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Rule of Law Updates and Perspectives

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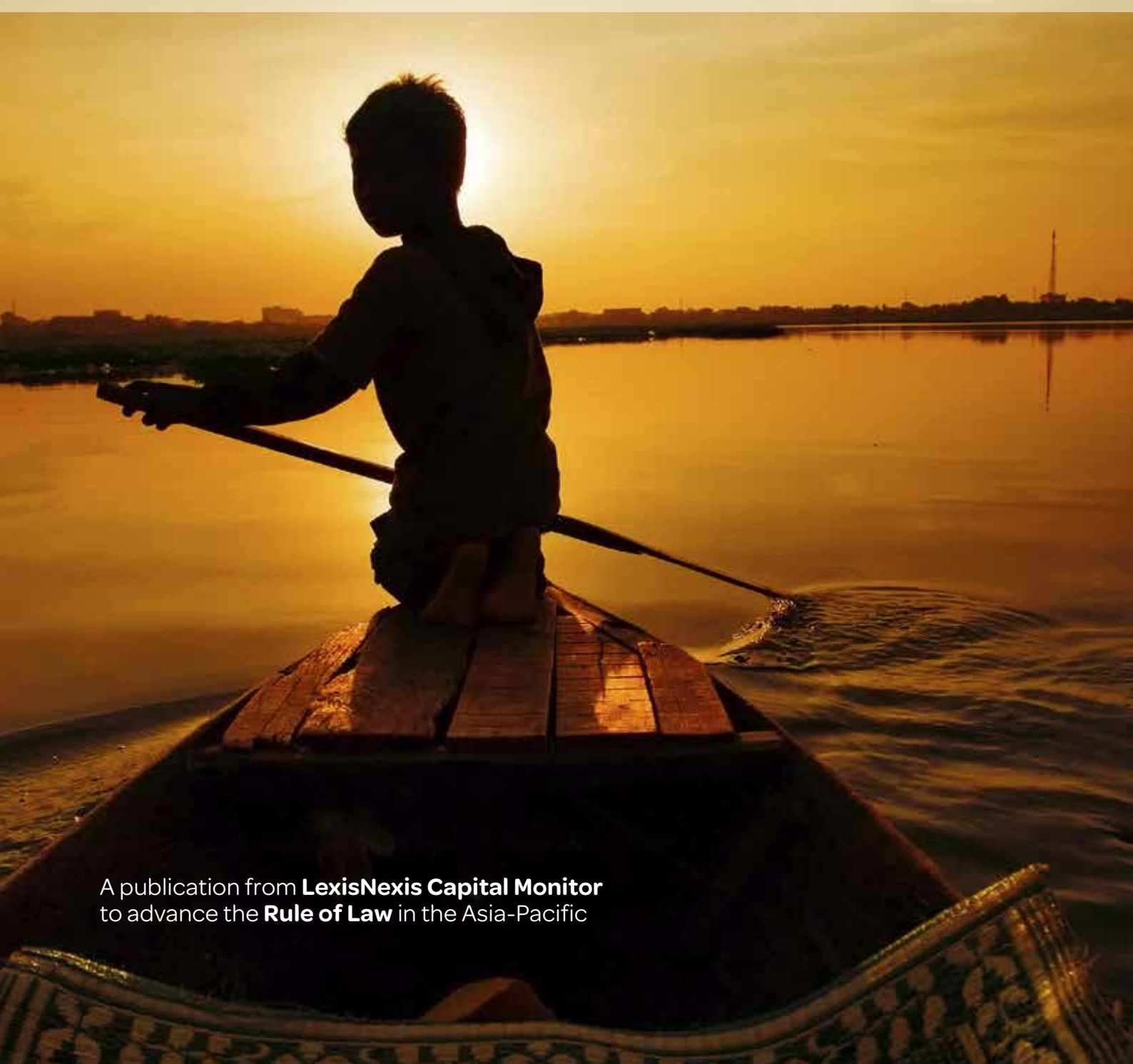

A publication from **LexisNexis Capital Monitor** to advance the **Rule of Law** in the Asia-Pacific

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LexisNexis and other legal content and technology organisations are some of the building blocks of the rule of law: it is a privilege to partner with the legal community to enable the advancement of society.

With kind regards,

Dr Marc K Peter
Chief Operating Officer, LexisNexis Pacific

Kristy gives out school packs

Voice works with families affected by crisis

Giving a voice to human rights

Kristy Fleming, CEO and Founder of Voice - a charity committed to giving a voice to marginalised and disempowered people - spoke to LexisNexis® **Capital Monitor** of the work Voice undertakes in Cambodia.

Cambodia is one of the most corrupt countries in the world.[1] More than 60 per cent of people reported having to pay bribes to the judiciary, police, registry, and land services in the past year.[2]

Kristy Fleming, Chief Executive Officer and Founder of Voice - a charity, committed to giving a voice to marginalised and disempowered people - says that despite the Declaration of Human Rights (enshrined in Cambodia's Constitution) affording everyone the right to food, clothing, housing, medical care and necessary social services, the reality for the almost 20 per cent of people in Cambodia that live below the poverty line is significantly different. [3]

"I worked for the United Nations in Cambodia for five years – fighting corruption and ensuring all Cambodians have basic human rights from the top down seemed as impossible as an echo without a voice to start it," Ms Fleming said. "I recognised that a different approach was needed."

Launched in early 2012, Voice is an Australian charity with community-based operations in Cambodia, which provide people in crisis with access to their fundamental human rights.

With very little resources, Voice now runs two 24-hour community crisis centres in slum areas of Phnom Penh, and assists hundreds of people each year to get out of crisis and regain financial independence. Voice provides emergency housing and healthcare for the homeless and sick, a soup kitchen program to eradicate hunger, school packs and scholarships to get children off the street and into school, and employment opportunities and small business loans for parents, carers, and adults otherwise unable to meet their basic daily needs. The charity's outreach and individualised case management ensures that people in crisis are provided with the resources, skills and support to sustainably improve their lives.

"When I first visited Cambodia over a decade ago, I was travelling around the countryside, and as I went from village to village, the people kept telling me about an amazing organisation that had given them fishing nets," Ms Fleming recalled, while thinking back to the time she saw the hardship of rural Cambodians for the first time.

"They were so happy with their new nets. They could catch enough fish for their families and sell any left-overs. After inquiring further about this project, I found out that it was run by a large international health project to fight malaria – and the fishing nets were actually intended to be mosquito nets."

[1] Cambodia has been ranked 160th out of 177 countries in Transparency International's 2013 Corruption Perceptions Index.

[2] Transparency International [2013], Corruption Perceptions Index.

[3] UNICEF [2013], Cambodia: Statistics. http://www.unicef.org/infobycountry/cambodia_statistics.html.

"The mosquito nets were useless to protect against malaria once they had been placed in water which washed off the chemicals meant to keep mosquitos away," Ms Fleming said. The project had clearly been ineffective in achieving malaria prevention, but very effective at providing the people with what they wanted - a means to improve their livelihoods.

"This was a valuable lesson for me," Voice's founder added.

"I learnt that you cannot attempt to meet people's secondary needs without first meeting their primary needs. I also learnt that instead of sitting in an office reading statistics and providing a generic solution, it is crucial to talk to people about what they want and need."

In this case, the people had wanted food and a source of income before a defence to malaria. Had the health organisation asked them, that is what they would have been told. Evidently nobody had asked.

"The lesson I took away was that the people themselves are best placed to identify their needs, and are instrumental in identifying the most sustainable (and often innovative) methods of achieving those needs, and improving their own lives. The best intended aid organisations often miss one crucial step in their planning phase – to ask the people themselves."

Rights-based approach – meaningful collaboration

Voice's work is inextricably linked to the human right to dignity, freedom of expression, and meaningful participation as enshrined in international human rights law. The charity recognised a common gap in existing interventions between hearing and recording people's stories, and developing interventions to assist the same people realise their human rights – a need to ensure that people are, not only consulted, but given the opportunity to drive their own future.

"Voice starts these discussions – we aim to find practical solutions in collaboration with the people themselves," Ms Fleming added.

Voice assists Cambodian people in crisis

"In Cambodia, human rights are not fully realised for many people, and this is particularly true for the individuals and groups Voice works with including women and children. Fundamental human rights such as the right to life, food, quality health care and education regularly remain unfulfilled."

Furthermore, many people in Cambodia also face violations of their right to freedom from slavery (often in the form of debt bondage and human trafficking), freedom from torture, inhumane or degrading treatment, and freedom from wrongful imprisonment.

"When I started Voice, I wanted to institute an individualised approach to helping people - one that took the time to identify people who were most in need and ask them how they wanted their lives to improve, and the best way they saw to improve it," the Voice CEO said.

