market confidence in the credibility of the Suharto government.

- After the fall of Suharto, three presidents came and went – and, of course, a fourth, President Yudhojono, was elected 11 months ago peacefully and without any accusations of the result being tainted by irregularities.

- Note: "elected" directly by the people of Indonesia – to be able to say that is a measure of how far Indonesia has come: a president directly elected by the people. This possibility – of a president being directly elected and of a peaceful democratic transfer of power from one president to another – in such a relatively short period of time after a prolonged period of what has to be characterized as autocratic rule, is by any standards truly remarkable.

- And there were other changes too in the months and years immediately following the fall of Suharto: East Timor was let go; the military was no longer allocated a percentage of DPR (parliament) seats, many governmental functions were devolved to the local level, to locally elected legislatures and, increasingly, locally elected officials; an extremely vibrant free press came into being and a commensurately vibrant "public" discourse about sensitive issues such as about how to deal with separatist tendencies, about corruption within the armed forces, the police, the

judiciary, in parliament; and there were a host of economic changes, including the breaking up of some key monopolies, legislating the independence of the central bank, consolidation within the banking sector, significant corporate and corporate debt restructuring , the resumption of steady growth, that in turn has led to a significant reduction in poverty levels – and increasingly awful traffic jams in Jakarta once again.

But, during the whole time I was living in Indonesia – until August of last year -- there was a troubling lack of real progress in addressing one issue that more or less everyone concerned with Indonesia – inside and outside – acknowledges was and is a major problem for Indonesia: pervasive corruption.

Surveys show that on this issue, Indonesia continues to be viewed as among the most corrupt countries in the world.

Of course is some debate as to the quality of some, if not all, such indices. But there is no doubt that not only many foreigners, but also most Indonesians, have viewed this issue to be a major concern and challenge: after all, the rallying cry against Suharto in the demonstrations that led to his fall was "down with KKN" – corruption, collusion, nepotism.

And the issue of KKN – corruption, collusion and nepotism -- continues to shape in a profound way the Indonesian political scene today: I think it fair to say that among the reasons why President Megawati did not succeed in her re-election bid, a key one was the perception of many, probably most, Indonesians that not only did corruption continue to flourish under

her presidency, but that there was no real attempt on the part of the authorities to do anything significant about it. By contrast, the campaigns and rhetoric of her leading challengers clearly demonstrated that they thought the issue continued to resonate very powerfully in the country – and would make and break regimes.

What was particularly striking about Indonesian political and policy developments in the years immediately following Suharto' fall was not so much the low standing of the Indonesian judiciary, but the near absence of positive expectations about that institution as an instrument, let alone a force, for playing any sort of significant role in addressing Indonesia' massive banking and corporate debt crises – crises that in essence manifested themselves in contracts not being honored – and, perhaps more fundamentally, the near absence of positive expectations about that institution as an instrument and force for playing any sort of significant role in tackling corruption – a lack of expectation that extended to the police and attorney general's office – the prosecutors of Indonesia. And, along with that lack of expectation was a lack of interest on the part of all but a handful of individuals in doing anything about reforming those institutions – the very institutions that must be relied on to provide a credible stick in any meaningful fight against corruption. It was tough to conclude, in fact, up to the inauguration of President Yudhojono, that there was any serious intent to wage a fight against corruption on the part of the political elites at all.

Now, why did we in the World Bank care about this? In part, the reason was that it was clear to us that perceptions that Indonesia's justice sector institutions were lacking integrity were having a materially adverse impact on Indonesia's ability to attract and/or retain the

investment it needed to recover from the massive contraction in the economy that occurred in 1998 and 1999 and to attain the sort of growth rates Indonesia needs to provide jobs for a growing labor force (more than 1 million additional people become of working age every year) and to provide enhanced living standards for its citizens. And in part the reason for our caring was, frankly, a greater appreciation of the importance of governance issues to the cause of poverty reduction more generally. But we were concerned also because bad law enforcement unquestionably contributed powerfully to the existence of other major problems Indonesia confronted across a broad range of issues.

Where law enforcement officials apparently could be so easily bought off, it was hardly surprising that Indonesia suffered – and still suffers – from almost catastrophic rates of deforestation and from widespread smuggling. Where law enforcement officials reportedly saw concerns about law and order as an opportunity to make money, it was hardly surprising that protection rackets proliferated and investors feared their employees and their assets would not be protected by the police. And, where ordinary people do not see the police as their protectors and the courts as a source of justice, it is easier to understand the phenomenon of mob "justice" and to understand why communal frictions can so rapidly generate into intense violence.

