

DIALOGUE, JUSTICE AND DISPUTE RESOLUTION¹

Mediation As a Key Pillar of Development Accountability

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1 Good morning. It is a privilege to be with you in Singapore and to have the honour of delivering this lecture. The Singapore Convention Week and this lecture has become an important moment in the mediation calendar, and I am grateful to be part of it this year.

2 Let me begin with thanks. My gratitude goes to the Singapore Mediation Centre, to Aequitas Law LLP, and to the Singapore Management University for their invitation and hospitality. I also extend thanks to everyone here today – mediators, judges, lawyers, academics, public officials, and students – who bring insight and experience to this conversation.

3 I would like to acknowledge someone many of you know well, my good friend Tat Lim. Tat has been a pioneer of mediation in Singapore and across the region, leading commercial dispute resolution with skill and integrity. Less visibly, he has contributed to the work of the World Bank's Dispute Resolution Service ("DRS") as one of our mediators. His professionalism and generosity have enriched the practice of many of us who work in this field.

4 Being here is significant for another reason. Singapore has placed mediation firmly on the global map. The Singapore Convention on Mediation² has raised the visibility of mediated settlements and given them legitimacy across borders. It has encouraged governments, businesses, and institutions to view mediation not as an optional extra but as a credible pathway to resolving disputes.

5 Singapore has shown how institutional vision, legal infrastructure, and professional excellence can move mediation from a niche practice into a central part of the international legal landscape. That achievement has

1 This is the pre-delivered text of the Singapore Mediation Lecture 2025 given by Dr Orsolya Székely, Head of the World Bank Accountability Mechanism Dispute Resolution Service, on 28 August 2025. The delivered lecture can be seen in full at <https://www.youtube.com/watch?v=LNHgw5ffWk>. The post-lecture panel discussion was transcribed by Ms Zhang Yuying (Senior Research Associate, Singapore International Dispute Resolution Academy, Singapore Management University Yong Pung How School of Law) and Ms Stephanie Heng, a LLB student at the Yong Pung How School of Law, Singapore Management University.

2 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018).

inspired not only the commercial sector but also institutions like my own, working in development and public governance.

6 So, it feels appropriate to share with you the story of the World Bank Accountability Mechanism Dispute Resolution Service: what it does, the principles that guide it, what we have learned, and how our work connects to the wider mediation community – including here in Singapore. Throughout, I will speak about conflict and dispute resolution in practical terms: how we help parties move from impasse to constructive engagement, and why that matters for development outcomes.

I. Personal reflection #1 – moments of conflict

7 Before I turn to institutional matters, I would like to invite a brief reflection.

8 Think back to a moment in your professional life when you were in real conflict with another person. Perhaps it concerned obligations in a contract, or a difficult decision about resources, or a clash of responsibilities within a team. Or perhaps, outside work, it was a quarrel with a close friend or a family member.

9 You may remember the unease of that period – the tight conversations, the fatigue that followed you home, and the uncertainty about how the situation would end. Conflict has weight. It affects how we decide and how we live.

10 Now recall what it felt like when that conflict was resolved. Perhaps through dialogue, perhaps through listening, perhaps through mediation. Words replaced silence. Understanding replaced suspicion. The relationship, however fragile, began to mend, and a path forward reopened.

11 That sense of relief is more than the end of a quarrel. It is the reopening of possibility. It is the recognition that conflict need not entail rupture. Managed well, it can become a turning point.

12 There is also something universal in that experience. Even among professionals who are accustomed to advocacy, most of us recognise the personal costs of prolonged conflict. What releases the tension is not a clever argument alone; it is the sense that one has been heard accurately, that practical constraints have been acknowledged, and that commitments are being made in good faith. When that happens, energy returns to the room. People begin to think again about what they can build, rather than what they must defend.

13 When we hold that same feeling in mind as we consider larger disputes between institutions and communities, the task becomes clearer. Dispute resolution is not about winning a case; it is about restoring the

conditions in which people can work together responsibly. That is what we seek to support in our practice.

14 This transformation – from tension to co-operation, from conflict to resolution – is what the DRS seeks to support at scale, between communities, governments, companies, and institutions involved in development projects.

II. Purpose of mediation in dispute resolution

15 At its essence, mediation is not simply a mechanism for settling disagreements. It is a structured way of engaging with conflict that aims to prevent escalation, build understanding, and restore working relationships in ways that endure.

16 In the commercial sphere, mediation can preserve partnerships that might otherwise dissolve. In family contexts, it can maintain essential ties in the midst of separation. In governance, it can help citizens and public institutions find constructive paths forward when projects bring difficult trade-offs.

17 In the development context, the stakes are particularly high. Projects financed by the World Bank are intended to bring benefits: energy to fuel economies, and roads that connect communities, schools and hospitals that improve lives. Yet these projects can also have unintended consequences on communities. Land may be acquired against the wishes of local farmers; families may be displaced; livelihoods may be disrupted; and cultural and environmental resources may come under pressure.

18 Where such impacts occur, conflict often follows. Communities may feel excluded or unheard. Governments and implementing agencies may run into accusations of mismanagement or corruption. Institutions may be caught between legitimate but competing expectations. Left unresolved, these disputes can harden into mistrust and delay, impeding development goals.

19 Mediation offers an alternative path. It provides a neutral, structured space in which parties who might otherwise confront each other in protest or litigation can meet to talk. It creates conditions in which communities can express their concerns openly, decision-makers can listen to them directly, and options can be explored without prejudice to rights or responsibilities. The aim is practical: to resolve disputes before they escalate into entrenched conflict, and to do so in ways that safeguard people and support credible delivery.

20 Importantly, mediation is not a substitute for rights or a waiver of protections. Communities retain the ability to seek compliance review or judicial remedy where available. Mediation offers a voluntary, time-bound opportunity to address problems directly with those who are in a position to

act. It recognises that in complex projects the fastest path to a safer outcome is often through structured dialogue that clarifies facts, explores options, and permits commitments to be made transparently and monitored credibly.

III. Introducing World Bank Accountability Mechanism Dispute Resolution Service

21 The DRS was established by a decision of the World Bank's Board of Executive Directors in 2020.³ Until that point the World Bank did not have a dispute resolution arm alongside its long-standing compliance function.

22 For more than three decades the World Bank's Inspection Panel has provided respected oversight, investigating whether the World Bank has followed its policies in the design and implementation of projects. The Inspection Panel remains a vital part of the accountability system. But investigation alone does not always address the immediate needs of people living with project impacts. When families are displaced or livelihoods are at risk, what is often needed is a way to be heard and a route to practical solutions. The DRS exists to create that space.

23 Our mandate is clear. We provide a neutral forum where communities affected by World Bank-financed projects can seek resolution of disputes with public authorities or implementing agencies. We complement the Inspection Panel by offering a different approach – collaborative problem-solving rather than investigative findings – and we operate under defined timelines. A dispute resolution process normally runs for 12 months, with the possibility of a six-month extension if the parties agree. The structure helps sustain momentum and encourages engagement.

24 Participation is voluntary. Communities, governments, and implementing agencies must all consent to enter the process. Once they do, mediators drawn from our roster of experienced professionals facilitate the dialogue, supported by a small team within the DRS. At the conclusion of each process, whether agreement is reached or not, the DRS issues a report to the World Bank's Board of Executive Directors, to senior management, and to the Inspection Panel, setting out the outcome. If agreement is achieved, the report reflects the commitments made by the parties. If agreement is not achieved, the Inspection Panel may proceed with an investigation by the Inspection Panel. In that way, dialogue and compliance work side by side.

