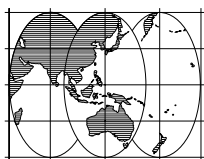


Beijing Statement

OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION



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INTRODUCTION

Every two years since 1985, a conference of Supreme Court Chief Justices from the Asia Pacific region has been held in cooperation with the Judicial Section of LAWASIA, the Law Association for Asia and the Pacific. Since its inception, the conference has served as a useful forum for sharing information and discussing issues of mutual concern among the Chief Justices of the region.

At the 6th Conference of Chief Justices, held in Beijing in August 1997, 20 Chief Justices first adopted a joint Statement of Principles of the Independence of the Judiciary. This Statement was further refined during the 7th Conference of Chief Justices, held in Manila in August 1997. It has now been signed by 32 Chief Justices throughout the Asia Pacific region.

FOREWORD

The Beijing Statement of Principles of the Independence of the Judiciary finds its origins in 1982 in a statement of principles formulated by the Law Association for Asia and the Pacific (LAWASIA) Human Rights Standing Committee and a small number of Chief Justices and other Judges at a meeting in Tokyo (“the Tokyo Principles”). The decision to formulate the current Statement was made at the 4th Conference of Chief Justices of Asia and the Pacific in Perth, Western Australia in 1991. The Secretary of the LAWASIA Judicial Section, The Honourable Justice R D Nicholson, and I undertook the drafting of the Statement, a first draft of which was presented to the 5th Conference in Colombo, Sri Lanka, in 1993. In light of comments received at that conference and subsequently, and following further consideration at the conference in Beijing in August 1995, the Statement of Principles was adopted by the Chief Justices from 20 countries in the Asia Pacific. A revised version of the Statement as it is presented here was adopted in its final form at the 7th Conference of the Chief Justices in Manila in August 1997. The Statement has now been signed and subscribed to by 32 countries in the Asia Pacific region.

The Statement is a tribute to the determination of all signatories to leave aside differences in both legal and social traditions to formulate a single Statement on the Independence of the Judiciary.

The Honourable David K Malcolm
Chairman, Judicial Section, LAWASIA
Chief Justice of Western Australia

In every region of the globe, countries are wrestling with the complex challenges of legal and judicial reform, including the key question of developing and refining the role and functions of the judiciary. In this regard, the coming together of 32 Supreme Court Chief Justices from throughout the Asia Pacific region to issue a joint statement on the independence of the judiciary represents a significant step forward in addressing a crucial worldwide issue.

The Asia Foundation’s role in this effort dates back to 1984, when The Asia Foundation’s Senior Advisor for Judicial Administration and Judicial Systems, Judge J Clifford Wallace of the US Ninth Circuit Court of Appeals, recommended the establishment of a Conference of Chief Justices of Asia to provide a forum for interaction and cross-fertilization on important common issues. At the request of The Asia Foundation, the Judicial Section of LAWASIA agreed to be a co-sponsor. The first conference was held in Malaysia, in August 1985, and conferences (later adding the Pacific nations) have been held every two years since, *most recently in the Philippines in 1997*. As the conference series has developed, it has become increasingly more effective both in its information-sharing role and in taking on important issues affecting legal development and reform in the region, as exemplified in the Chief Justices’ joint statement.

The Asia Pacific Chief Justices conference is now self-supporting, but The Asia Foundation is proud to have provided the necessary funding during its formative years to help the conference become established as an important regional forum. And we are extremely pleased now to have arranged for the printing of this important document.

William P Fuller
President, The Asia Foundation

PREAMBLE TO STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY

Beijing, 19 August 1995

Whereas the *Charter of the United Nations* the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination;

Whereas the *Universal Declaration of Human Rights* enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by the law;

Whereas the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* both guarantee the exercise of those rights, and in addition the *Covenant on Civil and Political Rights* further guarantees the right to be tried without undue delay;

Whereas the organisation and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality;

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles;

Whereas the 6th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors;

Whereas the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985, adopted the *Basic Principles on the Independence of the Judiciary* by consensus;

Whereas the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended the *Basic Principles on the Independence of the Judiciary* for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

