

Traditional and Customary Justice Systems: Asia-Pacific Regional Consultation

**9th annual Geneva Forum of Judges & Lawyers
13-14 December 2018**

Bangkok, Thailand

Programme

The 2018 Geneva Forum of Judges & Lawyers is made possible by the support of the Republic and Canton of Geneva, Switzerland.

Thursday, 13 December

9:00 – 9:30

Registration

9:30 – 11:00

Opening Session & Introduction of the Forum

- Welcome remarks.
- Explanation by ICJ of background, scope and intended focus of Forum.
- Participants briefly introduce themselves and their experience with traditional and customary justice systems (5 minutes per participant).

11:00 – 11:15

Coffee Break

11:15 – 12:30

Equal and Effective Access to Justice

- What is the potential for traditional and customary justice systems to contribute to the realisation of equal and effective access to justice, particularly for rural, poor and other marginalised populations in the Asia-Pacific region, including in connection with Sustainable Development Goal 16?
- How do international human rights of ethnic, religious or linguistic minorities, the particular rights of indigenous peoples, and cultural rights more generally relate to traditional and customary justice systems in the Asia-Pacific region?
- What challenges and risks need to be overcome in seeing traditional and customary justice systems contribute to equal and effective access to justice in the Asia-Pacific region, and how to address them?

12:30 – 13:30

Lunch

13:30 – 15:15

Legal Status of Traditional Justice Systems at the National Level

- Are traditional and customary justice systems recognised by the Constitution or other national laws in different countries in the region?
- Do the Constitution or other national laws set out the relationship between the traditional or customary justice system, and the ordinary courts of the country?
- What kinds of matters can traditional and customary justice systems decide in different countries in the region?
- Where there is overlapping jurisdiction between traditional systems and the ordinary justice system, who can determine which system will address a particular case, what is such a determination based on, and what can people do if they disagree with that decision?

15:15 – 15:30

Coffee-break

15:30 – 18:00

Human Rights of Women, Gender Equality

- What impacts – negative or positive, actual or potential – do the mechanisms and processes of traditional and customary justice systems have on the human rights of women?¹ For instance as regards:
 - effective participation by women (as decision-makers, parties, witnesses);
 - the right of women to non-discrimination, including in relation to access, process and outcomes;
 - practices relevant to the right to remedy and reparation, with particular impact on women; and
 - treatment of cases of alleged violence against women.
- What other impacts – positive or negative – do traditional and customary justice systems have from the perspective of gender analysis?
- How best to address any potential inconsistencies with international human rights law and standards?

¹ Please note that the inclusion of a specific session on the rights of women in the schedule is not intended to restrict discussion of the situation and rights of women to that session. To the contrary, participants are encouraged to consider and discuss gender perspectives and other intersecting aspects of discrimination on multiple grounds, whether in relation to ordinary courts or traditional or customary systems, throughout all parts of the programme.

Friday, 14 December

9:30 – 11:00

Fairness and Impartiality, Use of Coercive Powers

- What are the processes and criteria by which decision-makers within traditional justice systems are chosen?
- How do the decision-makers in informal justice systems ensure their decisions are independent and impartial, free from bias, corruption and discrimination?
- How do traditional justice systems guarantee the fairness of the proceedings (considering elements such as: the right to a fair and public hearing, the right to be heard by an independent and impartial decision maker, the right to legal representation and assistance, the right to interpretation if necessary, the right to legal aid, the right to non-discrimination in access to public office)
- What coercive powers do traditional justice systems use during the process (deprivation of liberty of persons accused, witnesses; getting information from people who resist providing it; etc.)? (considering elements such as: the right not to be subject to torture or other cruel, inhuman or degrading treatment; the right not to be subject to arbitrary arrest or detention).
- What kinds of punishments or other coercive measures can traditional justice systems impose to resolve the case? (considering elements such as: the prohibition against torture or other cruel, inhuman or degrading punishment; the right to life; the right to effective remedy).
- Can the decision of a traditional justice system be appealed or reviewed by another body? If so, by what bodies and on what grounds?

11:00 – 11:15

Coffee Break

11:15 – 12:30

Fairness and Impartiality, Use of Coercive Powers (continued)

12:30 – 14:00

Lunch

14:00 – 15:30

Human Rights of Children, Juvenile Justice

- What impacts – negative or positive, actual or potential – do the mechanisms and processes of traditional and customary justice systems have on the human rights of children? For instance, as regards:
 - effective participation by children (as complainants, defendants, or witnesses); and
 - the rights of children, including the principle of primary consideration of the best interests of the child and standards for the administration of juvenile justice, in relation to access, processes and outcomes.
- How best to address any potential inconsistencies with international human rights law and standards?

15:30 – 15:45

Coffee Break

15:45 – 17:30

Towards more Effective Engagement by and with Traditional Justice Systems

- With a view to improving equal and effective access to justice, protection of human rights, and the rule of law in the Asia-Pacific region:
 - How can decision-makers and other actors in traditional and customary justice systems better engage with international human rights?
 - How can judges, prosecutors and other actors from ordinary justice systems engage with decision-makers and participants in traditional and customary justice systems, with a view to improving equal and effective access to justice, protection of human rights, and the rule of law?
 - What approach should international non-governmental organisations, national and international development agencies, and inter-governmental organisations take with traditional and customary justice systems?