25 Neutrality and consent are central. We maintain a roster of mediators with experience in complex, multi-party negotiations and with the cultural and technical competence needed for development settings. Before any process begins, we work with participants to confirm informed

3 The World Bank, *Dispute Resolution Service* <<https://accountability.worldbank.org/en/dispute-resolution>> (accessed 30 October 2025).

consent, to agree ground rules, and to identify reasonable measures for safe participation. The typical one-year time frame is not arbitrary. It is intended to balance urgency – so that issues are not allowed to drift – with the depth of preparation that constructive dispute resolution requires.

IV. What we have done so far –portfolio of cases

26 Although the DRS is still young, we have already worked across a diverse set of geographies and sectors.

27 In Nepal, our very first case to reach conclusion concerned an electricity transmission line project. Through our process the parties negotiated a settlement. That outcome became the DRS's first concluded case and provided early proof that dialogue could deliver results.

28 In Cameroon, we supported dispute resolution in a hydroelectric project. It was the first time the DRS conducted a process in co-operation with other independent accountability mechanisms, strengthening coordination across institutions.

29 In Vietnam, communities affected by the Coastal Cities project opted to pursue dispute resolution. Mediation in that matter was led by a Singaporean mediator well known to many here today, Mr Tat Lim, whose professional insight helped the parties engage with seriousness. In Pakistan, parties involved in the Khyber Pass Economic Corridor Project have chosen to engage in dispute resolution. That process is ongoing at the time of this lecture.

30 And in Uganda, which I will describe in more detail shortly, we undertook one of our most significant cases – a dispute that helped define our role and approach. Uganda was the first case to begin under the DRS.

31 These cases illustrate both the variety and common threads that run through our work: vulnerable communities, public authorities under pressure, and the need for trust-building to enable practical solutions.

32 We do not measure success only by the presence of a signed agreement. We look for credible processes that help parties understand one another's concerns, reduce risk, and identify practical steps that improve how projects are delivered.

V. Case study: Uganda

33 I want now to describe the Uganda case in greater detail because it captures many of the challenges we face and the methods we use.

34 I want to play you a short clip reflecting the feelings of the participants, including our lead mediator on the case, as we approached this case.

[video plays]

Narrator: In June 2021, the World Bank Inspection Panel received a request for inspection from a local civil society organisation in Uganda. The request was made on behalf of community members living near the Lubigi Channel in Kampala. The community members allegedly faced a forced eviction attempt and were rushed through a threatening and coercive resettlement process during preparations for an infrastructure improvement project financed by the World Bank. The complaint was against the Kampala Capital City Authority, or KCCA, the agency responsible for implementing the project. Later that year, after the World Bank's board approved the Inspection Panel's recommendation to investigate, the parties were offered the option of dispute resolution, and they both agreed to it. This broke new ground, marking the beginning of the World Bank Accountability Mechanism's first ever dispute resolution case.

Mediator Lord Jack McConnell: From the beginning, it was absolutely clear that we had a big job to do.

Facilitator Grace Tukaheebwa: You come in at a time when people's moods are already on fire.

Community Member Hamisi Mbabari: KCCA had vowed not to compensate any one of us. [translation]

Human Settlement Specialist Pascal Mugisha: We started at zero.

Narrator: After 18 months of mediation, a confidential agreement was signed by both parties addressing many concerns, including involuntary resettlement and acquisition processes. The parties then requested that the DRS team stay on to monitor the implementation of the agreement.

Facilitator Grace Tukaheebwa: DRS basically provided an environment where these two parties can listen to each other and talk about their issues freely.

Executive Director of KCCA, Sharifah Buzeki: The experience we have gotten in this dispute resolution process is a good one. There is a tendency of entities to look at it and view it as a process to critique these entities. I think from my experience, it was not the case. It was an issue of amicably settling the issues so that all sides are comfortable where they are and also reminding us to do what we are obliged to do.

Human Settlement Specialist Pascal Mugisha: Maybe if the DRS had not come, some of these cases may have ended up in litigation.

Community Member Peter Kazibwe: In the event you go to court, one side will win, and the other side will lose, and you will remain enemies forever. But today, when you go to the KCCA, they are happy to see you. They will ask you, 'Where can we help?', which was never the case before. [translation]

Human Settlement Specialist Pascal Mugisha: The communities became part of government.

[video ends]

35 Over months of facilitated meetings, parties mapped issues, exchanged perspectives, and explored options. Practical steps emerged: processes for assessing and documenting losses; approaches to compensation and support; and ways of sequencing works to reduce harm. The conversations were demanding. They asked everyone involved to listen to experiences that were sometimes painful and to recognise constraints that were sometimes immovable.

36 A turning point arrived when officials and community representatives began discussing impacts face to face, not as abstractions but as lived experience. In that setting the logic for joint problem-solving became clearer. A senior minister later reflected that the process helped him “see problems first through the eyes of the local community,” and that without community support, plans could not move forward credibly.

37 That insight is not rhetorical. It matters because infrastructure succeeds when people who live with it can recognise themselves in the design and in the way impacts are managed. Agreement was reached on a set of measures, including arrangements for compensation and for continuing engagement. The process did not erase every difficulty, nor could it. But it rebuilt channels of communication and provided a framework for addressing issues constructively.

38 For the DRS, the case demonstrated in practice that early, structured dialogue can transform a pattern of confrontation into a pattern of problem-solving. It also reminded us that dispute resolution in development settings is not an abstraction. It is a concrete, disciplined method for managing conflict so that projects can proceed more credibly and so that people affected by change can have a voice in shaping solutions.

VI. Personal reflection #2 – when dialogue surprises us

39 This case also reminds me of a more general truth about mediation: dialogue often surprises us.

40 Many practitioners have sat down at a table believing that the parties are too far apart, that their history is too heavy, that mistrust is too deep. And yet, when people begin to be heard with care, something shifts. A point of shared interest emerges. A practical option that seemed off the table becomes imaginable. The shift may be modest at first – a change in tone or a willingness to test an idea – but it creates momentum.

41 I have seen that dynamic in commercial matters and in public projects alike. In Uganda the shift happened when those implementing works described the constraints they faced and when residents described the consequences they were living with. Neither perspective erased the other. Instead, the combination created the space for joint problem-solving. That is where dispute resolution adds value: it does not demand agreement

about everything; it looks for enough recognition to permit responsible compromise.

42 One small example from my own experience, in a different context, illustrates this point. In a meeting that initially seemed destined to harden positions, a short caucus allowed each side to articulate a non-negotiable concern and a non-essential preference. When we reconvened, it became evident that the non-negotiables did not in fact collide, and that each side's preferences could be accommodated with modest adjustments. The solution was not dramatic; it was incremental. But it unlocked a stalemate. That is often how disputes shift, not with a single dramatic concession but through a sequence of smaller, well-designed steps that build confidence.

VII. Core principles of the Dispute Resolution Service

43 From the outset our work has been anchored in four principles: trust, independence, transparency, and accountability. Each has practical meaning.

44 **Trust.** Parties must believe that the process is fair and that participation will be respected. Building trust requires time, clarity about expectations, and attention to safety and security. It also requires cultural competence and humility. Many communities have never been part of a mechanism like this; many officials have not previously engaged in facilitated dialogue with residents. We invest in preparation so that people know what mediation is – and what it is not.