Now, this is not the occasion to analyze why the Indonesian justice sector institutions came held in such low regard. But I will say this: I think history shows that where you have non-democratic autocratic regimes – and especially military or military-dominated regimes -- the likelihood is that the role of law enforcement authorities will be viewed by the political leadership, and will be so viewed by the justice sector institutions themselves, as being in the

first instance not to serve the people but to preserve the authority of the state – or, to put it more bluntly, the authority of the governing regime; and that the judiciary's role is not to serve as an instrument whereby government authorities can be held accountable for the way in which power is exercised, but rather as an instrument for the pro-forma validation and enforcement of the actions and decisions of the political authorities. By contrast, I think a strong democracy, where political power is almost by definition diffused, needs something rather fundamentally different: justice sector institutions that enjoy the respect and trust of the society from which they arise and amongst which they operate. And this leads me to the following conclusion: that the success of efforts to reform justice sector institutions needs ultimately to be measured, by their stakeholders and by themselves, by the degree to which the trust and respect of the society in which such institutions operate are obtained.

And so we in the World Bank began to devote considerable attention to the challenges of addressing corruption in Indonesia and, more broadly, of promoting better governance; and, in my case, of helping to foster justice sector reform in Indonesia.

Now, here I want to comment on the view held by many both inside and outside Indonesia that the World Bank had no credibility in speaking about corruption – and the broader issue of good governance -- in Indonesia because, so the view went – and still goes among many -- the World Bank in effect fueled the corruption of the Suharto years by massive lending into a situation where it knew public funds were being misused on a large scale by a regime it knew was authoritarian.

I'm not going to address this issue at any length. But I do want to acknowledge it is an

important “charge” that the World Bank should not shy away from addressing.

What I will say on this issue is that the World Bank as an economic development institution always faces the difficult challenge of how to contribute to the attainment of desirable developmental goals in less than perfect situations. Indeed, a good part of the challenge of development is precisely about good governance. Sometimes – in fact all too often – the governance situation in countries the World Bank has programs of assistance with is very poor. The World Bank could of course decide to walk away from such countries. And on occasion it has had to do so. But we always have to ask ourselves whether and how best we can provide value-added; and in most situations we conclude that walking away isn’t the answer. And one of the reasons is that if we were to walk away, many of the poverty alleviation programs that no other institution, except those such as the World Bank, would finance might well wither away. Of course remaining engaged has its price. And of course we sometimes get it wrong. But I think that Indonesia is one of those countries where we by and large got it right, including during the Suharto years: I think that just about every project the World Bank helped fund during those years had appropriate objectives, that the vast majority advanced the cause of development --- and that our ability to influence the broader governance agenda was very limited.

To give but one example: the World Bank had serious misgivings in the 1990s about the way Indonesia was addressing its power generation needs. Specifically, it thought that the method of awarding independent power producing contracts was flawed. These views were conveyed to Indonesian Government unambiguously. The Government for the most part did not listen to us and one result was that we ceased to fund power generation. (I might also note

that the non-competitive process by which many of these contracts were awarded eventually gave rise to intense political headaches for Suharto during his last weeks in office and for the Habibie presidency which followed.) But of course we did not cease to lend to Indonesia altogether: the development agenda was – and is – broad and there were plenty of areas where we could – and probably did – contribute constructively. Finding ways to do so is of course not always so easy. Judgment calls are needed – and we claim no monopoly of good judgement or wisdom. On the whole I think our assessment of our record in Indonesia during the Suharto years is that we were a contributor – a modest contributor – to a lot of the good things that happened to improve the lives of ordinary Indonesians.

Since Suharto fell the World Bank has made governance issues a core aspect of its assistance strategy for Indonesia. Part of the reason for doing so is, frankly, a greater appreciation of the importance of governance issues in dealing with the sort of concerns I mentioned a few minutes ago, and to the cause of poverty reduction more generally. But another reason is that political developments in Indonesia since the fall of Suharto opened up a "space" in which governance issues can be debated, where meaningful opportunities exist for advances in a "good governance" agenda to be achieved. The existence of such "space" is vital: if there is one lesson we have learned over our near 60 years of existence is that attempting to foist what we think are good policies on countries is a near-useless exercise; if there isn't a genuine political receptivity to such policies within those countries, well-intentioned advice, and projects that are intended to promote such policies, are likely not to take root.

It is important to note that we do not look at governance, including the issue of

corruption, as essentially, or even primarily, a matter of its impact on investment. We see "governance" as a matter relevant to a much broader aspect of development, namely: how well are communities, locally and nationally, served by public institutions/authorities in the adoption and implementation of sound public policies and in the provision of public services?

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And now to the Philippines and the judicial reform program that is the product of the vision and energy and commitment of so many of you here today.

I became involved in the World Bank's efforts to help the Philippine judiciary in the development of its reform program in early 2001. By then the program was well into its design phase. And the World Bank had already been making a modest contribution to the cause of judicial reform in the Philippines through its support for a number of research papers and analytical work on subjects such as case management, the causes of delays in disposal of cases, court administration challenges, judicial infrastructure requirements, and information strategy and priorities for the judiciary.

My interest in the Philippine program was frankly driven by my concerns about the challenges posed by the weaknesses of the Indonesian justice sector for reformers and for those like ourselves who wished to assist promote and support reform – and what could be learnt from the Philippine experience.

What frankly blew me away on first familiarizing myself with the Philippine program was just how visionary it was, how sophisticated it was – and how enviable it was.

