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JUDICIAL INDEPENDENCE: A LAWASIA REGIONAL PRESPECTIVE

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The Hon Justice Michael Kirby AC CMG[*]

A LAWASIA REGIONAL PERSPECTIVE

It is impossible for any lawyer, operating within the courts in one of the countries of the LAWASIA region, to have an appreciation of all of the issues of judicial independence and accountability throughout the region. Indeed, in the current fast-moving situation, it is difficult for a lawyer to keep fully abreast of all of the developments that are occurring in this respect in his or her own legal system. We live in fast-changing times. We are now much more in contact with professional colleagues in other societies, including those with judicial institutions different from our own. We can learn from each other. That is the basic purpose of this meeting. I congratulate LAWASIA for undertaking the meeting in Ho Chi Minh City. I take as

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my theme the principles stated in the International Commission of Jurists (ICJ) publication of the *Practitioner's Guide on International Principles on Independence and Accountability of Lawyers, Judges and Prosecutors* (2007) ("the International Principles").

My qualifications to express the opinions in this construction need to be stated at the outset. They include:

Before my recent judicial retirement, I was Australia's longest serving judicial officer, having been first appointed to judicial office in 1975 as a Deputy President of the Australian Conciliation and Arbitration Commission. Thereafter, I served in the Federal Court of Australia, the Court of Appeal of the Supreme Court of New South Wales; and on the High Court of Australia - Australia's highest appellate and constitutional court. In the course of my work in the courts, I was also involved in several issues relevant to judicial independence and accountability. I have also observed many of the changes that are occurring in my country, to alter features of the judiciary that had previously remained unchanged for many years, and many of them have also been challenged in England, from whose traditions the judiciary of Australia derived over centuries;
Between 1993-6, I also served as Special Representative of the Secretary General of the United Nations for Human Rights in Cambodia. In this position, I was mandated by the Secretary-General to conduct missions to Cambodia and to report upon Cambodia's progress in adhering to international human rights

treaties; upholding the principles of those treaties, including in respect of fundamental human rights; the rebuilding of the judicial institutions of Cambodia; and the re-establishment of an independent judiciary and legal profession.

Between 1995-6, I also had the honour to serve as President of the Court of Appeal of Solomon Islands. In the course of that work, I presided in appeals, sitting with judges from the region, including judges from Australia, New Zealand, Papua-New Guinea and Solomon Islands itself. This experience, which I relinquished upon my appointment to the High Court of Australia, gave me insights into the operation of the judiciary in Solomon Islands and the special needs of that judiciary having regard to the operation of a derivative culture; a derivative legal system; the impact of that system upon the particular cultural norms of Solomon Islands; and the limited resources that were available for the discharge of judicial duties.

Between 1999 and the present date, I have also served as Rapporteur of the Judicial Integrity Group, now established within the United Nations Office on Drugs and Crime (UNODC). This Group was responsible for adopting and refining the *Bangalore Principles of Judicial Conduct* which were revised at a round table meeting in which Chief Justices and Judges from common law and civil law countries convened at the Peace Palace, the Hague, in November 2002. The resulting *Bangalore Guidelines* were

subsequently endorsed by the General Assembly of the United Nations.

Finally, between 1995-98, I served as President of the International Commission of Jurists and before that as a member, later Chairman, of the Executive Committee and as a Commissioner of the global organisation most intimately concerned in the preparation of guidelines and principles relevant to the defence of the independence of the judiciary; the integrity of lawyers and prosecutors; and the maintenance of the rule of law. Several of the documents collected in the *International Principles* were adopted on the initiative of the ICJ, or with the participation of its Commissioners and staff. I pay a tribute to the work of the ICJ, over the years, in maintaining a steady focus upon the issues of the independence and accountability of the judiciary. By substantially adhering to its core concerns with the judiciary, the legal profession, the defence of the rule of law and human rights, the ICJ has played a vital role in the subject matters of this meeting. I also pay a tribute to the vital work of LAWASIA. During my entire judicial life I have been a member of this vital professional organisation.