45 **Independence.** Our mediators are neutral. Participation is voluntary and informed. Independence provides the mediators with the confidence to enter the room and to speak candidly. It also protects the process from being perceived as advocacy for any side.

46 **Transparency.** Mediation encourages direct engagement, supported by advisers. It allows people to explain interests rather than only positions, to ask questions, and to test options. Transparency does not mean publicity; it means clarity among the participants about what is on the table and why, with appropriate confidentiality safeguards.

47 **Accountability.** The DRS sits within the World Bank's broader accountability architecture. Our role is to provide an avenue for constructive dispute resolution while the Inspection Panel provides compliance oversight. Accountability also has a relational dimension: ensuring the process meets the needs of participants, that commitments are recorded accurately, and that the dignity and safety of those involved are respected throughout.

48 These ideas are not abstract. Trust is built, for example, when participants see that translation is available, that meetings are scheduled at times and in places that allow participation, and that sensitive information

is managed carefully. Independence is demonstrated when mediators are selected for their neutrality and when the scope of the process is agreed openly. Transparency looks like agendas that are circulated in advance, notes that truly capture what was said and what was agreed, and a common understanding of how follow-up will occur. Accountability looks like clear documentation of commitments and, where appropriate, mechanisms identified by the parties to track implementation.

VIII. Why it matters beyond each case

49 Why does this work matter beyond the settlement of a particular dispute? Because each process models practical ways to manage conflict that can be replicated elsewhere.

50 In many places where development projects occur, access to courts can be limited or slow, and public consultations can be uneven. Mediation does not replace judicial process, nor should it. But it offers a complementary path that is collaborative, educative, and preventive. It empowers communities who might otherwise struggle to have their voices heard. It invites governments and agencies to view grievances not as threats but as opportunities to learn, to adjust, and to strengthen project outcomes.

51 The effects can endure. People who have been through a credible dispute resolution process often carry forward habits of consultation and constructive engagement. Institutions that have experienced facilitation often identify risks earlier, design mitigation more carefully, and communicate more openly. In that sense a well-run process contributes not just to the resolution of a dispute but to the wider culture of conflict management around development. Prevention is part of the story as well. When a dispute resolution process highlights a recurring issue – eg, how information on land acquisition is provided – that insight can be used to strengthen guidance and training across projects. Over time the feedback loop can reduce the frequency and severity of disputes. It can also demonstrate to communities that institutions are responsive, which supports confidence that engaging in dialogue is worth the effort.

52 In addition, credible processes can reduce the likelihood of escalation beyond the project context. When people experience a fair hearing and see practical responses, grievances are less likely to migrate into broader political disputes or to spill into courts as a first resort. That does not diminish the role of the Judiciary. Rather, it supports it by reserving adjudication for issues that truly require judicial determination, while enabling many operational problems to be resolved promptly and with the participation of those most directly affected.

IX. Singapore's role in global mediation

53 Singapore has played a distinctive role in advancing mediation globally. The Singapore Convention on Mediation has provided international recognition for mediated settlement agreements in cross-border commercial disputes, improving prospects for enforcement and raising confidence in the use of mediation. Its adoption has encouraged investment in professional standards and institutional frameworks.

54 Although the Convention does not directly apply to the work of independent accountability mechanisms, the example it sets is instructive. It shows how thoughtful legal design, institutional commitment, and professional excellence can mainstream mediation. The same ingredients help our field as well. They encourage parties to see dialogue as a credible path, to approach it with discipline, and to commit to outcomes with clarity.

55 Singapore's professional culture also models disciplined preparation and respect for process. The emphasis on mediator training, ethical standards, and institutional support – including the work of the Singapore Mediation Centre and the universities – has helped build a community of practice that others can learn from. For a mechanism like the DRS, that example is valuable because it shows how quality and legitimacy reinforce each other.

56 Singapore has also fostered a culture of practical problem-solving, rigorous training, and international partnership. Those features resonate strongly with our experience in the DRS and with the aspirations of many public institutions around the world.

X. Shared learning and future directions

57 For the World Bank, dispute resolution is not only about resolving cases; it is also about learning and prevention.

58 Each complaint highlights patterns and risks: how land is acquired, how resettlement support is designed, how environmental and social impacts are assessed, and how engagement with communities is conducted. Lessons from dispute resolution processes can inform policy refinement, capacity building, and project design. They can also help governments and implementing agencies identify issues earlier and address them more systematically.

59 We share insights with other institutions through the Independent Accountability Mechanisms Network, comprising 23 mechanisms linked to development finance institutions around the world. Coordination across mechanisms supports consistency of approach where multiple financiers are involved. It also strengthens the credibility of the field by encouraging rigorous practice and exchange.

60 Looking forward, the future of mediation in development will be interdisciplinary. Many of the skills refined through commercial practice – managing multi-party negotiations, structuring options and working with experts – are directly relevant. Conversely, experience from community-level processes can enrich commercial mediation with tools for participation and inclusion. There is room for more joint training, shared research, and dialogue across sectors. Learning also involves data. Without reducing human concerns to metrics, it is useful to track the kinds of issues that arise, the points in the project cycle at which they surface, and the approaches that appear to help. Sharing that information responsibly – with attention to confidentiality – can inform policy updates and help practitioners design engagement strategies that address common challenges.

61 Coordination with other accountability mechanisms is likely to deepen, particularly when projects are co-financed. That co-operation can include joint outreach to explain options to communities, shared rosters of mediators where appropriate, and exchange on methods that protect safety and integrity. The entire field benefits when high standards are visible and when institutions learn from one another's experience.

62 Finally, we aspire to work earlier in the project cycle where appropriate, supporting parties to address issues upstream before disputes harden. That does not replace formal processes; rather, it complements them by promoting a culture of constructive conflict management as part of responsible project delivery.

XI. Personal reflection #3 – what conflict resolution means

63 Let me offer a final brief reflection.

64 At the close of a process a community representative once said that, for the first time in years, he felt his neighbours' concerns had been heard with respect. The comment was simple, and it stayed with me. Respect does not substitute for remedial action, and dialogue does not remove the need for legal protections. But when managed carefully, dispute resolution can help people see that they are being taken seriously and that their experience matters.

65 There is a temptation, when discussing mechanisms and mandates, to speak only in generalities. Yet the work is always about particular people in particular places. The discipline of dispute resolution is to hold both realities at once: to design fair processes that can be applied consistently, and to attend closely to the lived experience of those affected. When we do both, the process supports not only solutions in the case at hand but also confidence in the institutions responsible for delivering public goods.

66 That recognition, paired with concrete steps, is often what enables parties to move forward. It is also what encourages institutions to learn,

to adapt, and to carry those lessons into future work. In that sense dispute resolution is not an add-on to development; it is part of doing development well.

XII. Closing remarks

67 I began by asking you to recall a moment of conflict in your own life. I would like to end by returning to that thought in the context of development. Development takes place in the real world of competing interests and scarce resources. Conflict is inevitable. What matters is how we respond to it. If disputes are left to fester, projects progress more slowly or halt altogether and trust erodes. If disputes are addressed in good faith through dialogue, with clear roles for oversight and accountability, co-operation becomes possible and outcomes improve.

68 There is a proverb from this region that says, “Peace and harmony bring fortune.” In the context of dispute resolution, its meaning is practical. Constructive handling of conflict creates the conditions in which projects can proceed credibly and communities can share in the benefits. It is not a slogan; it is a reminder that responsible conflict management is integral to sound governance.

