

JUDICIAL DIALOGUE ON THE CHALLENGES AND ROLE OF THE JUDICIARY IN PROMOTING POST-CRISIS ECONOMIC GROWTH

“Tackling the COVID-19 Pandemic in the Courts: Triage, Transformation and Trust-Building”

Thursday, 27 August 2020

Speech by Justice Vincent Hoong

I. Introduction

1. Good morning, and greetings from Singapore! I would like to begin by thanking the Supreme Court of Indonesia for so kindly inviting me to participate in this webinar.
2. On behalf of Chief Justice Sundaresh Menon and the Supreme Court of Singapore, it is my pleasure to congratulate the Supreme Court of Indonesia on its 75th anniversary. It is remarkable that you have chosen to commemorate this special occasion by organizing this webinar, to consider how you can continue to make “a tangible contribution to the state ... [and to] improve [yourselves] in order to increase competitiveness and also contribute to economic recovery”.¹ This reveals your deep love of your nation, and your belief in the importance of mutual

¹ Terms of Reference of the “Judicial Dialogue on the Challenges and Role of the Judiciary in Promoting Post-Crisis Economic Growth”, at p 2.

exchange and dialogue between judiciaries – values which resonate deeply with my colleagues and me in the Singapore Judiciary.

3. In the next few minutes, I hope to contribute by sharing with you our experience in Singapore. I'll first sketch out briefly the impact of the COVID-19 pandemic in Singapore, before touching on what I believe should be the responses required of the Judiciary.

II. Impact of the COVID-19 pandemic on the Singapore Economy and the work of the Judiciary

A. Impact on Economy

4. As a small nation with an economy that thrives on open borders, Singapore was badly hit by the coronavirus earlier this year. On 23 March 2020, Singapore closed its borders to tourists and short-term visitors, after the first 2 COVID-19 related deaths were reported in Singapore.
5. On 3 April 2020, a series of further measures were implemented by the Singapore Government to combat the spread of COVID-19 – this was termed a “Circuit Breaker”. Many workplaces had to be closed entirely, with movement and gatherings of persons

severely restricted. The Circuit Breaker was lifted only about 8 weeks later, on 1 June 2020.

6. While the Circuit Breaker helped to stem the spread of the virus, the economic impact was severe. The weak external demand amidst a global economic downturn caused by the pandemic has also worsened the situation for us. In response, the Singapore Government injected almost SGD \$100 billion into the economy to save jobs and provide emergency support to workers and companies just in the last few months alone, of which SGD \$52 billion came from our carefully-guarded national reserves. These are unprecedented numbers for Singapore.

7. But even with these countermeasures, the Singapore economy is likely to shrink by 5 to 7 percent this year,² with analysts predicting that our retrenchment figures for 2020 would be far higher than in any previous economic contraction in Singapore. The gloomy economic outlook for individuals and businesses in Singapore continues to loom amidst the uncertainty as to when we will finally overcome this public health crisis.

² Press release by the Ministry of Trade and Industry in Singapore, "MTI narrows 2020 GDP Growth Forecast to "-7.0 to -5.0 per cent"" (11 August 2020).

B. Impact on Judiciary

8. In tandem with the Government's measures, and to ensure the health and safety of all our court users and staff, the Singapore Judiciary announced on 5 April 2020 that only "essential and urgent matters" would be heard in our courts, with all other matters adjourned. This directive was only lifted on 1 June 2020, when the Circuit Breaker ended.
9. During the period between 7 Apr and 1 June 2020, many hearings which were not essential and urgent were adjourned, resulting in an accumulation of cases to be heard across all our courts.

III. The Responses Required of the Judiciary

10. Having set out the adversities that have beset us, let me now allude to the 3 responses which I believe the Judiciary should engage in, to aid in the country's economic recovery and growth. They are: **(a) Triage; (b) Transformation; and (c) Trust-building** – or in short, **the "3 Ts"**.