In addition to these formal and institutional activities, I have engaged with numerous other bodies in activities in the Asia-Pacific region. These have included the Commonwealth Secretariat, the International Bar Association's Human Rights Initiative (HRI), National Bar Associations, Law Societies, Universities and other

bodies, focussing on the issues of judicial independence and accountability. As well, I have travelled widely in the region, have many friends and keep in close contact over these issues which are both of professional and personal concern to me.

Having described my credentials (such as they are), I turn to comment on a number of the issues for judicial integrity, independence and accountability that are worthy of note at this meeting in Vietnam. I will do this by reference to lessons learned, and experiences encountered, in the several capacities that I have just outlined.

LESSONS AND EXPERIENCES

In the Australian judiciary: Within the Australian judiciary, judges enjoy institutional and individual protection against extraneous interference in the judicial activities of judges, whether federal, State or Territory appointees. The total number of judicial officers in Australia is about a thousand. Of these, half are magistrates and the other half are judges of courts organised in their jurisdictionary hierarchies: District or County Courts; State and Territory Supreme Courts; national federal courts (the Federal Magistrates Court; the Family Court of Australia and the Federal Court of Australia); and the High Court of Australia. In addition to these courts, there are a number of important, independent tribunals in every jurisdiction. The most important national tribunals include the Australian Industrial Relations Commission, now Fair Work Australia

(successor to the Australian Conciliation and Arbitration Commission to which I was first appointed in 1979 - an industrial relations body); the Administrative Appeals Tribunal - a body with duties of legal and merits review of administrative decisions; and the Refugee Review Tribunal and the Migration Review Tribunal. There are also anti-discrimination and human rights protecting tribunals in the several jurisdictions of Australia.

The most important feature of all these bodies is that they operate within a strong legal culture, supported by the independent legal profession. Within their several jurisdictions, they act independently and without extraneous interference from Ministers, officials or powerful interests. They are subject to processes of appeal and judicial review. Almost without exception, they always perform their adjudicative functions in public. They enjoy, for the most part, considerable powers of self-regulation in respect of the expenditure of appropriated funds for the performance of their duties. In the assignment of individual members to perform their duties, most such bodies are independent: the assignment being performed by the presiding member or by concurrence of all members (as is the case in the High Court of Australia).

Constitutional provisions guarantee the independence of the federal judiciary. After appointment, such judicial officers serve with tenure until the designated birthday identified in the Constitution (in the case of the High Court) or in federal, State and Territory legislation

(in the case of other courts and of tribunals). For the most part, judicial officers serve to the age of seventy years although some appointments are to age sixty-five and others are to age seventy-two with possible extension to seventy-five. I myself retired in February 2009 not long before attaining the age of seventy years. My proudest boast in more than thirty years of service as a judicial officer is that I never had any interference, or the suggestion of interference, in the performance of my adjudicative functions.

Nevertheless, within Australia, there are particular issues concerning judicial independence and accountability that have come before the courts and which deserve mention. These include:

(1) *Non-reappointment*: In the 1980s, there were some undesirable instances of the abolition of a federal tribunal and of State courts, resulting in the non-reappointment of members of such bodies (some having judicial title and rank) to a replacement tribunal. Such a course cannot occur in the case of federal courts and has generally not occurred in respect of federal tribunals (even where, as in one case, the tribunal was held unconstitutional and therefore of no legal validity). In cases that came before me judicially, in the New South Wales Court of Appeal, I endeavoured to uphold the legitimate expectation of retiring members of such abolished tribunals (in that case the State Court of Petty Sessions) to be considered without any unfair procedures for appointment to the

replacement court[1]. However, that decision was reversed on appeal by the High Court of Australia which upheld the absolute entitlement of the State to decide on all appointments to such State courts[2]. In direct consequence of that decision, an amendment was adopted to the State Constitution of New South Wales providing that, in the future, upon the abolition of any such court, members of the court would be offered appointment to a court of the same or higher status[3]. There have been similar instances of non re-appointment in other States but none in recent years;