69 That is why the work of mediation – in commerce, in communities, and in public institutions – matters. It is also why collaboration between fields is so valuable. As mediators, lawyers, judges, and policymakers, you shape how conflict is managed every day. On behalf of the DRS, thank you for the work you do, and thank you for the opportunity to share our experience. My thanks to our hosts, to colleagues across the accountability community, and to practitioners here in Singapore.

70 I look forward to discussing this further with you all.

PANEL DISCUSSION⁴*Moderator***LIM Tat***Managing Partner, Aequitas Law LLP.**Panellists***Dr Orsolya SZÉKELY***Head of the World Bank Accountability Mechanism Dispute Resolution Service.***Philip JEYARETNAM***Judge of the High Court, Supreme Court of Singapore.***Dorcas QUEK ANDERSON***Associate Professor, Yong Pung How School of Law, Singapore Management University.***Kevin LEE***Barrister, Twenty Essex.*

Lim Tat (“LT”): Welcome everyone to the Singapore Mediation Lecture. This year, we want to involve everyone here and how we are going to do this is principally we are going to unpack what Dr Orsolya has talked about in her speech. There are four key themes that we want to unpack. We will do a Mentimeter poll. For every statement that is given, you will be asked whether you agree or disagree with the statement and then the panel members will respond to the answers from the audience and the discussion will evolve from there.

This would be an appropriate time for me to thank members of the panel. I have a history with each panel member which I will not go into detail. Suffice to say, the longest relationship I have had with any member of the panel is probably Justice Philip Jeyaretnam (“Jeyaretnam J”). I think more than 30 years ago, we were young officers trudging in the jungles of Tekong. The next person I have known the longest is Dorcas Quek Anderson (“DQ”). When the Primary Dispute Resolution Centre was first started in the Subordinate Courts, as it was then known, we were some of the pioneers. She was certainly a trailblazer who developed court-annexed mediations and the evolution of the mediation space where it is now so entrenched in the courts, both in the State Courts as well as in the frame in which litigation lawyers and arbitration lawyers view mediation as a way to resolve disputes. Kevin Lee (“KL”) and I were practising together for a short

4 This panel discussion followed the 2025 Singapore Mediation Lecture. This is an abridged transcript of the dialogue between the panellists.

bit before a higher calling called him away to other cases. A good friend but always spending a lot more time than I think helps him in some other parts of the world. Of course, my newest friend, Dr Orsolya Székely (“OS”) who, one could say, is my boss at the Dispute Resolution Service (“DRS”) in the World Bank. These are my panel members, and I am very happy that they have agreed to join me.

With that, we will explore the four themes, starting with the rule of law and then going on to discussing themes relating to dialogue and accountability, and finally dispute resolution. With that, let us put up the first question on the Mentimeter for your reaction. The first question is: “Far from advancing the rule of law, mediation can be a weapon for the powerful to erode it.”

There seems to be more people who voted “no” than “yes”. Any comments, DQ?

DQ: This seems to suggest that some think that mediation can be a weapon for the powerful to erode the rule of law. This is perhaps reflective of the current climate internationally; some people can be quite cynical about consensual processes because without certain checks, maybe they think that mediation can sometimes be wielded by the more powerful to get an outcome that is more advantageous to the powerful compared to the weaker.

LT: Just for the benefit of the people polling, the questions are designed to force you into a “yes” or “no”. Obviously, the answer, if one wants to have unpack the question, is not a “yes” or “no”. One would have to spend a lot of time trying to explain why it should be a qualified “yes” or maybe a qualified “no”. However, this is a provocative way in which we can then lead to the panel discussion. That does lead me to a question for you, Judge. This question refers back to a 2023 keynote address that you made at the launch of the Appropriate Dispute Resolution – The Singapore Way. You remarked, and I quote “mediation in and of itself has only an indirect relationship to justice because it focuses not purely on the rights of the parties, but also on their interests, regardless of their strict legal rights”⁵ Nonetheless, you also warned in that speech that if mediation is unmoored from the legal system, it may advantage the strong over the weak. When we look at this poll where the majority of the audience seems to say no to the proposition, and in light of your earlier caution and sentiment shared, how do you see the courts, institutions and mediators working together to ensure that mediation complements rather than compromises the rule of law, particularly in situations where parties are not on equal footing?

5 Justice Philip Jeyaretnam, Supreme Court of Singapore, keynote address at the Appropriate Dispute Resolution – The Singapore Way launch event at para 5 <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-philip-jeyaretnam-keynote-address-delivered-at-the-appropriate-dispute-resolution-the-singapore-way-launch-event>> (accessed 25 October 2025).

Jeyaretnam J: Thank you, Tat. Let me start by perhaps offering an explanation for the resounding no to this question. In Singapore, mediation takes place against the backdrop of an efficient, effective and relatively affordable legal system. Mediation in Singapore is certainly not unmoored from the legal system, which was what I was talking about in that lecture. Once you situate mediation within the overall system, it is a very powerful tool, not just for achieving a good result relatively quickly, but also for achieving outcomes that you could not achieve in litigation by bringing forward interests of parties into the mix and indeed achieving more nuanced outcomes as opposed to litigation, in which typically one wins and one loses. The point that I was making in that lecture was really about situations where there is limited access to justice. It is either going to take too long to get a result in court, or it is going to be too expensive. If you are a claimant and you know that you will only be able to get a result in court, say a decade later, if at all, then your first priority will be to just get something, anything at all, to settle at a price which is far removed from what you would actually be entitled to under the law. That was the concern that I was addressing. I should just say one more thing which responds to the wonderful lecture we have just heard. I think what the DRS does and what the World Bank does is to even go beyond what we have just been talking about. When the World Bank funds a project, it is as a condition of the loan, as I understand it, putting in place this mechanism. It is creating an opportunity for compensation which would not exist otherwise. There we see mediation as part of something very positive. This positive outcome would not happen without mediation.

LT: Thank you, panel members. Any thoughts on what Jeyaretnam J has just mentioned?

OS: Yes, thank you so much for bringing in the World Bank context, because I would like to answer this question the same way. I do not see mediation as a weapon for the powerful. This was the perception before the DRS existed: How can we overcome the power imbalances that arise between a powerful government and community members who may not be well informed of their rights and what they are otherwise entitled to under judicial processes or World Bank standards? We had to make sure that the process was designed to overcome this power imbalance, and professional training was provided for community members and government officials. It is also very important to consider how power is perceived. It was interesting to hear executive agency members speak about their concern that the community is more powerful. These members mentioned how there are hundreds of them, and they are afraid to speak to them, so of course they bring the police with them because the community is viewed as having much power. We need to understand power in a neutral manner before we address it.

LT: That brings to mind the definition of power, because in some of the disputes that we see in the World Bank, moving away from disputes between governments and communities, there can be disputes between communities and funded companies. You might find that the companies are unable to get on an even keel in the mediation process because the communities are

assisted by civil society groups. Sometimes non-governmental organisations and civil society groups do offer a very powerful element of advocacy to the process. I wonder if, DQ, since you have done some work in that space training mediators from the Asian Development Bank, what do you see might be some of the trigger points leading to this imbalance of power?

DQ: I thought I would address power balances as well as something that Jeyaretnam J alluded to about how mediation should also advance a substantive just outcome. It is useful to see that justice and rule of law can mean different things to different people. Having formally worked in the Judiciary, I wrestled a lot with the relationship between mediation, justice and the rule of law. I would first like to affirm how the Judiciary sees the role of mediation in advancing justice. In Singapore, it is quite clear that the Judiciary sees mediation as one of the options alongside litigation to advance access to justice. It is not a situation where you do not have an option to go to court quickly and therefore mediation offers you a more timely option.

