

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

OPENING OF THE LEGAL YEAR 2020

Monday, 6 January 2020

Mr Attorney,

Mr Vijayendran,

Honoured Guests,

Members of the Bar,

Ladies and Gentlemen:

I. INTRODUCTION

1. It gives me great pleasure, on behalf of the Judiciary, to welcome you to this morning's proceedings. I am especially grateful to the Honourable Prof Dr M Hatta Ali, Chief Justice of the Supreme Court of the Republic of Indonesia, the Right Honourable Tan Sri Tengku Maimun binti Tuan Mat, Chief Justice of Malaysia, the Honourable Slaikate Wattanapan, President of the Supreme Court of Thailand, and our other guests from abroad for being with us this morning.
2. Over the past year, the Judiciary has been involved in a number of significant reforms in both its domestic and international fields of work. This morning, I will provide a broad overview of our progress and outline some anticipated

changes, before turning to some broader issues concerning the future of our profession. Let me begin by briefly reviewing the changes within the Judiciary.

II. FELICITATIONS

3. Justices Pang Khang Chau, Audrey Lim, Ang Cheng Hock and Vincent Hoong were appointed as Judges of the High Court following their terms as Judicial Commissioners. We have also just welcomed Judicial Commissioner Mohan S/O Ramamirtha Subbaraman, who brings years of experience in admiralty practice as one of our first Senior Accredited Specialists in Maritime and Shipping law. These appointments will enhance the quality and the diversity of the Bench.
4. In addition to the extensions I foreshadowed in my Response last year, we retained the deep experience of Justices Woo Bih Li and Tan Siong Thye, each of whom has been re-appointed for a term of two years.
5. Turning to the Singapore International Commercial Court (“SICC”), I am delighted to welcome two new International Judges:
 - (a) the Honourable Arjan Kumar Sikri, who retired last year from the Indian Supreme Court as its most senior judge after the Chief Justice; and
 - (b) Professor Douglas Samuel Jones, one of the world’s foremost construction arbitrators.
6. Their appointments will reinforce the SICC’s standing and enhance its capacity to adjudicate and resolve complex international commercial disputes.

7. The work of the Bench is supported by the Supreme Court Registry, which is led by a new Registrar, Ms Teh Hwee Hwee, and Deputy Registrar, Mr Phang Hsiao Chung. Ms Teh succeeded Justice Hoong in April last year. I gratefully acknowledge Justice Hoong's outstanding work as Registrar of the Supreme Court prior to his appointment to the Bench, and I am certain that Ms Teh and Mr Phang will lead the Registry with similar distinction.

III. OVERVIEW OF PROGRESS

8. Let me turn to our progress over the past year and outline what we can look ahead to.

A. *Domestic Matters*

i. Civil Justice

9. I begin with civil justice. Perhaps the most noteworthy development last year was the establishment of the new Appellate Division of the High Court, which will help address the growing caseload of the Court of Appeal. The relevant Constitutional and legislative amendments were enacted last November and the Appellate Division is expected to come into operation in the second half of this year.
10. Notwithstanding the introduction of the Appellate Division, the present system of having essentially a single tier of appeal from first instance decisions of the High Court will largely remain in place. Appeals from what will be known as the General Division of the High Court will be allocated between the Court of

Appeal and the Appellate Division. The Court of Appeal will have power to transfer civil appeals between the two appellate courts, based on criteria specified in primary and subsidiary legislation. Where an appeal has been decided by the Appellate Division, leave for any further appeal to the Court of Appeal will be subject to stringent requirements.

11. Another significant development we can expect in the coming year is the implementation of the new Rules of Court proposed by the Civil Justice Commission. The Ministry of Law (“MinLaw”) and the Commission have carefully considered the feedback provided by stakeholders in the public consultation that concluded last year. I understand that the legislative amendments required to implement the new rules will be tabled in Parliament later this year.

ii. Criminal Justice

12. Turning to criminal justice, a key aspect of the Criminal Justice Reform Act 2018 was the establishment of the Criminal Procedure Rules Committee pursuant to s 428A of the Criminal Procedure Code. The Committee comprises representatives from the Judiciary, the Bar, and the Government. It has commenced the work of codifying and streamlining the rules on procedure and practice in our criminal courts, and its initial contributions are also expected to be promulgated in the second half of the year.