(2) *Judicial bias claims*: It is a duty of superior courts in Australia to consider, on appeal or judicial review, complaints about the existence of bias, or the appearance of bias, on the part of judicial officers or tribunal members who are required to exhibit independence and impartiality. Most cases involving this question are unremarkable and the decisions apply, and uphold, principles of the common law in Australia which are reflected in international human rights principles. However, in one noted case[4], a question arose where a judge heard and determined a case although he had shares in one of the parties, a bank. Between the hearing and the decision, the judge's mother had died and he inherited a large parcel of

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1 *McRae v Attorney-General (NSW)* (1985) 9 NSWLR 268.

2 *Attorney-General (NSW) v Quin* (1990) 170 CLR 1.

3 *Constitution Act 1901 (NSW),* s56.

4 *Ebner v Official Trustee* (2000) 205 CLR 337.

shares which were, nonetheless, miniscule in proportion to the total shares in the bank and such that the judge's decision could not affect their value. A question arose whether the judge's ownership of such shares required him to disclose their acquisition and, in default of doing so, to recuse himself from deciding the case. A majority of the High Court of Australia held that the judge was not obliged to disqualify himself. My own opinion was to the opposite effect. I held that he should have drawn his interest to the notice of the parties. Having failed to do so, he had an undisclosed, personal interest in one of the parties. He therefore could not decide the case. This was the minority view.

(3) *Appointments: special arrangements*: In the Northern Territory of Australia, the Chief Magistrate was recruited and appointed on special conditions with particular and superior entitlements, not enjoyed by his predecessor or other magistrates. An Aboriginal Legal Service challenged the appointment as involving a possible appearance of partiality in decisions that would arise as between the government and litigants, including Aboriginal litigants[5]. The High Court of Australia unanimously rejected this contention, concluding that judicial independence and impartiality were not rigidly defined but took on different features and permitted different characteristics having regard to the special needs of particular jurisdictions;

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[5] *Northern Territory Aboriginal Legal Aid Service v Bradley* (2004) 218 CLR 146.

(4) *Judicial assignment*: Another recent decision of the High Court of Australia concerned an unfortunate case which had led to the prosecution of the Chief Magistrate of Queensland and her removal from office for an alleged breach of criminal law. In the result, the Chief Magistrate not only lost her position but was convicted and obliged to serve a period of imprisonment. Her offence was said to have arisen from her wrong-doing in assignment magistrates to hear cases, contrary to earlier arrangements and their desires[6]. In the course of quashing the conviction of the former Chief Magistrate, the High Court of Australia referred to the proper interpretation of the subject criminal offences in a context in which the assignment of judicial officers to hear cases is itself part of the judicial function and necessarily so in order to avoid any suggestion that partiality can be exhibited by the Executive in the selection of judicial officers to hear and determine particular cases. In my reasons, concurring in this result, I referred to some of the specific standards for the independence of judges that are also referred to in the ICJ's *International Principles* and in LAWASIA's own publications on this issue[7]

(5) *Temporary judges*: An issue that has arisen in many countries, in recent years, has been the practice of appointing

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[6] *Fingleton v The Queen* (2005) 227 CLR 166.

[7] LAWASIA, *An Independent Judiciary – Pressures and Problems in the Lawasia Region*, Lecture by Mr. F. Nariman, President of LAWASIA, 1985, New Delhi. This publication included the report of a LAWASIA seminar held in Tokyo, Japan, July 1982, *ibid*, 18ff. See also below.

temporary, part-time or *ad hoc* judges to particular courts. In England, Scotland and Australia (in which the same general traditions are observed), this practice has expanded to meet occasional special needs for temporary or part-time judges. Also in Australia, it is not permissible, under the Constitution, to appoint temporary or part-time federal judges. The concern has been expressed that the practice of appointing such judicial officers in the States of Australia has increased the power of the Executive to render the judiciary accountable for reappointment at short intervals, thereby damaging the independence secured by long-term judicial tenure. A challenge to the constitutionality of such State appointments was brought to the High Court of Australia[8].