I think the thornier question is how we understand the idea of a just outcome in the context of mediation. There are two elements when we talk about the advancement of the rule of law or a just outcome. One is the actual substance of the agreed outcome: whether it veers a lot from your legal entitlement, whether it be international law, or whether it is according to the law of the State where you are conducting your mediation. The other is the impact of power imbalances. We assume in mediation that people have autonomy to ask for what they need. When there is no full autonomy, in a sense that one feels intimidated or a party is more powerful, that is where power imbalances can affect the substantive outcome. When we are talking about justice as a mediation outcome, you cannot simply use the rule of law as a yardstick. You are not comparing apples to apples when juxtaposing both adjudication and mediation in terms of their substantive outcomes. Yesterday, Andre Maniam J gave an apt story in the Singapore International Dispute Resolution Academy (SIDRA) forum about this. He remembers representing a client being sued by his friend. From the legal standpoint, it looked like there would be no resolution because of the amount being claimed. When they went for mediation, it was surprising that they could resolve their dispute as the outcome addressed the friend's interest: acknowledgment of the wrong done. There was an apology together with nominal payment. That is an apt example of justice within mediation. Some people have written about "justice from below" in a mediation. You are not talking about legal entitlements but about real concerns. Sometimes your real concerns might correspond with your legal entitlement, and sometimes they might not because you could be more concerned about acknowledgment rather than the money.

Regarding managing power imbalances, mediators could swing towards two extremes. One extreme is where we leave it to the parties to pursue whatever they want. Based on many mediation codes of ethics, we are actually bound as mediators to exercise a gatekeeping role in preventing

illegal or unconscionable outcomes.⁶ This means that mediators cannot be totally “hands off” in terms of the substantive outcome. If not, the substantive outcome may clearly infringe certain norms, not necessarily legal norms but perhaps general norms or international norms. My view is that mediators have a role in preventing this, especially when there is no informed consent, that is, the parties are not aware of their legal rights before they agree to a certain outcome. There is the concept of mediating or negotiating in the “shadow of the law”.⁷ The reality is that a lot of the mediations, at least those that are convened when there is a pending case in court, are conducted in the shadow of the law because you need legal advice on what you would get if you go to court. The law cannot be totally ignored, especially when the mediator senses that there is no informed consent. If you have not been advised on your legal rights – say you could get 50% in trial – and then on that premise, you agree to 20%, that is an issue. I think that mediators must talk more about how to manage such power imbalances.

LT: It is important for all of us to appreciate that in the mediation, one looks at the case and we understand, of course, that if one wants to launch into an evaluative form of mediation, you examine the merits of parties’ respective positions, usually from the perspective of their respective legal case theories. However, more often than not now, as I explain to the lawyers, that perhaps today is a negotiation based strictly on game theory. When you launch into a discussion on game theory, it has absolutely nothing to do with the merits of the case. It has to do with the psychology of how parties are prepared to land on a number that they can live with. Once they get to that number and they can live at that number, they settle and move on. Nobody ever revisits the legal merits of the case. Something I think in that piece segues to those thoughts that both of you have mentioned.

KL: I thought I would share an interesting reflection on that. If we switch our hats to consider sovereign litigation, I think in some of the sovereign litigation matters that I have been in, it is the litigation system that has power imbalances that may not otherwise be visible in the usual private context. That makes mediation much more suitable. Just to give you an example, one is the repeat player problem. When private parties are in dispute, you often have different parties for different disputes. But when you are faced with sovereign litigation, what we do not often see in this country, because there is not much of it, is that in bigger jurisdictions like the US or UK, each sovereign can be facing upwards of 20 or 30 pieces of litigation. What that means is that you could have very good merits as a sovereign in a case, but because of discovery proceedings that are mandatory in litigation, you end up suffering the pain of litigation of potentially compromising issues

6 See, eg, Singapore International Mediation Institute, SIMI Code of Professional Conduct for SIMI Mediators (Version 2.0, 10 November 2023) at para 6.1 <<https://www.simi.org.sg/What-We-Offer/Mediators/Code-of-Professional-Conduct>> (accessed 24 October 2025).

7 Rober H Mnookin & Lewis Kornhauser, “Bargaining in the Shadow of the Law: The Case of Divorce” (1979) 88(5) *Yale Law Journal* 950.

of national security that you otherwise would not want to happen. In those instances, I often advise or try to get parties to say: “Hey, can we go to mediation instead?” Oddly, in that context, we do not want a facilitative mediation. We want an evaluative mediation, just without the pressures of game tactics and game theory, like you mentioned, that we otherwise have to suffer in the mandatory discovery process of litigation across multiple fronts. I think that is an interesting reflection that makes you switch hats and think about how traditionalist principles of litigation actually end up causing a power imbalance in favour of the weaker party in litigation (on the merits) that could otherwise lend itself towards a better (dispute resolution) process through mediation.

LT: Thanks for that. We will go on to the second Mentimeter question: “Confidentiality within mediation undermines the mediator’s accountability to the disputants and the public. Do you agree?”

So far, “no” is the more popular answer, interesting. As the answers come in, again I look at my panel members and say that this is very unrepresentative of the voting we had internally. Any thoughts from anyone on why you think it is going this direction?

KL: It is interesting, because the key takeaway from the last two slides for me is that actually, as a system in Singapore, we have developed a lot of public trust for mediation.

LT: In our internal voting, we had to discuss what the keywords in the statement were, and some of us focused on the words “accountability to the public”, which triggered us to react and respond in a certain way. Perhaps I can pose a question to you, KL, and this question relates to the question of confidentiality. Tapping on your experience in investor-state dispute settlements where questions of legitimacy, transparency, public interest are especially sharp. As you explain, how do you view the tension between confidentiality, which is of course, as we all agree, a cornerstone of mediation, and the need for accountability in the processes involving public entities or state actors?

KL: To me, I feel like I would agree with this if we kept the thesis statement to private parties. However, here there is the element of the “public”, and I feel the assessment changes when one starts to consider matters of public interest. There are two sort of tensions in my mind that I think require some qualified consideration of the thesis. The first is the whole exclusionary process of mediation. It is not just confidential, it is private. If I could give you an example, and we were just talking about this before the break about a documentary called “The Tribunal”. It was about a Canadian mining company and its investor-state arbitration against Ecuador. Part of the issue there, and the documentary focuses on this, is the inadequacies

of arbitration.⁸ You have the Canadian mining company that was granted licences to mine in Ecuador and as a result of executing its mining licence legally, had displaced domestic communities outside of the area which was being mined, and had caused immense environmental harm in those areas as well. What happens is that the State then terminates the licence in order to eradicate that sort of harm and to try and move communities back in, only to be met with a claimant mining company launching an investment treaty arbitration against Ecuador and winning.

Theoretically, there is a legal right to mine and at the same time it had been unlawfully terminated prematurely. The dissatisfaction is that at the arbitration level you can account for the views of both disputing parties, but there are very limited areas in which victims can appear in the arbitration process. These days there is an *amicus* process, but it requires usually the consent of both disputing parties as well. You have a dissatisfactory outcome where the award grants money to the company that was exercising its mining licence, but to a great detriment to the public. That reflects the fallback value that you credit (to the investors) in the result of the award, but nothing is going to the victims. That is one context in which I think mediation suffers from some deficiencies of accountability as well. We perhaps may need to think about more flexible ways to involve victims such as victim impact statements and the ability for people to participate in proceedings to contribute to the ultimate justice of the issue at hand.

