

THIRD  
ASEAN CHIEF JUSTICES'  
ROUNDTABLE ON ENVIRONMENT  
ASEAN'S ENVIRONMENTAL CHALLENGES  
AND LEGAL RESPONSES

THE PROCEEDINGS

EDITORS

KALA K. MULQUEENY  
FRANCESSE JOY J. CORDON



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# FOREWORD

In November 2013, typhoon Haiyan struck the Philippines leaving at least 6,201 persons dead, 28,626 injured, 4.1 million homeless, and \$895 million in property damage. Climate change will increase the likelihood and frequency of such natural disasters. Typhoon Haiyan, together with other disasters to have hit Southeast Asia, gives the judiciaries of the member countries of the Association of Southeast Asian Nations (ASEAN), and the rest of the world, glaring examples of Southeast Asia's susceptibility to environmental challenges like climate change.

In 2013, deforestation, transboundary haze, biodiversity loss, and pollution continued to be regional challenges for Southeast Asia. In 2011, the Southeast Asian region's judiciaries first met to consider these and related environmental challenges and legal issues and come up with "A Common Vision on Environment for ASEAN Judiciaries" (the "Jakarta Common Vision"), seeking to strengthen regional cooperation on environmental issues. In November 2013, the region's chief justices and their designees met in Bangkok, Thailand for the third time on these issues. Hence, the theme of the third roundtable was "ASEAN's Environmental Challenges and Legal Responses." Those present recognized the region's environmental challenges and what these mean for their people, as they viewed these challenges with a greater sense of urgency and desire to contribute.

The Asian Development Bank (ADB) is committed to helping countries and their judiciaries prevail over these environmental challenges. On rebuilding the typhoon Haiyan-affected communities alone, ADB is providing \$23 million in grants, \$500 million in an emergency loan, \$372 million in an assistance loan, and \$150 million reallocated funds from ongoing ADB projects or at least \$1 billion to fund post-disaster rehabilitation efforts.

ADB also recognizes the judiciary's critical role in (i) enforcing environmental laws by rendering environmental decisions, developing environmental jurisprudence, and establishing environmental courts; as well as (ii) championing and leading the rest of the legal profession toward credible rule of law systems that have integrity and promote environmental justice. As such, ADB has been helping ASEAN judiciaries strengthen their systems of environmental adjudication and justice.

The Third ASEAN Chief Justices' Roundtable on Environment: "ASEAN's Environmental Challenges and Legal Responses" was part of ADB's continuing efforts to enhance the ASEAN judiciaries' knowledge of the legal, economic, and scientific aspects of the region's common environmental concerns and to empower them to better enforce environmental laws, increase access to environmental justice, and adjudicate environmental cases. The event's significant success was a result of the important collaboration between ADB and the Supreme Administrative Court of Thailand, the host judiciary, and the strong commitment and full participation of the judicial delegates. Throughout the conference, many of these delegates requested ADB's support to implement judicial initiatives. ADB is open to "strengthen...the legal, regulatory, and enforcement capacities of public institutions on environmental considerations." Overall, participants agreed to affirm the Jakarta Common Vision and accelerate its implementation.

This volume captures the speakers' rich presentations and the engaging discussions during the roundtable. The volume is envisioned to be an excellent reference point for further work on increasing access to environmental justice and developing environmental jurisprudence across Southeast Asia, and as a shared recording of the region's milestones toward achieving the Jakarta Common Vision.

**Christopher L. Stephens**  
General Counsel  
Office of the General Counsel

# ACKNOWLEDGMENTS

**M**any staff and consultants at the Asian Development Bank (ADB) and the Supreme Administrative Court of Thailand deserve recognition for making the Third ASEAN Chief Justices' Roundtable on Environment: "ASEAN's Environmental Challenges and Legal Responses" a success and for recording the proceedings.

The Supreme Administrative Court of Thailand convened and warmly welcomed the ASEAN chief justices and members of senior judiciaries, ensuring that the delegates' stay in Bangkok would be enjoyable and memorable. Dr. Hassavut Vitivityakul, president of the Supreme Administrative Court of Thailand, delivered the opening remarks; Prof. Dr. Ackaratorn Chularat, former president of the same institution, gave the keynote address; while Kasem Comsatyadham, vice president, diligently chaired several sessions, presented souvenirs to the judicial delegates, and gave the closing remarks. Chanwit Chaikan, administrative case official, and Patcharaporn Sirivimolkul, administrative court official, provided support in collating and confirming the materials of resource persons and in proofreading this record of the proceedings.

ADB also expresses its gratitude for those who graciously agreed to chair and/or facilitate roundtable sessions. They are Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand; Pairoj Minden, president of a chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court of Thailand; Glynda Bathan-Baterina, deputy executive director of Clean Air Initiative for Asian Cities Center; Assoc. Prof. Dr. Saitip Sukatipan, judge of the Chiang Mai Administrative Court of Thailand; Dr. Thomas Enters, regional coordinator of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) of the United Nations Environment Programme's Regional Office for Asia and the Pacific; Rolando A. Inciong, director for communication and public affairs of the ASEAN Centre for Biodiversity; Srunyoo Potiratchatangkoon, judge of the Central Administrative Court of Thailand; Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB; Peter Wulf, member of the Australian Administrative Appeals Tribunal, a barrister, and scientist; Dr. Wanhua Yang, legal officer of the Division of Environmental Law and Conventions of the United Nations Environment Programme's Regional Office for Asia and the Pacific; and Hima Kohli, judge of the High Court of Delhi.

Dr. Kala K. Mulqueeny led an exceptional team under the ADB Office of the General Counsel's Law, Justice and Development unit—comprised of Christina U. Pak, Ma. Celeste Grace Saniel-Gois, Kristine Melanie Rada, Ma. Imelda Alcala, Brenda Jay Mendoza, and Francesse Joy J. Cordon. That team collectively gave administrative, secretariat, and research support.

Dr. Kala K. Mulqueeny and Francesse Joy J. Cordon prepared and edited this record of proceedings.

**Christopher L. Stephens**  
General Counsel  
Office of the General Counsel



# ABBREVIATIONS

ADB	– Asian Development Bank
ADR	– alternative dispute resolution
AJNE	– Asian Judges Network on Environment
ASEAN	– Association of Southeast Asian Nations
CBD	– Convention on Biological Diversity
CEO	– chief executive officer
CITES	– Convention on International Trade in Endangered Species of Fauna and Flora
EIA	– environmental impact assessment
GHG	– greenhouse gas
ha	– hectare
km <sup>2</sup>	– square kilometer
Lao PDR	– Lao People’s Democratic Republic
NGO	– nongovernment organization
SAO	– Subdistrict Administrative Organization
SLAPP	– strategic lawsuit against public participation
TEPO	– temporary environmental protection order
UN-REDD	– United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
US	– United States

# EXECUTIVE SUMMARY

The Asian Development Bank (ADB) and the Supreme Administrative Court of Thailand hosted the Third ASEAN Chief Justices' Roundtable on Environment: "ASEAN's Environmental Challenges and Legal Responses" on 15–18 November 2013 at the Royal Orchid Sheraton Hotel, Bangkok, Thailand. The roundtable is part of the continuing commitment of ADB to "strengthen... the legal, regulatory and enforcement capacities of public institutions on environmental considerations..." and thereby enhance the judiciary's capacity to enforce environmental laws, develop environmental jurisprudence, and lead the rest of the legal profession toward credible rule of law systems that have integrity and promote environmental justice.

Eminent speakers discussed the region's common environmental challenges before distinguished delegates from the Supreme Court of Brunei Darussalam, Prosecution Office to the Phnom Penh Court of First Instance of Cambodia, Supreme Court of Indonesia, People's Supreme Court of the Lao People's Democratic Republic (Lao PDR), Federal Court of Malaysia, Supreme Court of the Republic of the Union of Myanmar, Supreme Court of the Philippines, Supreme Court of Singapore, Supreme Administrative Court of Thailand, and Supreme People's Court of Viet Nam. The delegates also shared their judicial innovations and experiences in addressing environmental challenges.

The roundtable proper was divided into nine sessions. In Session 1, with the theme of ASEAN Environmental Challenge: Climate Change—Science, Economics, and Law, Glynda Bathan-Baterina of Clean Air Initiative for Asian Cities Center defined "climate change" and explained its consequences in Southeast Asia. Dr. Seree Supratid of the Climate Change and Disaster Center in Rangsit University discussed the global state of climate change and urged decision makers to conduct climate downscaling studies to find a finer scale of impact on the community, and based on such studies, to implement necessary adaptation measures. Peter Wulf of Australia discussed litigation and legal advancements made in the United States (US) and Australia in the field of climate change, and how climate change litigation in both countries highlighted potential future climate change litigation in the countries of the Association of Southeast Asian Nations (ASEAN) region. Judge Srunyoo Potiratchatangkoon of Thailand cited water management cases in Thailand to depict what a global warming case is in Thailand and suggested regional collaboration in developing legal principles and measures to address cases involving transboundary considerations. During question and answer time, participants wanted to know what effective climate change mitigation and adaptation measures could be implemented by the ASEAN member states, and whether there was a provision in Thailand's Constitution recognizing the people's right to a healthful and balanced ecology.

Session 2 had the theme of ASEAN Environmental Challenge—Forests, Illegal Logging, Forest Fires, and Transboundary Haze. Dr. Thomas Enters of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) of the United Nations Environment Programme's Regional Office for Asia and the Pacific stressed the fact that illegal forest activities are serious examples of transnational organized crime. Rataya Chantian

of the Seub Nakhasathien Foundation, Tropical Forest Foundation and the Society for the Conservation of National Treasure and Environment identified wildfire, wildlife hunting, illegal deforestation, and government infrastructure policies and projects as the primary threats to Thailand's forests.

Josi Khatarina of the Indonesian Center for Environmental Law, the UN-REDD Programme, and the Presidential Delivery Unit for Development Monitoring and Oversight (Unit Kerja Presiden Bidang Pengawasan & Pengendalian Pembangunan or UKP-PPP) traced deforestation and forest and/or peatland degradation in Indonesia to (i) illegal granting of mining and plantation permits, (ii) corruption, (iii) failure of business entities to perform their contractual obligations under the permits issued to them, and (iv) local communities having minimal access to forested areas that prevents them from fully utilizing these areas. She also discussed the approaches being used to address these drivers. First, Indonesia enacted new environmental laws that (i) take into account the effects of climate change in conducting environmental impact assessments (EIAs), (ii) consider environmental licenses as prerequisite to other business licenses, (iii) impose corporate criminal liability on entities violating environmental laws, among others, and (iv) sanction not only the direct perpetrators of environmental crimes but also government officials who improperly issue these licenses and/or who fail to properly monitor the grantee of the permits. Indonesia also established a new integrated law enforcement team to address environmental law enforcement problems and the judicial certification program on environment. Indonesia now also follows a road map to enhance the governance of forests and peatlands. The road map requires concerned government agencies to conduct license audits for sectors that significantly contribute to deforestation and forest degradation and follow a multi-door approach in law enforcement to strengthen interagency coordination and cooperation.

Judge Lukik Tri Cahyaningrum of Indonesia thereafter presented the forest management policies in Indonesia. H.E. Mya Thein of the Republic of the Union of Myanmar shared the forest policy and forest management system of the Republic of the Union of Myanmar. During question and answer time, participants deliberated on the transboundary nature of illegal logging and trade in timber and potential solutions.

In Session 3, with the theme of ASEAN Environmental Challenge—Biological Diversity and the Illegal Wildlife Trade, Rolando A. Inciong of the ASEAN Centre for Biodiversity stressed the indispensability of biodiversity and related ecosystems to humankind's survival. ADB played a short, provocative video—showing graphic images of the impact of the illegal wildlife trade on people, ecosystems, and wildlife—to inform the delegates of the character of wildlife crime as a “serious, transnational organized crime” that threatens not only endangered species but also human lives and national security. The video was coproduced by ADB, the World Wildlife Fund, and TRAFFIC. As such, urgent and strong international cooperation and coordination are required to address this crime. Speakers from the Lao PDR, Malaysia, and Viet Nam highlighted the causes of biodiversity decline in their respective countries and the measures they have implemented to arrest further biodiversity loss. During question and answer time, participants discussed the major challenges, including legal challenges, to effectively stop the illegal wildlife trade.