Whilst the majority in that decision rejected the contention that the temporary appointment of a State judge to the State Supreme Court had not undermined the independence of that court, several members of the majority indicated that, in certain circumstances, such appointments might exceed permissible constitutional bounds and might attract constitutional remedies. My own opinion was in dissent. In my reasons, by tables, statistics and graphs, I endeavoured to demonstrate that the appointment of temporary or part-time State judges in New South Wales had expanded from rare *ad hoc* expedients into a stable and apparently permanent feature

[8] *Forge v ASIC* (2006) 228 CLR 45.

of the judiciary (including the highest judiciary) of the State. This rendered appointees answerable to the government of the State for reappointment at short intervals (usually annually). In my opinion, this was inconsistent with true independence and manifest impartiality on the part of such judges. The position was even worse in the case of judges of the District Court who had been recruited for part-time or temporary appointment from the practising legal profession and who served consecutively as practitioners and as judges. This issue has been of direct concern in the United Kingdom and other common law countries where the judiciary is not, as such, a government professional service but is appointed from senior members of the independent practising legal profession;

(6) *Parliamentary attacks*: Whereas in the past, attacks on judges in Parliament were extremely rare and, under Standing Orders, normally only permitted in conjunction with a formal motion for the removal of the judge concerned by Parliament for proved misconduct or incapacity (such removal normally being reserved in the case of the higher judiciary to both Houses of the Parliament concerned), in recent years privileged attacks on judges have become more common in Australia. Such an attack was made upon me in the Australian Senate in March 2002. It was made without notice, with no due process, involving unfounded allegations, based upon forged or unreliable and untested documents. When the falsity

of the allegations was quickly demonstrated, the attack was withdrawn and an apology offered and accepted. However, out of respect for the rules governing both the judicial and parliamentary institutions, such behaviour would not previously have occurred. The proliferation of such attacks in many countries (and the fact that they can then be reported under absolute privilege by the general media) have a potential to do great damage to both institutions, each of which is essential to a functioning democracy.

Within Australia, there have been many developments in the past three decades of my judicial service that impinge upon the independence and accountability of the judiciary:

(1) Judicial complaints mechanisms have been established in various jurisdictions, sometimes by legislation (such as the Judicial Commission of New South Wales) and sometimes by informal arrangements of the court or law ministry concerned. The number of such complaints has risen greatly in recent years. It is of the nature of judicial decision-making that at least one party to most cases is dissatisfied with the outcome. Whilst there is a need to enhance the availability, transparency and acceptability of complaints mechanisms, this must be done in a way that does not undermine the independence of the judiciary.

(2) *Judicial education*: When I was first appointed in 1975, there were no mechanisms for formal education of judicial officers in Australia. Subsequently, institutions for judicial education have been established, including the Judicial Commission of New South Wales; the National Judicial College of Australia; and specific court-based initiatives for such education. Commonly, the education is conducted with judges from various courts. It has generally been well received by new judges.

(3) *Judicial appointment*: In recent years, there has also been a substantial change in procedures for judicial appointment, below the High Court of Australia. Thus, the appointment of virtually all magistrates is now publicly advertised; and advertisements have more recently appeared for the higher courts, including some State Supreme Courts and federal courts. A process of an *ad hoc* committee has been instituted in the federal sphere, including a past Chief Justice of Australia, a past judge, Bar President and others to advise the Attorney-General on appointments. Hitherto all such processes were informal and not institutional. Whilst some of the normative instruments included in the ICJ's *International Principles* call for independent bodies, divorced from politics, having the obligation to select persons for judicial appointment, some observers question such a change in past practice. Inescapably, appointed judges give effect, in their decisions, to their personal values. These affect their

decisions. There may be dangers in the selection of judges by commissions or committees that are comprised entirely or mainly of members of the established legal profession alone[9]. The value of political appointments has been to ensure a moderated democratic element in such appointments, given that the judiciary so appointed is an organ of government, where values always matter. Whilst the improvement in transparency (by advertisement etc) has been uniformly welcomed, there remains considerable anxiety about appointment effectively by a judicial commission or by procedures that may reflect the "old boy network". I share those hesitations.