A. Triage

11. The first “T”, triage, refers to the need to assess and address the problems of the highest priority or urgency. In the case of the Singapore courts, this would be the need to clear the backlog of cases which were filed before or during the Circuit-Breaker.
12. This backlog, if not addressed, poses not only an administrative problem but also an economic one. Cashflow implications abound for parties whose disputes drag on in court with no end in sight. In a time like this where cashflow is likely to be critical for many businesses, I believe that it is the foremost responsibility of the Judiciary to facilitate the prompt and efficient resolution and disposition of disputes. This will give litigants the certainty that they need to move on with their lives and to make informed commercial decisions for their businesses.
13. With this in mind, the Singapore Judiciary implemented a number of measures to reduce the backlog:
 - a. We prioritised those cases affected by the Circuit Breaker and successfully re-scheduled all of them for hearing.
 - b. Judges deferred their leave plans, while the traditional mid-term recess in June was cancelled to make up for lost time.

- c. Our courts conducted proactive case management and stepped up the use of simplified and expedited procedures. These included summary procedures and documents-only hearings. All these measures helped to reduce the number of hearings and will consequently minimize the amount of time required to clear the backlog.

- 14. The Singapore Government also responded swiftly by enacting legislative amendments allowing our Judges to conduct hearings *outside* of designated courthouses, using approved remote communication technology.

- 15. We have also planned ahead on how to manage *future* backlog that may arise as a result of the pandemic. Early on during the Circuit Breaker, we scanned the horizon to anticipate the types and volume of cases that are likely to arise in the wake of the rapidly deteriorating economic conditions. This allowed us to identify areas where legal work is likely to increase due to parties having to grapple with the aftermath of the pandemic. Having identified the types of cases which may possibly see a surge, we examined our processes and resources to determine how we can better resolve these upcoming cases.

B. Transformation

16. I turn now to the second “T” - “transformation”. This unprecedented crisis has laid bare many fault lines in our work processes or systems. In doing so, the pandemic has presented a unique opportunity for us to push for systemic and structural changes that will help future-proof our judiciaries.

17. The Singapore Judiciary has always believed in the importance of transformation. To this end, we have set up work groups comprising judges and staff from the different judiciaries within Singapore to conduct deep-dives into specific areas such as: (i) the transformation of court processes and systems, (ii) the reform of organisational, personnel and financial matters, and (iii) strategic planning and international relations in a post-COVID-19 environment. These work groups will present their reports and recommendations to a strategy management group chaired by the Chief Justice.

18. The ultimate goal is, in the words of Richard Susskind, a leading expert on the future of legal services, to “radically redesign our court systems and put in place a new configuration of people, processes, technologies and physical spaces that is user-centred, technology enabled, sustainable, accessible, and better

than what we have today.”³ An important part of this process will be to consider how our practices and systems should be transformed in light of the dire economic conditions our court users are likely to find themselves in.

19. I'll just share two examples of the transformative changes we are looking at.

20. One area pertains to the conduciveness of our processes in promoting the amicable resolution of disputes. As a growing number of litigants in our courts are likely to be cash-strapped in the near future, we foresee that many will be “inclined to renegotiate contracts than to be entangled in costly and protracted court proceedings”.⁴ This has led us to ask ourselves:
 - a. How can we re-design our procedures and rules, to promote or employ mediation more effectively?

 - b. How much emphasis does our current adjudicative approach place on peace-building, to help parties preserve important commercial relationships, as opposed to a zero

³ Richard Susskind, “The Future of Courts” in *The Practice* (Vol 6, Issue 5, July/August 2020) at p 13.

⁴ Chief Justice Sundaresh Menon, “Judicial Integrity Network in Asean Webinar: Justice in Times of COVID-19” (28 May 2020) at [18].

sum game where one party wins at the expense of the other?

21. Another area is our traditional reliance on the physical court setting. This pandemic has shown us that remote or document-only hearings can lower the cost of dispute resolution, especially for those whose physical attendance in Court can be highly disruptive to their daily schedules. This has led us to look into the following areas:
 - a. Can we rely on better technologies to help reshape how court services are rendered? For example, how can we expand the use of asynchronous hearings, for a society which has embraced online processes as part of daily life?⁵
 - b. How can we leverage upon our electronic filing and case management systems, to pave the way for an entirely paperless environment?

⁵ Richard Susskind, *Online Courts and the Future of Justice* (OUP, 2019) (draft) at p 62.