Session 4 had the theme of ASEAN Environmental Challenge—Pollution. Glynda Bathan-Baterina of Clean Air Initiative for Asian Cities Center framed the session by associating pollution with disputes. Justice Hima Kohli of India discussed the significance of public interest litigation (particularly in solving air and water pollution cases in India), and the National Green Tribunal, established to expediently dispose

of cases relating to environmental protection and natural resources conservation. Justice Maneewon Phromnoi of Thailand talked about the creation of Thailand's administrative courts and environmental divisions, their role in the adjudication of environmental cases, the environmental legal framework of Thailand, and the application of environmental legal principles—specifically the prevention principle, polluter pays principle, public participation principle, and sustainable development principle—in several landmark decisions. Tan Sri Richard Malanjum of Malaysia tackled the sources of pollution in Malaysia, how weak law enforcement mechanisms and other challenges weakened Malaysia's environmental laws, and other solutions to the pollution problem. Justice Lailatul Zubaidah Hj Mohd Hussain of Brunei Darussalam explained the factors that reduced air and water quality in Brunei Darussalam, described the country's environmental protection framework, and the cleanup activities and conservation programs that the country is undertaking. During question and answer time, Justice Kohli explained the liberal manner of India's judiciary in adjudicating environmental cases as stemming from their constitutional mandate to regard the people's right to environment as their right to life. Judges of the Supreme Administrative Court of Thailand also expounded on the power of Thailand's administrative courts.

In Session 5, with the theme of Access to Environmental Adjudication, Dr. Kala K. Mulqueeny of ADB highlighted the judicial innovations introduced in advanced ASEAN judiciaries, such as (i) Thailand's green benches and the presidential recommendation prescribing the period within which environmental cases should be resolved, (ii) the Philippines' 117 environmental courts and special rules of procedure for environmental cases, (iii) Malaysia's environmental training programs, and (iv) Indonesia's environmental certification program for judges. Judge Pairoj Minden of Thailand explored the concept of community rights in Thailand. Justice Diosdado M. Peralta of the Philippines elaborated on the salient features, benefits, and challenges of having the special rules of procedure for environmental cases. Tan Sri Richard Malanjum of Malaysia discussed the three forums for filing environmental cases in Malaysia—the environmental courts, civil courts, and tribunals. Judge Andriani Nurdin of Indonesia talked about Indonesia's fundamental environmental legislation, their experiences in judicial activism, and their advances in increasing access to environmental justice and adjudicating environmental cases. During question and answer time, the speakers elaborated on the jurisdiction and powers of their environmental courts and tribunals, while the rest of the participants shared how their judiciaries have ruled on environmental cases within their jurisdictions.

Session 6 had the theme of Interim Relief Measures—Preventing Irreversible Harm to the Environment. Peter Wulf of Australia asked everyone to think of the concept of ecological sustainability in awarding interim relief and the speed by which environmental disputes could be heard in relation to applications for interim relief. Gritsana Changgom, an independent scholar and legal advisor in Thailand, presented a philosophical and theoretical framework for understanding and applying injunctive relief, especially in the context of environmental administrative law cases. Judge Wuttichai Sangsamran of Thailand emphasized judges' need to rely on expert witnesses from multidisciplinary fields in order to lawfully and equitably decide environmental cases before determining the kinds of injunctive relief which Thailand's administrative courts can order. Justice Lucas P. Bersamin of the Philippines elaborated on the four new interim relief orders which Philippine courts can issue in accordance with their special rules of procedure for environmental cases and the radical changes to the regular rules of procedure to expedite the environmental litigation process. During question and answer time, participants considered the general prohibition on the issuance of injunction orders against government agencies.

In Session 7, with the theme of Court-Annexed Alternative Dispute Resolution, Dr. Wanhua Yang of the United Nations Environment Programme's Regional Office for Asia and the Pacific stressed the role of alternative dispute resolution (ADR) in resolving complex environmental cases. The speakers from Malaysia, Singapore, Thailand, and Viet Nam shared the various ADR mechanisms that have formed part of their case management systems, and the benefits these mechanisms offer to parties in terms of expediently resolving environmental disputes. They also listed the challenges to effective ADR systems, which aid in the resolution of environmental conflicts, and suggested means of overcoming these challenges. During question and answer time, participants discussed, among other things, the limitations of ADR mechanisms and how judiciaries could increase public and judicial enthusiasm for ADR.

In Session 8, with the theme of Execution of Court Orders and Judgments, Justice Kohli of India stressed the challenges to enforcing court orders and judgments in environmental cases. The speakers from Malaysia, the Philippines, and Thailand presented the means judiciaries have applied to enforce their final judgments and orders. Prof. Wisit Wisitsora-At of the Ministry of Justice of Thailand explained how the exemption of state properties from execution could frustrate the enforcement of court judgments and orders. Justice Presbitero J. Velasco, Jr. of the Philippines pointed out that obtaining a favorable judgment is only the first part of winning a case; the second part is having that judgment satisfied. He also discussed the Philippine judiciary's special means of enforcing judgments in environmental cases. Tan Sri Richard Malanjum of Malaysia illustrated the maneuvers that losing parties had used to forestall the execution of court judgments and the other causes of unsatisfactory enforcement of judgments. He also described the attitude among Malaysians that hampered the effective enforcement of environmental laws, rules, and regulations. For him, the tendency of Malaysians to suppress their emotions to avoid conflicts allowed large corporations to intimidate them. During question and answer time, participants talked about how court judgments could be executed against state properties and the other methods by which they could ensure the satisfactory execution of these judgments, especially where cross-border issues were involved.

Finally, in Session 9, with the theme of Cooperation Amongst ASEAN Judiciaries, the participants considered how they would advance regional cooperation and realize "A Common Vision on Environment for ASEAN Judiciaries" (or the "Jakarta Common Vision"), and ensure their continuous representation in these roundtables. Justice Vichai Chuenchompoonut of Thailand noted that the earlier roundtables had provided forums for sharing information among participants and wanted to have the record of these roundtables prepared; he also suggested rotating the head of these roundtables every 3 years. Deputy Chief Justice Tuong Duy Luong of Viet Nam requested the organizing committee of the current roundtable host judiciary to share its experiences in convening the roundtable with the next host judiciary and ADB to sponsor additional conferences among ASEAN justices to discuss environmental matters and include mediators in these conferences. Justice Velasco recommended using the Asian Judges Network on Environment (AJNE) website to share information and strengthen judicial capacity to appreciate scientific evidence and list scientists and technical experts who can offer opinions in environmental cases and train judges. He also suggested exploring the possibility of harmonizing the rules of procedure for environmental cases within ASEAN judiciaries and drafting a set of model rules. In response to the discussion, Dr. Mulqueeny said that these roundtables were aimed at helping regional judiciaries that wanted to pursue regional environmental collaboration ensure such collaboration, rather than creating binding or consensus-based documents.

In the last session, delegates representing nine ASEAN judiciaries agreed that the ASEAN Chief Justices' Roundtable on Environment is important. They further agreed to reconvene in a side meeting during the Second Asian Judges Symposium in Manila so that they could nominate their respective judiciary's focal points to facilitate regional integration and update one another on what they done after this Third ASEAN Chief Justices' Roundtable on Environment.

Similarly, these delegates affirmed the Jakarta Common Vision and made a series of proposals to hasten the realization of this vision. It was generally agreed that the proposals be made to the ASEAN chief justices and considered within a working group to help plan the next ASEAN Chief Justices' Roundtable on Environment. These proposals included the following: (i) forming national environmental committees or National Working Groups on Environment which would serve as focal points for regional coordination; (ii) establishing an ASEAN Judiciaries Working Group on Environment comprised of the chairperson of each National Working Group or persons appointed by their chief justices; (iii) prioritizing the attendance of chief justices at the annual ASEAN Chief Justices' Roundtable on Environment and having the ASEAN Judiciaries Working Group on Environment ensure that priority issues were included in the roundtable agenda to encourage the participation of chief justices; (iv) holding interim virtual meetings, and if possible one face-to-face meeting, of the ASEAN Judiciaries Working Group on Environment with the support of ADB; (v) submitting progress reports on the implementation of the Jakarta Common Vision at each ASEAN Chief Justices' Roundtable on Environment, and submitting interim reports to the ASEAN Judiciaries Working Group on Environment; and (vi) engaging in environmental twinning programs to share their lessons learned. Singapore would refer matters discussed to its Chief Justice for his approval.

# HIGHLIGHTS

## DAY 1: 16 NOVEMBER 2013

### ■ OPENING CEREMONY

#### ■ Opening Remarks

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The Honorable Dr. Hassavut Vitisitviriyakul, president of the Supreme Administrative Court of Thailand, began by expressing heartfelt sympathy to the citizens and residents of the Philippines and Viet Nam for the natural disasters that had recently struck both countries and caused significant loss of lives and damages to property. He also expressed sincere hope that both countries would be able to quickly recover from these disasters. He then highlighted the importance of this roundtable in providing a forum for discussing common environmental concerns, the different procedures that the Association of Southeast Asian Nations (ASEAN) judiciaries follow in adjudicating environmental cases, and the problems and obstacles these judiciaries face in the process of deciding such cases. He also wanted this roundtable to help enhance their environmental justice systems, as ASEAN judiciaries help one another think of solutions to common environmental and legal challenges.

Dr. Vitisitviriyakul emphasized that the need to conserve the environment had become an increasingly important and pressing issue given the impacts of climate change and the depletion of the world's natural resources. To successfully conserve and protect the environment, he urged all stakeholders to cooperate in undertaking environmental management efforts at both national and international levels. Government agencies, he noted, should also seek the support of international organizations in enhancing their knowledge, skills, and experience in dealing with environmental issues and in promoting sustainable development.

On behalf of the Supreme Administrative Court of Thailand, Dr. Vitisitviriyakul thanked (i) the participants of the Second ASEAN Chief Justices' Roundtable on Environment for their confidence in entrusting the administration of this subregional roundtable on environment to them, (ii) the Asian Development Bank (ADB) for supporting and assisting them in organizing this roundtable, and (iii) the ASEAN chief justices and environmental judges for their firm commitment to enhancing environmental justice. He wanted this roundtable to help strengthen the relationship and network of the ASEAN judiciaries, enhance the region's environmental justice system, and meet the expectations of all participants.

#### ■ Welcome Remarks

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Christopher Stephens, general counsel of ADB, welcomed everyone to the Third ASEAN Chief Justices' Roundtable on Environment with its theme "ASEAN's Environmental Challenges and Legal Responses" and expressed pleasure in partnering with the Supreme Administrative Court of Thailand by hosting this event. He also extended his sympathy, condolences, and prayers for the Filipino people; and acknowledged the vital role that Thailand plays in establishing the ASEAN, which increased the region's economic



growth and integration. He stressed that ADB acknowledges the critical role that chief justices and their senior judiciaries are playing in (i) enforcing environmental laws by rendering environmental decisions, developing environmental jurisprudence, and establishing environmental courts; and (ii) championing and leading the rest of the legal profession toward credible rule of law systems that have integrity and promote environmental justice. As such, ADB strongly supported the Supreme Administrative Court of Thailand in convening the roundtable.

Stephens recounted how this roundtable emanated from the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in Manila in July 2010 where during that event, over 100 members of the senior judiciary called for an Asian Judges Network on Environment (AJNE). It was also on that occasion that Chief Justice Harifin A. Tumpa declared the judiciary's vital role in dealing with the ASEAN region's common environmental challenges and invited the ASEAN chief justices to the inaugural ASEAN Chief Justices' Roundtable on Environment in Jakarta, Indonesia to discuss how the ASEAN judiciaries could address these challenges. As a result of this first roundtable, participants agreed upon "A Common Vision on Environment for ASEAN Judiciaries" (the "Jakarta Common Vision"), which recognized the ASEAN judiciaries' role in championing the rule of law and environmental justice, and pushed for regional collaboration in developing environmental jurisprudence and innovative remedies, strengthening environmental courts, and generating knowledge and action on the region's environmental challenges. Chief Justice Tumpa also announced the adoption of Chief Justice Decree No. 134 of 2011 on the environmental certification program of judges to enhance the capacity of Indonesian courts in adjudicating environmental cases through qualification and training. The second roundtable was held in Melaka, Malaysia and hosted by the Federal Court of Malaysia, which (with the support of ADB) established new green trial courts and conducted environmental law training in that same year. Similarly, the Supreme Administrative Court of Thailand did not only host this third roundtable, it also established environmental courts and rendered landmark decisions on pollution and global warming.