(4) *Women judges*: The appointment of women, ethnic minorities, members of sexual minorities and others to the judiciary has increased substantially in Australia in recent times. In part, this has happened because of the public pressure expressed through political processes that judicial appointments should be generally more representative of the community and especially should include more female members. Within the past two years, the Federal Attorney-General in Australia has constituted a small committee of judges and ex-judges as well as the Secretary of his Department to advise him on the appointment of Federal judges. However, the committee is advisory and non-statutory.

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[9] This is, in substance, what may now happen in the United Kingdom, following enactment of the *Constitutional Reform Act* 2005 (UK),ss26-30.

(5) *Magistrates' standards*: One of the greatest changes that has come about in the judiciary of Australia in the past three decades has been the enhancement of the independence of the magistracy in Australia. Whereas thirty years ago, magistrates in Courts of Petty Sessions were substantially recruited from the Public Service and were looked upon as public servants, deployed and controlled by the Executive, now, the magistracy is substantially recruited from the practising legal profession. The Local Courts have witnessed considerable enhancement of their standing, status and professional respect. There are moves in some quarters to rename Australian magistrates as "Judges", as has recently happened in some other common law countries.

A review of the above developments will indicate that the institutional independence of the judiciary in Australia is generally well respected and protected. Although there are legal protections, a substantial element of protection is found in the legal culture; the traditions of the practising legal profession; the history of judicial institutions; the long tradition of independent office-holders; the absence of public corruption; and the high quality of legal education and training.

CAMBODIAN JUDICIARY

My service over three years as UN Special Representative for Cambodia, acquainted me with some of the problems that faced that

country during and after the UNTAC period as it moved to re-establish its judicial institutions. Amongst the issues that I had to address were the following:

(1) *The lack of formal education of appointed judges:* Many of the judges of pre-1930 Cambodia had been killed during the genocide of the Khmer Rouge period. Newly appointed judges were often former teachers, they being some of the few who had survived who had sufficient education to hold the office. Building a national judiciary from scratch was a major challenge. The earnestness and devotion to duty of most of the judicial officers with whom I dealt was a source of inspiration and encouragement.

(2) *Independence from government*: Questions were raised with me as to whether judges could be, and remain, a member of political parties. This is permitted in some cultures (eg Germany and in the United States) but strictly forbidden in most others (eg United Kingdom, Australia and most common law countries). A recommendation was made that judges should steer clear of political involvement; however the realities of daily life in Cambodia may have made this difficult in many cases. Whether that would be an issue in a country such as Vietnam may be explored in this meeting.

(3) *Independence from litigants*: The judicial salaries in Cambodia during my service for the United Nations were so low that questions arose as to whether judges could accept gifts from litigants grateful for their performance in a case affecting them.

It was explained to me that the giving of such gifts was part of Khmer culture and that, in any case, such gifts would supplement their salaries (just as the military supplemented their salaries by conducting informal highway tolls on roads which the military guarded). I cautioned against any such gift practice, given that large and wealthy litigants, such as multimedia companies, could always afford to out-bid small and powerless litigants. The appearance of justice must always be observed and if gifts to judges were to become a practice, it would undermine the appearance of judicial integrity and independence;

(4) *Contact with Ministry*: In French colonial times in Cambodia, it had not been uncommon for tribunal members and judges to contact the Department of Justice to seek advice for the resolution of cases coming before the courts. The need for advice was said to be even greater after the Khmer Rouge period, because of the destruction of law books and the unavailability of legal material, texts and sources. I counselled against contact with departmental officials for advice and urged the persistence with internal judicial consultations. The common law tradition of developing precedents to ensure consistent treatment of cases of a like kind was recommended. Telephone calls to the ministry were advised against. It could appear to outsiders that the government was dictating the outcome of cases in the courts. That would

offend the basic principle of the separation of governmental power.