Now, in the International Court of Justice, there is something called the Monetary Gold Principle, which is, loosely speaking – if the subject matter rightfully affects the interests of an indispensable third party, the court cannot exercise jurisdiction over the issue without the third party's consent. Some of those justice considerations, I feel, do lend weight to considering how we can make mediation more flexible. The second point is publicity relating to outcomes. One of the key issues is if, for example, in one of the sovereign mediations that I did, maritime boundary delimitation grossly affects multiple States within the area. If you end up having a mediated settlement that is not public, there is some thinking there that consideration should be given to the public needing to know. That is why many times now in sovereign litigation where we do have a settlement, we think very hard about making the settlement public because we want there to be a message that nothing under the table was being done. This is all in aid of public justice. These are my two reflections.

OS: When we were building the DRS, this was one of the major critiques from the public and civil society organisations (“CSOs”). If you do have confidential agreements, how do we make sure that the agreement is accountable and that the bank and borrower is accountable for whatever

8 Columbia Center on Sustainable Investment, “The Tribunal - A Film by Malcolm Rogge in Partnership with CCSI” <<https://ccsi.columbia.edu/thetribunal>> (accessed 24 October 2025).

harm they were doing? I think it is a balance to ensure you do have processes that make sure that whatever happens is accountable. For example, in our case, we had to build in policies that in my role, I would be overseeing agreements and making sure that they are not illegal, that they meet the bank standards and that they are in line with whatever the bank would otherwise aspire to achieve, in terms of its commitments to the standards. At the same time, it is about making something public, even if the agreement is confidential. We had to develop my report of the matter to the Board, which as a public document, does include enough information of what happened but not too much information, to protect confidentiality. Thus, it is about balance. I look at it as an opportunity to learn, because if we do make some elements public in terms of what happened, especially in the public sector, that is an opportunity to learn for other countries and governments. I think in some ways it is a challenge. I do not think anyone wants to hide anything, but it is also extremely important that the safe space is protected and that confidentiality is protected for the mediation to take place.

LT: I want to press the panel members to maybe answer a slightly nuanced question than the one we posed. Are mediators, in your view, accountable to the public? And I will start with KL, and then we will work our way across the panel.

KL: This is such a tricky question, in so far as there might be public interest issues, I feel like innately the answer is “yes”. To do complete justice, you inevitably have to take into account views of the public if they are being affected. This is especially if you do not involve third parties that may otherwise be affected. The dispute between, shall we say, the applicant and respondent is intractable to begin with. In fact, we have seen this in some of the work we have done together where you have, let us say, upwards of four parties and only two of them want to come to the mediating table. What then do you do with the remainder? If the liability is joint or several, it causes all sorts of complications that way as well. To me, you have to take into account the interests of third parties if they are relevant.

LT: In private disputes where clearly there are only a limited number of parties, say a two-party dispute, would a mediator be accountable to the wider audience of the public, if the public should even be considered as an audience to the mediation?

KL: I think no with the asterisk, which is that I do not think, for example, you can try and mediate away criminal behaviour. I think there is a big asterisk there.

LT: That is a great answer, DQ?

DQ: I have two points regarding whether the mediator is accountable to the public. First, I take the view that if the mediator is operating under the auspices of an institution – be it a mediation centre or within the context of the courts – there is accountability in the sense that the institution would

want to maintain public confidence. The reality is that public confidence, even though it is high, can in one moment decline just by a bad experience within mediation. I think mediation providers have accountability to maintain that confidence in the process and the public and anywhere that it has impact. Like OS pointed out, accountability affects whether people may consider mediation in the future and are confident about the desired outcome. As OS and KL pointed out, there is a tension between accountability and confidentiality. There is some information that if published might directly pierce confidentiality, but there are some exceptions where we can let the public know what is going on. The attraction to mediation is precisely its confidentiality. Once there are too many exceptions to confidentiality, you undermine its attraction. Nancy Welsh has written a lot about procedural justice, fairness and accountability. She argues that for institutions, aggregated information can be reported.⁹ Aggregated data does not reveal specific details of each case and will not necessarily breach confidentiality. Even though things are done well in mediation, people tend to be suspicious if everything is confidential, but if you put aggregated data out there to provide public assurance, it can make a great difference.

Another point is that there is some element of public accountability. There is an Ethics Committee in International Mediation Institute (“IMI”) which LT and I are part of, and we also have Ivana Nincic Osterle, who is the Executive Director of IMI, here. We had a lot of conversations within the committee on all the principles that should govern mediation. I just want to highlight one aspect that is quite unique in the draft code, which is now open for public consultation: the principle of professional integrity. It says that professional integrity requires a mediator to act within the confines of the mediator’s role and congruent with the mediation process. It highlighted four components under professional integrity: mediator decision-making and independence in the exercise of professional discretion; separation of professional roles and services; consideration of appropriateness of a case for mediation; and more importantly, *the prevention of process abuse or substantial defects in the process*.¹⁰ Some of these defects have been defined, like the use of conduct that exhibits bad faith or is inconsistent with the purpose of mediation, undue pressure, exploitation, duress, or if it seems the agreement will *severely jeopardise the standing of public trust in mediation*.¹¹ Confidentiality within mediation may seem antithetical to the principle of

9 Nancy A Welsh, “Bringing Transparency and Accountability (with a Dash of Competition to Court-Connected Dispute Resolution)” (2020) 88(6) *Fordham Law Review* 2449; Nancy A Welsh, “But Is It Good: The Need to Measure, Assess, and Report on Court-Connected ADR” (2021) 22 *Cardozo Journal of Conflict Resolution* 427.

10 International Mediation Institute, “Introducing the Board Sub-Committee on the IMI Draft Code of Conduct: Advancing Global Standards for Mediators’ Ethics” (28 August 2025) <<https://imimediation.org/2025/08/28/introducing-the-board-sub-committee-on-the-imi-draft-code-of-conduct-advancing-global-standards-for-mediators-ethics/>> (accessed 25 October 2025), IMI Draft Code of Conduct at para 8.5.2.

11 International Mediation Institute, “Introducing the Board Sub-Committee on the IMI Draft Code of Conduct: Advancing Global Standards for Mediators’ Ethics” (28 August 2025) <<https://imimediation.org/2025/08/28/introducing-the-board-sub-committee-on-the-imi-draft-code-of-conduct-advancing-global-standards-for-mediators-ethics/>> (cont’d on the next page)

open justice in adjudication. The reality is when mediation is confidential, we as mediators can do many things wrongly that endanger the standing of public trust in mediation. If no one tells us, we will continue to do it. It is just natural human nature. It is important therefore that there is some kind of feedback mechanism, in the form of party's feedback, or at least institutional oversight. I personally believe accountability is very important to the public.

LT: Thank you. Jeyaretnam J and then OS.

Jeyaretnam J: My short answer is of course that confidentiality is contrary to accountability. It is precisely because of confidentiality that many parties will choose mediation because the party that is perhaps the defendant, is seeking to avoid public scrutiny. It is an incentive to settle quietly in mediation, so of course these two things are in tension. You cannot just throw out confidentiality because then mediation will become substantially less popular and would not have that incentive of avoiding the public glare. I thought it might be worth just mentioning one other situation which has not been highlighted and illustrated. The case of *Federal Republic of Nigeria v Process & Industrial Developments Ltd*,¹² which is where an arbitration award was obtained against the Nigerian Government in circumstances where there was corruption, including corruption of the Government's defence team. You had this flow of information going from the defence team to the claimant's team and you had an arbitration award which was divorced from the real facts of the case. It was set aside in the London Commercial Court. It was only in court that you had the scrutiny that enabled something like that to be caught and dealt with. A similar issue no doubt can arise in mediation, where the mediator is, in effect, being made use of. That is where one really has to think about what the mediator's duties are, not just to the immediate parties but also ethical duties regarding wider cause of justice and indeed the public.