Surprisingly, this practical, common-sense approach is quite innovative in the development industry in Cambodia. And maybe not so surprisingly, this approach produces the most cost-effective and impactful solutions to helping a person out of crisis.

Crisis comes in many forms - forced eviction

For Lina, it came in the form of a forced eviction. Lina used to have a thriving business selling smoked fish by a lake in central Phnom Penh. But when the lake was filled with sand, to make way for new development in the rapidly growing capital of Cambodia, she was evicted from her home. All of a sudden, Lina was homeless. What's more, she had no means to earn an income. One is hard pressed to catch a fish in a lake filled with sand. Her children began to beg and collect rubbish in order for her family to earn enough to eat.

But all was not lost, Lina told Voice. All she needed was enough money to buy a first lot of fish from the market. After that, she said, she could increase the price of her smoked fish enough to buy the next lot from the market. If all went according to plan, she would net enough profit to rent a house, and allow her children to stop working.

Lina had a plan - all she needed was the means. That's where Voice usually comes in. The charity provided Lina with a $50 interest-free loan, which she agreed to pay back within six months. Indeed, she paid back the loan within four months. She also doubled her income, and rented a house. Voice also helped Lina's two boys, by way of school uniforms and school supplies, to go to school for the first time.

With minimal assistance, Lina and her two boys went from crisis to

Lina and her fish smoking business

independence. Voice was able to identify what assistance would be the most cost-effective and beneficial just by listening to Lina tell her story.

"This is how Voice works," Ms Fleming points out.

"We listen to people, take the time to understand their situation, and empower them to improve their lives in the ways they want. For example, a family of garbage collectors asked us for $2 headlamps so they could more effectively collect rubbish at night when it was cooler. It was an easy and practical way to increase their income and improve their lives - we would never have thought of it if we didn't ask."

Despite the fact that Cambodia is a party to a number of international human rights instruments obliging the State to protect their citizens against forced evictions from their homes, over half a million Cambodians have been affected by forced eviction in the past 10 years.[4] The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights .[5]

Voice works closely with people who have been forcibly evicted from their homes and listens to the devastating impact these events have on individual and family lives. The human impact of forced evictions includes, inter alia; increased poverty, homelessness, psychological trauma, health problems, loss of livelihood, removal of children from schools, increased crime and family breakdown.

Right to healthcare – timely action

In 2012, when Voice was launched, the charity first met five-year-old Srun. He was selling bags of corn on the street for 15c each. He was naked and his stomach bulged. He appeared lethargic and sick. Srun and his family said they hadn't eaten in a couple days.

"We immediately went off to buy them some rice and fish," Ms Fleming said.

"We also got some clothes for Srun."

On full stomachs, the family shared more of their story. Srun and three of his siblings were sick. Voice took them to the doctor. Srun's protruding stomach wasn't due to severe malnutrition, and Voice was surprised to learn that it was instead due to an enlarged spleen caused by a severe genetic blood disorder called Thalassaemia Major.

Left untreated, a child with Thalassaemia Major is lucky to survive until their 6th birthday. There is no cure. Srun needs monthly blood transfusions and iron chelation medication for the rest of his life, like each of the estimated 1 in 100 Cambodian children born with Thalassaemia Major each year.[6]

Although Thalassaemia Major is so common in Cambodia, there is also a severe blood shortage. Even when a child is correctly diagnosed and can afford to get to the hospital, he or she often does not receive a blood transfusion.

Srun's family had racked up a debt with their local motorbike taxi driver, who had taken them to the hospital before. The taxi driver was beginning to doubt the family's ability to pay back the debt, and so had begun to refuse to take them. Voice loaned Srun's father a motorbike so he could take Srun to hospital when needed. He could also earn money as a motorbike taxi driver during the day. Voice also initiated a regular volunteer blood donation drive to assist Srun and the many other Thalassaemia patients to receive the life-saving blood transfusions they need.

"Srun and Lina's problems are not easy to fix, but nor are they impossible to address," Ms Fleming said.

"Homelessness, child labour, severe hunger, human trafficking and even child and maternal deaths are preventable with appropriate and timely action."

The Declaration of Human Rights states that everyone has the right to food, clothing, housing, medical care and necessary social services. This is not a reality for many people in the world. Help make it one. All donations to Voice go directly to people in crisis in Cambodia. If you would like to assist, please donate at www.voice.org.au/donate and follow Voice on Facebook at https://www.facebook.com/VoiceInternational. ■

[4] Based on investigations conducted by Licadho Cambodia, Licadho Canada claim that over 500,000 Cambodians have been affected by forced evictions since 2003 with over 2.2 million hectares of Cambodian land being granted to large firms in the form of economic land concessions. Licadho Canada [2014], Land Grabbing in Cambodia, online at http://licadhocanada.com/about-cambodia/land-evictions-in-cambodia/.

[5] These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, and consistent with the indivisibility of a human rights approach, article 17 of the International Covenant on Civil and Political Rights states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence", and further that "[e]veryone has the right to the protection of the law against such interference or attacks". Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision.

[6] This figure is based on a report finding 30-40% of Cambodian people are carriers of the Thalassaemia gene (Informa Healthcare [2006], The Prevalence and Molecular Basis of Hemoglobinopathies in Cambodia) combined with the well-documented body of research that states if two carriers reproduce they have a one in four chance of having a child with Thalassaemia Major (eg. Thalassemia Foundation of Canada [2014] http://www.thalassemia.ca/resources/faq-2/).

Crunch time for action on North Korea

In a historic move, on November 18, 2014 the Third Committee on behalf of United Nations General Assembly resolved to refer the Commission of Inquiry's (COI) report on human rights abuses in the Democratic People's Republic of Korea (DPRK) to the Security Council. The formal reference will happen shortly. So the United Nations is approaching a moment of truth.

This is one occasion where the UN machinery has acted swiftly and properly. Following years of adverse reports, the UN Human Rights Council in Geneva in May 2013, established the COI appointing me as chairman. Other members were Marzuki Darusman (Indonesia), and Sonja Biserko (Serbia). Exceptionally, the COI was created without even a call for a vote. It reported within time, unanimously, and in a document made vivid and readable by its inclusion of extracts from the testimony of victims collected during public hearings.

The COI refrained from concluding that 'genocide' had been proved; but only because of the narrow meaning given to that crime by current international law. Nevertheless, the COI reported that many 'crimes against humanity' were established to the standard of reasonable grounds, justifying consideration by an international prosecutor of whether a prosecution should be brought against those responsible. The COI gave notice to the Supreme Leader of North Korea that he might himself be found to be personally accountable for such crimes, including on the footing that he had the power to prevent, or sanction them, but had failed to do so. North Korea is a highly secretive state, and throughout its inquiry, the COI was given no cooperation by its officials.

The report of the COI was well received by the organs of the United Nations. It was praised by most of the members of the UN Human Rights Council (HRC). Only 6 nations (China, Cuba, Pakistan, Russian Federation, Venezuela and Vietnam) voted against adoption of the HRC resolution. They did not seek to defend North Korea's record. They simply declared themselves opposed to 'country specific' inquiries. North Korea condemned the report as the hostile act of its political enemies. In the Third Committee, representing all the members of the General Assembly, the adverse vote grew to 19. But only by adding non-members of the HRC such as Iran, Syria and Zimbabwe.

By the Hon. Michael Kirby AC CMG*

* The Hon. Michael Kirby (Australia) is former Justice of the High Court of Australia (1996-2009); President of the International Commission of Jurists (1995-8); and UN Special Representative for Human Rights in Cambodia (1993-6). In this article, drawing upon a talk he gave to the Hague Institute for Global Justice on March 20, 2014, he describes the work of the UN Commission of Inquiry on Human Rights in DPRK: A/HRC/25/63 (7 February 2014).

Exceptionally, three members of the Security Council (France, United States of America, and Australia) in April 2014 convened an 'Arria' meeting in New York. Under the Rome Statute, where a country concerned is not a party to the treaty, exceptionally, the Security Council may confer jurisdiction on the ICC. Previously it had only been done twice – in the cases of Darfur and Libya. But it has been done, with all permanent members of the Security Council present.

At the Arria briefing on North Korea, 2 seats were empty. They were those of China and the Russian Federation. They are permanent members of the Security Council and their affirmative vote is required to produce a valid substantive resolution of the Council, in accordance with the UN Charter.

An important question is therefore presented in crude terms. What would now happen if the 2 permanent members withheld their concurring votes in any resolution presented to the Security Council, whether along the lines recommended by the COI, or otherwise?