Stephens then enumerated the key environmental challenges resulting from Southeast Asia's rapid and unsustainable economic development. For one, rapid population growth entailed far-reaching and serious social consequences and environmental problems, including climate change, air pollution, deforestation, overfishing, and limited safe water supplies. The overexploitation and illegal trade in timber, wildlife, and other natural resources and products; poor environmental law enforcement; and weak governance aggravated these problems, thereby demonstrating the need for every ASEAN member state to safeguard the compliance and effective enforcement of national and international environmental laws and instruments and to support regional cooperation on environmental issues. As an essential component of the environmental law enforcement chain, Stephens pointed out that the ASEAN judiciaries and the other participants of this third roundtable needed to promote environmental justice and ensure that lower courts understood the significance of their active participation in this endeavor.

To deal with these environmental challenges, ADB has committed to environmental sustainability and good environmental governance by identifying several approaches for transitioning to a "green growth" model. One approach is the conservation of natural capital and ensuring the delivery of ecosystem services that are essential for reducing poverty, increasing resilience, and making "green economies" a reality. Another approach is the conservation of critical ecosystems through regional cooperation programs and projects to enhance the livelihoods of people by limiting their exposure to pollution and ensuring



that new infrastructure initiatives do not fragment ecosystems. More specifically, ADB (i) worked with the Government of Thailand in improving its flood management and response mechanism and its energy security; (ii) supported the Coral Triangle Initiative, the Greater Mekong Subregion Core Environment Program, and its Biodiversity Conservation Corridors Initiative; (iii) aided several judicial reform programs, such as the Philippine justice sector's Governance in Justice Sector Reform Program, Indonesia's judicial certification program on environment, and Malaysia's establishment of green benches and environmental training; (iv) supported the Asian judicial delegation to the World Congress on Justice, Governance and Law for Environmental Sustainability; (v) convened the Judicial Colloquium on Biodiversity in Hyderabad, India in October 2012; and (vi) convened the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) Conference of the Parties in Bangkok in March 2013. ADB was also convening the Second Asian Judges Symposium in December 2013.

Finally, Stephens recognized the participants' efforts in demonstrating their leadership and commitment to strengthening environmental enforcement and access to environmental justice as manifested by their attendance in these roundtables on environment. Moving forward toward greater cooperation among the ASEAN judiciaries on environmental adjudication, he expressed enthusiasm in listening to (i) the participants' responses to the region's common environmental challenges, and (ii) the next steps that the judiciaries will pursue to strengthen cooperation among ASEAN judiciaries on the environment.

## ■ Keynote Address

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To drive home his point that humans do not own the earth, and that they themselves will suffer the consequences of the manner in which they treat the earth, Prof. Dr. Ackaratorn Chularat, former president of the Supreme Administrative Court of Thailand, quoted a January 1854 letter widely attributed to Chief Seattle:

“...This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected. Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life, he is merely a strand in it. Whatever he does to the web, he does to himself.”

Prof. Dr. Chularat explained that humans are agents of change and are instantly affected by social change—with both positive and negative consequences—such as disputes among individuals, private entities, and possibly between people and the state. Given the state's role in serving the people, the state cannot avoid being embroiled in disputes with its citizens. Likewise, social changes cause environmental problems that affect and concern everyone, and the speed by which environmental degradation worsens and reaches a critical point is in proportion to the speed by which the human population grows. In addition, globalization and economic development do consume and devastate the world's natural resources.

Prof. Dr. Chularat pointed out that while one group of humans profit from environmental degradation, other groups are bound to suffer from it. The consumption of natural resources, he said, inevitably creates a conflict of interest and environmental disputes, which are complicated by the relationship between technology and nature, and the ripple effect of mankind's activities. As this “environmental challenge”

must be resolved, it is essential to determine the origin of environmental problems and the solutions to these. The law, as a vital social institution, and the court, which is created by law, he said, can effectively solve these environmental problems. As the Latin maxim goes, “*Ubi homo, ibi societas. Ubi societas, ibi ius. Ergo: ubi homo, ibi ius.*” That is, “where the human being is, there is a society. Where there is a society, there is law. Therefore, where the human being is, there is law.” Environmental disputes can be private or public. Similarly, environmental litigation can be private or public. Public interest environmental litigation can be further classified as either administrative environmental litigation or constitutional environmental litigation. The solution to a given environmental problem depends on the legal remedies the aggrieved person or interested person seeks, the kind of environmental dispute it entails, and the jurisdiction involved. Prof. Dr. Chularat noted that it is also important to consider if nature has rights at the onset, and if so, if it is responsible for its own actions.

Toward the end, Prof. Dr. Chularat stressed that humans will continuously exploit natural resources and damage the environment, regardless of consequences. This is precisely why humans try to give rights to all other living beings. Humans, in other words, create the environmental problems, which they now have to solve. They threaten the effectiveness of the very legal environmental protection measures they have instituted because humans are unaware of their relationship with nature. In closing, he again quoted Chief Seattle:

How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and sparkle of the water, how can you buy them? ....

... You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land, tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children: that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If men spit upon the ground, they spit upon themselves .....

## ■ Overview: Asian Judges Network on Environment

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Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of the Asian Development Bank (ADB), first acknowledged the leaders of the Supreme Administrative Court of Thailand as partners of ADB in hosting the roundtable. She also paid her respect to the late Deputy Chief Justice Paulus E. Lotulung of the Supreme Court of Indonesia as one of the champions of environmental justice and regional integration in Southeast Asia, a principal driver of Indonesia’s judicial certification program on environment, and of the ASEAN Chief Justices’ Roundtable on Environment.

Showing pictures of the devastation caused by typhoon Haiyan (or Yolanda) in the Philippines, cyclone Nargis in the Republic of the Union of Myanmar, the terrible 2011 floods in Bangkok, and the 2005 tsunami in Sumatra, she expressed condolences to the victims of these natural calamities. She explained that these shared tragedies highlighted the commonality of shared environmental challenges among the member countries of ASEAN. She also pointed out the significance of this roundtable, the vision of regional cooperation in addressing Southeast Asia’s common environmental and legal problems, and the role that ASEAN chief justices and members of the senior judiciaries play in confronting these challenges.

Dr. Mulqueeny next presented an overview of the succeeding sessions. First to be discussed would be the region's common environmental challenges, such as (i) natural disasters and climate change; (ii) deforestation, illegal logging, forest fires, and transboundary haze; (iii) biological diversity loss and the illegal wildlife trade; and (iv) urbanization and pollution. Second, delegates were also invited to discuss their respective judiciary's ways and means of increasing access to environmental justice, providing interim relief measures to prevent irreversible harm to the environment, resolving environmental disputes through alternative dispute resolution (ADR) mechanisms, and effectively enforcing court orders and judgments in environmental cases. Third, she then drew attention to what ASEAN judiciaries had agreed on during the first two roundtables: (i) the Jakarta Common Vision of what these judiciaries would want to accomplish, and (ii) the technical working groups to be formed for the purpose of drafting a memorandum of understanding among ASEAN judiciaries on how exactly they would like to achieve the Jakarta Common Vision.

Dr. Mulqueeny also encouraged participants to reflect on their role in addressing the region's environmental challenges and on the purpose of having the ASEAN Chief Justices' Roundtables on Environment and the South Asia Judicial Roundtable on Environment. She particularly stressed the role of chief justices and the senior members of judiciaries, given their esteemed status as leaders and bastions of the rule of law, in (i) championing environmental rights and environmental justice in the context of upholding the rule of law, (ii) shaping environmental law and laying down judicial precedents, and (iii) issuing rules and directions to lower courts on how to carry out their role in adjudicating environmental cases.

Dr. Mulqueeny briefly discussed the upcoming Second Asian Judges Symposium in December 2013 and the formal launch of the AJNE. She concluded by showing the test AJNE website, and the information it provides on the ASEAN Chief Justices' Roundtables on Environment and South Asia Conferences on Environmental Justice and the outcome statements, key environmental legislation, landmark judgments, and judicial innovations. She ended the overview by asking participants to help increase the website's usefulness to the judiciaries by providing information on their landmark cases, sharing their views on what they would like to accomplish in this roundtable, and how they would like to further progress on regional judicial cooperation on environmental matters.

## ■ Introduction of Participants

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Dr. Mulqueeny invited the judicial participants to introduce the members of their country delegations and to briefly give some comments on the roundtable event.

### *Brunei Darussalam*

Dato Seri Paduka Haji Kifrawi, chief justice of the Supreme Court of Brunei Darussalam, thanked the Supreme Administrative Court of Thailand and ADB for the invitation to participate in this roundtable. He introduced the members of their delegation as Justice Lailatul Zubaidah Hj Mohd Hussain and Justice Harnita Zelda Skinner, senior magistrates of the Supreme Court of Brunei Darussalam. He ended by conveying his admiration for the inquisitorial system adopted by Thailand's administrative courts, preferring the inquisitorial system to the more commonly used adversarial system.

## *Cambodia*

Ly Sophana, deputy prosecutor at the Prosecution Office to the Phnom Penh Court of First Instance, Cambodia, thanked the Supreme Administrative Court of Thailand and ADB for inviting Cambodia to this roundtable. He informed participants that prosecutors in Cambodia are qualified as prosecutors in the same way as judges in Cambodia are qualified as judges. Further, judges in Cambodia can move for the removal of prosecutors on certain grounds. As it was his first time to attend the ASEAN Chief Justices' Roundtable on Environment, Sophana expressed his desire to learn much during the conference and that participants could discuss ways of improving ASEAN communities.

## *Indonesia*

Imam Soebechi Soekarno, deputy chief justice of the Supreme Court of Indonesia, thanked the Supreme Administrative Court of Thailand and ADB for inviting the delegation of Indonesia to this conference and introduced his fellow delegates, Dr. Andriani Nurdin, vice chief judge of the High Court of Banten, Indonesia, also the chief judge of Central Jakarta District Court, and an experienced environmental court judge; and Lulik Tri Cahyaningrum, judge of the State Administrative Court of Bandung, Indonesia. Justice Soekarno also apologized for Chief Justice Muhammad Hatta Ali's inability to attend the roundtable.

## *Lao People's Democratic Republic*

Khamphanh Sitthidampha, president of the People's Supreme Court of the Lao People's Democratic Republic (Lao PDR), thanked the Supreme Administrative Court of Thailand and ADB for inviting his country to this roundtable, and introduced his fellow delegate, Sengsouvanh Chanthalonnavong, who is also a judge of the People's Supreme Court of the Lao PDR. He encouraged participants to take this opportunity to discuss and understand environmental law and enforcement and to promote ASEAN cooperation on sustainable development. He also acknowledged the significance of this roundtable in helping the Lao PDR strengthen its environmental law enforcement mechanisms.

## *Malaysia*

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, greeted the participants, thanked the Supreme Administrative Court of Thailand and ADB for inviting Malaysia to this event, and apologized for Right Honourable Tun Arifin bin Zakaria's inability to be present at this roundtable that had occurred last minute due to a personal emergency. He introduced his fellow delegate, Alwi bin Abdul Wahab, judge of the sessions court in Kuching Sarawak, Malaysia. He expressed desire that by the end of this roundtable, they would have learned much more on environmental issues and adjudication and that the ASEAN judiciaries would have agreed on a more concrete plan of action. He also suggested that for the next roundtables, each ASEAN delegation should have a report card that should serve as a benchmark, presenting what they have accomplished in addressing environmental challenges in the year between roundtables.

At this point, Dr. Mulqueeny indicated her appreciation of Judge Malanjum's initiative in speaking about how the ASEAN judiciaries could advance the ASEAN judicial environmental agenda, and urged the other delegations to similarly share their thoughts on this endeavor.