iii. Family Justice

13. Third, on family justice. The Committee to Review and Enhance Reforms in the Family Justice System, co-chaired by Justice Debbie Ong and the Permanent Secretaries of MinLaw and the Ministry of Social and Family Development, submitted its recommendations in September last year. The key recommendations include proposals to strengthen the judge-led approach in court proceedings, enhance the enforcement of child access orders, and simplify the Family Justice Rules.
14. The recommendations rest on a sharpened philosophical vision of family justice. This recognises, amongst other things, that the administration of justice in family matters is often less about judging alleged “breaches of rights” than it is about addressing the dire consequences of a family breakdown. To this end, the recommendations aim to promote therapeutic justice using a multi-disciplinary approach, designed to help families find a constructive way forward. This move from an approach focused on rights towards one focused on solutions will require a change of perspective on the part of judges, lawyers, the parties themselves, and all others who play a role in our family justice system. To promote this, our family judges will continue to undergo specialist training, and the development of a Family Lawyer’s Certification curriculum for practitioners is being studied.

iv. State Courts

15. I turn to the State Courts, which is the gateway into the justice system for the vast majority of litigants. The State Courts recently completed their relocation to the new State Courts Towers – a momentous transition that marks a new chapter in the administration of justice in Singapore. In conjunction with the relocation, the State Courts will be launching a new Justice Statement and formulating a new Strategic Plan. The Towers will be officially opened on 14 February 2020, and it is my hope that we might open the Legal Year there from time to time in the years to come.
16. The State Courts will also be collaborating with the Singapore Academy of Law to set up a co-working space within the Towers, known as “CLICKS @ State Courts”. “CLICKS”, short for “Collaborative Law, Innovative Co-creation and Knowledge Sharing”, aims to promote pro bono work while driving legal innovation and entrepreneurship. I look forward to the launch of CLICKS this year and encourage the profession to take advantage of the resources that will be made available through this initiative.
17. The State Courts has gone from strength to strength in recent years. Much of this is attributable to the passion and dedication of Justice See Kee Oon who has presided over the State Courts since 2013, aided by an able and dedicated senior management team. Justice See will complete his term as the Presiding Judge at the end of March this year and will then take on mainstream High Court work. I congratulate him on the outstanding work he has done in leading the State Courts. I am pleased to announce that Justice

Hoong will take over from Justice See as Presiding Judge of the State Courts in April, and I am confident that the State Courts will continue to flourish under his leadership.

B. *International and Regional Matters*

18. Beyond our domestic constituency, we have continued our efforts on the international front.

i. SICC

19. Let me begin with the SICC, which today has a docket of some 45 cases. In 2019, four Originating Summonses relating to international commercial arbitration proceedings were filed directly in the SICC. Over the same period, several cases were also transferred to the SICC, including one where all the parties applied by consent for the transfer.

20. Two imminent developments will strengthen the SICC's position as a dispute resolution venue for international parties in the region.

(a) First, I spoke last year about the ongoing development of a new standard-setting body of SICC procedural rules incorporating the best international practices in commercial dispute resolution. The proposed rules have undergone a rigorous consultation process with stakeholders, and plans are underway for implementing them later this year.

(b) Second, the SICC is organising a symposium on trends and developments in international commercial litigation which is scheduled

to be held on 11 March 2020. This will feature in-depth discussions on topics such as the value propositions of commercial courts, their role in infrastructure and cross-border insolvency disputes, and the international enforcement of court judgments. The programme also includes a session outlining key features of and user perspectives on the new SICC procedural rules. The symposium will be of great interest and benefit to all who might be involved in international commercial disputes.

ii. International Relations

21. Regionally, we have deepened our engagement with the ASEAN community through our efforts in the ASEAN Law Association (“ALA”) and the Council of ASEAN Chief Justices (“CACJ”).

(a) Over the past year, ALA has worked closely with the ASEAN Secretariat to identify areas for greater collaboration, and this augurs well for ALA to play a role as the Secretariat’s legal consultant and the legal think-tank for ASEAN.

(b) ALA has also formed a working group, headed by Justice Pang Khang Chau, to consider the creation of an ASEAN Protocol for Communication with Non-Disputing States on Issues of Treaty Interpretation, which will be of relevance in the area of investor-state disputes.