LT: Thank you. OS?

OS: I would like to mention maybe two things. I would like to mention the opposite. Confidentiality is an element that is preventing you probably also from being accountable. What if there are accusations out there against the mediator that you have done something this or that way, which is not true, but you cannot defend it, without compromising the confidentiality of the process. I think that is another layer of challenge that many mediators struggle with. Another difficulty is how one would present the results or the outcomes, or the good lessons learnt from the process. However, I noticed in the context of the World Bank and the public sector, they often want this public knowledge out there, not only because of accountability of the

on-the-imi-draft-code-of-conduct-advancing-global-standards-for-mediators-ethics/> (accessed 25 October 2025), IMI Draft Code of Conduct at para 8.

12 [2023] EWHC 2638 (Comm).

process itself, but because they are concerned with how the agreement is going to be implemented. If the outcomes of the agreements are not known, how can the public, or how can CSOs and other outside actors make sure that it is actually going to be implemented? It is a very valid question. That is why we built in the monitoring of the process in our framework, because we wanted to make sure that implementation does happen, and on our end, we can report on the outcomes of the monitoring once the agreement is implemented. That is another opportunity to go back to the parties and ask them if they would consent to publishing the agreement itself. It would be another opportunity to learn.

LT: Right in the Singapore space for all of us who live here and practise mediation, there is at least one case where the mediator's conduct was scrutinised by the High Court. The case involved a party who settled a case and subsequently filed an application to set aside the mediated settlement agreement. I know about that case because the co-mediators were Dr Joseph H H Sheares and myself.¹³ It appeared the case went before Tan Siong Thye J, who was asked to examine whether the mediators had applied undue pressure on a party that forced her to sign a settlement agreement. At the end, he said, well, all these things that you are complaining about speaks of reality testing, which is exactly what the mediators are supposed to do. What you said does speak of that degree of accountability that when you practise and even in your private caucus, secret and private things could explode that way. As a trained and experienced mediator, you better be sure that you are doing the right thing.

DQ: Could I have a quick comment on both of your points? I just thought it is quite timely to say that there are currently checks on mediators' conduct. For example, there can be disciplinary action against a mediator. I recall Mr Kevin Kwek from the Singapore Mediation Centre, telling me that the centre makes great effort to deal with complaints and a disciplinary mechanism is activated. We know in Singapore, the Singapore International Mediation Institute ("SIMI") is chaired by Prof Joel Lee. For mediators who are SIMI certified, people can complain against you and then the disciplinary mechanism is activated.¹⁴ I was also speaking to Chern Yang on the Law Society mediation scheme, and they are also looking at ways to ensure accountability. There is also accountability according to the law. Linking our conversation to the Singapore Convention on Mediation,¹⁵ we know when there is a serious breach of mediation standards, that can be a ground for non-enforcement of the mediated settlement agreement.¹⁶

13 *Chan Gek Yong v Violet Netto* [2019] 3 SLR 1218.

14 See, eg, Singapore International Mediation Institute, SIMI Code of Professional Conduct for SIMI Mediators (Version 2.0, 10 November 2023) <<https://www.simi.org.sg/What-We-Offer/Mediators/Code-of-Professional-Conduct>> (accessed 24 October 2025).

15 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018).

16 United Nations Convention on International Settlement Agreement Resulting from Mediation (New York, 2018) Art 5.

A similar ground of non-enforcement is provided by s 12 of our Singapore Mediation Act 2017¹⁷ as the court can refuse to record it as a judgment if there are certain well known contractual grounds for vitiation, including breach of public policy.¹⁸

LT: On to our next theme, accountability and dialogue. The question which the audience is asked to answer is: “Rather than enabling genuine dialogue, mediation mechanisms often exclude those most affected. Do you agree?”

Maybe on that note, let me throw the question to DQ in this case? You did some research and you wrote a paper in 2017 where you observed that the alternative dispute resolution (ADR) processes, including mediation, are increasingly used to, in your words, “increase access to justice and to mitigate the limitations of the formal adjudicatory system”, offering a more informal justice that is, in your words, “more empowering and participatory”, while also “less alienating and costly”.¹⁹ So maybe speaking on your view, what features or safeguards do you think must be present to ensure that mediation genuinely includes and empowers all the participants, including those who might be less vocal, less resourced, or perhaps more vulnerable to the dispute?

DQ: I think, OS, you alluded a little bit to that when you said in your lecture that sometimes mediation preparation takes a long while, involving identifying the people we need to talk to. The same preparatory steps are also important for mediation in the private context. One way to make this real is to give a personal example. I deal with some cases where there are a lot of repeat players who might know how mediation works. However, some parties may be participating in mediation for the first time and have no idea about mediation and negotiation and how they work. If you do not know the norms of the negotiation process, you might give your best offer during the first round of offers and you have no room to move anymore. The other side might misunderstand that you are negotiating in bad faith, resulting in a lot more misunderstandings. Some of the sources of power imbalances may just simply relate to parties not having the knowledge of how the mediation process works. This point was brought home to me in one mediation. I already talked to each side prior to the mediation, but when I talked to one party on the day of mediation, I could sense he was very, very nervous. He commented that he did not know how mediation would work while everyone else seemed to know. I then realised that the lack of knowledge of the process can create a sense of alienation which I as mediator may not know unless I actively put myself in the shoes of the person.

17 2020 Rev Ed.

18 Mediation Act 2017 (2020 Rev Ed) s 12.

19 Dorcas Quek Anderson, “Evaluating the Impact of Judicial Mediation on Access to Justice: Perspectives From the Singapore State Courts’ Judicial Mediation System” (2017) 5(2) *Journal of Arbitration and Mediation* 27.

Some safeguards can be easily put in place when we actively put ourselves in a person's shoes, trying to understand how each person would feel. In this regard, one should not assume that the typical "weaker party" is actually weak. Sometimes they might be the stronger one and the one that appears strong is actually vulnerable. Some measures include looking at the details of the mediation setting, and adequately explaining the mediation process to each party prior to the mediation. Another thing mediators should do is involve the parties in designing the process. Although mediation has a standard procedure, we should try to know their needs. For instance, someone might need frequent breaks simply to compose their emotions. A report written by the Office of the Compliance Advisor/Ombudsman ("CAO"), suggested other ways to contextualise the process to the parties, such as making it culturally appropriate.²⁰ Not everyone may be comfortable speaking around a table; it could have an alienating effect for people from certain cultures. I remember talking to our good mediator, Linda. She mentioned that in the matter of deciding on the venue, she and her co-mediator decided to use a certain party's religious institution as the mediation venue because in a prior mediation conducted elsewhere, many of the key spokespersons were not present, which affected the mediation. Once we put ourselves in a person's shoes and have those conversations that involve them, some of these power imbalances can be pre-empted.

LT: I want to turn to you, OS, because the World Bank DRS has done a lot of work in ensuring that effective dialogue takes place and ensuring that the mediation mechanisms do not exclude those who are most affected. Maybe you could speak a bit about that?