### *Republic of the Union of Myanmar*

H.E. Mya Thein, judge of the Supreme Court of the Republic of the Union of Myanmar, introduced his colleague, U Soe Thein, chief judge of the High Court of the Mandalay Region, and expressed delight for having been invited to this roundtable.

### *Philippines*

Presbitero J. Velasco, Jr., associate justice of the Supreme Court of the Philippines, also apologized for Chief Justice Maria Lourdes P.A. Sereno's inability to attend this roundtable. His colleagues were Diosdado M. Peralta and Lucas P. Bersamin, both associate justices of the Philippine Supreme Court. He expressed his confidence that this roundtable would yield many outputs.

### *Singapore*

Woo Bih Li, justice of the Supreme Court of Singapore, thanked the Supreme Administrative Court of Thailand and ADB for inviting Singapore to this roundtable and expressed his condolences and prayers for the speedy recovery of the Filipino people from the devastation caused by typhoon Haiyan. He also apologized for Chief Justice Sundaresh Menon's inability to attend the roundtable, and expressed his desire to learn a lot from the presentations of the other delegations.

### *Viet Nam*

Tuong Duy Luong, deputy chief justice of the Supreme People's Court of Viet Nam, appreciated the invitation extended by the Supreme Administrative Court of Thailand and ADB to attend this roundtable and the efforts they exerted in organizing this conference. His fellow delegates were Tran Van Thu, deputy director of International Cooperation Department; and Tran Vu, who also works at the Supreme People's Court of Viet Nam. He then informed participants that in Viet Nam, environmental protection and conservation are critical issues, and expressed his desire for their delegation to learn from the experience of other judiciaries, especially on conserving biodiversity, combating illegal wildlife trade, and undertaking other judicial initiatives in dealing with environmental issues.

### *Thailand*

Vichai Chuenchompoonut, vice president of the Supreme Administrative Court of Thailand, introduced his colleagues, Paiboon Siengkong and Sumath Roygulchareon, and conveyed his desire for this roundtable to be of great help in solving the region's common environmental problems and for all participants to enjoy the roundtable and their stay in Thailand.

On this note, Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand, acknowledged the presence of Vichai Chuenchompoonut, who is also vice president of the Supreme Administrative Court of Thailand, and his cochair, Pairoj Minden, president of a chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court of Thailand.

To start the first day's morning session, Judge Minden informed participants that the session facilitator would frame the relevant issues under each theme for discussion among roundtable participants, and thereafter, three resource persons would give short presentations on the current state of climate change from a scientific, economic, and legal perspective.

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## ■ SESSION 1 ASEAN Environmental Challenge: Climate Change—Science, Economics, and Law

Glynda Bathán-Baterina, deputy executive director of Clean Air Initiative for Asian Cities Center, facilitated the session. She started by defining the term “climate change” based on the Natural Resources Defense Council’s February 2013 issue of the *NRDC Policy Basics* as a situation where “[h]eat-trapping air pollutants, most notably carbon dioxide, are changing the Earth’s climate.” She further highlighted the consequent 40% increase in carbon dioxide (CO<sub>2</sub>) concentration in the air and global temperature since the start of the industrial era.

Citing studies conducted by ADB, she then explained the consequences of climate change in Southeast Asia. First, climate change exposed 563 million Southeast Asians living along coastlines, or about 80% of the population in Southeast Asia living within 100 kilometers off the coast, to rising sea levels. Second, the agriculture-dependent region had been rendered vulnerable to droughts, floods, and tropical cyclones associated with global warming. Notably, heat waves, droughts, floods, and tropical cyclones had become more intense and frequent, causing a tremendous increase in loss of life and damage to property.

In the Philippines alone, the number of recorded floods and storms dramatically increased from just under 20 incidents from 1960 to 1969 to nearly 30 during 2000–2008. Bathán-Baterina also said that just before this roundtable, typhoon Haiyan had recorded a death toll of 2,357 and damages breaching the P4 billion (or almost \$90 million) mark.<sup>1</sup> ADB reported that inaction by national governments to address climate change could, in fact, cost an annual 6.7% of the combined gross domestic product of Indonesia, the Philippines, Thailand, and Viet Nam by 2100. She also showed how implementation of the Clean Air Act in a highly industrialized country, particularly the United States (US), decoupled the economic growth and greenhouse gas (GHG) emissions. In other words, the increase in GHG emissions was not as high as the increase in economic growth.

In conclusion, she asked participants to consider (i) the science and economics behind climate change; (ii) the effectiveness of existing legislation in resolving the problem of climate change, (iii) the justiciability of climate change cases, and (iv) the role that courts play in resolving climate change issues. She stressed that climate change mitigation and adaptation measures have already been identified. Thus, the only remaining components needed to effectively address climate change were a strong political will and for the stakeholders to convene and actively pursue these solutions.

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<sup>1</sup> As of 29 January 2014, 6,201 individuals were reported dead, 28,626 injured, and 1,785 still missing. Typhoon Haiyan also destroyed 1,140,332 houses, and caused a total of P39.8 billion (or approximately \$895 million) worth of damaged infrastructure and agriculture. See National Disaster Risk Reduction and Management Council. 2014. SitRep No. 104. Effects of Typhoon “YOLANDA” (HAIYAN). <http://www.ndrrmc.gov.ph/attachments/article/1125/Update%20Sitrep%20No.%20104%20Effects%20of%20TY%20YOLANDA.pdf>



## **The State of Climate Change in Thailand and an Update on the Intergovernmental Panel on Climate Change Report, and Its Impacts**

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Associate Professor Dr. Seree Supratid, director of the Climate Change and Disaster Center in Rangsit University, discussed the state of climate change in Thailand. He also updated participants on the Intergovernmental Panel on Climate Change (IPCC) report and its impacts. He presented a graph that showed the composite number of all disasters—including droughts, earthquakes, famines, floods, volcanic eruptions, waves and/or surges, wildfires, and windstorms—recorded over a century, from 1900 to 2000. The graph clearly demonstrated that the number of recorded disasters drastically increased toward 2000. Much of this increase could be attributed to the significant improvement in information access and population growth. However, it showed that from 1980 to 2000, the number of floods and cyclones had been rising, while the number of earthquakes had remained fairly constant.

Dr. Supratid referred to the World Risk Index released by the United Nations University Institute for Environment and Human Security in September 2011 to inform the audience of the risk score of 173 countries around the world with regard to natural disasters. This index is based on the following indicators: (i) exposure to natural hazards, (ii) susceptibility or likelihood of suffering harm, (iii) coping capacities to reduce negative consequences, and (iv) adaptation or capacities for long-term strategies for societal change. Southeast Asian countries, particularly Cambodia, Indonesia, the Philippines, Thailand, and Viet Nam are highly prone to natural disasters. Notably, over the last decade, Thailand suffered fluctuating weather patterns—from severe droughts to floods.

Dr. Supratid pointed out that politicians are often focused only on short-term strategies of dealing with climate change, which however has long-term effects. Looking at the external and internal drivers of the Bangkok floods—such as heavy rainfall, sea-level rise, subsidence, land-use planning, and flood management—decision makers would see that climate change mitigation strategies must be urgently implemented. Since climate change and anthropogenic disasters are unavoidable, societies need to adapt and employ smarter farming systems and implement strategic infrastructure projects, such as reducing or eliminating settlements in hazard-prone areas, unsafe dwellings, slums, and poverty. Governments, he said, must also improve communication systems so they could adequately inform the people about the impacts of climate change.

## **International Litigation and Legal Developments**

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Peter Wulf, member of the Australian Administrative Appeals Tribunal, a barrister,<sup>2</sup> and scientist, focused on the litigation and legal developments in the US and in Australia in the field of climate change. He concentrated upon the common law jurisdictions of both countries, with their considerable coal resources, significant GHG emissions, slow climate change regulation development, and the presence of many environmental activists.

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<sup>2</sup> In Australia, a barrister is a legal practitioner entitled to appear in and present cases to one or more courts and a legal advocate specializing in evidence.

Wulf described the regulatory framework of both countries at the federal and international levels. While both countries are heavy polluters, the US has very limited federal statutes directly dealing with climate change and has no law mandating climate change mitigation efforts. The US not only refused to sign the Kyoto Protocol, the US Senate even unanimously passed a resolution stating that the US should not become a party to the Kyoto Protocol because the protocol excludes countries like the People's Republic of China (PRC) and India, which are also major emitters of GHGs. Australia, on the other hand, has specific climate change legislation, including the *National Greenhouse and Energy Reporting Act 2007* and carbon tax provisions in the *Clean Energy Act 2011*,<sup>3</sup> and a more comprehensive environmental legal framework under the *Environment Protection and Biodiversity Conservation Act 1999*. Further, the Government of Australia under Prime Minister John Howard signed the Kyoto Protocol in 1998, although it was only after the 2007 election that Australia, under the leadership of Prime Minister Kevin Rudd, ratified the protocol.

Wulf defined climate change litigation as involving cases filed before the courts and quasi-judicial tribunals that make reference to climate change issues, and compared the kinds of cases filed in the US with those in Australia. A landmark US Supreme Court decision on climate change is *Massachusetts v. Environmental Protection Agency*, 549 US 497 (2007) where 12 states, a US territory, 3 cities, and 13 nongovernment organizations (NGOs) questioned the denial of the US Environmental Protection Agency (EPA) of their application to regulate CO<sub>2</sub> and other GHG emissions of motor vehicles as air pollutants pursuant to the Clean Air Act. The US Supreme Court resolved that the Clean Air Act authorized the EPA to regulate tailpipe GHG emissions. The law's definition of "air pollutant" is comprehensive enough to cover GHGs. Subsequent decisions rendered by the US Supreme Court, such as *American Electric Power Co., Inc., et al. v. Connecticut, et al.*, 564 US \_\_\_\_ (2011), revealed that the Supreme Court has been influencing US climate change regulation at the federal level.

Wulf described Australian climate change litigation. Australia's climate change jurisprudence is split into two areas: (i) cases related to the impacts of certain projects on climate change, and (ii) cases where the courts have been required to assess the impact of climate change. The first type of cases is primarily due to the concern among public and environmental groups over the environmental effects of a booming coal mining industry and consequently, whether the expansion of several coal fire power stations should be allowed. Several Australian judgments delved into the concept of "ecologically sustainable development" and the need to conduct a complete environmental impact assessment (EIA), which would include an analysis of the indirect impact of offshore emissions produced by the burning of coal in power plants abroad. In *Australian Conservation Foundation v. Latrobe City Council* (2004) 140 LGERA 100 and in *Gray v. Minister for Planning* (2006) NSWLEC 720, both courts therein considered indirect impacts, such as GHGs and climate change issues, relevant to an EIA associated with development projects. In *Walker v. Minister for Planning* (2007) NSWLEC 741 and in later cases, the court (New South Wales Land and Environment Court) considered environmentally sustainable development principles, specifically the

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<sup>3</sup> Editor's Note: Effective 17 July 2014, the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* repealed the *Clean Energy Act 2011* entirely. See Australian Government ComLaw. *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*. <http://www.comlaw.gov.au/Details/C2014A00083>



precautionary principle<sup>4</sup> and intergenerational equity, and by extension, climate change impacts, as mandatory considerations in the entire environmental legislative framework. Wulf said that, in the future, more stringent climate change adaptation approaches are likely to be taken into account in formulating climate change mitigation policies. The second type of cases, on the other hand, is often related to coastal development and whether the impacts of climate change had been properly considered when approving certain projects.

Wulf noted that the volume and impact of climate change litigation in the US and Australia sheds light on the kinds of climate change cases that could be filed within the ASEAN region. Clearly, ASEAN countries share similar features with the US and Australia—manufacturing industries in Indonesia and Thailand, large coal resources in Indonesia and the Republic of the Union of Myanmar, large populations, and numerous motor vehicles emitting GHGs across Southeast Asia. These industries and GHG emissions could pose similar climate change impacts and play a significant role in environmental litigation, EIAs, and the entire environmental framework.