In recent years, the United Nations has given much emphasis to the central importance of universal human rights as core principles of the organisation. It has moved towards a 'rights up front' approach in the conduct of its secretariat, and of its constituent organs. It has laid emphasis upon accountability for international crimes – including genocide and crimes against humanity. Are we finally capable, as a global community, to deliver effective remedies against crimes that shock the conscience of humanity? The vivid symbols of the two empty seats at the Arria meeting of members of the Security Council in April 2014 is cited by some commentators as proof positive that recommendations for action by the COI on North Korea will not be achieved. I am far from convinced that this is the case:

- Within the Security Council there is no need for new stand-alone resolution. All that is required of the Council would be an amendment and elaboration of the present solutions that deal with monitoring armaments to embrace the issues of human rights and humanitarian needs referred to in the COI report.

- The Charter itself insists upon the inter-related character of international peace and security and defence of universal human rights. The sudden arrest, trial and execution of Jang Song-Thaek, uncle of the Supreme Leader of North Korea in December 2013 demonstrated the violence and instability of a country which could dispose of such a powerful leader so rapidly and in such a manner.

- The Russian Federation has, it is true, historical, political and sentimental links to North Korea, dating back to the Soviet Union under Stalin. But economic and political links today are greatly diminished. And Russia is now more concerned with events in Europe.

- China, despite having important economic and other links to North Korea, must itself be deeply concerned about the instability created by the current regime - fuelled by human rights violations, and aggravated by ongoing grave food shortages.

- The violent threats since the Third Committee's resolution last week – in which North Korea has threatened "catastrophic" consequences towards Japan, South Korea and other states. Ironically establishes from their own words and actions, the close link between peace and security (the Security Council's mandate) and human rights in North Korea (the subject of this week's threats).

The case of North Korea is starkly painted in the report of the COI. The witnesses around whom the case is constructed commonly gave their testimony in public, and it is available online. This COI was transparent in its procedures, its recommendations, including invocation of the ICC, constitute an implementation of the principle of the Responsibility to Protect (R2P) which the UN endorsed unanimously in 2005.

Now it is for politicians and diplomats to convert the fine words into action. History will judge severely (as will the watching people of the world) the actions of those who would impede an effective response. The building blocks of R2P are there. But will the players grasp them, and ensure that human rights come at last to the people of North Korea?

This is an extract from an article written by the Hon. Michael Kirby for Advancing Together, LexisNexis Pacific's newsletter dedicated to advancing the rule of law throughout the Pacific. The full article can be accessed here (www.lexisnexis.com.au/ruleoflaw).

The Hon. Michael Kirby (Australia) is former Justice of the High Court of Australia (1996-2009); He was Chair of the UN Commission of Inquiry on North Korea (2013-2014). ■

Jokowi's example lights up Southeast Asia, will he beat the odds

By James Dawson

Indonesia, the world's fourth most populous nation, has undergone a profound democratic transformation since the fall of the Soeharto regime in 1998. Yet, the nation still faces significant challenges in advancing the rule of law. The newly-inaugurated President Joko Widodo (known as Jokowi) brings a reputation of consultative political reformer to the post, but he would have to contend with the power of entrenched vested interests if he was to enact change at the national level.

Indonesia's democratic transition has undoubtedly evolved in the last decade. Former President Susilo Bambang Yudhyono (in office 2004-2014) was the first directly elected president in Indonesia's history - his predecessors always elected by Parliament. Direct elections at all levels of politics have so far encouraged strong participation among Indonesians, with a 75.11 percent turnout for this year's presidential election.[7] Disappointingly, in its last few days in business the previous Parliament scrapped direct elections for local officials, in the face of a presidential regulation to continue them.

An issue Indonesia has always grappled with raises its head whenever Indonesian politics are discussed – corruption, as it pervades all levels of politics, and the judiciary. In 2013, Indonesia was ranked 114 of 177 countries on Transparency International's Corruption Perceptions Index, a negligible improvement on the previous year. The World Bank's Worldwide Governance Indicators for 2013[8] ranked Indonesia in the 36.49 percentile for rule of law. Although a substantial improvement on the country's 2003 ranking of 20.57 percent, this is still far below a level that would ensure fair treatment under law for all Indonesians.

Jokowi has already built a reputation for consultation and honesty, established during his seven years' service as Mayor of Surakarta, in Central Java. He was able to parlay performance at this level into a successful bid for the Governor of Jakarta. Just 18 months after taking on the Governorship, Jokowi held a commanding lead in every national opinion poll, and was named as presidential candidate for the Indonesian Democratic Party of Struggle (PDI-P). His outsider status is a novelty for the Indonesian presidency; his predecessors worked their way up through the military or party systems. It is this outsider status that at once frees Jokowi from conventional obligations and distances him from traditional areas of support.

By contrast, Jokowi's opponent in the presidential race, Prabowo Subianto, was very much an establishment figure. A retired Lt. General with a dark human rights record, Prabowo is also Soeharto's former son-in-law. His brother, Hashim Djojohadikusumo, one of the richest men in Asia, also provided substantial funding for his campaign. Many would argue that a Prabowo victory in the presidential election would have presaged a decline in both democracy and the rule of law. During his campaign, Prabowo openly stated that direct elections were not compatible with Indonesian culture, and signalled a desire to abolish them.

After his defeat at election, Prabowo was not content with the result. He mounted a challenge in the Constitutional Court (MK), alleging errors in vote counting and various forms of electoral fraud. The MK rejected his entire plea, declaring that his case was unclear and lacked detail. Furthermore, the Justices concluded that, even if some irregularities had occurred, a re-vote would not exchange the outcome of the election. The court also made recommendations for the improvement of the electoral monitoring system.

That such a high profile case could be concluded in such a transparent way was a much-needed victory for the Constitutional Court, recently embroiled in a corruption scandal that had tarnished the reputation of the entire judiciary. The then Chief Justice of the MK, Akil Mochtar, was arrested by the Corruption Eradication Commission (KPK) after accepting bribes to influence the outcome of a local election dispute in 2013. Mochtar was sentenced to life imprisonment in June this year, after being found guilty of having accepted more than AU$5 million in bribes to influence rulings.

The rule of law depends in part on an independent and impartial judiciary. Since 1998, constitutional and political change has created the framework for judicial independence and impartiality, but corruption at all levels continues

[7] International Institute for Democracy and Electoral Assistance, http://www.idea.int/vt/countryview.cfm?CountryCode=ID
[8] World Bank Worldwide Governance Indicators http://info.worldbank.org/governance/wgi/c102.pdf

to undermine access to justice for all, particularly the poor and marginalised.

Jokowi comes to office with an expressed commitment to opposing corruption. His manifesto lists 42 initiatives to strengthen the rule of law in Indonesia, including eight anti-corruption initiatives. His reforming desires may be somewhat limited, however, by the need to compromise that characterises Indonesian, and in fact politics worldwide.

Jokowi would have to negotiate with the Parliament if he was to successfully enact reform. His PDI-P gained 19 percent of the vote in the People's Representative Council (MPR), winning 109 of 560 seats. Any legislation would therefore require a coalition of support among disparate political parties. The parliamentary coalition supporting Prabowo has for example already pledged to block Jokowi's program of reform.

Jokowi's new Cabinet may give some indications as to what compromises he would be willing to make. The new President announced his new Cabinet as the Working Cabinet: of 34 members, 20 are professional bureaucrats, 14 are party members, drawing members drawn from five different parties. Jokowi said that his Ministers were selected meticulously because the Cabinet would be working for five years. He added that he had sought 'clean' figures and, to that end, had subjected candidates to the scrutiny of both the KPK (Corruption Eradication Commission) and the PPATK (Financial Transaction Reports and Analysis Centre). Eight of his original nominees were red-flagged by the KPK, and their nominations withdrawn. Evidently Jokowi is already compromising - some of the nominees who were yellow-flagged by the KPK have made it into the Cabinet.

The appointment of Puan Maharani as Coordinating Minister for Human Development and Culture has been widely criticised as a political compromise. Vice President Jusuf Kalla has denied that the appointment was made solely to please her mother, PDI-P leader Megawati Sukarnoputri. The appointment could be seen as recompense for Megawati's reluctant withdrawal from the presidential race and endorsement of Jokowi. Puan has been an MP for five years, but has no administrative experience, so it is a surprise to see her appointed to such a senior post.

Yet in his first Cabinet meeting, Jokowi set the tone for his leadership, clearly signalling his intentions that Ministers are not to run their departments as personal fiefdoms. Jokowi instead asked his Ministers to intensively coordinate with other Ministers to solve problems and enact policy.

The Jokowi presidency promises improvements in both democracy and the rule of law should be in the next five years. Just how far such reforms progress depends on Jokowi's negotiation skills along with those of the PDI-P, and their ability to reach political compromise without abandoning principles.

James Dawson is LexisNexis Capital Monitor Managing Editor, ANU B Arts/ B Asia-Pacific Studies (current).