I can confidently say the judicial reform program of the Philippines is the most comprehensive in its scope and in its detail of any country in south-east and east Asia. But perhaps this not altogether surprising. The "position" of the Philippines judiciary, and especially the higher judiciary, is quite different from that found in many other countries of the region, including, for example, Indonesia.

I think it is accurate to say that the legal profession holds a high status in Philippines society. I think, for example, that a good measure of how a profession is regarded in a country is to look at the competition story for university places concerning those professions. I'm told that in the Philippines, getting a university place to study law is very competitive and considerable prestige is attached to being a law student. I have also noticed that the title of "attorney" seems to convey a mark of significant respect! And the Supreme Court clearly not only occupies a pivotal constitutional position in the Philippines polity but also is viewed by most Filipinos as a fundamentally important public institution and a key element of the system of checks and balances in the Philippine polity.

The contrast with Indonesia is striking: there, being a law student typically carries little prestige and competition for entry into law school is far from fierce. Few are impressed by someone being a lawyer. Being a judge carries very little prestige; being a Supreme Court justice carries very little more.

These observations are obviously in no way scientific. But I think they are basically accurate – and say a lot about expectations of society. Expectations – an element to which I

will come back to.

Another difference between the Philippines and many other countries in this part of the world, concerns the way other pillars of government view the judiciary. Again I will take Indonesia as my counterpoint: In Indonesia, at least until very recently, one simply did not get the impression that other parts of government attached much importance to judicial decisions or indeed to the judiciary itself. There are no landmark Supreme Court decisions that are ever referred to in any public policy debate. The Indonesian judiciary came in for very sharp criticism in the wake of the Asian crisis at the end of the Nineties among domestic human rights groups, the investor community and the donor community – including the World Bank. But there was no evidence that this debate was replicated at all within the executive or in the legislature. It was only in the aftermath of the Bali bombing that one began to see significant concern among political elites about whether the judiciary – and the police and prosecutors – would prove up to the task of bringing the perpetrators to justice, and not simply bring shame and embarrassment to Indonesia.

All this contrasts very significantly with the Philippines, as most of you know well. And in fact a great deal of credit goes to the Government of the Philippines for the reform program of the judiciary. To take just one example that I know well: reform programs are never costless, and the Action Program for Judicial Reform (the APJR) – the formal name for the Philippine judiciary's reform program – is no exception. At a time of severe budgetary and fiscal constraints, the Government of the Philippines was prepared to borrow loan funds in a significant amount to assist in meeting some of the costs associated with the APJR. This is, in my view, an emphatic vote of support for a well-conceived program of reform and represents

a wholly desirable interest of the Government in the quality of judicial service to the people of the Philippines.

I say "wholly desirable interest" because one of the key lessons we in the World Bank have drawn from our involvement in, or observation of, judicial reform programs around the world is that a key ingredient for any judicial reform program to really gain impetus and traction is a willingness of the executive, and typically also the legislative branch, to support reform by matching their rhetoric by their willingness to make the necessary budgetary investment.

For whatever else judicial independence means, it certainly doesn't imply an absence of significant linkages to the other pillars of government. There are real and appropriate linkages, the most obvious example being the budget. I will return to this in a little while.

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I now want to make some observations about the APJR and the way it is being implemented to date. In the course of doing this, I will challenge some of its specifics. I do this in what I fully intend is a wholly constructive spirit.

And my first, and to me my most important, observation is that the APJR has as good a prospect of success as any judicial reform program in the world today. And I say this with some confidence, for the APJR is fundamentally well rooted. It is rooted in the following vision:

"A judiciary that is independent, effective and efficient, and worthy of public trust and

confidence; and a legal profession that provides quality, ethical, accessible and cost-effective legal services to the people of the Philippines and is willing and able to answer the call to public service".

This vision and these words are those of Chief Justice Davide. And in my humble view, this vision captures the absolute essence of what all societies the world over and for all time should aspire to for their judiciaries:

a. That judiciaries are about the provision of a public service
b. That real justice must be ethically rooted
c. That quality matters
d. That it must be accessible to the poor and not just the mighty
e. That the ultimate test of a great judiciary is that it has the public's trust.

I also want to pay tribute to the way the APJR was put together: it didn't materialize overnight and its designers didn't shy away from learning from others.

First, it was well-informed: For example, the APJR was built on a number of important diagnostic studies, including the following: an Assessment of Past Judicial Reform Efforts; Formulation of Administrative Reforms; Review of the Criminal Justice System: Review of Alternative Dispute Resolution Mechanisms; Review of the Barangay Justice System; Assessment of the Impact of Judicial Education and Directions for Change and Development; and Formulation of a Medium-Term Public Investment Program for the Judiciary. And I know of many focus-group meetings held, by those responsible for formulating and articulating the APJR, with judges, court personnel, civil society groups, executive branch officials, and with

academics and students.