(5) *Courtroom furniture*: A particular source of anxiety to some lawyers of the common law tradition was the design of courtrooms in Cambodia, given the French tradition that they had copied in colonial times. Such courtrooms often provided a special bench for the prosecutor, more elevated than that of the accused or the accused's legal representative. This lack of equality of arms appeared offensive to those raised in the common law tradition. I cautioned against assigning undue significance to such questions. The substance of justice could be just as well accomplished by inherited court furniture as by changing it when there were so many other urgent priorities.

(6) *Trial of Khmer Rouge*: A constant theme of my advice was the need to introduce a procedure for the trial of the remaining personnel of the Khmer Rouge in Cambodia. Such trials have been greatly delayed as the United Nations negotiated for the creation of a completely independent international tribunal, free of the involvement of local persons, many of whom might have some connection either with the Khmer Rouge or with their victims. More than 10% of the Cambodian population was murdered during the Khmer Rouge period. The difficulty of constituting a completely independent tribunal from Khmer personnel was obvious. In the result, a composite tribunal has been established within the Khmer judiciary but including international judges. It is in this way that an attempt has now

been made to bring the remaining Khmer Rouge leaders to justice whilst upholding the dignity and role of the Khmer judiciary. Whether this compromise will be successful, remains to be seen.

It is more than a decade since I concluded my functions in Cambodia. Whilst I continue to follow the progress of Cambodia with close attention, its special needs require intense involvement from its friends and support from the international community. Since my time, four successors have served in an advisory role. Perhaps inevitably, each has experienced difficulties, as I did, in securing the understanding of sections of the Cambodian government.

SOLOMON ISLANDS JUDICIARY

The Court of Appeal of Solomon Islands is a highly professional multi-national court made up of senior judges from Commonwealth countries. It continues to function in a highly professional way. My successor as President of the Court was Lord Slynn, a retired judge of the United Kingdom House of Lords, who has recently died. There has been no breakdown in the continuity of constitutional governance in Solomon Islands. Accordingly, there has been no resignation of judges of other countries, as has occurred in the Fiji Islands where, as a result of four military coups, overseas judges have expressed their unwillingness to serve or to receive or renew their commissions on the higher courts at the behest of the military rulers, following *coups d'état*.

One particular issue arose during my service in Solomon Islands which is worthy of note. Until my period as President of the Court of Appeal, that court had invariably been constituted by overseas judges. I conceived the idea of including in the court a judge of the Solomon Islands High Court who would serve as an Acting Judge of Appeal. In this way, I endeavoured to secure the participation of such judges in appeals so that, ultimately, the use of foreign judges would be phased out. I had not appreciated the particular difficulties of including judges who might have special cultural and familial impediments for participating in appeals involving their ethnic community. The discovery of those difficulties taught me the lesson that judicial independence, in societies of the Pacific Islands, will sometimes involve special problems for indigenous judges that are not always recognised by foreigners.

A particular challenge for the Solomon Islands judiciary is the availability of up to date legal texts, authorities and case reports. The provision of discarded textbooks from law libraries in Australia and New Zealand has been a useful supplement to the meagre resources of law libraries in Honiara. The reality of judicial independence in such societies often depends upon resources that are available to the judicial officers to perform their functions effectively and in accordance with law.

JUDICIAL INDEPENDENCE IN THE REGION

Of special importance to the LAWASIA region is the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*[10] ("Beijing Statement"). That statement, which has now been signed by thirty-two Chief Justices from across the Asia-Pacific, was given widespread publicity throughout the region.