C. Trust-building

22. Finally, the third and final “T” - “trust-building”.
23. We live in an era where many countries are seeing the erosion of public trust, whether in governments or public institutions or between communities. The economic impact of this pandemic is likely to exacerbate this societal problem, as inequalities within the society are brought to the fore. Disillusionment can spread quickly if those in authority are not seen as having the people’s interests at heart, amidst the worsening situation.
24. If we – the Judiciary – similarly lose the trust of the public, the ramifications will be profound. If the Judiciary can no longer be trusted to fairly and competently adjudicate disputes, it will result in a society with scant respect for the rule of law. Such a society will certainly not inspire the confidence required for economic growth and recovery.
25. It is thus my firm belief that there is a need for our judiciaries, more so in this critical period than ever, to build and retain public trust. How might we do so, practically speaking? I offer two suggestions for your consideration.

26. First, we have to remind ourselves that in these times of change and uncertainty, the Judiciary should be unflinching in its adherence to the following tenets:
- a. To act with integrity, without fear or favour;
 - b. To safeguard and practise impartiality and independence;
 - c. To be transparent in our decision-making process.
27. Put simply, to build trust, we need to first be *trustworthy*.
28. Second, in our quest to transform our processes, we must always set our eyes firmly on the goal of *access to justice*. We must never stop asking how the changes we are implementing will impact the poorest and most marginalised in our society.
29. This means that, while we leverage on the use of technology – and rightly so – to improve our court processes and systems, we must be conscious of the “digital divide” that is present in many societies today. As explained by Chief Justice Menon in a speech he delivered last year, this refers to the “disparity between those who are in a position to access and operate technology, and those who are not. [This] is deeply relevant to [the issue of] access to justice because the ability of technology

to contribute to access to justice is itself premised on access to technology”.⁶

30. Indeed, we must always remember that the most impressive legal frameworks and advanced technological wizardry will come to nought if the man on the street does not benefit from it. Our legal system, and the technology employed to carry it through, are merely but a means to an end. At its core, from the judiciary's perspective, the “end” must be access to justice.

31. This is why, in the push to promote remote hearings through the use of video-conferencing by the Singapore Judiciary, we have set up dedicated video-conferencing rooms in our court houses. These serve as venues where parties who lack the means or knowledge to connect to video-conferencing facilities can still participate in remote hearings, while observing safe distancing measures. This is just one example of how new processes and technologies in our courtrooms are being implemented which seek to “enhance and equalise access to justice”⁷ for all.

32. At the end of the day, the people whom we serve must be able to *trust* that however dire their economic or social conditions,

⁶ Chief Justice Sundaresh Menon, “Negotiation and Conflict Management Group ADR Conference 2019: Technology and the Changing Face of Justice” (14 November 2019) at [29].

⁷ Chief Justice Sundaresh Menon, “Mass Call Address 2020: Living up to the call in a time of pandemic” (25 August 2020) at [20].

meaningful access to justice in our courts will always be there when needed. Such trust will give individuals and businesses the security and confidence to remain invested in our countries and, consequently, contribute to economic recovery.

IV. Conclusion

33. The COVID-19 pandemic is proving to be one of the greatest socio-political levellers in our generation. We may hail from different countries, with different challenges and problems; but we are now in the same boat together, buffeted by the same crippling waves which the pandemic has wrought on our countries' economies. As a result, we find ourselves united by the same goal of finding appropriate solutions, within our institutional boundaries, to uplift our economies and societies. I hope the "3 Ts" I have shared today – triage, transformation, and trust-building – together with examples of what we at the Singapore Judiciary have been doing, have provided some food for thought.

34. This common predicament we now find ourselves grappling with has given rise to a common purpose. This reminds me of the value of exchanges between judiciaries, such as the one we are

having right now. They provide us new insights, help us to detect blind spots and, just as importantly, give us the opportunity to express solidarity with one another. For Judges are, ultimately, human and doing justice is fundamentally a human endeavour. While this pandemic calls on us to muster all our courage, integrity, vision and ideas to meet it head-on, we will ever so often be in need of encouragement. And that comes in rich supply in exchanges like the one we are having today.

35. Finally, it remains for me to thank the Supreme Court of Indonesia once again for organizing this important and timely webinar for all of us. I look forward to the day where we can physically meet one another either in Singapore or in your lovely country. Thank you very much.