There was also – and still is – a very real willingness to learn from the experience of other countries. This I found particularly refreshing when I first became involved with the APJR back in 2001. For one of the more frustrating experiences I had in Indonesia in my interactions with Indonesians on the issue of judicial reform in those days was the extreme reluctance – if not outright refusal – to acknowledge that the experience of other countries might be helpful and relevant to Indonesian thinking and efforts with respect to judicial reform. However, I want to note here a fact: in late 2003 the Chief Justice of the Supreme Court of Indonesia announced the adoption by the Supreme Court of a set of really impressive Blue Prints for Reform of the Indonesian Judiciary. The model – and in an important way the impetus -- for these Blue Prints was the APJR, which had been shared with them back in 2002.

However, I want to inject here a note of caution about the extent to which the experiences of other judiciaries can be drawn upon. For it is very clear to me that ultimately justice sectors are home-spun affairs and touch the core of countries' sovereignty and dignity. While legal systems and institutions may and do borrow heavily from others, local contexts are decisive. And this has clear implications for reform agendas.

The NZ Chief Justices Conference that Justice Panganiban and I attended in 2001 brought this point home to me in an interesting way. At one of the sessions, a number of chief justices described challenges their judiciaries faced and initiatives they were undertaking to deal with them. Among the speakers were the Chief Justice of the federal courts in Australia

and the Chief Justice of Indonesia. The image that came to my mind when listening to the various accounts was that of car makers talking about the next year's model and the changes being proposed. The Australian Chief Justice seemed to me to be talking about a BMW. The next year's model was going to have an extra couple of inches of interior space without increasing the exterior dimensions of the vehicle. The hood was going to be sleeker and the quality of the leather was going to be upgraded in all models. Now, the peculiar thing about the Chief Justice of Indonesia's speech was that it conjured up a very similar image: it was as if he were talking about tweaking a BMW model. But the "reality" was that the vehicle he was driving was a dilapidated old car with major engine problems, severe rusting and parts held together through clever improvisations. Moreover, there was no fuel – in the form of sustained support from the legislative and executive branches. How could such a car run at all, even if it had a willing driver in the seat? This brought home to me fairly forcefully the need to build reform programs around solid and realistic self-assessment, and the fact that there are real limits to how far the efforts of one judiciary in upgrading itself are likely to be of relevance to judiciaries elsewhere. Now, I want to hasten to add that in the case of Indonesia, the Blueprints I mentioned a minute ago were in fact the product of a superb iterative process of dialogue between the judiciary and elements of civil society.

The second aspect of the APJR that I want to pay tribute to is the fact that Chief Justice Davide was prepared to look outside the court for assistance in managing the program. Now, I acknowledge that there will be some within the judiciary who are likely to question the involvement of non-judiciary personnel. And clearly, there is an indispensable need for the judges and court personnel of the judiciary to be active participants in any program that seek to reform the institution that they are a part of. For ultimately the men and women who make

up the judiciary *are* the judiciary. During the course of the preparation of the project that the World Bank is honored to support in furtherance of the APJR, we constantly stressed the importance of having court personnel being fully involved in, and assuming leadership for, its design and its implementation. At the same time, however, managing the judiciary requires skills that are simply not in all cases unique to the judiciary, but rather are common to many large organizations. For example, many large hospitals around the world these days are run by professionals who are not doctors but rather have backgrounds of managing large institutions. And the same is true of running programs of institutional reform: while of course institutional reform is ultimately all about the particularities of individual organizations, there are many skills – for example, financial, administrative, human resource, and change management skills -- that apply to many large organizations. And finding and bringing such skills into a reform program is plain commonsense. My assessment of the Program Management Office for the APJR is that it stands out as "best practice". While it should, in line with the evolving nature and course of the reform program, regularly assess itself and be assessed by the leadership of the Philippine judiciary with a view to ensuring it provides optimal service, for me it is a fact that the Program Management Office of the Philippine judiciary is a model that other countries would be really well served if they emulate it. The fact that it has been visited by officials from many countries is a testament to its reputation. I hear, too, that project offices in other countries implementing non-judicial projects also now want to visit the Program Management Office to observe good practice at first hand.

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I now want to turn to some issues that I think should be considered by the judiciary as implementation of the APJR proceeds. And I will also touch on some issues relevant for the other pillars of government to consider – for, as you will recall, it is my firm view that judicial

reform is ultimately not just a matter for the judiciary alone to be concerned with: independence of the judiciary does not imply the absence of appropriate links between the judiciary and the executive and legislative parts of government.

First, I think it important to move from a thought process that treats reform as a special initiative to a mindset that views it as a permanent and continuing feature of good management. I do not claim to be a change management expert in any sense at all and so will not dwell on this point. But I think it obvious to all of us that the demands on the judiciary and the challenges faced by the judiciary are constantly evolving, in line with evolving economic, political, social and technological shifts and expectations in the country. The judiciary is certainly a golden thread in the fabric of most modern societies; but that fabric is constantly adjusting. A management philosophy that views its task as dealing with a static entity is one that will ultimately ill serve that organization and its stakeholders. In that sense, the APJR should not be viewed as a program to be found in a year 2000-and-something publication, but rather as an evolving plan for, and key instrument in, the management and operation of the Philippine judiciary -- in pursuit of what indeed is a timeless vision for the judiciary: that so eloquently articulated by Chief Justice Davide in the Davide Watch.