Whereas on 17-18 July 1982 the LAWASIA Human Rights Standing Committee met in Tokyo, Japan and in consultation with members of the judiciary formulated a *Statement of Principles on the Independence of the Judiciary in the LAWASIA Region* (“the *Tokyo Principles*”) in the context of the history and culture of the region;

Whereas the 5th Conference of Chief Justices of Asia and the Pacific at Colombo, Sri Lanka on 13-15 September 1993 recognised that it was desirable to revise the *Tokyo Principles* in the light of subsequent developments with a view to adopting a clear statement of principles of the independence of the judiciary, and considered a first draft of a *Revised Statement of Principles on the Independence of the Judiciary* and requested the Acting Chairman of the Judicial Section of LAWASIA to prepare a second draft of the *Revised Statement* taking into account the views expressed at the 5th Conference of the Chief Justices and comments and suggestions to be made by the Chief Justices or their representatives; and

Noting that the 6th Conference of Chief Justices of Asia and the Pacific was held in Beijing in conjunction with the 14th LAWASIA Biennial, the primary object of which is:

“To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region.”

The 6th Conference of the Chief Justices of Asia and the Pacific:

Adopts the *Statement of Principles on the Independence of the Judiciary* contained in the annex to this resolution to be known as the *Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region*.

Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region

(As Amended at Manila, 28 August 1997)

INDEPENDENCE OF THE JUDICIARY

1. The Judiciary is an institution of the highest value in every society.
2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.
3. Independence of the Judiciary requires that;
 - a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and
 - b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.
4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.
5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.
6. In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.
7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.
8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.
9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

OBJECTIVES OF THE JUDICIARY

10. The objectives and functions of the judiciary include the following:
 - a) To ensure that all persons are able to live securely under the rule of law;
 - b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
 - c) To administer the law impartially among person and between persons and the State.

APPOINTMENT OF JUDGES

11. To enable the judiciary to achieve its objectives and perform its functions, it is essential that judges be chosen on the basis of proven competence, integrity and independence.
12. The mode of appointment of judges must be such as will ensure the appointment of persons who are best qualified for judicial office. It must provide safeguards against improper influences being taken into account so that only persons of competence, integrity and independence are appointed.
13. In the selection of judges there must be no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.
14. The structure of the legal profession, and the sources from which judges are drawn within the legal profession, differ in different societies. In some societies, the judiciary is a career service; in others, judges are chosen from the practising profession. Therefore, it is accepted that in different societies, different procedures and safeguards may be adopted to ensure the proper appointment of judges.
15. In some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Services Commission has been seen as a means of ensuring that those chosen judges are appropriate for the purpose. Where a Judicial Services Commission is adopted, it should include representatives of the higher Judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained.

16. In the absence of a Judicial Services Commission, the procedures for appointment of judges should be clearly defined and formalised and information about them should be available to the public.

17. Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience.

TENURE

18. Judges must have security of tenure.

19. It is recognised that, in some countries, the tenure of judges is subject to confirmation from time to time by vote of the people or other formal procedures.

20. However, it is recommended that all judges exercising the same jurisdiction be appointed for a period to expire upon the attainment of a particular age.

21. A judge's tenure must not be altered to the disadvantage of the judge during his or her term of office.

22. Judges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct that makes the judge unfit to be a judge.

23. It is recognised that, by reason of differences in history and culture, the procedures adopted for the removal of judges may differ in different societies. Removal by parliamentary procedures has traditionally been adopted in some societies. In other societies, that procedure is unsuitable; it is not appropriate for dealing with some grounds for removal; it is rarely, if ever, used; and its use other than for the most serious of reasons is apt to lead to misuse.

24. Where parliamentary procedures or procedures for the removal of a judge by vote of the people do not apply, procedures for the removal of judges must

be under the control of the judiciary.