OS: There were multi-layer efforts to do that which will need to be unpacked partly because a compliance investigation starts out with any two requests submitting a complaint, which is a very powerful way to approach a mechanism and usually assisted by civil society advocacy actors. However, when it comes to dispute resolution, you have to pay attention to all people who are affected by that potential harm. There is a question of how you shift from focusing on these too loud voices to having everyone represented. This includes hundreds or thousands of people in a process and not delaying the process by having so many people present. We invested several efforts to doing that. One way is to do training for communities and people affected by the harm but who are detached from the mediation team. It is very important they should be allowed to express their questions and their learnings outside the mediation process. They do not feel weakened in their positions when they are engaged in the mediation and discussions. We also help them formulate the true representative structure of their issues because what may be an advocacy representative structure may not be the representative structure in mediation. This representative structure may also change. Those who are present at the start of the mediation may or may

20 Office of the Compliance Advisor/Ombudsman, *CAO Mediator Toolkit* (10 September 2023).

not be the ones who are capable of finalising an agreement. It is important to pay attention to these nuances all along in the process.

We also do training with CSOs, which is another very important factor we came to learn. If the people cannot be assisted by qualified, equipped CSOs, then in doing mediation, not advocacy, which is a different role, it makes our task a lot more difficult. As you have mentioned, Jeyaretnam J, it may not be that they get at the end what is right or what is according to law but what they actually want. Formulating those things can very much be detached from a CSO who is more interested in promoting a rights-based approach to trying to basically have a more generic approach to a given case. I think it is also important to pay attention really to the most vulnerable who are invisible. Those who cannot access a site because of disability, those who are excluded from the society because they are considered non-existent non-actors, and we know that this unfortunately still exists, or those who simply because of traditional decision-making structures, are not involved in decision-making. Very often, women are a part of this group. We have to make sure that when we enter a dispute resolution process, we do not take for granted what is given.

LT: I think that is all very useful. One of the learnings that I have had in the maybe now almost eight years I have been involved in the CAO and the World Bank DRS is how much effort goes into for the media to develop a rapport with the CSOs, with the NGOs. This trust building is not just with the parties, but also with the extraneous parties, the parties who represent interest groups and building capacity. Often, we call it capacity building from all fronts, but that helps to create that rapport and ensure that the mechanisms do not exclude those most affected.

Now we move to our last point. This is the fourth question which has now been polled: “In disputes involving governments, corporations and communities, true neutrality by mediators is impossible.”

OS: You like asking provocative questions.

LT: Well, to be fair, a lot of these questions were crafted with the assistance of one of us in the team. Well at the moment it looks fairly even. OS, you spoke today about mediation as the foundational mechanism of the development accountability, one that cultivates dialogue, ensures just outcomes, and empowers communities. I think what perhaps you can help us understand a bit better is that given this inherent tensions and power imbalances in such disputes, where state interests often overshadow community voices, what institutional designs, mediators’ attributes or procedural safeguards do you think are essential to at least allowing genuine neutrality or perhaps sufficient procedural impartiality in development-related mediations?

OS: I think it starts out from the beginning. When we designed the DRS, this was essential. Neutrality of a mediator is key to developing trust by all sides. How do you make sure that this is established from the start? For example,

we do not choose mediators for the process. We offer mediators based on their expertise, but it has to be the parties who choose them. It did happen in one case that one of the sides said, no, this is not the right mediator. It was revealed in the discussions that he was good friends in school with the president. I mean, we can have mishaps in proposing mediators, and that is why it is so powerful that the parties can say this is the person whom we trust to work with. That is from the start.

When you enter a process, you make sure that there are procedural guarantees such as the mediator doing any evaluation, and which matters should be addressed by compliance investigation staff instead of the mediator. There can be questions asked directly from the inspection panel in our case. There can be matters explained by management, if they are part of the process, as observers such as the management action plan on the outcome of investigation regarding what than do and cannot do. It is not for us to evaluate and not for us or for the mediator to say what you would end up with at the end of another kind of process. If you truly want to have neutrality, that does not mean you are blind to power imbalances. It is important to make sure that you deliberately choose to be neutral when you propose certain measures to bring the discussions to an equal footing. For instance, you could suggest capacity training, have a separate community discussion, or create a safer space where parties feel comfortable to have the discussions. All these elements have to be considered by the mediator to make sure there is neutrality. I think it is again important to understand the words which we use to describe what neutrality means. Neutrality means that you are not directing the process out of self-interest, nor accepting anything that promotes you to gain any advantage over parties. You do not take sides in the dispute. You accept it if there is no agreement, which is a very important element of neutrality. We are not doing this to promote an agreement.

LT: Very good. First of all, thank you to all the audience for having polled your answers. I think they have enriched our discussions; 34 to 35 responses are very much in line with what we were suggesting for the outcome. It leaves me now to raise a last question for each individual panel member to cast our eyes on the future. The question I have for each of you is to provide your final words on one insight, challenge or imperative that you believe the mediation community must take seriously if mediation is to remain a credible and constructive force in advancing justice and the rule of law over the next decade? We will take this in this order: KL, DQ, OS and of course Jeyaretnam J always has the last word.

KL: I had originally written down one answer for this question, but I think I am going to change it. Originally, I wrote down cross-cultural expectations because I think we are only going to get more globalised. I think maybe a more nuanced idea is that as we get more globalised, the nub of the issue is that increasingly public interest matters are more likely to be amenable to mediation going forward. If I trace the history in the arbitration space, about 12 or 13 years ago, the Permanent Court of Arbitration started

developing optional rules for some of these more public interest matters like investor-state arbitration and then environmental harm and so on and so forth. I just wondered if maybe that is an initiative which we can think about, such as optional rules for mediation for public interest type issues. To my knowledge, public interest matters typically are handled by a formal organisation for dispute resolution. If not, all the available rules are private in nature and do not often cater to some of these public interest aspects. I will leave that with you.

DQ: I thought what OS mentioned resonated with me: humility and continual learning from both our successes as well as our failures will keep us engaging in such important discussions. I think if we are at a stage where there is a lot of awareness of mediation skills, it is a chance and apt opportunity to go deep, reflect very deeply and talk to one another about our mediation experiences and difficult issues. These issues include whether we have managed power imbalances well or how we can design the mediation process better so that truly we deliver on the promise of mediation in advancing access to justice.

OS: I would say balancing cross-disciplinary learning. These days it is very easy to get information. We all tend to know something about something, and I think it is necessary because we need to be aware of the larger context but also learn from each other. I did go back to study quite late in my career because I realised, we talk about the same thing in the public sector and the private sector but just in different languages. We need to be able to understand each other, to be able to learn from each other. At the same time, it is extremely important not to dilute the expertise that is out there. That is my bigger concern when I look at for example just the future of the World Bank where they are discussing potential merger between the two accountability mechanisms, the private and the public sector. There lies expertise which is very specific in the public sector, and I would not want to dilute that because it then can just flip the success of the process if you do that. I would like to encourage for the future ahead, a good balance of both.

Jeyaretnam J: Well, I think over the next 10 to 15 years, we are going to see more and more use of technology. The challenge that I foresee is, how do we avoid getting too distracted by technology, too drawn into it? At the heart of every dispute, it is a human drama. The best mediators are fully attentive to all of that and to finding a solution that works for humans.

LT: Yes, excellent. On that note, I first of all, want to thank all of you for your time and for all your wisdom. Can we all give a round of applause to the panel members? Thank you.