Second, the judiciary needs to make a decisive shift towards a computer technology-based organization. I fully recognize the fact that the APJR places a significant emphasis on upgrading the courts' information and communications systems technology – which is entirely welcome. And I also recognize that funding is a major issue. But my sense is that the court has not yet made the psychological leap that is required – and which is the real barrier to the shift I refer to. Part of this is a generational problem – I say this with a lot of trepidation and

respect to this very distinguished audience! Although I like to think of myself as still young, this is wishful thinking! I observe my children, and I know they live in a world rather different from mine. Among the more obvious signs of this is the facility with which they handle computer software and their reliance on them for so much of what they do. I think all of us in this room know what I'm talking about – and know I'm right about this technological gap. But our generation's habits and ignorance can no longer justify running such a fundamentally important public service as the judiciary on what amounts to a manual basis. However, I want to acknowledge that a great deal of thought has gone into the APJR by way of envisioning how the integrative power of information and communications technology (ICT) can be harnessed both to strengthen the efficiency of the judiciary, and to make judicial services more accessible to the public. I know also that among the members of the Bench there are passionate advocates of ICT in the service of judicial service delivery. I know, too, that you have already taken the first steps – for example through your electronic judicial library and the digitization of court records - in showing the direction you want to take. However, my suggestion is that the APJR is a window of opportunity – as you embark on the next stage of your reform effort – to examine even more deeply how ICT can best serve to move the Philippine judiciary into the front ranks of the world's judiciaries, not least by integrating ICT into all aspects of planning, from court administration and budgeting to the very design of your court buildings and other infrastructure.

Third, there continues to be a real need to take a hard look at how the judiciary is resourced for the carrying out of its mandate, including the ever-present issue of highly constrained budgetary envelopes that afflicts public services in most countries in the world. This is not the occasion and nor am I remotely qualified to talk about the Philippines' public

expenditure priorities. So I will limit myself to three observations/comments this issue:

1. In many countries the expansion of the private sector has posed a significant challenge for the public sector to attract and retain the best and the brightest. I first went to Indonesia in 1981. In those days the main employers were the civil service, the armed forces and the oil and gas sector. The civil service was able to attract many of Indonesia's most talented individuals, in part because of the lack of opportunities elsewhere in the economy. By 1997, when I returned to live there, the situation had changed very significantly. The Suharto years were overwhelmingly years of major economic strides forward. Particularly striking was the growth and diversification of the private sector. The disparities in income opportunities between the private and public sectors were large and growing. And the ability of the public service to recruit and retain people of the highest caliber was increasingly under stress. And the disparities in income between those in the private sector and those in the public sector were almost certainly a factor in the increasingly poor governance situation within the public service, including worsening corruption. Indonesia is far from the only country with this experience. Indeed, what I call the quality challenge facing the public sector is perhaps one of the most difficult developmental challenges in the world today. A new paradigm for the staffing and delivery of public services may well be in order.

2. Wish-lists are great -- I'm often struck by how often so much of the content of State of Union addresses in the US is about such lists -- but what is also needed is a hard sense of realism. There are choices to be made, priorities to be established. The judiciary is of course not the only indispensable public service. Public investment in health and education, for example, is a developmental imperative. However, when considering how much to invest in the judiciary, it seems to me entirely relevant to note that in a democracy such as that of the Philippines, the judiciary is in a fundamental way the anchor of that democracy and a powerful force for stability. While there are many people in the US, for example, that are bitter about the outcome of the Supreme Court of the United States case concerning the Florida balloting in the 2000 presidential election, it seems to me difficult not to appreciate the fact that there was an institution to whom one could turn in extremis to bring about a peaceful resolution to an acutely politically charged state of affairs, in which no less an issue than the election of the President of the United States of America was at issue.

Let me give another example of what I see as the potential stabilizing

power of the judiciary. In multi-religious, multi-ethnic, multi-lingual countries, the judiciary is increasingly seen as a potentially critical force for the protection of the rights of minorities, since electoral and administrative processes alone are often not sufficient for this. In Indonesia, the World Bank is currently supporting a program intended to assist communities rebuild their lives in post-conflict situations. One challenge we – the Indonesians and ourselves – faced in designing the project was how to avoid the situation where the very assistance being provided doesn't become the cause of more conflict: allegations of misappropriation or misuse of public funds provided by the project becoming the trigger for renewed communal tensions as people see – rightly or wrongly – the hand of communal discrimination behind the alleged abuses. So there is a significant focus in the project on how to provide trustworthy dispute resolution and law enforcement mechanisms. It is the fact that Indonesian justice sector institutions are simply not trusted enough by communities that makes this the problem that it is. While it would clearly be claiming too much to say that a judiciary trusted in the land, and easily accessible to communities throughout that land, would be a decisive force in preventing communal tensions from degenerating into violence, the absence of such is certainly is a contributing force of social fragility.