Whistleblowing and the rule of law

By Saurabh Bhattacharya

Two controversial incidents of public disclosure of restricted information in recent years - the WikiLeaks release of confidential US State Department cables in 2010, and the leaking of classified National Security Agency documents by former NSA analyst Edward Snowden in 2013 – have forced various governments to grapple with a critical question: how, if at all, do acts of whistleblowing that break certain laws fit in a society that adheres to the rule of law? Addressing this question also seems to be the implicit goal of the Public Interest Disclosure Act 2013 (henceforth referred to as the PID Act), which came into effect in Australia on January 15, 2014. According to a PID Act information sheet, (available online at http://www.ombudsman.gov.au/docs/fact-sheets/Ombudsman_PID_Fact_SheetA.pdf), the primary aim of the Act is to provide all whistleblowing actions legally-sanctioned framework that not only encourages such acts in order to ensure consistent integrity and accountability in the

public sector, but also provides legal protection to whistleblowers. In a way, the PID Act exemplifies governmental processes that strive to accommodate whistleblowing in a rule of law based socio-political structure.

Apparently, there does not appear to be any problem in positioning whistleblowing per se as an act that potentially strengthens society by disclosing information that is inimical to some basic human rights – the right to privacy, the right to free speech, and the right to information. Both Snowden and WikiLeaks founder Julian Assange have defended their action of publicising classified information on grounds that people have a right to know if their democratically-elected government is engaging in activities that are patently undemocratic. If one were to take their defence at face value, then whistleblowing is not just acceptable within the framework of the rule of law, but even laudatory and essential. The PID Act's explicit exhortation 'encouraging and facilitating the disclosure of information by public officials about suspected wrongdoing in the public sector'[9] also seems to highlight this laudatory and essential nature.

A closer look at what certain acts of whistleblowing really imply, however, makes this prima facie case much more complicated. It is important to clarify that not all acts of whistleblowing are illegal. In his 1999 paper *Whistleblowing: A Restrictive Definition and Interpretation*, academician Peter B. Jubb defines whistleblowing as 'a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organisation, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of the organisation, to an external entity having the potential to rectify the wrongdoing'. [10]

This act of disclosure may not always involve the breaking of laws – a public service employee can, for example, legitimately disclose illegal activities in his/her organisation to senior members of the organisation, or even to the press, if such disclosures are not considered contrary to the employee's employment contract, or the laws of the organisation. If, however, the employee's action runs contrary to established contractual or statutory clauses of the organisation, then the employee is, technically doing something illegal. How can actions of the latter category gain legitimacy in a rule of law environment?

For the purpose of this article, I will focus on two aspects of Jubb's definition that, I believe, crystallise the complex nature of whistleblowing in a rule of law society: the 'deliberate non-obligatory' intent of the act, and the 'non-trivial illegality or other wrongdoing whether actual, suspected or anticipated' nature

"...On the other hand, overly-restrictive criteria could result in a legislation that actually stymies the critiquing potential of whistleblowing, making it more a cynical, self-serving act of tattling than a serious tool for sociolegal improvement."

of the content being publicised by the act. In order to truly accommodate all whistleblowing within the rule of law, both the intent of the whistleblower, and the content of the information being divulged need careful, and detailed, exploration.

First, let us look at the issue of intent. Jubb's definition clearly states that the whistleblower is not obligated to divulge information. Rather, the disclosure of information is something that the agent does because he/she wants to, for various reasons, which range from the pecuniary to the philanthropic. In the case of Snowden, for example, his decision to leak the NSA documents was driven, in his own words 'not to benefit myself... not to gain a label but to give you [the American people] back a choice about the country you want to live in'.[11] Snowden considers his act of whistleblowing an act driven by his conscience and his love for his country and its people.

Whether this apparently unselfish tenor of his intent gives Snowden's whistleblowing ethical legitimacy is a question that requires a more detailed discussion not within the scope of this article.

The crucial point worth noting here, rather, is the fact that Snowden's action is uniquely individualistic, deliberate, and non-obligatory. At the same time, according to Australian political commentator Ben O'Neill, it is an action that necessarily involves the breach of 'some contractual or statutory requirement not to disclose the information they are disclosing'. It must, at least apparently, 'always be regarded as a breach of law, and possibly also a breach of ethics'.[12] This makes acts of whistleblowing that involve a necessary flouting of 'contractual or statutory requirements' ethically problematic in a rule of law society, since such actions run contrary to the norms of a law-abiding way of living.

[9] The Public Interest Disclosure Act 2013 – what's it all about' Information Sheet. Accessed online at http://www.ombudsman.gov.au/docs/fact-sheets/Ombudsman_PID_Fact_SheetA.pdf on October 5, 2014.
[10] Jubb, P.B. (1999) 'Whistleblowing: A Restrictive Definition and Interpretation'. Journal of Business Ethics. 21:77-94, p. 78.
[11] Snowden, E. (2014) 'Edward Snowden: The Untold Story'. Wired, August 22, 2014. Accessed online at http://www.wired.com/2014/08/edward-snowden/ on October 5, 2014
[12] O'Neill, B. 'The Ethics of Whistleblowing'. Accessed online at http://mises.org/daily/6474/ on September 22, 2014.

Now let us turn our focus on the issue of content. Jubb's definition specifies that the content being disclosed by a whistleblower must have the status of 'non-trivial illegality or other wrongdoing… actual, suspected or anticipated'. In other words, whistleblowing must involve the divulging of information that, if not disclosed, may lead to seriously illegal and/or unethical consequences. Notably, it is not necessary for the consequences to be actual. Even 'suspected or anticipated' wrongdoing is admissible as content worth disclosing. A number of the documents publicised online by WikiLeaks in 2010 do not overtly imply actual wrongdoing, but the fact that they were being collated in secret, without the permission of the people concerned, makes them potentially suspect.

The problem of content in a rule of law society can be articulated thus: the entity making the call on the wrongful nature of the content is, typically, not the organisation, but rather the whistleblower. So, the basis of the call is, naturally, subjective. How can such a subjective decision be accommodated in a rule of law society that necessarily has certain clear and established parameters of what comprises right and wrong – parameters crafted not whimsically but through a rigorous socio-political discourse that involve all citizens, directly or indirectly?

This complex nature of content becomes more apparent when one recognises the fact that the veracity of the wrongful nature of the content being publicised can be gauged only after the content has been publicised. It can be argued that the whistleblower is using the established socio-political parameters of his/her society as a litmus test to establish the illegal and/or wrongful nature of the content. This argument, however, is speculative since any defence of the whistleblower's decision is effectively reliant on the nature of the content after it is made public. Often the debate that is initiated on the release of classified content, like the one raging around the security implications of the WikiLeaks disclosure, even puts a big question-mark over the decision-making ability of the whistleblower.

Despite, or perhaps because of, the problematic relationship between whistleblowing and rule of law – particularly acts of whistleblowing that necessarily involve the flouting of statutory and/or contractual obligations – various governments have legislated Acts that aim to provide whistleblowing some sort of legally legitimate framework, and provide whistleblowers legal protection from any form of retribution that results because of their act of disclosing information. Why? The answer lies in the one indubitable fact about whistleblowing – it is an extremely effective critiquing instrument that, when harnessed properly, can force institutions to remain on the straight and narrow path of ethically sound and legally permissible behaviour.

This fact was officially recognised in the 2010 G20 declaration on whistleblowing, where countries 'committed… to put in place adequate measures to protect whistleblowers and to provide them with safe, reliable avenues to report fraud, corruption, and other wrongdoing'.[13] In Australia, this commitment has resulted in the recently-legislated PID Act, which, as mentioned earlier, aims to provide whistleblowers a legally sanctioned process to raise concerns about various Commonwealth Government agencies.

Considering the complex nature of whistleblowing vis-à-vis rule of law, any legislation attempting to provide legal protection and/or sanction to acts of whistleblowing also needs to provide lucid and specific criteria that gauges the intent and content of the action in order to recognise its ethical import. A key point here is that of balance. Overly-generalised criteria could lead to a scenario where whistleblowing becomes more the norm than the exception, diluting not just the essence of the rule of law, but also the very ethical foundation of critiquing cases of socio-legal misdeeds. On the other hand, overly-restrictive criteria could result in a legislation that actually stymies the critiquing potential of whistleblowing, making it more a cynical, self-serving act of tattling than a serious tool for socio-legal improvement.