At this juncture, Bathán-Baterina invited participants to raise any burning questions they might have. Justice Velasco asked the facilitator to restate the causes of climate change. Bathán-Baterina restated that climate change is the increase in heat-trapping air pollutants, notably CO<sub>2</sub>, released in the air, largely because of emissions from burning of fossil fuels. Justice Velasco then asked if the solution is to set limits on the amount of emissions. Wulf answered that Australia used to set targets on the proportion of renewable energy in the electricity production. Other developing countries have also set such targets.

Justice Velasco pointed out that ASEAN nations are the ones suffering from the GHG emissions of developed countries, and asked how they could convince the more progressive countries, which emit huge amounts of GHGs, to comply with the limits or at least reduce their GHG emissions.

Judge Malanjum asked Wulf about the source of funding for environmental litigation against companies. Wulf said that an anonymous influential businessperson in Australia donated A\$600,000 to finance the needs of the Environmental Defender's Office. At the same time, many barristers and experts in Australia have been rendering pro bono legal services.

Dr. Mulkeeney added that many regulatory mechanisms could address climate change. However, the key solutions include (i) putting a price on CO<sub>2</sub> emissions to deal with the negative externalities of these emissions, thus, making the polluters pay the cost of their GHG emissions; (ii) removing fossil fuel subsidies that amount to \$400 billion–\$600 billion a year; (iii) coming up with international agreements to cover the transboundary effects of CO<sub>2</sub> pollution; and (iv) strengthening regional cooperation among ASEAN member states.

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<sup>4</sup> The precautionary principle requires preventive action to be taken even when information about potential risks is incomplete based on a preference for avoiding unnecessary health risks instead of incurring unnecessary economic expenses. See US EPA. [http://iaspub.epa.gov/sor\\_internet/registry/termreg/searchandretrieve/termsandacronyms/search.do;jsessionid=BwBnlWEfZDRcdJprWzEwztyUMtilO-ukBVhjNohAl5dRdKu65YXpl-633225629?search=](http://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/termsandacronyms/search.do;jsessionid=BwBnlWEfZDRcdJprWzEwztyUMtilO-ukBVhjNohAl5dRdKu65YXpl-633225629?search=)

Justice Velasco recognized that it is up to the government of each country to set limits on their GHG emissions. However, the enactment and enforcement of laws imposing such limits, and the filing of cases based on violations of these laws are what would trigger judicial action on this matter. Until then, the judiciary has a very limited role in environmental law enforcement. Dr. Mulqueeny agreed with Justice Velasco that until a case is filed in court, the judiciary could play a limited role. However, she suggested that a law specifically limiting GHG emissions is not a prerequisite to the filing of such a case. Cases touching on climate change could be filed on the basis of other relevant laws, such as those requiring the conduct of EIAs (to take account of the environmental impacts, including climate impacts of particular projects), similar to what has happened in some other jurisdictions.

Dr. Vititviriyakul also shared his observation that most of the environmental degradation examples cited were due to climate change. However, other threats resulting from exploiting subterranean resources are also present. He also noted that disasters could also occur as a result of the misuse and abuse of modern technological devices. He emphasized that countries should adjudicate environmental cases together.

## ■ Legal Developments and Landmark Cases in Thailand

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Srunyoo Potiratchatangkoon, judge of the Central Administrative Court of Thailand, began by noting that Thailand is a country not listed in Annex 1 of the United Nations Framework Convention on Climate Change. As such, Thailand is not bound to enact any law or issue any regulation on GHG emissions. Moreover, Thailand's administrative agencies are not authorized to regulate, manage, or control GHG emissions. Consequently, Thailand administrative courts can only exercise jurisdiction over cases concerning the discharge of pollution and management of water resources.

Judge Potiratchatangkoon then presented cases on various water issues to illustrate what constitutes a global warming case in Thailand. The first set involved several cases filed before the administrative courts on the massive floods in 2011. These cases questioned whether the immeasurable damage to properties was caused by natural disasters, and would thus absolve the government of any liability for these damages, or by defects in the government's water management system—an issue that had also been decided earlier. The Supreme Administrative Court held that the flooding was caused by a natural disaster and the state could not be held liable for failing to manage a situation, which is beyond its control.

The second case involved a water management project, which cost B350 billion (or about \$10.7 billion). The plaintiffs wanted a court order suspending the project on the ground that the government had not conducted public consultation, as mandated by the Constitution. The Central Administrative Court ruled that the government indeed failed to comply with the constitutional mandate on public consultation and ordered the government to suspend the project's implementation. This decision was appealed to the Supreme Administrative Court. Meanwhile, some groups protested the court's decision, asserting that the real challenge in this case was how to properly balance public interest with socioeconomic development. Hence, regardless of which side won, certain groups would still rally against the court's decision. For Judge Potiratchatangkoon, intensive public consultation should be held before implementing a project that has serious impacts on the public and the environment to avoid and/or resolve any conflict later on.

The third case involved the construction of the Xayaburi Dam on the Lower Mekong River to produce hydroelectric power. The plaintiffs sued the Electricity Generating Authority of Thailand and other state agencies for supporting the construction of the dam, despite its potential severe impact on the natural resources and environment of the surrounding areas and downstream communities. They requested the government to stop purchasing the electricity generated by the dam. The Central Administrative Court dismissed the case on the ground that the plaintiffs were not interested parties, and the Ministry of Natural Resources and Environment's action involved international relations, and not an administrative action. The case was pending review before the Supreme Administrative Court.<sup>5</sup> For Judge Potiratchatangkoon, ASEAN judiciaries should carefully study the exercise of the right to sue in cases that involve the exploitation of natural resources and transboundary pollution, many of which make references to international legal concepts and practice.

Judge Potiratchatangkoon concluded that ASEAN communities should collaborate in developing legal principles and measures, including legal standing and the enforcement of judgments on the exploitation of transboundary natural resources, especially in cases of conflicting laws, jurisdiction, and judgments. He expressed desire for the roundtable to provide an opportunity for such collaboration in developing a common environmental justice system in Southeast Asia.

## ■ Discussion

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During question and answer time, Justice Velasco asked Judge Potiratchatangkoon if there was any provision in Thailand's Constitution guaranteeing citizens their right to a healthful and balanced ecology and empowering them to sue the government to compel them to enact a law on climate change. One of the judicial participants from Thailand responded that the people's right to sue in environmental cases had long been recognized and that their current Constitution also gives the people the right to participate in the management of natural resources.

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## ■ SESSION 2 ASEAN Environmental Challenge—Forests, Illegal Logging, Forest Fires, and Transboundary Haze

Kasem Comsatysadham, vice president of the Supreme Administrative Court of Thailand, and Assoc. Prof. Dr. Saitip Sukatipan, judge of the Chiang Mai Administrative Court of Thailand, served as cochairs for Session 2. They framed the succeeding sessions on the themes related to (i) forests, illegal logging, forest fires, and transboundary haze; (ii) biological diversity and the illegal wildlife trade; and (iii) pollution. They next introduced the facilitator and the resource persons for this session.

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<sup>5</sup> On 29 June 2014, the Supreme Administrative Court overturned the ruling of the Central Administrative Court and upheld the plaintiffs' right to protect their livelihoods, which should be balanced with economic development. See P. Wangkiat. *Bangkok Post*. Court takes Xayaburi dam case. 25 June. <http://www.bangkokpost.com/news/local/417207/court-takes-xayaburi-dam-case>

Dr. Thomas Enters, regional coordinator of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) of the United Nations Environment Programme's Regional Office for Asia and the Pacific, gave an overview. He advised the participants that between 1990 and 2010, natural forest resources equivalent to the size of Viet Nam had been depleted. This translates to a sizeable loss in biodiversity, ecosystem services, and livelihood opportunities. To stress the fact that illegal forest activities, including illegal logging and trade in illegal forest products, are serious forms of transnational organized crime in East Asia and the Pacific, he cited the April 2013 report prepared by the United Nations Office on Drugs and Crime entitled *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment*. Of the \$90.0 billion estimated combined annual income from selected illicit markets in East Asia and the Pacific, the trade of counterfeit goods amounted to \$24.4 billion, while trade of illegal wood products amounted to \$17.0 billion. He also described the high incidence of forest fires in many countries, except Singapore, due in part to the shifting cultivation practice of subsistence farmers. However, these forest fires had gotten out of hand over the last few years, with damages amounting to billions of US dollars.

### Thailand

Rataya Chantian, president of the Seub Nakhasathien Foundation in Thailand and advisor to the Tropical Forest Foundation and the Society for the Conservation of National Treasure and Environment, talked about Thailand's forests. Based on 2009 statistics, 33.44% of Thailand's land area consists of forests, while 41.09% consists of agricultural areas. The forested areas are protected under Thailand laws, with 20.01% being used as wildlife sanctuaries and national parks, and the remaining 13.43% used as national forest reserves, among others. However, forest cover had been cut in half—from 53.33% in 1961 to 33.44% in 2009. The drastic decline in forest cover slightly slowed down in 1989 when the government stopped granting new forest concessions. In 2000, forest cover was estimated to have increased to 33.15%, after the government redefined "forests" and "forest type areas," and accordingly adjusted its forest area estimates. Showing the 2010 ASEAN forest statistics of the United Nations Economic and Social Commission for Asia and the Pacific, she informed participants that Thailand ranks third worst in terms of remaining forest cover as a percentage of total land area, while Brunei Darussalam ranks first with 72.1%.

Chantian identified wildfire, wildlife hunting, illegal deforestation, and government infrastructure projects and policies as primary threats to Thailand's forests. For instance, the construction of roads and dams, particularly the Umphang Road and the Chiew Larn Dam projects, resulted in significant deforestation, massive consumption of natural resources, habitat loss and degradation, increased risk of hunting and logging, and inundation of endangered species. Legal deforestation to implement irrigation, road building, and mining projects, and the construction of electric power plants and telecommunications infrastructure, denuded at least 613,696 hectares (ha) of forest cover. Thereafter, the government undertook the construction of the Khlong Lan–Umphang Road through the western forest complex, thereby submerging 2,000 ha of high-density forest. The proposed Mae Wong Dam to be built in the Mae Wong National Park threatens to destroy the habitat of endangered species, and has compelled 120,000 people to sign a petition against the proposed dam and a 388-kilometer protest march from Maewong to Bangkok. With these contentious dam projects threatening the food security of approximately 60 million people and the river biodiversity of the Lower Mekong Basin, Chantian concluded that illegal deforestation and development projects pose the highest risk to Thailand's forests. She stressed the significance of having forests in ensuring water stability, and concluded that without any forest, there would be no water and, therefore, no life.

## Indonesia

Josi Khatarina, senior researcher at the Indonesian Center for Environmental Law and a member of both the UN-REDD Programme and the Presidential Delivery Unit for Development Monitoring and Oversight (Unit Kerja Presiden Bidang Pengawasan and Pengendalian Pembangunan or UKP-PPP), first acknowledged the significance of the roundtable in shaping environmental law enforcement in Southeast Asia. She next discussed the status of Indonesia's forests and how deforestation and forest and/or peatland degradation serve as the major sources of carbon dioxide (CO<sub>2</sub>) emissions in Indonesia. She said that presently, of the approximately 188 million ha comprising Indonesia's total land area, some 99 million ha are still covered with lush forests. This means that Indonesia holds 20% of the world's remaining tropical forests, despite having lost about 40 million ha of forest cover, or the combined size of Germany and the Netherlands, from 1979 to 2011. The country's peatland is the third largest in the world, next to that of the Russian Federation and Canada. However, it is also the worst contributor of GHG emissions from peatland degradation, with CO<sub>2</sub> emissions reaching 500 million tons per annum. Further, forest fires in Indonesia cause smoke haze pollution and pose significant environmental and health risks not only to Indonesians, but also to citizens and residents of neighboring countries.

Khatarina linked deforestation and forest and/or peatland degradation to (i) illegal granting of mining and plantation permits, (ii) corruption, (iii) failure of business entities to perform their contractual obligations under the permits issued to them, and (iv) local communities having minimal access to forested areas and thus the inability to fully utilize these areas. Evidently, these problems arise from defects in Indonesia's legal framework that are now being addressed through the enactment of new environmental laws that (i) take into account the effects of climate change in conducting EIAs, (ii) consider environmental licenses as prerequisite to other business licenses, (iii) impose corporate criminal liability on entities violating environmental laws, among others, and (iv) sanction not only the direct perpetrators of environmental crimes but also government officials who improperly issue these licenses and/or who fail to properly monitor the grantee of the permits. Environmental law enforcement problems, such as corruption in the law enforcement agencies and lack of capacity to creatively enforce the law in forest areas, are being solved by establishing a new integrated law enforcement team and the judicial certification program on environment.