3. My final comment on the issue of how the Philippine judiciary is resourced for carrying out its mandate concerns the role of local governments in helping resource the judiciary, typically in the form of providing building space. I have no doubt that local governments overwhelmingly step in to assist the judiciary on the basis of entirely appropriate considerations. However, the potential that arises for conflicts of interest should be of concern to the judiciary and policy makers. Of course the courts are also ultimately dependent on the other pillars of government at the national level for funding. But at the local level, where professional and public service communities are often small and mingle on a daily basis, I think the potential for a conflict of interest in situations where the courts are asked to rule on matters concerning the rights or obligations or behavior of local officials, is simply different and more real. This is an admittedly difficult issue, more especially in a time of significant budgetary constraints. And I know that this is an issue that is on the APJR agenda. But it is one of those agenda items that I think warrants a higher profile, as it ultimately speaks to one of the key challenges the judiciary faces: justice at the local level.

This brings me to the fourth issue that I think should be considered by the judiciary as implementation of the APJR proceeds, namely the question of investing in court premises. As

many of you will know, the project currently being supported by World Bank financing includes the rehabilitation of 3 court houses. Court premises are obviously a major issue for the judiciary: they are where court personnel work and they are the tangible and visible aspect of the judiciary. I have been lucky enough to visit a number of court houses in the Philippines in the course of the past 4 years. And I have to say many are in quite shocking condition. And I have to say I admire the dignity maintained by many of the judges I have met when the surroundings in which they work are anything but dignified. I think I can say with confidence that there is clearly an absolute need to upgrade court premises throughout the Philippines. I remember, for example, visiting the courts in Cagayan d'Oro. The place had somewhat the feel of a railway terminal – a lot of to-ing and fro-ing, with a lot of people going in all directions. Going down the main corridor, with court rooms on the right and court administration offices on the left, I noticed a lot of scruffy looking cardboard boxes, full of papers and other stuff, all along the left wall, leaving little room for the constant traffic of people going up and down the corridor to pass. I asked one of the judges showing us around why these boxes were there. Of course the answer was a lack of filing and storage space. But what shocked me was that he also added that most of the boxes were full of evidence material concerning ongoing cases! So, there is no doubt that court premises need to be improved upon and it is tough to begrudge devoting as much as possible to doing just that. But in deciding what is possible, I think a key factor to be taken into consideration is accessibility of court premises to ordinary people. This is a very real challenge in countries like the Philippines, which consists of many islands and even more isolated communities. To my way of thinking, investing in mobile courts – buses and boats – is the way to go. The judiciary, to its great credit in my view, has already invested in a mobile court here in metro Manila, and is in the process of bringing into operation two more. My advice is: many more. And if that means less

for the construction of new premises, so be it. Justice for the poor has many dimensions. A very real one for many poor people is physical access. Bringing court premises to the people would make a very powerful statement by the judiciary that it is indeed committed to being an institution that is there for all the people.

My fifth comment concerns the special challenge of religious minorities in the Philippines. I think I'm correct to say that 10% of the population of this country are Muslims, of whom a significant percentage reside in Luzon, mostly in and around Metro Manila. This raises the issue of sharia courts. Let me say straight away that there is a great deal that I do not know about the functioning of sharia courts in the Philippines: I do not know how many Sharia courts are functioning in the country; how heavy are their case loads; whether, if they are very light, this is an indication of lack of trust or credibility; or a question of difficulty of access -- or both; or, if the case load is very heavy, whether this is an indication of under-resourcing. Nor do I have figures on the representation of Muslims in the judiciary and justice sector more generally: the proportion of Muslims in the judiciary across the country; in the Metro Manila area; among prosecutors, police, correctional services, probation services, and other branches of the justice sector, or within the higher judiciary. I do think that the existence of sharia courts in an overwhelmingly Catholic country says something very positive about the Philippines. However, my sense is that it is important to maintain, and perhaps increase, efforts on the part of the upper echelons of the judiciary to ensure that the personnel of the sharia courts feel themselves as an fully integral part of the Philippine judiciary. I can only draw on one experience to explain this "sense" of mine: when I visited the court in Cagayan d'Oro back in 2001, a meeting was arranged for myself and my colleague Waleed Malik, who some of you know, to meet two judges of a sharia court. We met in our hotel; and it was a

somewhat uncomfortable meeting. The problem was not one of awkwardness between us: there was little to none of that. It was partly what the two gentlemen had to say: sentiments of marginalization and being outsiders. And it was partly the very body language of the meeting: a lack of comfort on their part in a milieu of judges present for the centennial celebrations of the court. I recognize it is risky to draw conclusions from one meeting. But it was troubling.