In turn, the *Beijing Principles* drew upon a number of earlier instruments including the International Bar Association's *Minimum Standards of Judicial Independence* (1982) ("New Delhi Standards"); the United Nations' *Draft Principles on the Independence of the Judiciary* (1981) ("Siracusa Principles") (ICJ p 81) and the Draft Universal Declaration on the Independence of Justice (1989) ("Singhvi Declaration") (ICJ, 100).

The *Beijing Statement* had its origin in a statement of principles formulated by the Human Rights Standing Committee of LAWASIA and a number of Chief Justices and other judges beginning in 1982. When adopted in 1995, it had the unanimous support of the Chief Justices of Australia, Bangladesh, the People's Republic of China, Hong Kong, India, Indonesia, Republic of Korea, Mongolia, Myanmar (Burma), Nepal, New Caledonia, New Zealand, Pakistan, Papua-New Guinea, the Philippines, Singapore, Sri Lanka, Vanuatu, Vietnam and Western Samoa.

[10] (1996) 70 *Australian Law Journal* 299.

In a region that unfortunately cannot boast of its own human rights Charter[11] or even Principles; and that has no court or commission to uphold and protect universal values in countries of the region (thus distinguishing it from Europe, the Americas and Africa) the achievement of the *Beijing Statement on the Independence of the Judiciary* is an important one. It gathers together some core ideas. It moderates and varies slightly the trend of international principles adopted elsewhere. It recognises the impact of "differences in history and culture" that explain different procedures adopted in different societies, eg in Principle 23 concerning the removal of judges. In some such societies (deriving their procedures from England) such removal is reserved to Parliament as a representative of the sovereign people. In other societies, that procedure is deemed unsuitable and inappropriate. Certainly, in all societies it is a procedure that is and should be very rarely, if ever, used - that being part of the genius of involving the Parliament to indicate the grave seriousness of the dismissal of a judge for proved misconduct or incapacity. The fact that agreement could be achieved within a judiciary of great diversity in a region of such disparity is a source of encouragement and inspiration.

From time to time, the *Beijing Statement* is referred to in Australia, including in judicial decision. I have done so myself. In the Bangkok colloquium of August 2008 organised by the ICJ, it was important to

[11] In October 2009, the ASEAN Heads of Government Conference in Hwa Hin, Thailand, unveiled a new human rights initiative for the ASEAN countries of the region.

keep that statement before us and to build upon its achievement in the ongoing endeavour to ensure that an independent, impartial, competent, uncorrupted and hard-working judiciary can earn and deserve the respect and support of the people throughout our region. A precondition to building a strong economic and social order is the rule of law and an independent judiciary to safeguard and uphold it. But beyond economic and social reasons for securing an independent judiciary is the fact that the promise of such a judiciary is a fundamental human right. It was asserted, as such, in the *Universal Declaration of Human Rights*, which was adopted in December 1948, just over sixty years ago. The same principle is recognised in Article 14(1) of the *International Covenant on Civil and Political Rights*. It is upheld in the *American Convention on Human Rights* (Art 8(1)); the *African Charter on Human and People's Rights* (Art 7(1)); and the *European Convention on Human Rights* (Art 6(1)). It is reflected in the numerous United Nations, Commonwealth and other international statements. It is given detail and substance by the many other official and unofficial statements that have been accepted in the world community.

We should not be satisfied by simply exchanging words at this LAWASIA conference in Ho Chi Minh City. We should examine the ways in which we can build on what has gone before and take past achievements to the next level in a new century of higher educational standards; superior communications; improved economics; and enlarged expectations of our people that a New

World Order will emerge that respects fundamental principles of universal human rights, including the right, where relevant, to have an independent and impartial judge to decide disputes in accordance with law, by fair procedures and with manifest integrity. Whatever other differences that may exist, in all parts of the world, concerning the precise application of international and regional human rights treaties and agreements, this one great principle should surely be recognised and upheld by all. It is crucial to securing the rule of law in the place of the rule power, guns and money. Everyone with real legal dispute must have access to the judiciary to decide such dispute. And the members of that judiciary must be professional and competent, independent and impartial.

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