Khatarina also explained that concerned government agencies are now following a road map to enhance the governance of forests and peatlands. Reform starts at the planning process, which incorporates a one-map movement, where different government agencies now use a common map in performing their respective official functions. At the utilization stage, these agencies now conduct license audits for some sectors that significantly contribute to deforestation and forest degradation. Finally, at the enforcement stage, concerned agencies have begun to adopt a new multi-door approach in law enforcement to strengthen interagency coordination and cooperation. The multi-door approach operates on two premises: (i) crimes involving the forestry and natural resources sectors are actually cross-sector crimes, and (ii) gaps in one law can be supplemented or filled by the provisions of other laws. In other words, forestry crimes go hand in hand with money laundering, bribery, unauthorized gratification, and tax avoidance. As such, forestry law enforcement is not the responsibility of one agency only. The Attorney General's Office, together with the police, the Ministry of Forestry, Ministry of Finance, Ministry of Environment, and financial intelligence units, investigate forestry and peatland-related cases. This new approach is also supplemented by capacity building exercises for all concerned government officials,

the *Memorandum of Understanding on Enhancing Coordination of Law Enforcers to Support Sustainable Natural Resources Management and Implementation of REDD+*, and the implementing guidelines—the *Joint Regulation on Multi-door Approach in Case Handling of Forest-Related Crime*—to strengthen the implementation of the multi-door approach.

Khatarina ended by showing statistics of the cases investigated and/or prosecuted by the joint enforcement team all over Indonesia.

At this juncture, Dr. Enters opened the floor for discussion. Dr. Mulqueeny asked Chantian to elaborate on the concept of “protected areas” within Thailand’s legal framework and the development projects scheduled for implementation in Thailand’s protected areas. In response, Chantian defined “protected areas” as “preserved forests” and identified both areas as the top two most protected areas in Thailand. She disagreed with the proposed developments to proceed because, strictly speaking, these are prohibited under their laws.

Judge Malanjum requested Chantian and Khatarina to elaborate on illegal logging. Khatarina cited a joint research conducted by an NGO in Indonesia and another one in the US, which traced the transport of stolen timber to Indonesia, among other places. Dr. Enters added that Australia, the US, and the European Union passed legislation penalizing the import of forest products produced by illegal logging. Many other consumer countries are still indifferent about the source of the forest products they import.

Dr. Enters then called on the second resource person from Indonesia.

Lulik Tri Cahyaningrum, judge of the State Administrative Court of Bandung, Indonesia discussed the forest management policies in her country. She told participants that forest management in the interest of national economic development and the prosperity of the people is mandated by their Constitution, as affirmed in Law No. 5 of 1967 (amended by Law No. 41 of 1999) on forestry and its implementing regulations.

Judge Cahyaningrum stressed the critical role of Indonesia’s natural resources in its continuous economic development. However, the quality and quantity of such resources could likely decline as a result of excessive logging, forest fires, forest encroachment, and shifting cultivation, all of which could be either intentionally or negligently done. To determine if such activities were performed without, or beyond the scope of, the required license, one should look at the said license and determine the authorities that granted the permit, and the strict supervision of the acts done under the permit.

Forest management and supervision tasks had been devolved to local governments, although there have been conflicts in the authority to grant permits covering various forest activities and overlapping forest areas. The process of obtaining permits could also be long and extremely complex. Permits were usually revoked only after lawsuits had been filed against the issuing authority. Judge Cahyaningrum noted, however, that such lawsuits had been few and filed only when the licensing authority’s actions were already causing severe damage to forests to the grave detriment of society. She also observed the poor monitoring of forest activities due to lack of personnel or supervisory workers and the lack of coordination among forest management and protection agencies. Other problems that have been successfully addressed include (i) forest degradation, (ii) damaged watersheds due to illegal logging and



land conversion, (iii) poor forest management system, (iv) unclear division of authority and responsibility for undertaking forest management programs, (v) weak law enforcement against those engaged in illegal logging and timber smuggling, and (vi) inadequate forest management capacity.

Judge Cahyaningrum concluded by sharing some of her criticisms against Indonesia's forest management situation. First, there were overlaps in the authority of the national government vis-à-vis that of the local governments in the issuance of permits to conduct forest activities. Second, insufficient staff resources and interagency coordination lead to weak oversight of the forestry sector. Finally, forest management authorities rarely impose administrative penalties.

### *Republic of the Union of Myanmar*

H.E. Mya Thein, judge of the Supreme Court of the Republic of the Union of Myanmar, presented the country's geographical features and forest resources base. Notably, 47% of the country's total land area consists of lush and diverse forests. The country's economy is largely dependent on agriculture and the export of Burmese teak. In 1856, the government initiated a systematic forest management system and in 1995, the Ministry of Forestry declared the country's Forest Policy. The current policy prioritizes six key points: (i) protection of soil, water, wildlife, biodiversity, and environment; (ii) sustainable use of forest resources for the continuous benefit of the present and future generations; (iii) satisfaction of the people's basic needs—fuel, shelter, food, and recreation; (iv) efficiency in harnessing the full economic potential of forest resources in a socioenvironmental manner; (v) people's participation in the conservation and utilization of the forests; and (vi) public awareness of the vital role that forests play in the well-being and socioeconomic development of the nation.

Judge Mya Thein also described the institutional framework of the country's forest management system. The Ministry of Environmental Conservation and Forestry is primarily responsible for administering and managing the forestry and logging sectors. The ministry is divided as follows:

- (i) Planning and Statistics Department, which coordinates and facilitates the tasks of the Forest Department, the Myanmar Timber Enterprise, and the Dry Zone Greening Department pursuant to the directives laid down by the Ministry of Environmental Conservation and Forestry. The Planning and Statistics Department also acts as a forum on policy issues in the forestry sector;
- (ii) Forest Department, which handles wildlife protection and conservation, and ensures the sustainable management of the country's forest resources;
- (iii) Dry Zone Greening Department, which handles the reforestation of degraded forestlands and the restoration of the Dry Zone environment of Central Myanmar;
- (iv) Environmental Conservation Department, which safeguards the environmental norms in the Republic of the Union of Myanmar;
- (v) Survey Department, which undertakes topographic mapping throughout the country and carries out boundary demarcation with neighboring countries; and
- (vi) Myanmar Timber Enterprise, which handles timber harvesting, milling, and downstream processing and marketing of forest products.

District-level forest management units were also established in 63 districts, together with the launching of the Republic of the Union of Myanmar's National Forest Management Plan (2002–2031).

Judge Mya Thein then described the country's judicial system and forest management legal framework. Courts were established under the control and supervision of the Supreme Court of the Union in accordance with the layout mandated by the Constitution. Moreover, the legal framework for forest management initiated under the Burma Forest Act (1902) was updated through new forest laws enacted in the 1990s, starting with the Forest Law (1992). In 2012, the legislature enacted the Environmental Conservation Law to protect and conserve the natural environment. However, despite the many environmental laws and regulations in place, the country's timber continues to be illegally exported and illegal logging remains a problem in remote areas. Based on the number of cases handled by different courts across the country, the caseload of courts in the regions with dense forests is clearly the highest. These factors exposed the weaknesses in the country's forest management policies and laws, which prodded the Ministry of Environmental Conservation and Forestry to consider amending the Forest Law (1992) to enhance the effectiveness and efficiency of its forest management.

In concluding his presentation, Judge Mya Thein pointed out the country's untapped natural resources, its potentials, and the love and care of the people for their natural environment. Given that forest management cannot be effectively handled by just one country, he emphasized the need for all countries to cooperate and coordinate to solve the problems of deforestation and illegal forest activities, and to conserve and protect the world's natural environment.

## ■ Discussion

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During question and answer time, Dr. Enters stated that international cooperation is crucial in addressing the region's common environmental challenges, especially considering that these challenges involve transboundary issues. He then opened the floor.

Justice Velasco stressed that addressing the illegal logging issue is primarily a law enforcement concern. Those caught violating forestry laws should face corresponding penalties. He also suggested (i) the countries' executive departments to encourage the conduct of entrapment operations against corrupt law enforcement officers to stop them from continuously allowing the export of illegally cut timber; and (ii) the judiciaries to set a time limit on the disposition of environmental cases to send a message to the violators that the government, particularly the judiciary, means business. Judge Nurdin added that to successfully prosecute the masterminds, law enforcement officials should also follow the money trail.

Dr. Mulqueeney asked the Philippine delegation about the experience of their forestry courts, specifically if they would recommend the establishment of forestry courts, or if environmental courts have already subsumed the function of forestry courts. Justice Velasco responded that the conversion of forestry courts into environmental courts and the adoption of the special rules of procedure on environmental cases were really the Philippine judiciary's best means of adjudicating environmental cases. The examination of various aspects of forestry courts led to the establishment of green courts, which can now hear and decide on all environmental cases.



### ■ SESSION 3 ASEAN Environmental Challenge—Biological Diversity and the Illegal Wildlife Trade

Cochairs Kasem Comsatysadham, vice president of the Supreme Administrative Court of Thailand; and Assoc. Prof. Dr. Saitip Sukatipan, judge of the Chiang Mai Administrative Court of Thailand, emphasized the problems on the overexploitation of genetic resources and widespread illegal trade of endangered species. They next introduced the session facilitator and resource persons for Session 3.

Rolando A. Inciong, director for communication and public affairs of the ASEAN Centre for Biodiversity, started by defining “biodiversity” as the abbreviated form of the term “biological diversity,” which means “the variety of life on Earth, from the smallest microorganism to the biggest mammal, and their interaction within the places where they live in, which we call ecosystems.” He affirmed mankind’s dependence on biodiversity and ecosystems for food, medicine, shelter, and clean water. Mankind has also benefited from other services provided by nature, such as pollination, moderation of climate change impacts, and air and water purification although these benefits had diminished along with the gradual degradation of earth’s ecosystems. Given humans’ dependence on biodiversity and the various ecosystems in which different kinds of species live, biodiversity loss inevitably leads to the loss of humankind’s lifeline to survival.

Inciong then highlighted the major ecosystems of Southeast Asia, like the 4,200 kilometers Mekong River and the marine biodiverse Coral Triangle and Borneo, and the 600 million lives relying on these ecosystems. While the region occupies only 3% of the earth’s surface, the region takes pride in being home to 18% of all species identified by the International Union for Conservation of Nature (IUCN), the most diverse coral reefs in the world, and three mega-diverse countries—Indonesia, Malaysia, and the Philippines. However, in 2010, the ASEAN Centre for Biodiversity published the *ASEAN Biodiversity Outlook*, which serves as a report card on how the region fared in terms of achieving the global target of reducing the rate of biodiversity loss. The publication revealed that the ASEAN member states failed in addressing the drivers of biodiversity loss that include destruction of habitats, unsustainable use and overexploitation of resources, climate change, introduction of invasive alien species, pollution, and illegal wildlife trade. The region’s rich biodiversity, in particular, makes it an attractive hot spot for the multibillion dollar global illegal wildlife trade. These unchecked threats lead to the alarming loss of the region’s rich terrestrial and marine biodiversity.

### ■ Combating Illegal Wildlife Trade (Video)

The video depicted the Right Honourable Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia, labeling wildlife crime as a “serious, transnational organized crime” that can threaten national security. Christopher Stephens, general counsel of ADB, linked wildlife crime to biodiversity, communities, and entire economies and described this crime as a threat to their sustainable economic development. In fact, illegal wildlife trade is one of the largest criminal activities in the world and ranks as one of the world’s top illegal trades. The business of trafficking animals and animal parts alone rakes in \$8–\$10 billion every year. Combined with illegal, unregulated and unreported fishing, which rakes in \$4.2–\$9.5 billion every year, and the illegal timber trade, which is worth \$7 billion yearly, the profits can amount to \$19.2–\$26.5 billion annually, proving that illegal wildlife trade is a very lucrative enterprise. This is primarily due to the high global demand for wildlife and their by-products, resulting in the slaughter of tens of thousands

to millions of elephants, wild tigers, rhinoceroses, pangolins, humphead wrasse, tropical fish, and other marine species like sharks, sea turtles, and manta rays, and making Asia a major consumption hub and hot spot for criminal wildlife trafficking. This also illustrates the fact that wildlife crime is a highly lucrative business for dangerous global crime syndicates.