25. Where parliamentary procedures of procedures for the removal of a judge by vote of the people do not apply and it is proposed to take steps to secure the removal of a judge, there should, in the first instance, be an examination of the reasons suggested for the removal, for the purpose of determining whether formal proceedings should be commenced only if the preliminary examination indicates that there are adequate reasons for taking them.
26. In any event, the judge who is sought to be removed must have the right to a fair hearing.
27. All disciplinary, suspension or removal proceedings must be determined in accordance with established standards of judicial conduct.
28. Judgements in disciplinary proceedings, whether held in camera or in public, should be published.
29. The abolition of the court of which a judge is a member must not be accepted as a reason or an occasion for the removal of a judge. Where a court is abolished or restructured, all existing members of the court must be reappointed to its replacement or appointed to another judicial office of equivalent status and tenure. Members of the court for whom no alternative position can be found must be fully compensated.
30. Judges must not be transferred by the Executive from one jurisdiction or function to another without their consent, but when a transfer is in pursuance of a uniform policy formulated by the Executive after due consultation with the judiciary, such consent shall not be unreasonably withheld by an individual judge.

JUDICIAL CONDITIONS

31. Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed.
32. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

JURISDICTION

33. The judiciary must have jurisdiction over all issues of a justiciable nature and exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
34. The jurisdiction of the highest court in a society should not be limited or restricted without the consent of the members of the court.

JUDICIAL ADMINISTRATION

35. The assignment of cases to judges is a matter of judicial administration over which ultimate control must belong to the chief judicial officer of the relevant court.
36. The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.
37. The budget of the courts should be prepared by the courts or a competent authority in collaboration with the

courts having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.

RELATIONSHIP WITH THE EXECUTIVE

38. Executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge or judges.
39. Inducements or benefits should not be offered to or accepted by judges if they affect, or might affect, the performance of their judicial functions.
40. The Executive authorities must at all times ensure the security and physical protection of judges and their families.

RESOURCES

41. It is essential that judges be provided with the resources necessary to enable them to perform their functions.
42. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.

EMERGENCY

43. Some derogations from independence of the judiciary may be permitted in times of grave public emergency which threaten the life of the society but only for the period of time strictly required by the exigencies of the situation and under conditions prescribed by law, only to the extent strictly consistent with internationally recognised minimum standards and subject to review by the courts. In such times of emergency, the

State shall endeavour to provide that civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts and detention of person administratively without charge shall be subject to review by courts of other independent authority by way of *habeus corpus* or similar procedures.

44. The jurisdiction of military tribunals must be confined to military offences. There must always be a right of appeal from such tribunals to a legally qualified appellate court of tribunals to a legally qualified appellate court or tribunal or other remedy by way of an application for annulment.

It is the conclusion of the Chief Justices and other judges of Asia and Pacific listed below that these represent the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

SIGNATORIES AT BEIJING, 19 AUGUST 1995

The Hon Sir Gerard Brennan AC KBE
Chief Justice of Australia

The Hon Mr Justice A. T. M. Afzal
Chief Justice of Bangladesh

HE Mr Wang Jingrong
Vice-President, Supreme People's Court of the
People's Republic of China
(Representing HE President Ren Jianxin,
President of the Supreme People's Court)

The Hon Sir Ti Liang Yang
Chief Justice of Hong Kong, SAR

The Hon Shri Justice S. C. Agrawal
Justice of the Supreme Court of India
(Representing The Hon Mr Justice A. M.
Ahmadi, Chief Justice of India)

The Hon Justice S. H. Soerjono
Chief Justice of Indonesia

The Hon Yun Kwan
Chief Justice of the Republic of Korea

The Hon D. Dembereltseren
Chief Justice of Mongolia

The Hon U Aung Toe
Chief Justice of the Supreme Court of The
Union of Myanmar (Burma)

The Rt Hon Mr Justice Biswanath Upadhyaya
Chief Justice of Nepal

Monsieur Le Premier Président Olivier Aimot
Premier Président of the Court of Appeal of
New Caledonia

The Rt Hon Sir Thomas Eichelbaum GBE
Chief Justice of New Zealand

The Hon Mr Justice Sajjad Ali Shah
Chief Justice of Pakistan

The Hon Sir Arnold K. Amet
Chief Justice of Papua New Guinea

The Hon Andres R. Narvasa
Chief Justice of the Philippines

The Hon Justice Yong Pung How
Chief Justice of Singapore

The Hon Mr Justice P. R. P. Perera
Justice of the Supreme Court of Sri Lanka
(Representing The Hon Mr Justice G. P. S. De
Silva, Chief Justice of Sri Lanka)