A close analysis of the PID Act, unfortunately, puts this legislation in the latter category. Instead of giving whistleblowing a strong, legitimising force in Australian policy, this legislation has, in fact, quite successfully clipped its critiquing wings, relegating the act to a mere sideshow attraction. Let us first look at how the Act defines the term 'public interest disclosure', a term used to suggest acts of whistleblowing. In Subdivision A of Division 2 of Part 2[14], the Act states that:

…A public interest disclosure is a disclosure of information, by a public official, that is:

- A disclosure within the government, to an authorised internal recipient or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (referred to as 'disclosable conduct')

and

… The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct…

with the caveat that

… There are limitations to take into account the need to protect intelligence information

There are a number of problems with this definition. First, there does not appear

[13] Wolf S., Worth W., Dreyfuss S., Brown, A. J. (2014) 'Whistleblower Protection Laws in G20 Countries: Priorities for Action' Blueprint for Free Speech. Accessed online at http://www.griffith.edu.au/__data/assets/pdf_file/0010/647542/FINAL__-Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for__-Action.pdf on October 5, 2014.
[14] 'Public Interest Disclosure Act 2013', accessed online at http://www.comlaw.gov.au/Details/C2013A00133/Html/Text#_Toc361755354 on October 5, 2014.

to be any specific definition of what 'reasonable grounds' may comprise. This opens up the PID Act to various interpretations, potentially obfuscating both the intent of the whistleblower's action and heightening the subjective nature of the content being disclosed.

This issue had been raised in the Rule of Law Institute of Australia's submission to the Australian Senate Legal and Constitutional Affairs Committee's inquiry into the 2013 Public Interest Disclosure Bill. The submission stated that 'potential whistleblowers may be dissuaded from making a disclosure if they are unable to present a strong case that they are aware of disclosable conduct'.[15] The submission also pertinently pointed out that the wording of the Bill put the onus of belief in reasonable grounds on the whistleblower, whereas a more appropriate approach to the issue of disclosable conduct should not involve subjective belief systems, but rather 'whether it appears that there is disclosable conduct'. Clearly, this suggestion was ignored in the final draft of the Act that was passed by the government.

Second, the Act restricts the recipient of the information to 'an authorised internal recipient or a supervisor' in the case of internal disclosure cases, and qualifying any external disclosure by specifying that the information must first have been presented internally to authorised internal recipients before going external. This restriction not only narrows the ambit of disclosure but also negates the fundamental critiquing nature of information disclosure by empowering the very people who may, potentially, be at the receiving end of the critique.

Third, the caveat regarding intelligence agencies (which is later elaborated in Clause 33 of Subdivision B of Division 2 of Part 2), giving them complete immunity from any public disclosure action, effectively removes any possibility of bringing such agencies into the ambit of public scrutiny. While this exception is, quite clearly, a result of the Snowden issue, its inclusion in an Act that ostensibly aims to provide a legal framework to acts of whistleblowing makes the whole Act nothing more than lip-service to the concept of whistleblowing.

"The problem of content in a rule of law society can be articulated thus: the entity making the call on the wrongful nature of the content is, typically, not the organisation, but rather the whistleblower. So, the basis of the call is, naturally, subjective."

Regardless of its obvious flaws, perhaps there is one lesson to be learnt from the PID Act. This Act, with its overly-restrictive criteria, illustrates my core argument: that while it is commendable for governments to attempt to bring in acts of whistleblowing within the ambit of rule of law, myopic legislation that refuse to engage with the ethical complexities of the intent and content of whistleblowing are doomed to fail. More importantly, such legislation potentially make whistleblowing a mockery. They reduce a cautionary clarion call for institutions to remain accountable to the rule of law into an inconsequential trill that is lost in the humdrum of corruption and incompetence.

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[15] Rule of Law Institute of Australia (2013). 'Inquiry into the Public Interest Disclosure Bill 2013' p. 3.

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Supporting Voice
LexisNexis Cares Committee and LexisNexis Rule of Law Program

LexisNexis® employees across the Pacific had the opportunity to enter 500 words or less explaining what they have done to help advance the rule of law for a chance to win a trip to Phnom Penh, Cambodia, to visit the two crisis centers run by Voice. The lucky winners were Laura McKnight and Caron Wadick, both from the Sydney office Australia. Laura's application was successful due to the work she did leading the fundraising activities LexisNexis Cares Committee (LN Cares) ran in 2013, raising AUD$25,000 for Voice. Caron's winning application was selected on the back of the pro-bono legal aid work she carries out in communities in need within Sydney.

Laura McKnight (right) delivering a school pack to a local child who is supported by Voice's Back 2 School project

Caron and Laura travelled to Phnom Penh with Tyson Wienker, LexisNexis Executive Director of Strategy. Kristy Fleming, CEO and Founder of Voice hosted Caron, Laura and Tyson for two days, taking them to visit the children and families the charity works with and supports in Cambodia.

Day 1

Tuol Sleng Genocide Museum

A packed day planned, the team set off at 7am in a local tuk tuk and headed for a tour of Tuol Sleng Genocide Museum, a former high school which was used as the notorious Security Prison 21 (S-21) by the Khmer Rouge regime from its rise to power in 1975 to its fall in 1979. On the way to the tour Kristy explained that visiting the museum, although very harrowing to learn about the terrible atrocities that occurred there only 35 years ago, would help us gain a better understanding of Cambodia's history and explain its constant struggle to get its people out of poverty, and its authorities out of corruption.

Meeting Srun and learning about Thalassemia Major

After the tour and a quick debrief on what we'd learned we were back in the tuk tuk and off to meet Srun and his family while they were selling corn to tourists, as they do most days. Srun is a little boy who suffers from a genetic blood disorder called Thalassemia Major, a condition that requires regular blood transfusions. As blood is in severe shortage in Cambodia Voice has set up a volunteer blood donation drive to support Srun and his family with this much needed healthcare. Supporting the blood drive by volunteering to donate while visiting Phnom Penh is one of the ways LexisNexis has been able to support Voice in its quest to provide the basic human right of healthcare to people like Srun and his siblings.

Back 2 School packs drive

The next stop was to visit Voice's inner city crisis centre to meet the children Voice enables to get back to school and educated. LN Cares has been promoting and planning a massive fundraising event to raise money for the Back 2 School campaign, launched by Voice, to raise the AUD$20,000 required to get more than 100 children back to school this year. This money goes towards school fees and scholarships for many of the children, and provides them with school packs that include uniforms, note books, text books, pens and pencils to equip children with everything they will need for a successful school year. Caron, Tyson and Laura were privileged enough to visit at the time of year the children receive their packs.

"It was really fulfilling and touching to be able to give the children the packs that LexisNexis helps to provide and see the delight and happiness on their faces," Laura said of the experience.

Eviction site

In the afternoon Kristy took the LN team to a site where a family Voice works with still lives, even after many others had lost their homes and livelihoods after being forced to abandon the land so it could be turned into a development site. It was both eye opening and sad to see such a large section of land where many families once lived and worked be reduced to wasteland. Even worse was seeing the one remaining, lonely looking tin roof of a house that had survived the demolition where this family of four still live in what is left of their unsafe, unstable 'tin roof' home.

Giving blood

The team then went on to donate blood so that vouchers for blood transfusions could be given to Srun and his siblings.

Day 2

Family visit

On the morning of day two Kristy took the team to meet a family living with inherited blindness and HIV. Voice gives invaluable assistance with this family's much needed healthcare and helps to get the children into school. Caron, Tyson and Laura delivered school packs to the children in the family including one young girl suffering with HIV. They were also able to see how the family makes a living by breeding livestock just outside their home, a living that was enabled through Voice who bought the family their first pig to breed. This is another success story of how Voice gives people in crisis the means to gain independence and support themselves, providing opportunities for a better future.

Caron Wadick, Laura McKnight and Tyson Wienker (left to right) outside the blood centre just having donated blood to support Voice's Thalassemia program

Back 2 School pack round two

After lunch the team went to deliver the rest of the school packs to the children at another Voice community crisis centre, run by Cambodian kickboxing champion and national hero, Eh Phutong. As well as handing out the packs the team was treated to a kickboxing dance performance from the children, one of the many activities the children are encouraged to do. This helps them learn discipline, have stability, a sense of belonging and teamwork, and of course have fun.

Royal University of Law and Economics (RULE)

Kristy also organised for the team to visit the Dean of RULE law faculty in Phnom Penh. This was a very insightful visit as the team learned about the law school and the resources it has to educate its students. It was exciting to see some LexisNexis publications that had been donated over the years. This was an important part of the trip as a large part of LexisNexis' global mission to advance the rule of law means being able to help countries like Cambodia develop by educating its population so it can grow and change for the better of the country and generations to come.

LexisNexis is interested in exploring opportunities to assist organisations like RULE by providing access to legal publications and help more young people into law school through scholarships and other means, so they can improve their lives and the lives of others.

Why Voice?

LexisNexis Pacific chose to support Voice because its ethos and mission to give people access to their basic human rights aligns perfectly with LexisNexis' mission to advance the rule of law around the globe. As one of the most corrupt countries in the world, Cambodia is arguably the county most in need of support in advancing the rule of law, particularly in the Asia Pacific region. LexisNexis is proud to support Voice, a charity that makes a massive difference with minimal resources, on its journey to give basic human rights to people in crisis so they can gain independence and improve their own lives.