On behalf of ADB, Stephens expressed deep concern about the widespread trafficking in wildlife products throughout Asia and the Pacific, and the enormous harm that this crime poses to economies throughout the region. Khalid Pasha, acting head of TRAFFIC India, added that there are pieces of evidence proving that the illegal wildlife trade is connected to other transnational crimes, such as drug trafficking; showing that wildlife crime syndicates harm not just wildlife and their natural environment. Andile Mhlongo, a ranger at the Hluhluwe-Umfolozi Park, South Africa; Dr. Joseph Okori, WWF African Rhino Programme Manager; and Dr. Kent Butts, director of the Center for Strategic Leadership's National Security Issues Group, unanimously attested to how poachers, well-armed with high-powered rifles, rocket-propelled grenades, night vision scopes, armored vehicles, and extensive training imperil the lives of countless people, especially rangers stationed at protected areas. Ginette Hemley, senior vice president of the WWF Conservation Strategy & Science, added that wildlife crime also threatens local communities, which in turn threatens economies at local and national levels worldwide.

Kingpins of the global wildlife crime syndicates continuously engage in these violent and destabilizing activities, confident that they can act with impunity due to weak laws and regulations, poor enforcement mechanisms, lack of effective prosecutions, and low penalties. Hemley pointed out that even in countries where there are strong laws and governments trying to enforce them, illegal wildlife trade fails to be regarded as a high-level political priority, so governments do not actively prosecute perpetrators. Shenaaz Khan, national wildlife trade officer of TRAFFIC SE Asia, revealed that many illegal wildlife traders are lawyers or at least knowledgeable of the law, so they know how to circumvent the law. Dr. Robert D. Hormats, Undersecretary of State for Economic Growth, Energy, and the Environment of the US Department of State, likewise emphasized that these syndicates also bribe and/or intimidate judges, border guards, rangers, and villagers, thereby taking a slice of a country and crippling the entire government process.

Ultimately, the video made clear that with wildlife crime syndicates remaining uncontrolled, wildlife crime and its accompanying perils increase each year. Governments need to be aware that wildlife crime is a serious transnational organized crime requiring urgent action. Stephens articulated ADB's commitment to work with all levels of national government to help them raise awareness of the issue, promulgate appropriate laws and regulations, and effectively enforce them. Dr. Bindu Lohani, vice president of ADB, urged the pooling of resources to collectively combat the illegal wildlife trade. For Chief Justice Zakaria, it is his responsibility as chief justice of the Federal Court of Malaysia to guarantee their entire judiciary's application of the highest standards in upholding the rule of law. As such, he issued a directive establishing environmental criminal courts to adjudicate wildlife cases and instructed the Malaysian judiciary to consider wildlife crime's immense gravity and, therefore, apply the strongest penalties. He also urged other judiciaries, prosecutors, and law enforcement agencies to seriously approach wildlife crime, bearing in mind its magnitude and consequences. The video ended with a call for action for "stronger enforcement," "effective prosecutions," "stronger penalties," "better collaboration" and to "stop wildlife crime."

Inciong praised the video for its presentation of the magnitude of the problems brought about by illegal wildlife trade, together with the reasons for the proclivity of criminals to engage in this environmental

crime, and the solutions available to combat this crime. He then requested Dr. Mulqueeny to elaborate on the video. In response, Dr. Mulqueeny discussed why ADB produced the video and why ADB started working on the illegal wildlife trade issue in addition to its work on building the capacity of judiciaries across Asia and the Pacific to adjudicate environmental cases. She related the approval of ADB for a \$1 million regional technical assistance project supporting the fight against transnational organized environmental crime and promoting environmental law reform and enforcement (RETA 8497).<sup>6</sup> The video was prepared for and earlier presented at the Symposium on Combating Wildlife Crime: Securing Enforcement, Ensuring Justice, and Upholding the Rule of Law—a side event to the Sixteenth Meeting of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) Conference of the Parties (CoP 16) on 10–12 March 2013. Dr. Mulqueeny explained that while combating wildlife crime is not uniquely focused on the judiciaries, the judiciaries continue to be a key part of this endeavor. While this technical assistance project is narrower in terms of addressing the region's common environmental challenges, it is broader in scope because ADB will be working with more environmental law enforcement components.

Expressing interest in the video's significant message, Inciong asked Dr. Mulqueeny how it would be possible to have a video copy to help disseminate its message. In response, Dr. Mulqueeny informed participants that the video would also be shown during the Second Asian Judges Symposium and at the launch of the AJNE on 3–5 December 2013, and thereafter, uploaded on the AJNE website. However, before ADB authorizes the replay of the video, there is a need to confirm its release with its production partners, the World Wildlife Fund, and TRAFFIC. Inciong added that the ASEAN Wildlife Enforcement Network warned that should wildlife crime trends continue, scientists estimate that 30%–42% of the region's animal and plant species could be wiped out during this century.

### *Lao People's Democratic Republic*

Sengsouvanh Chanthaluonnavong, judge of the People's Supreme Court of the Lao People's Democratic Republic (Lao PDR), described how humans have endangered wildlife species mainly as a result of their cutting down trees for timber, cultivation, and large infrastructure projects. The Government of the Lao PDR recognized this correlation between human activities and the extinction of species, as reflected in its Constitution, which mandates all organizations and citizens to protect the environment and all natural resources. The Lao PDR is also a signatory to various international and regional instruments, such as the Convention on Biological Diversity (CBD) and the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources. At the national level, the legal framework governing the environmental protection and management system is established under the Environmental Protection Law (1999), the country's primary environmental legislation, and supplemented by the Wildlife and Aquatic Law (2008), penal law, and criminal procedure law.

Judge Chanthaluonnavong also stated that the Ministry of Agriculture and Forestry is mainly charged with environmental protection and wildlife conservation. The judicial organs, on the other hand, are tasked with the investigation, prosecution, and punishment of environmental crimes, and the enforcement of decisions and orders issued in these cases. In particular, police officers investigate and detain the accused, collect all pieces of evidence, confiscate the object of the crime, and prepare

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<sup>6</sup> The approved budget for this technical assistance project had been increased to \$1.5 million.

a summary of the case for transmittal to the prosecutor. The prosecutor, in turn, studies the case files prepared by the police officers and prepares the prosecution statement for filing with the court, should he or she find sufficient evidence that the accused should be further prosecuted. Criminal courts of justice, thereafter, hear and render decisions, which shall then be enforced by the Ministry of Justice's enforcement agency.

In conclusion, Judge Chanthaluonnavong observed that despite these environmental protection measures, several challenges still confront the government in effectively enforcing environmental legislation. First, administrative authorities and criminal courts lack experience in dealing with environmental crimes. Second, only a few are assigned to handle these cases. Third, lack of budget and capital resources delay the prosecution of these crimes. It also does not help that people are reluctant to cooperate in law enforcement. Finally, since most cases occur in remote areas, this makes it extremely difficult for judicial organs to actively prosecute the cases.

Inciong thanked Judge Chanthaluonnavong and summarized his presentation on how the Lao PDR has been very active in pursuing domestic and international efforts at biodiversity conservation through its accession to a number of international environmental agreements and enactment of several legislation aimed at protecting the environment, conserving wildlife, improving the livelihood of poor communities to prevent them from engaging in illegal wildlife trade, and strengthening its law enforcement agencies.

## Viet Nam

Tuong Duy Luong, deputy chief justice of the Supreme People's Court of Viet Nam, expressed appreciation to ADB and the Supreme Administrative Court of Thailand for hosting this Third ASEAN Chief Justices' Roundtable on Environment. He then described the state of biodiversity decline and the illegal wildlife trade in Viet Nam, which is currently one of the top 15 countries facing extinction of animal species. Significantly, the syndicated illegal wildlife trade and the high profitability of the crime, the strategic location of Viet Nam as both a destination point and a transit hub for illegal wildlife trade, the overexploitation of natural resources, industrial pollution, population growth, and residential land expansion propel Viet Nam's biodiversity loss. Recognizing these threats to its biodiversity, Viet Nam signed various international environmental agreements and enacted several domestic laws to counter the illegal wildlife trade, and launched education campaigns.<sup>7</sup> It also entered into strategic partnerships with

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<sup>7</sup> Under the Prime Minister's Directive, dated 20 February 2014, on strengthening the direction and implementation of measures for controlling and protecting endangered, rare and precious wild animals, the Prime Minister requested concerned ministries, sectors and local authorities to do the following:

- (i) strengthen the prevention, fighting and eradicating of transnational organized crime syndicates related to illegal trading, transporting, exporting, importing, reexporting, temporary importing for immediate exporting, advertising, and consuming of specimens of endangered, rare and precious wild animals, especially rhino and ivory specimens originating from African countries;
- (ii) foster strict supervision and control of check points, including airports, sea ports, in land routes, unofficial transportation routes in the bordering areas;
- (iii) focus on detecting and addressing the hot spots of illegally trade in wildlife specimens, including fake specimens, in bordering areas and domestic markets; being determined to comply with legal regulations in the process of investigation and handling with violators; and
- (iv) enhance communication to raise awareness for the public and governmental officials in this particular area.

concerned stakeholders in caring for and protecting forests and conservation areas, and with research institutes in preserving genetic resources, among other things.

Deputy Chief Justice Tuong also mentioned the administrative agencies responsible for managing their biological resources. These include the Ministry of Resources and Environment and the Ministry of Agriculture and Countryside Development, the other ministries and ministerial-level agencies, and designated people's committees. He ended by enumerating the solutions they have identified to address their biodiversity loss problem, such as (i) enriching the people's knowledge on the biodiversity loss and illegal wildlife trade issues; (ii) ensuring close cooperation between the administrative agencies and the judicial organs; and (iii) increasing and enhancing the capacity of environmental enforcement staff, including police officers and the judiciary.

Inciong highlighted Deputy Chief Justice Tuong's report about the decline of biodiversity in Viet Nam partly as a result of the country being used as a transit point in the illegal wildlife trade, and the efforts they have used in addressing this biodiversity loss.

## Malaysia

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, began his report by sharing the richness of Malaysia's biological resources and various ecosystems. A number of forestry departments, wildlife and marine parks departments, research institutes, and biodiversity centers—operating under various biodiversity and forestry laws and international instruments—take care of this biodiversity. He also identified the following drivers of biodiversity loss in Malaysia: (i) land use changes, mainly for agriculture, housing, and plantation; (ii) unsustainable development projects; (iii) natural disasters, particularly tsunamis and forest fires; (iv) theft of native plants like wild and rare orchids committed by tourists; and (v) poaching and illegal wildlife trade committed by both locals and tourists due to greed.

Judge Malanjum then discussed Malaysia's National Policy on Biological Diversity to preserve the country's biodiversity and ensure that the same is being sustainably utilized to support the nation's continuous development, and the country's other conservation programs. The Government of Malaysia (i) launched a campaign to plant 26 million trees by 2014 and a coastal area tree planting program; (ii) strengthened biodiversity management with the Central Forest Spine Master Plan covering Peninsular Malaysia, the Heart of Borneo Initiative, and the Coral Triangle Initiative; (iii) developed the National Tiger Conservation Action Plan; (iv) provided sanctuaries for endangered species with the support of large corporations; and (v) protected animal habitats and promoted their defragmentation with the unparalleled aid of the international community. Still, several issues and challenges exist that hamper the effective protection and management of Malaysia's biodiversity, such as (i) the use of Malaysia as a transit point for illegal wildlife trade, including that of tigers, pangolins, and birds; (ii) inadequate skills and expertise in identifying species; (iii) lack of communication among enforcement agencies; (iv) inadequate training of the investigation and prosecution officers; and (v) the enforcement agencies' power to compound offenses, which prevents the filing of cases against perpetrators of wildlife crimes.