My final comment in connection with the APJR concerns continuing education and professional development. I simply want to applaud the efforts of Justice Herrera and others in the judiciary in making this a central part of the reform agenda. Being a legal practitioner, like being a medical doctor, requires a commitment to continuous learning. The law deals with the real world. The decisions of judges have real consequences. For example, many decisions have significant economic or commercial consequences for society. I'm not implying in any sense here the need to have a pro-business bias. Far from it. But because there are such consequences – often far reaching, it is absolutely incumbent that judges dealing with commercial issues or issues that having a commercial consequence be as well informed as possible about commercial realities, and fully aware of the likely consequences of their decisions. In Indonesia there is a criminal case coming up for trial concerning allegations of the polluting of waters in Sulawesi by the Indonesian subsidiary of a large foreign mining company, in which it is claimed that the alleged pollution caused what appears to be a highly abnormal incidence of cancer outbreaks in the neighborhood of the mine. The presiding judge of the local court apparently openly fretted about her competence to understand the complexities of the environmental issues at stake. The Supreme Court very recently heeded her concerns by replacing her on the case by a judge with considerable experience in trying environmental cases and who had recently attended an advanced course on environmental law

issues overseas. I think this is entirely appropriate: quality outputs require quality inputs.

Finally, a few words about the broader justice sector. The judiciary does not exist in isolation from that broader community. To repeat what I just said: quality outputs require quality inputs. In Indonesia, the courts, as I have implied earlier, have come in for a great deal of criticism: criticism for making bad decisions that are not explained or explainable. But often there is an explanation, and moreover an explanation that has little or nothing to do with the court's competence or probity, but rather to do with poorly conceived, badly drafted legislation or regulation, or with the competence or probity of lawyers or prosecutors or the police. The World Bank supported a judicial reform project in the country of Georgia. While viewed as a successful project – by the way, the central feature of the project was the firing of the entire judiciary! – it was broadly recognized that the failure to embark on parallel reform of the police and prosecutorial service was a significant limitation to the project's impact on the quality of formal justice in Georgia. Back to Indonesia for the last time: a major part of the World Bank's assistance program to Indonesia is centered around community development projects, at the core of which is the giving to local communities the right to determine what development grants to such communities should be spent on. However, what became very clear to us in the course of supporting these community development projects was that law enforcement authorities in Indonesia were often failing the communities they are meant to serve. You have to expect that abuses may occur in projects involving the use of public funds. And they all too often do: one consequence of independent monitoring and introducing reasonably effective complaint-raising mechanisms is that abuses – and allegations of abuses – are exposed with depressing frequency. But the Indonesian law enforcement authorities have to a significant extent miserably failed to be a factor in dealing with such abuses. Part of this

is explained by a lack of resources: just the travel time it takes to reach many communities from the local prosecutor's office or police station – and vice versa – explains a lot. But usually once contact between the law enforcement authorities and village complainants is made, another problem often begins: one in which the police or prosecutors seeks to extract some "reward" from the complainants in return for getting involved. The result is that people avoid the police – and that either abuses go unchecked, or people take "the law" into their own hands. The resulting climate of impunity, mistrust and lack of respect for public institutions is in some ways the biggest challenge facing Indonesia today.

As I have indicated earlier, I think the Philippines has much to be proud about with respect to its judiciary. Indonesia and other countries in the region, and in deed in other parts of the world have much to learn from the Philippine judicial reform program. So, I suspect, do the other institutions of the Philippine justice sector. Ultimately it comes down to have the trust and respect of the people such institutions are there to serve: the people of the Philippines. Respect: it has to earned every day. It a challenge that all public institutions face, those of the Philippines being no exception.

Chief Justice Davide: I have to tell you I do have somewhat of a personal interest in the fate of judiciaries in Asia. My wife comes from Myanmar and from a family of very distinguished jurists, of whom two were chief justices of Burma in the early years after independence. From everything I have heard and read, the judiciary of Burma was held in very high regard in those early years. That judiciary was smashed, along with all democratic institutions, when the military seized control of the country in 1963. Judiciaries are not impervious to political winds. They cannot assure the survival of decent government and they

cannot assure their own survival. But one thing seems fairly clear to me: there can be no just government in the absence of a just judiciary. That is why all efforts to bring about or maintain just judiciaries are so worth while. You have been an inspiration to me and to many many others concerned with the well-being of judiciaries. Thank you for that. I wish you happiness in your retirement. But I hope your retirement will be only from the burdens that come with being Chief Justice. I hope you will continue to take a leadership role in promoting judicial reform in Asia and beyond. If there is a way we in the World Bank can support you in that endeavor, we will find that way. Thank you all very much.

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* **An Esteemed Friend of the Philippines**
by
Justice Artemio V. Panganiban

I have divided my introduction of our guest speaker into two parts. *One,* who is Anthony Gerald Toft? And *two,* why is the World Bank, the institution that he works with, relevant to the judiciary? More pointedly, why is the World Bank interested in helping the judiciaries of the different countries on this planet, including the Philippines?

For the sake of clarity and good order, I shall reverse the order of the topics and attempt an answer to the second question ahead of the first.