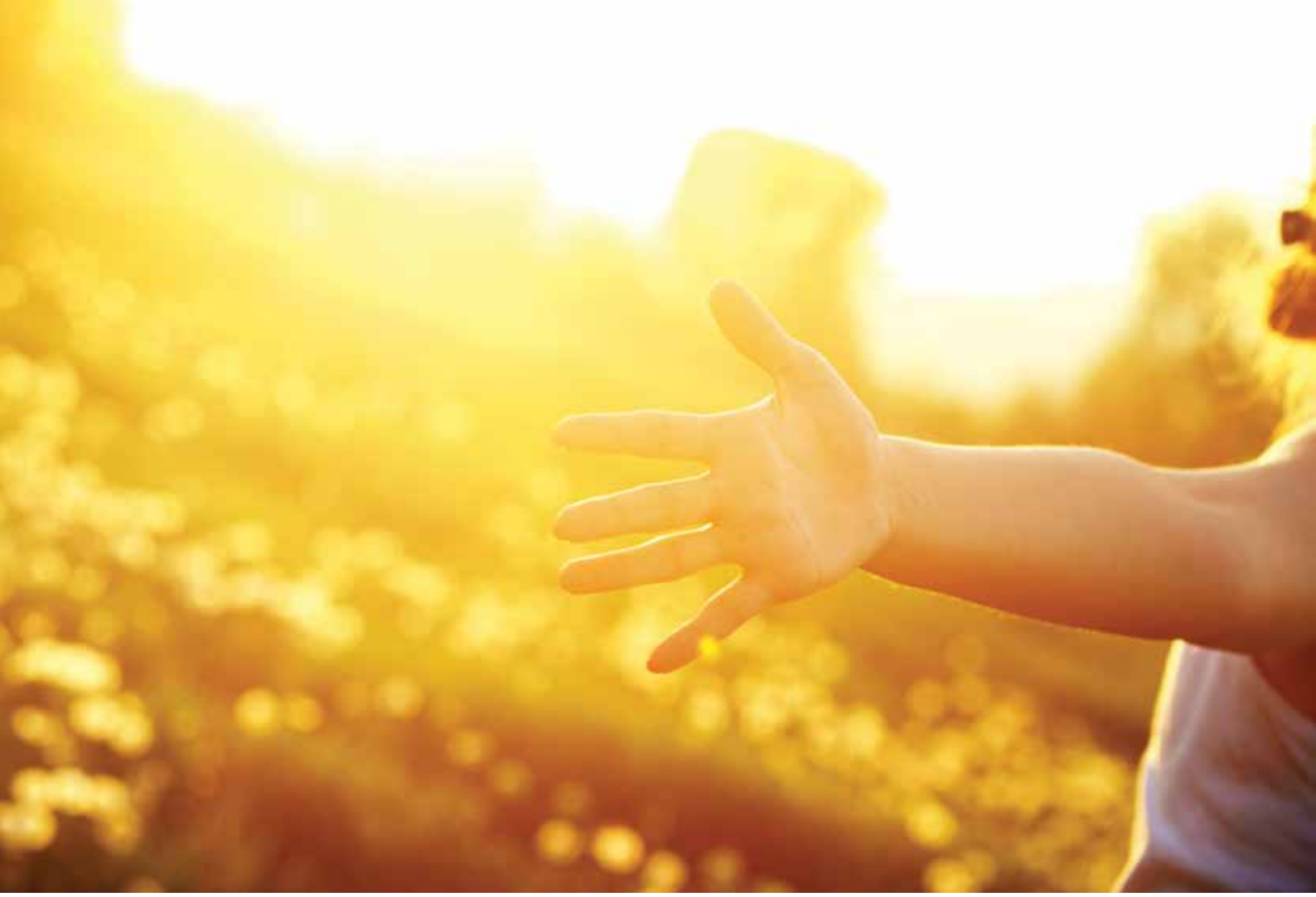
Bree Moody, LexisNexis Executive Director Sales, who leads the LN Cares Committee in the Pacific, also holds the role of Vice President on the Voice Management Committee. In her role Bree is working closely with the committee to find ways to better sustain funding and support for Voice in the long term. The committee is looking for other corporate and professional organisations that want to make a difference to the lives of disempowered people in Australia and Cambodia to come on board and get involved.

Fundraising 2013

In 2013 LexisNexis raised AUD$25,000 for Voice through bake sales, raffles, a wine tasting event, monthly employee drinks, quiz night and other fundraising events along with an in-kind donation drive to collect toys and clothes to send to Cambodia. LexisNexis also applied for funding from the Reed Elsevier Cares program to donate to Voice, from which AUD$7,500 was secured.

Fundraising 2014

The focus for this year's fundraising is an online silent auction, which was launched here in mid-November. Alongside the auction LexisNexis has been raising funds throughout 2014 with activities such as the autumn and spring lunch, monthly drinks and quiz nights. This year the committee aims to raise more than the AUD$25,000 raised in 2013 to help Voice with its back-to-school program and other projects. The silent auction will be open to anyone who wants to either donate or bid. If you would like to find out more about the auction and find out how you can help please contact Laura McKnight at laura.mcknight@lexisnexis.com.au or call +61 2 9422 2957.



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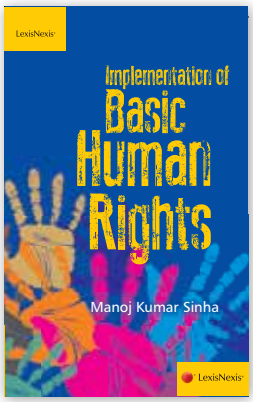

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Manoj Kumar Sinha
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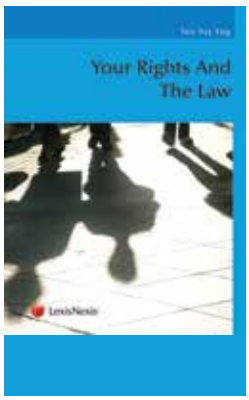

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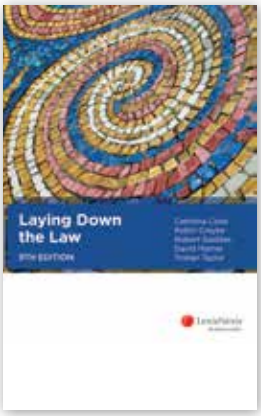

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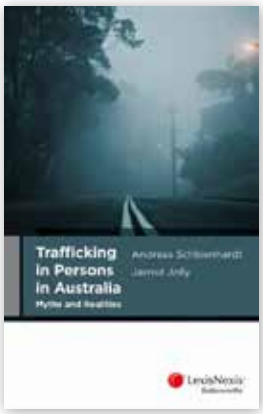

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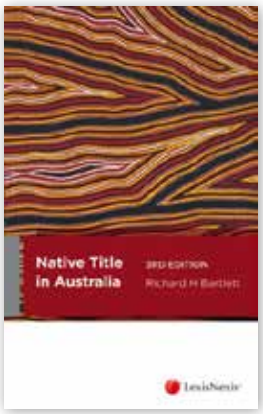

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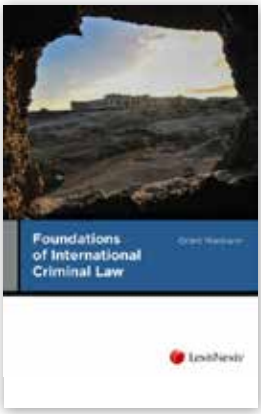

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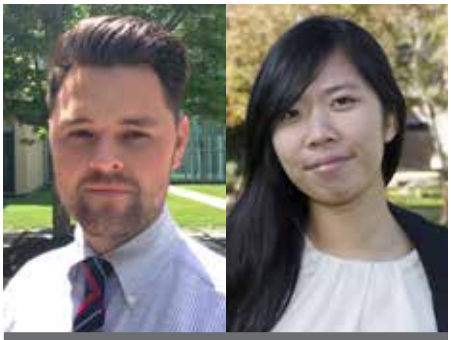

By James Dalley and Winkei Lee

On 31 August 2014, the Standing Committee of the National People's Congress (NPCSC) released its Hong Kong electoral reform package.[16] It was the trigger for the latest mass protest in Hong Kong, with tens of thousands of people taking to the streets to demonstrate against the reforms.

Hong Kong became a Special Administrative Region of China in 1997, and its people have demanded universal suffrage ever since. The Sino-British Declaration of 1984 [17] stipulated that from the date of cessation of British colonial rule in 1997, Hong Kong shall continue with its own economic and political system for at least another 50 years. Known as the 'One Country, Two Systems' principle, Hong Kong regulates the city-state under what is known as the Hong Kong Basic Law with considerable autonomy from Beijing.