(c) The ASEAN Judiciaries Portal, developed by the CACJ, is another key initiative. Efforts are afoot to further populate the Portal, partly by the addition of an online repository of the case summaries of landmark

ASEAN judicial decisions. This will promote accessibility to and a better understanding of our various legal systems in ASEAN.

22. We have also continued to strengthen our relationship with our Chinese counterparts. At the third Roundtable held in Beijing last August, Chief Justice Zhou Qiang and I signed a Memorandum of Understanding on judicial training to facilitate collaboration and exchange between our respective judicial colleges. Our judicial colleges are now discussing and working towards a joint publication on case authorities relevant to the Belt and Road Initiative. I look forward to hosting our Chinese counterparts at the fourth Roundtable to be held later this year.
23. We will also host the third meeting of the Standing International Forum of Commercial Courts (“SIFoCC”) in March this year. This follows the first two successful meetings that were held in London and New York respectively. The SIFoCC brings together international commercial courts from around the world, and our continuing participation allows us to add our voice to the global dialogue on the resolution of cross-border commercial disputes.
24. In the context of international judicial training, the Singapore Judicial College has played a valuable role. Our foreign alumni to date consists of around 1,500 judges and officials from 87 jurisdictions. Moving forward, the College will focus on working with foreign judiciaries on longer-term capacity-building engagements even as it continues to discharge its primary function of training our own Judges and judicial officers.

25. Finally, it bears mention that Justice Kannan Ramesh was appointed as a Judicial Commissioner of the Supreme Court of Brunei Darussalam in October last year. He joins Justices Judith Prakash and Quentin Loh who have been serving as judges in other courts. These appointments reflect our commitment to help promote the rule of law internationally, even as they are a testament to the standing of our Judiciary abroad.

IV. CONVERSATIONS ON THE FUTURE OF THE LEGAL PROFESSION

26. I turn to the issues concerning the future of our legal profession. At the Opening of the last Legal Year, I spoke of how the ground is shifting beneath us all as globalisation, technology and commercialisation combine to effect seismic changes to our operating environment. I made three points on that occasion: first, that no single entity can manage or control these changes; second, that we will need an organised and multi-faceted response; and third, that this response must begin with dialogue so that we embark on this journey in unity and with mutual understanding. To that end, I announced that I would build on the work that was already being done by MinLaw and begin a series of Conversations with various sectors of our professional community. Both of you, Mr Attorney and Mr Vijayendran, have referred to those Conversations, which were held between May and August last year, and in the course of which my fellow Judges and I met more than 160 persons across 16 focus groups representing various interests and constituencies.

27. By harnessing the collective wisdom and experience of so many stakeholders, the Conversations have helped illuminate both the terrain on which we stand as well as the path that lies ahead of us. Let me therefore begin by expressing my deep gratitude to all who participated in the Conversations, and also to both of you, Mr Attorney and Mr Vijayendran, for the support you extended throughout the process.

28. I will outline some of the views and ideas that emerged from the Conversations, organising these into four broad themes.

A. *Developing lawyers of the future*

29. The first theme concerns developing lawyers of the future, who will have to navigate vastly more challenging conditions of legal practice. All focus groups agreed that it was timely to reimagine our system of legal education and training to ensure that it remains capable of moulding the lawyers that we need.

30. Starting with undergraduate legal education, two general observations stood out:

(a) First, we should reconsider aspects of how we train our law students. Attention should be directed at enhancing their exposure to particular skillsets and aspects of the law that are increasing in importance and this will ultimately work to the benefit of the profession and, in particular, of those we serve. I will elaborate on this momentarily.

(b) Second, it may be valuable to introduce greater diversity in the pathways that lead to admission to the Singapore Bar. This will encourage individuals with complementary backgrounds and skillsets – such as in computer science or STEM¹-related fields – to join and so strengthen our legal services sector.

31. Beyond undergraduate education, our professional training courses and qualifying examinations may need to be reviewed to ensure that they possess the quality, consistency, scope and rigour to equip all new lawyers with the skills to succeed in legal practice. As the gateway into the profession, our professional examinations must serve as a reliable assurance of the professional competence of aspiring lawyers.