The Hon Charles Vaudin D'Imecourt
Chief Justice of Vanuatu

The Hon Mr Justice Pham Hung
Chief Justice of Vietnam

Tiavaasue Falefatu Maka Sapolu
Chief Justice of Western Samoa

SUBSEQUENT SIGNATORIES:

The Hon Sir Timoci Tuivaga
Chief Justice of Fiji

The Hon Kim Yong Joon
President of the Constitutional Court of Korea

The Hon Tun Dato Sri Mohd Eusoff b. Chin
Chief Justice of Malaysia

The Hon Justice V Allear
Chief Justice of the Republic of the Seychelles

The Hon Sir John Muria
Chief Justice of the Solomon Islands

The Hon Nigel Hampton
Chief Justice of Tonga

SIGNATORIES AT MANILA, 28 AUGUST 1997:

The Hon Richard Brunt Lussick
Chief Justice of the Republic of Kiribati

The Hon Daniel Cadra
Chief Justice of the High Court
(Representing the Hon Allan Fields Chief
Justice of the Marshall Islands)

Chief Justice Sir Gaven Donne
Chief Justice of Nauru and Tuvalu

Chief Justice Vyacheslav M. Lebedev
Chief Justice of the Supreme Court Russian
Federation

SUBSEQUENT SIGNATORIES:

The Hon Toru Miyoshi
Chief Justice of Japan
(Subject to reservation in attached Statement,
as regards Article 9.)

The Hon Justice Sadka Makkamakkul
President of the Supreme Court of Thailand

THE OPINION OF THE CHIEF JUSTICE OF JAPAN

Concerning “Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region”

The independence in exercising the judicial function is firmly guaranteed to all the judges in Japan by the Constitution along with their compensation and status. This constitutional guarantee turns it unnecessary for the judges to make efforts to improve their working and economic conditions unlike workers in other professions, standing on an equal footing with their employers, who need to demand improvement against them. There are, therefore, no rights for the judges to form or join a labour union.

On the other hand, regarding the question of whether or not the judges are able to “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate” other than a labour union, it is understood as follows. The judges are especially required to be politically neutral to perform their duties, and it is also demanded that not only trial and judgement should be fair but also attitudes of judges must be relied on to be fair by the general public. Because of these conditions, the judges are not permitted to form or join an association that takes on a political coloration and arouses people’s suspicion about fairness. And it may cause danger of raising a doubt about political neutrality that the judges, who are firmly guaranteed their status and independence as mentioned before and enjoy their, so to speak, special status, “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.” To take into consideration the abovementioned factors, it is understood that there are some cases where those actions are deemed undesirable.

On the basis of the understanding that Article 9 of the Statement is not contrary to the law and system that are mentioned above, I express my agreement to “BEIJING STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION.”

ABOUT LAWASIA

LAWASIA is a professional association of representatives of Bar Councils and law associations, individual lawyers, law firms, and corporations principally from the Asia Pacific region. LAWASIA facilitates its members' participation in the fastest growing economic region in the world.

The Association provides an invaluable opportunity for lawyers to come together to exchange ideas and information on regional issues and to establish a network of working relationships in the dynamic Asia Pacific region.

LAWASIA's primary objective is to foster professional and business relationships between lawyers, businesses and government representatives in the region.

It also promotes the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

ABOUT THE ASIA FOUNDATION

The Asia Foundation is a private, non-government organisation dedicated to supporting programs that contribute to a peaceful, prosperous, and open Asia Pacific community. Drawing on four decades of experience in Asia, the Foundation collaborates with partners from the public and private sectors in the region to support through grants and other programs the development of institutions, leadership, and policy in four broad program areas: governance and law; economic reform and development; women's political participation; and regional relations.

With a network of 13 offices throughout Asia, an office in Washington DC and headquarters in San Francisco, the Foundation funds programs in these areas at both a country and regional level.

The Asia Foundation is funded by contributions from corporations, foundations, individuals, governmental organisations in the US and Asian, and an annual appropriation from the US Congress.