In 2007, Beijing promised the people of Hong Kong that the Chief Executive would be elected by universal suffrage in 2017 with election of the entire legislature by the same process in 2020. In an effort to honour this promise, the electoral reform package decided on by the NPCSC outlines a framework that allows only those candidates who have been pre-screened by a 1200-person nomination committee to run. The nomination committee is responsible for 'institutional nomination, implementing the majority will', and must be satisfied that chosen candidates 'love China, and love Hong Kong'. This maxim was also used in a White Paper issued by the State Council Information Office on 10 June 2014, in which it described local judges as administrators with an obligation to 'love China', a phrase that has become unofficially synonymous with 'love the communist party'.

What is sometimes overlooked in light of recent protests is that China has upheld the principles it agreed to in the Sino-British Declaration it signed 30 years ago. The electoral reform package is an example of this. While the pre-screening of candidates means the process is not purely democratic, the reforms allow election of the Hong Kong Chief Executive with more participation afforded to the Hong Kong people than was ever enjoyed while under British colonial rule. During colonial rule, Hong Kong citizens were forced to accept the appointment of a colonial Governor by the British Government in London, which it did for nearly a century without protest. In this sense, the electoral reforms are a positive step forward by Beijing in a move that supports a more democratic Hong Kong.

The protesters occupying the streets of Hong Kong have displayed an unwavering energy to vocalise their democratic ideologies through public demonstration. What started as a small protest limited to Hong Kong University students has ballooned into the so-called 'Umbrella Revolution', involving Hong Kong citizens from all walks of life. Despite Beijing's willingness to allow the Hong Kong people more participation in electing a local government Chief Executive than any other region in China, the protests are a sign that the Hong Kong people have given up working within the current legal framework to achieve democratic reform to their political system.

The protesters are making demands on the local Hong Kong Government and Beijing that include the release of three student activists, the resignation of Chief Executive CY Leung, revisions to the 2017 electoral reforms, and complete suffrage including civil nomination in 2017. The demand for universal suffrage without pre-screening of candidates is not something Beijing is likely to deliver. The absence of pre-screening could result in the election of a Chief Executive or local

[16] Standing Committee of the National People's Congress, Decision and explanations of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (31 August 2014) Constitutional and Mainland Affairs Bureau <http://www.2017.gov.hk/filemanager/template/en/doc/20140831a.pdf>

[17] Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 1984.

government that harbours anti-mainland Chinese sentiment and works to undermine the central government.

Upon closer inspection, the protesters are demonstrating about more than just electoral reform. Social inequality in Hong Kong is beginning to fuel anti-mainland Chinese sentiment among Hong Kong citizens. Hong Kong has one of the highest populations of billionaires per capita in the world, with 41 billionaires out of a total population of seven million according to the Forbes rich list. In recent years, a large number of mainland Chinese have migrated to Hong Kong with their newly acquired wealth, buying up highly sought after real estate. This has further added to the inflation of property prices and the cost of living, exacerbating inequality that is at its highest level since records began in 1971. Wages for graduates in Hong Kong have been in decline for more than a decade, with many young people now unable to afford their own home. The Hong Kong people are in desperate need of a local government that is able to address these increasingly prevalent social problems.

Hong Kong continues to be the only region in China that has universal suffrage embedded in its electoral process, and may well be a testing ground for the implementation of democracy in other regions of China. The current protests are only going to prove to Beijing that implementing democracy in other regions of China could result in similar social unrest as witnessed in Hong Kong. This is counter-productive to reaching democracy in both Hong Kong and mainland China.

The road to democracy in Hong Kong has been a long one, and many are sceptical that it will ever end. Yet the NPCSC in Beijing continues to allow the Hong Kong Basic Law to co-exist under the 'One Country, Two Systems' principle. Perhaps this is a sign that Hong Kong should remain hopeful in its quest to implement democratic elections on their own terms. ■

Winkei Lee is a Masters student at the Strategic and Defence Studies Centre, ANU.

[18] Forbes, Hong Kong Billionaires 2014 <http://www.forbes.com/billionaires/#tab:overall_page:1_country:Hong%20Kong>
[19] Census and Statistics Department, Hong Kong 2011 Population Census - Thematic Report : Household Income Distribution in Hong Kong <http://www.statistics.gov.hk/pub/B11200572012XXXXB0100.pdf>

Nathalie Tierney and Mathilda Miria-Tairea - two workshop participants

LexisNexis® New Zealand funds rule of law initiatives in the Pacific

By James Dalley

In late June LexisNexis New Zealand sponsored a three-day workshop for lawyers and magistrates, which was organised by NZLS CLE Ltd & Massey University, in association with The Cook Islands Law Society - a partnership that has seen the delivery of more than 20 mediation workshops since 2010.

The Skills and Strategies for Managing Your Cases: Expanding Your Toolbox – negotiation, settlement conferences and mediation workshop, held in Rarotonga between 18-20 June, focused on expanding the tools lawyers use to achieve better outcomes for their clients, including better negotiation skills, and bigger understanding, and use of judicial settlement conferences and mediation.

Run on a pro-bono basis, the workshop had a number of high calibre presenters lined up, including former Director of Massey University's Dispute Resolution Centre, Virginia Goldblatt, and Director of Massey University's mediations service, well known commercial mediator, Geoff Sharp. The Cook Islands Law Society's Executive Director Christine Grice, an experienced mediator who sits on the bench of the Cook Islands High Court, was also present for part of the workshop.

Skills and Strategies for Managing Your Cases – negotiation, settlement conferences and mediation workshop participants and faculty – the participants included local private and government lawyers and local Justices of the Peace. The faculty were Geoff Sharp (NZ commercial mediator), Virginia Goldblatt (Massey University) and Hon Justice Grice of the Cook Islands High Court.

Sponsoring events in the Pacific region such as the practical legal workshop in the Cook Islands, allows LexisNexis, an organisation passionate about advancing the rule of law worldwide, to contribute to the quality and integrity of the legal profession in the region, as well as deliver greater access to justice for citizens that come in contact with the law.

"At LexisNexis, our core belief, central premise and purpose, is to uphold the rule of law which fundamentally states that no one is above the law," LexisNexis New Zealand Executive Director Rachel Travers said, adding that the workshop had been a great initiative that served to advance the rule of law in the Pacific.

LexisNexis donated a cheque for NZ$6,000 to the New Zealand Law Society to support the workshop this year.

Another initiative in New Zealand this year saw LexisNexis deliver a donation by the New Zealand High Court in Wellington comprised of two full sets of New Zealand Law Report (NZLR) - 372 bound volumes weighing a total of 560kg - to Samoa and Niue.

The NZLR, published by LexisNexis New Zealand, are the official law report series of New Zealand's superior courts: the Supreme Court of New Zealand, the Court of Appeal of New Zealand, and the High Court of New Zealand.

The donations were made possible with the assistance of Christine Grice from the New Zealand Law Society, David Naylor of the South Pacific Lawyers Association, and funding from LexisNexis as part of the Pacific Rule of Law Initiative.

"Thank you so much for the kind donation, and please convey our sincerest appreciation to the management of LexisNexis," Mareva Betham-Annandale of the Samoan Law Society said at the time of the donation.

Facilitating access to the law through the delivery of legal materials is another way through which LexisNexis can uphold its commitment to advancing the rule of law in the region, and worldwide. The importance of corporate entities such as LexisNexis, side by side with regional state powers, including Australia and New Zealand, to be seen and accepted as staunch supporters of the rule of law in the region has never been more pertinent.

A report, recently published by the World Bank,[20] and presented at the Crawford School of Economics at the Australian National University in Australian Capital Territory, [21] identified the Pacific Islands as one of the most difficult places to do business in the world. The report cited evidence of high levels of corruption, gender violence, and an increase in crime rates as some of the challenges that continue to thwart progress of the rule of law in the Pacific region.

This year, the region has also witnessed first-hand the challenges the Pacific faces in advancing the rule of law, when in March, Australian-born Nauru Supreme Court Chief Justice Geoffrey Eames resigned from his role after Nauru's Chief Magistrate was sacked by the Nauru Government in a move condemned as a violation of the rule of law, both in Nauru and by external commentators.

In the meantime, the region has seen Fiji stage four coups since 1987, with the latest resulting in Commodore Frank Bainimarama hold onto power from 2006 until his resignation in February this year as Fiji Military Chief. Each coup saw the Constitution suspended, rendering fundamental rights and freedoms of Fijians, previously guaranteed, as non-existent. Since the most recent coup in 2006, the Fijian judiciary has been criticised of being overly-politicised - a number of judges trying to uphold the rule of law, have been forcefully retired or silenced. Implications of Commodore Frank Bainimarama's resignation are still unclear, yet the need to uphold the rule of law remains as apt as ever. ■

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Participants at the Skills and Strategies for Mangaing your Cases workshop.