32. For qualified legal professionals, our pursuit of lifelong learning requires us to commit to continuing legal education. All focus groups agreed that the constant churn of knowledge in an ever-evolving world demands a responsive and dynamic system of continuing education that targets the profession's most pressing needs, efficiently imparts new skills, and engages the profession's interest and attention. The existing Continuing Professional Development ("CPD") programme may require redesign to better meet these objectives.

¹ Science, technology, engineering and mathematics.

33. With these concerns and aspirations in mind, several suggestions and strategies were articulated. Let me emphasise that these are simply ideas that were raised during the Conversations and they will undoubtedly require further study to determine their viability. Four ideas received general support:
- (a) First, given the scale and complexity of the endeavour, decision-makers in key constituencies, including the Universities, the Ministries of Law and of Education, and the Judiciary, may be consulted under the auspices of a steering forum for legal education and training. Such a forum could seek to identify strategic objectives and areas of reform, and guide the evolution of our system of legal education and training.
 - (b) Second, our law schools might consider offering a wider variety of pathways to the Bar through their courses and degrees. Apart from direct entry through undergraduate law degrees, these pathways might also permit mid-career individuals with non-law backgrounds to enter the profession. We might conceivably also imagine a new four-year degree programme infused with both academic and practical components, involving two years of core legal education, followed by a year of professional training, possibly in the Legal Service, and a final year of study in a complementary discipline such as business, accounting, or computer science. These varied pathways could be capped by a common Bar examination to ensure that all new entrants meet the required standards.

- (c) Third, our law schools are well-positioned to helm the programmes for continuing legal education and training, under the overall coordination of the Singapore Institute of Legal Education. This may be accompanied by a redesign of the courses and points-based system of the current CPD programme, with the aim of targeting the profession's critical and long-term needs and interests.

- (d) Fourth, and returning to a point I started with, there was wide support for the idea that it might be timely to review the undergraduate law syllabus in order to do a number of things:
 - (i) first, focus on key growth areas such as cross-border insolvency, international arbitration, e-commerce and financial services;
 - (ii) second, encourage aspiring lawyers to consider the potential contributions of technology to legal practice;
 - (iii) third, enhance the teaching of practical skills;
 - (iv) fourth, increase exposure to core private law subjects in civil law systems, particularly those of China and ASEAN; and
 - (v) fifth, offer students meaningful work experience in more diverse institutions and organisations.

34. These initial ideas have been discussed with the Ministers for Law and for Education as well as the Deans of our law schools, and we expect to further explore them in the coming year.

B. *Building law firms of the future*

35. The second broad theme of the Conversations concerned building law firms of the future. The discussions in this area centred on two topics in particular.
36. The first was the state of technology adoption in our law firms. Many international firms have been developing in-house digital capabilities, recruiting technologists and project managers, and tapping on the expertise of external service providers. In contrast, the focus groups acknowledged that our law firms have generally been less robust in embracing technological solutions.
37. The focus groups identified several factors that might account for this. Among these, cost was a prime concern, although many acknowledged that MinLaw and the Law Society have organised generous sources of funding in recent years. Lack of familiarity with technology was also cited as a significant factor, although everyone agreed that the younger lawyers largely do not share this difficulty. It was worrying to hear that some senior practitioners, particularly in small and medium-sized firms, have not embraced technology due to a general resistance to change. Given the increasing automation of routine legal tasks, such resistance raises difficult questions as to the longer term sustainability of these practices. So I warmly welcome the efforts you outlined, Mr Vijayendran, that the Law Society is taking to encourage the adoption of technology in the profession.

38. I was also encouraged by the news that the Singapore Management University School of Law has recently been awarded a major grant for research into computational law. It intends to establish a Centre for Computational Law and Legal Technology to conduct this research and to develop cutting-edge digital and data solutions for legal practice. I am confident that the Centre will provide thought leadership and drive innovation in the vital intersection between legal practice and technology. The Judiciary is in discussions with SMU on how we might work together to optimise these resources in our effort to enhance access to justice through technology.
39. The second topic on building the law firms of the future was the projected demand for a corps of allied legal professionals. Many of you will be familiar with the forecast that the law firm of the future will cease to have a “pyramid” structure comprising a broad base of junior lawyers with a handful of partners at its peak. Instead, law firms will increasingly adopt a “rocket” structure, where a central spine of lawyers is flanked by a range of allied legal professionals trained in complementary fields.
40. If this projection holds, it will have significant implications for the hiring and organisational practices of law firms, as well as the supply and demand of lawyers and allied legal professionals. Many participants supported the idea that our polytechnics and law schools could usefully train allied legal professionals by offering courses that impart skillsets relevant and complementary to the core responsibilities of a lawyer, such as in litigation support, project management, or business development. So conceived,

lawyers and allied legal professionals would work synergistically to best serve their clients. This idea also has been canvassed with the Ministers for Law and for Education, and I expect that it too will be explored further in the coming year.