The common joke is that a bank is a fair-weather friend: one that would happily hand an umbrella to a customer on a fine sunny day, but would abruptly withdraw it when the rain pours and the floods rise. But the World Bank (WB) is not a typical commercial bank that justifies its existence by the amount of dividends it distributes to its shareholders. Created as a specialized United Nations agency during the Bretton Woods Conference in 1944, it is more precisely an international developmental institution whose mission is "to promote economic growth and reduce poverty in its member states." For that reason, probably more descriptive of its functions from the layman's view is its other name -- International Bank for Reconstruction and Development.

Why, then, should it be relevant to the judiciary and to the rule of law? WB Country Director Joachim von Amsberg gave us an idea during his Opening Remarks. A World Bank publication, *The Legal and Judicial Sector Manual* published in 2002, provides the definitive answer. It observes that "[o]ne of the critical lessons learned from the East Asian financial crisis and the collapse of some of the Eastern European transition economies in the 1990's was that, without the rule of law, economic growth and poverty reduction can be neither sustainable nor

equitable." Indeed, a well-functioning judicial system enables the State to regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments and other transactions.

To engender investments and jobs and thus promote economic growth, a trustworthy judiciary provides stability by predictably and uniformly interpreting and applying the law to identical or similar circumstances. Integrity, independence, transparency and accountability are highly prized judicial values that encourage firms and individuals to enter into mutually beneficial businesses, confident that rights to property would be recognized and contracts enforced. Equally important, an effective and efficient judicial system protects citizens from the abuses of government and safeguards the rights of the poor.

Studies in Brazil and Peru showed that an improperly functioning judiciary could significantly reduce economic growth and foment poverty. Econometric analysis yields a strong association between economic development and the effectiveness of legal institutions: a one percent increase in the effectiveness of these institutions correlates with a 4.75 percent increase in GNP per capita. (Judicial Sector Study for the Philippines, a World Bank publication, May 31, 2000)

While defined in various ways, the rule of law prevails where (1) the government itself is bound by the law; (2) every person in the society is treated equally under the law; (3) the human dignity of every individual is recognized and protected by the law; and (4) justice is accessible to the rich as well as to the poor. Along these four rule-of-law avenues, the World Bank has, during the last decade, dedicated considerable effort and resources to helping modernize and reform the judiciaries of the world. It has done so with the full realization that in a democracy, economic development and rule of law are inextricably intertwined in the tapestry of good governance.

Consistent with this inexorable alchemy of law and economics, the World Bank and other international developmental institutions, like the United Nations Development Programme and the Asian Development Bank, have thus banded together and combined their efforts to support, through grants and loans, the Action Program for Judicial Reform -- the centerpiece of the Chief Justiceship of the Honorable Hilario G. Davide Jr.

Having answered the second question, let me now proceed to the first: who is Anthony Gerald Toft? To be sure, his sparse one-page official curriculum vitae does not say much, other than these facts:

1. He is the chief counsel for East Asia and the Pacific Region of the World Bank.

2. Except for brief stints at private law practice in New York and Indonesia, he has spent much of his professional life -- from 1982 to the present -- as counsel of various World Bank programs in India, Myanmar, South Korea, Thailand, Nigeria, the Philippines, the former Yugoslavia, Poland, the former Soviet Union, China, Papua New Guinea, Vietnam, Mongolia and Indonesia.

3. He has a rare combination of ivy-league alma maters: Oxford for his basic law degree; and Harvard, his master's in law.

4. He is a citizen of the United Kingdom.

On a more personal level, let me quickly add, however, that I first met our guest lecturer some four years ago on October 4-8, 2001, during the 9th Conference of Chief Justices of Asia and the Pacific, held in Christchurch, New Zealand. As a guest speaker during that top-level judicial conference, he spoke glowingly of our Action Program for Judicial Reform (APJR), and said that if any country wanted World Bank assistance for its judicial reform initiatives, it should take its bearings from and use our APJR as the model of a viable and sustainable reform program.

As a Filipino citizen, I was singularly proud to be present at that Christchurch Conference and to hear the unsolicited tribute to our then still emerging APJR. Indeed, after his speech, many Chief Justices of several Asian countries approached me to inquire further on our APJR

and how, like us, they too could secure international support for their respective judiciaries.

The second time I touched base with our distinguished guest was on May 31 to June 2, 2005, when a Supreme Court delegation -- composed of Justice Angelina Sandoval-Gutierrez, Justice Antonio T. Carpio, Justice Adolfo S. Azcuna, Director Evelyn Toledo-Dumdum and I -- met with him and several other bank officials at the WB head office in Washington, DC. As we reviewed the progress of our judicial reform program, I noted that his enthusiasm and support for the Philippines had not diminished one bit; in fact, I believed it had intensified.

His presence today, in response to our invitation for a lecture, is the best testament to his lasting confidence in the long-term success of our APJR.

Distinguished guests, ladies and gentlemen, may I invite you to rise as I present to you our guest lecturer, a legal scholar from Oxford and Harvard, a career official of the World Bank, and an esteemed friend of the Philippines, Mr. Anthony Gerald Toft.