Catherine Evans (President of the Cook Islands Law Society) and Tingika Elikana (Cook Islands Secretary for Justice).

[20] World Development Report 2014, Risk and Opportunity: Managing Risk for Development.
[21] Public lecture by Kyla Wethli, Truman Packard, and Michael Carnahan, 'Risk and hardship in the Pacific and worldwide' 6 March 2014.

Countering human trafficking is an ongoing challenge

By Rachael Steller and Michaela Williams

At first glance, it's difficult to believe that in 2014 it is still necessary to lay charges for human trafficking, or slavery. It's even more difficult to accept that it is happening in our own backyard.

It's a reminder that the rule of law sometimes does not reach far enough into some corners of our own sphere of influence. In one case recently, two men were charged with human trafficking in New Zealand on August 28, and face a total of 11 charges. One of the men is facing another seven charges, along with a further 36 charges with a third man for giving false or misleading information to a refugee status officer in that country.

Human trafficking continues to provide labour, often forced and under duress, in a surprisingly wide range of commercial pursuits that are notorious for low wages and conditions. It's a growing problem globally, affecting industries as varied as fishing, agriculture and farming, hospitality, entertainment and sex work, and even nursing.

Victims are often coerced into unpaid labour, prostitution – including the sexual exploitation of children – forced marriages and surrogacy, sweatshops, organ harvesting, and other indignities.

Many of the victims are residents of poorer Asian nations like Indonesia, Vietnam and Cambodia, and are tricked into making sea journeys working as sailors or to travel to promised jobs, only to find themselves trapped by unsubstantiated debt, confiscated identity papers, physical and psychological abuse, appalling work conditions and inadequate shelter.

Exacerbating the problem is the fact that access to justice for many of these aggrieved people is not easy to acquire. For example, legislation in New Zealand does not presently recognise human trafficking internally, and excludes exploitation as a purpose for the offence. In many cases the best that victims of exploitation can hope for is a return to their country of origin.

There are those willing to provide assistance to victims of forced labour, trafficking or slavery, however. One charitable trust that was formed originally to fight poor conditions in the New Zealand fishing industry, Slave Free Seas, has mushroomed into an organisation with a charter to provide legal assistance for victims – and prosecution where possible – along with programs to raise public awareness of the problem, research into the extent of human trafficking around the world, and advocacy for legislative change. Among its members are lawyers who specialise in maritime law and human rights, academics and concerned citizens.

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> "Victims are often coerced into unpaid labour..."

Slave Free Seas has cooperated with other like-minded groups and LexisNexis to produce a "legal toolbox" of resources to assist those helping victims to seek justice, in any jurisdiction around the world, and to encourage the legal pursuit of those who try to profit from human trafficking.

Among those resources is *Practical Guidance - Slave Free*, a free legal resource prepared by Slave Free Seas and LexisNexis and can be found on www.lexisnexis.co.nz/practicalguidance. This free module, was created to assist legal practitioners in their support of victims. It contains general information on modern slavery and human trafficking, practical guidance on advocacy for victims' rights, and ways to seek policy changes in jurisdictions that do not provide adequate safeguards for victims.

Visit www.lexisnexis.com.au/ruleoflaw to read an extract of one of many practical case studies which can be found within the module.

LexisNexis contributed its expertise to this practical guide as part of its ongoing commitment to the rule of law – a theme that unifies the organisation across the globe.

Rachael Steller is LexisNexis Product Developer (NZ), Michaela Williams is LexisNexis Events, Social Media and PR Coordinator (NZ). ■

Fiji Law Reports: An update from the Pacific Rule of Law Project

Earlier in the year we announced that LexisNexis is working in partnership with the Judicial Department of Fiji to create access to selected cases in both hard copy and digital formats. We are delighted to announce that volume 1 of the LexisNexis Fiji Law Reports, comprising significant cases from 2012, went to press in November 2014, and will be jointly launched with the Judicial Department in early 2015.

This initiative will enable legal practitioners in Fiji to excel in the practice and business of law and assist the judiciary, governments and businesses to function more effectively, efficiently and with transparency. LexisNexis Pacific is committed to building a comprehensive set of authorised reports for Fiji.

The importance of the rule of law in promoting development

By Laila Hamzi

The Bingham Centre for the Rule of Law and the Singapore Academy of Law jointly organised a Symposium on 23 May 2014 in Singapore to explore the importance of the rule of law in promoting development. Governments, the judiciary, and the private sector all have an interest in understanding and exploring the connections between various components of the rule of law—such as legal certainty and transparency of laws, anti-corruption, order and security, equal application of the law, and access to justice—and economic progress, social development, and political stability. The Symposium was held in anticipation of the UN General Assembly's consideration of the Sustainable Development Goals in September 2014, recognising the inherent value of exchanging ideas about the rule of law and the growing international debate on the relationship between the rule of law and development.

The Symposium brought together pre-eminent speakers to foster discussion from Singaporean, regional and international perspectives. Among those presenting were Professor Sir Jeffrey Jowell, KCMG QC, Director of the Bingham Centre for the Rule of Law; Mr Christopher Stephens, General Counsel of the Asian Development Bank; The Honourable Attorney-General of the Republic of Singapore Mr Steven Chong SC; The Right Honourable The Lord Phillips of Worth Matravers KG PC, former President of the UK Supreme Court; and The Honourable the Chief Justice Sundaresh Menon, Chief Justice of the Supreme Court of Singapore. The speakers were divided into four panels which focused on the rule of law and economic and social development, the rule of law and business and finance, the rule of law and foreign investment, and judicial perspectives on the rule of law and development.

The questions considered at the Symposium were of both practical and theoretical significance as panellists represented a range of sectors. How, in practice, is the rule of law interrelated with and how does it reinforce economic and social development? What do businesses, financial institutions, international investors, policy-makers and legal practitioners see as the key rule of law challenges in each of their fields? How may these challenges be better addressed?

An edited collection of papers will be published by the Bingham Centre for the Rule of Law in due course. ■

Laila Hamzi is an intern at the Bingham Centre for the Rule of Law.

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Bingham Centre publishes *Immigration Detention and the Rule of Law: Safeguarding Principles*

By Justine Stefanelli

The use of detention as a means of immigration control has become increasingly widespread. In many countries, non-citizens may be detained indefinitely, awaiting a decision on whether they may be allowed to enter or remain on the territory. Despite its extensive use by governments, there is a great deal of evidence that, in many countries, immigration detainees are deprived of their liberty in accordance with procedures and under criteria and conditions which fall short of rule of law standards. It is vital that adequate procedures are in place to protect the liberty interest of individuals and to ensure respect for the rule of law.

In October 2013, the Bingham Centre published a set of 25 Safeguarding Principles (SP) and accompanying commentary, intended to promote practical and effective protection under the rule of law. Funded by a grant from the Nuffield Foundation, these progressive standards draw on legal instruments, promulgated standards, UNHCR and NGO Guidelines, working illustrations and judicial observations, extrapolated from national, regional and international contexts. The Safeguarding Principles focus on the procedural processes relating to the decision to detain. For example, SP3 suggests that the relevant criteria and processes associated with immigration be clear and published; SP5 recommends that detention can only be imposed and carried out by an authorised authority; SP21 calls for every detainee to be brought promptly before a judicial authority for an assessment of the appropriateness of detention; and SP22 suggests that review of the appropriateness and conditions of detention should be ongoing. However, the Safeguarding Principles move beyond procedure to consider substantive issues such as the right to liberty and equality (SP1 and SP2), the conditions of detention (SP19 and SP20), and the need to explore whether alternatives to detention are appropriate in the circumstances (SP8).

The Safeguarding Principles have relevance and resonance wherever immigration detention is practised, designed and scrutinised under the rule of law. For example, in the United Kingdom there is currently a Parliamentary inquiry into the use of immigration detention which explores several issues covered by the Safeguarding Principles, such as whether a maximum duration of detention should be set in law, and the extent to which the judiciary should be involved in the making and confirmation of executive orders for detention. Several of the Safeguarding Principles, such as the presumption of liberty (SP1), the right to an individualised assessment (SP7) and the requirement of necessity (SP13) are relevant to any country that practices mandatory immigration detention, such as Australia and the United States.

The Safeguarding Principles and commentary are aimed at assisting state governments in enacting and carrying out their detention policy; helping judiciaries in their full consideration of these issues; aiding immigration officials in the implementation of their policy; and informing individuals liable to detention or currently in detention as to the rights applicable to them.

The Safeguarding Principles can be downloaded at: http://www.biicl.org/files/6559_immigration_detention_and_the_rol_-_web_version.pdf ■

Justine Stefanelli is Maurice Wohl Associate Senior Research Fellow in European Law at the Bingham Centre for the Rule of Law.