C. *Reimagining the future of our courts*

41. The third major theme of the Conversations concerned the future of our justice system. There was broad agreement that while technology has already substantially improved court processes, it can accomplish far more. In particular, technology can be deployed to mitigate persistent inefficiencies, delays, expense and inaccessibilities within existing court processes.
42. These enduring problems are a legacy of a justice process that was conceived in a different era and which was founded on a philosophical preference for argument and adjudication as *primary* methods of dispute resolution. That model of justice is increasingly straining to meet the needs of modern society – one which is evolving faster than ever before; inhabits both the online and offline worlds; faces increasing socio-economic stratification; and confronts a polarised world more prone to conflict and division than peace and multilateralism.
43. Fortunately, the current era also offers a new set of tools – namely, the potential of technology. Much work is already being done to realise the next evolutionary phase of our courts. The model of an online court – which advances each dispute through the stages of evaluation, facilitation and

adjudication – is perhaps one of the most important of this new generation of possible solutions.

44. To this end, the State Courts has launched the Community Justice and Tribunals System (“CJTS”), which is an integrated justice solution that facilitates the use of online dispute resolution (“ODR”) options such as e-negotiations and e-mediations by litigants-in-person. In similar vein, we are continuing to work on the development of an Outcome Simulator as part of a new ODR Platform for motor accident cases. This will allow the parties to identify potential award ranges for personal injuries, thus facilitating early settlement. More functionality will, in time, be added to the ODR Platform to promote settlement negotiations. In the longer term, the Platform may also move beyond motor accident cases.
45. The Judiciary’s Office of Transformation and Innovation (“OTI”) has been working on various other measures to enhance efficiency in court-related proceedings:
 - (a) For example, the Authentic Court Orders system will obviate the need for parties to obtain “certified true copies” when asked to produce court orders to foreign courts or government agencies.
 - (b) A video-conference and queue management application will enable remote taking of queue numbers and remote attendance at selected hearings.

(c) The OTI also intends to pursue automated speech-to-text transcription with a view to providing real-time transcripts that are reasonably accurate and affordable. This will expedite proceedings and minimise the need for lawyers to take verbatim notes and will complement our recently-introduced policy to allow parties to obtain audio recordings of trials.

46. These are important and welcome developments, but they represent first steps in our journey to build a system that better meets our society's justice needs. I suggest three principles ought to guide the redesign of our justice system. Time does not permit me to do more than briefly outline these principles today, but I have explored them in greater detail at a lecture I delivered in November last year² and which Mr Vijayendran earlier alluded to.

(a) I start with the principle of *accessibility*. This should be understood in terms of closing the “justice gap”, which is a metaphor for the problem of unequal access to justice. It has three dimensions: a *physical* gap, which concerns the physical distance between an individual and the institutions of justice; a *resources* gap, which deters the individual from seeking legal recourse due to concerns over cost; and a *literacy* gap, which follows from a lack of awareness about one's legal rights and

² Sundaresh Menon CJ, Negotiation and Conflict Management Group (NCMG) ADR Conference 2019, “Technology and the Changing Face of Justice” (14 November 2019): <supremecourt.gov.sg/docs/default-source/default-document-library/ncmg---keynote-lecture.pdf>.

remedies. A justice system that seeks to minimise the level of injustice in society must necessarily be interested in closing each of these gaps, thereby enhancing and equalising access to justice.

- (b) Second, the principle of *proportionality* requires the nature, complexity and cost of the processes and solutions offered by the justice system to bear suitable relation to the nature, complexity and size of the legal problem in question. It is a resource-saving principle that not only promotes the efficient allocation of scarce judicial resources, but also recognises that disputes have varying needs which call for different types of solutions.
- (c) Third, the principle of *peacebuilding*. This reflects the aspiration that the justice system should not merely *keep* the peace by enforcing rights and obligations, but should also strive to *build* lasting peace by repairing and reinforcing relationships and rebuilding our sense of community. In so doing, the justice system would act prophylactically to prevent further and potentially more serious instances of rule-breaking and rights violations.

47. Guided by these principles, the redesign of our justice system should aim at delivering fair outcomes that are available to all, as a means of achieving real and lasting peace in our community. This vision requires us to embrace the idea of a court:

- (a) that departs from a traditionally reactive approach to proactively resolving disputes in the most appropriate manner;
- (b) that offers an extended suite of assistive services to empower and educate its users;
- (c) that recognises that adjudication is part of a wider universe of dispute resolution methods; and
- (d) that actively connects users with particular needs to sources of help, whether within or outside the justice system.

48. A justice system that is founded on these values holds out the promise of justice as a public service available to all, rather than being the exclusive preserve of a few. In the coming months, my staff and I will consider how these values can be more effectively realised through the institutional redesign of aspects of our justice system.

49. Seeing justice as a public service also entails helping the public better understand how justice is administered. This involves offering the public greater insight into the deliberative process by which judges decide cases, the nature of the judicial function, the powers of the courts and the limits of those powers. We can seed that basic understanding through court engagement and outreach, so as to promote the reasoned scrutiny of court decisions and more meaningful public discourse about the law.

50. Last November, we took a step in this direction by launching the State Court's Judicial Heritage Gallery. I am pleased to announce that the Supreme Court's new Judicial Heritage Gallery will open its doors today. This is a project that has been some years in the making and I am indebted to all those who have laboured hard to make it a reality. It is my hope that these Galleries will help bring the Judiciary and the profession closer to our fellow citizens. I warmly invite you to visit the new Judicial Heritage Gallery after the close of today's proceedings.

D. Regulating legal services of the future

51. The fourth and final major theme canvassed in the Conversations concerns regulating legal services of the future. The challenge in this area arises, in particular, from the emergence of alternative legal service providers, or "ALSPs", as new entrants into the market. ALSPs range from small legal technology start-ups to the "Big Four" accounting firms which offer legal services as part of a broader suite of professional services. Their emergence will result in a legal marketplace that is more crowded, competitive, diverse, and commercialised.

52. Regulating legal services and ALSPs is a complex issue that MinLaw has been studying closely and will continue to examine with care.

E. Carrying on the Conversations

53. That is a summary of the broad lessons that emerged from the Conversations. While the Minister for Law and I had several discussions on what was

emerging from these sessions, I will convey the essential points more fully in due course for the Government's further consideration. It is helpful that some of the issues and ideas that were raised during the Conversations dovetail with MinLaw's ongoing efforts to help pave the way forward for the profession. The study conducted by MinLaw last year on the Future of Legal Services also considered a number of issues which parallel the vision and scope of the Conversations. In this setting, MinLaw's efforts have extended to, amongst other things, organising the sources of funding I mentioned earlier, creating a strategic Roadmap to promote technology and innovation within the legal services sector, and supporting our law firms in exploring new markets abroad. These measures have laid a sound foundation for the further work we must now do, in the light of all that we are learning, if we are to survive and indeed thrive in today's digital age.

54. Whether we like it or not, we must confront the challenges that lie ahead. But if we all pull together, we can be confident that the future of our profession will be brighter than its past. So, while I urge you to take heed of these challenges, I also encourage you to take heart in our collective ability to overcome them. Although this series of dialogues may have come to a close, our conversations on the future of our profession must continue if we are to mould a consensus on how we will best meet that future.

V. APPOINTMENT OF SENIOR COUNSEL

55. I come finally to the appointment of Senior Counsel. The Selection Committee has decided this year to appoint 3 Senior Counsel. They are:

(a) Mr Pillai K Muralidharan;

(b) Mr Mohamed Faizal Mohamed Abdul Kadir; and

(c) Mr Chan Tai-Hui Jason.

56. I congratulate each of them and look forward to their continued contributions to the profession.

VI. CONCLUSION

57. Thank you all very much for attending these proceedings. On behalf of the Judiciary, I wish you all a happy, healthy and fulfilling New Year. Thank you.