Judge Malanjum updated participants about their lobby for stronger penalties under the law and directive to judicial officers to treat wildlife crimes seriously. He also wanted enhanced international cooperation in terms of information sharing.

To synthesize Judge Malanjum's presentation, Inciong stressed that one of the biggest challenges in combating wildlife crimes is balancing economic activities with biodiversity conservation, and dealing properly with natural disasters, theft of biological resources by tourists, poaching, and illegal activities driven by human greed. He then opened the floor for questions and further discussion.

## ■ Discussion

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During question and answer time, Dr. Mulqueeny asked Judge Malanjum to elaborate on Chief Justice Zakaria's directive to Malaysian courts to impose the strongest penalties as a response to the gravity of wildlife crimes and its relation to what the law provides. According to Judge Malanjum, Malaysian courts can only mete out penalties within the range of impossible penalties under the law. Although their laws have already been amended to provide for stiffer penalties, their laws are unable to deter the further commission of wildlife crimes because wildlife law enforcement agencies are still empowered to compound offenses, thus allowing perpetrators to get away without prosecution. Wildlife syndicates can settle the offenses by simply paying the corresponding fine.

A representative from Thailand's Department of Marine and Coastal Resources added that the ASEAN Wildlife Enforcement Network (ASEAN-WEN) had already been established to strengthen the enforcement of wildlife laws and counter the illegal transboundary trafficking of wildlife and wildlife products. He also suggested improving wildlife law enforcement through regional collaboration and capacity building initiatives. Inciong added that the ASEAN-WEN also assists in the exchange of information on wildlife and the illegal wildlife trade and in educating the public on these issues.

Ronasit Maneesai, forestry technical officer at Thailand's Department of National Parks, Wildlife and Plant Conservation, stressed that the move toward the ASEAN Economic Community by 2015 entails free transnational movement of both legal and illegal goods and services. This then inevitably facilitates the illegal trafficking of wildlife and wildlife products.

Finally, Justice Velasco suggested curbing the demand for wildlife products by presuming those in possession of these products guilty of violating wildlife protection laws under the anti-fencing law. He added that the job of controlling this demand falls on the shoulders of law enforcers; so long as cases are filed with the courts, then judges will decide these cases accordingly.

Inciong closed the session by stating that illegal wildlife trade goes beyond just losing species, it results in the loss of biodiversity, and consequently, of mankind's lifeline to survival. As such, biodiversity conservation is not just the job of those in the environmental sector, but the common responsibility of everyone—from individuals to communities, from schools to media, from local to national governments, with the law enforcement agencies and the judiciary being the lead sectors.



## ■ SESSION 4 ASEAN Environmental Challenge—Pollution

Glynda Bathan-Baterina, deputy executive director of Clean Air Initiative for Asian Cities Center, framed the session by correlating the presence of pollution to the existence of disputes, many of which need to be resolved by judiciaries. She then invited the speakers for this session to speak about environmental pollution cases in their jurisdiction, and the role that the judiciary plays in resolving environmental disputes. She also updated participants on the impact of air pollution in Southeast Asia, where outdoor air pollution caused the premature deaths of 3.2 million people globally, and of this number, 2.1 million premature deaths occurred in Asia. This data shows that outdoor air pollution is indeed an Asian challenge.

### India

Hima Kohli, judge of the High Court of Delhi, began her presentation by tracing mankind's high regard for objects of nature to ancient times. Significantly, the United Nations Conference on the Human Environment in 1972 pushed for the enactment of environmental laws in India. India's judiciary shaped the development of environmental laws through "careful judicial thinking" and incorporating in their decisions various international doctrines, coupled with a liberal view on ensuring social justice and protecting human rights.

Justice Kohli drew the audience's attention to the role played by public interest litigation in relation to pollution, given that the majority of the cases pending before the courts of India are writ petitions filed by individuals serving on a pro bono basis. She noted that public interest litigation, which is focused on community rights rather than individual rights, arose out of the relaxation of the rules on legal standing and a departure from the "proof of injury" approach.

Justice Kohli referred to some landmark cases that have dealt with air and water pollution in India. First, in *Municipal Council, Ratlam v. Shri Vardhichand & Ors* AIR 1980 SC 1622, the Supreme Court of India first introduced the concept of public interest litigation and held that a municipal council created precisely to preserve public health could not shirk from its principal responsibility by asserting financial inability. Second, in *M.C. Mehta v. Union of India* AIR 1987 SC 1086, the Supreme Court recognized the absolute liability of industries dealing with hazardous materials for the danger brought about by such materials. The Supreme Court was compelled to strike a balance between environmental concerns and the competing demands of development, which in turn generates employment and adds to national wealth. Third, in *Vellore Citizens Welfare Forum v. Union of India & Ors* AIR 1988 SC 1037, the Supreme Court of India likewise applied the doctrine of absolute liability for the harm caused to the environment in covering the cost of restoring the environment to its pre-damaged state. Fourth, in *M.C. Mehta v. Union of India* AIR 1997 SC 734, the Supreme Court sought to protect the Taj Mahal and the block of monuments shaped like a trapezium surrounding the Taj Mahal from the emissions of nearby factories by ordering these factories to change the fuel they use; otherwise, they should move their operations outside the trapezium. Fifth, in *M.C. Mehta v. Union of India & Ors* AIR 2001 SC 201, the Supreme Court issued several writs of mandamus, including an order addressed to commercial buses causing vehicular air pollution to change their fuel to compressed natural gas (CNG). Sixth, in *Research Foundation for Science Technology and Natural Resources Policy v. Union of India & Ors* AIR 2007 8 SC 583, the Supreme Court directed the Government of India to enact a law covering incidents such as shipbreaking, which caused maritime pollution, and issued guidelines on mitigating the environmental harm brought about by shipbreaking.

Justice Kohli also talked about the National Green Tribunal, which was set up under the National Green Tribunal Act 2010 and was responsible for urging the authorities to perform their duty to control air and water pollution. The National Green Tribunal has served as a catalyst for speedy and expeditious relief in environmental cases. She concluded by highlighting how India's judiciary shaped environmental legislation, how public interest litigation facilitated access to justice for all classes of the society, and how India's judiciary demonstrated its vital role in promoting environmental governance, upholding the rule of law, and ensuring a fair balance between environmental, social, and development concerns.

## Thailand

Maneewon Phromnoi, justice of the Supreme Administrative Court of Thailand, first discussed the establishment and structure of Thailand's administrative courts. Recognizing the increasing number of environmental cases being filed every year and the need for competent judges to resolve these cases, the Supreme Administrative Court created environmental divisions in the administrative courts of first instance on 5 July 2011, and in the Supreme Administrative Court on 2 August 2011. To expedite the resolution of environmental cases, the Supreme Administrative Court established a special procedure for environmental cases, bypassing the president of the court of first instance, and having the chief of the environmental division immediately refer the environmental complaint to the environmental panel composed of presiding judges with special knowledge and expertise in environmental law. The president of the Supreme Administrative Court of Thailand also issued a presidential recommendation limiting the period for resolving environmental cases to 1 year.

Justice Phromnoi also traced the environmental legal framework of Thailand to the Constitution. She cited the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (NEQA 1992), Thailand's fundamental environmental protection law, which provides for the establishment of the National Environmental Board.

Given the unique structure of Thailand's administrative courts and the laws applicable in the resolution of environmental cases, the Supreme Administrative Court of Thailand plays a vital role in determining whether the state agencies' exercise of power over NGOs, local communities, and businesses is lawful or not. Justice Phromnoi characterized the court's role in remedying pollution problems as a passive one because it can only adjudicate environmental cases filed before it. In the process, the court has to apply general principles of environmental law, such as the (i) prevention principle, which necessitates the implementation of measures to prevent damages from arising in the first place; (ii) polluter pays principle, which holds the polluters accountable for the damage they have caused; (iii) public participation principle, which empowers the people to sue the state in cases involving environmental damage and takes into consideration the public's participation in environmental governance; and (iv) sustainable development principle, which aims to strike a balance between socioeconomic development and environmental protection.

She explained the application of these principles in several landmark decisions in Thailand, including the *Map Ta Phut Case*, the *Klity Creek Case*, and the *Breeding Zone Case*. She also said that the administrative court can also (i) reserve and/or revise its determination of the full amount of environmental damages within a period of 2 years if at the time it rendered a decision it cannot ascertain the full impact of the environmental harm caused, (ii) assign punitive damages in case the defendant has displayed



unacceptable conduct toward the plaintiff, and (iii) issue environmental rehabilitation and restoration orders. Similarly, she referred to certain environmental cases—the *Cobalt-60 Case*, the *Mae Moh Case*, and the *Klity Creek Case*—for illustrative purposes. The active role of administrative courts had been limited to setting up the Academic Affairs Committee on Environmental Law, which is charged with researching and analyzing current environmental legal issues to equip environmental courts with valuable environmental information and advice, as well as cooperating with other organizations in conducting environmental studies.

In conclusion, Justice Phromnoi stated that the administrative courts aim to promote environmental justice for all. While the courts' role in protecting the environment is limited to interpreting and applying the law based on the facts presented before it, their interpretations and decisions are instrumental in shaping environmental laws. As such, the administrative courts should be more open to the community's point of view and consider environmental protection as a top-level priority.

## Malaysia

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, stated that there are many sources of pollution in Malaysia—both natural and man-made. As of 2012, sewage treatment facilities, especially individual septic tanks, contribute 88% of the water pollution: food service establishments contribute 11.59%, and manufacturing industries contribute 0.28%. On the other hand, the increasing number of motor vehicles, the burning of fossil fuel, and the haze coinciding with the hot and dry season serve as the biggest sources of air pollution. Malaysia already has enacted several laws on pollution and has signed and ratified pertinent international instruments. However, the effectiveness of legislation in addressing pollution in Malaysia has been weakened by poor law enforcement.

Judge Malanjum then detailed the measures that the Government of Malaysia has implemented to deal with air pollution and fires. First, the Department of Environment closely monitors the country's ambient air quality. However, to better monitor air quality, the concerned personnel of the department should undergo more training and must possess stronger dedication to this task. Second, the Department of Environment prevents fires by surveying fire-prone areas. The Fire Prevention and Peatland Management program and a standard operating procedure on preventing peatland fires are also in place. Lastly, to better prepare for and thus mitigate the impact of fires, a National Haze Committee convened on 7 February 2013 and 6 September 2013 and discussed (i) how concerned state agencies could better plan for and prevent land and forest fires and open burning, (ii) how to improve their response time on fire suppression and mitigation as part of their standard operating procedure, and (iii) how to enhance the various measures by which state agencies could prevent land and peatland fires and to disseminate relevant information to the public during the hot and dry season.

Judge Malanjum also identified several challenges to the successful prevention of pollution and fires, namely, (i) striking a balance between economic development and environmental protection; (ii) delays in reporting untreated illegal discharges of pollution; (iii) cross-border destruction of coral reefs and other marine lives; (iv) public education; (v) public apathy; (vi) limited resources for enforcement agencies; (vii) influx of illegal immigrants who are apathetic about maintaining the cleanliness of the places they inhabit; and (viii) imposing punishments, which could actually deter further pollution.

Based on Malaysia's experience, Judge Malanjum shared the success of their fire prevention programs, coupled with effective interagency coordination, continuous improvement of the standard operating procedures, and enhanced responses in controlling fire breakouts to mitigate fires in fire-prone peatlands. He ended by lauding the idea of incorporating environmental protection into the school curricula as an excellent means of addressing environmental challenges.

Bathan-Baterina pointed out Judge Malanjum's identification of open burning as a major source of air pollution and highlighted the importance of exchanging ideas in the field of law enforcement and in the prevention of peatland fires. She added that Malaysia's air quality monitoring system is outsourced to a third party to ensure a more efficient monitoring scheme. However, there remains the problem of data ownership—that is, whether the data should be considered the property of the subcontractor or of the government.

### *Brunei Darussalam*

Lailatul Zubaidah Hj Mohd Hussain, senior magistrate of the Supreme Court of Brunei Darussalam, first acknowledged the presence of the ASEAN chief justices and members of the senior judiciaries and thanked the Supreme Administrative Court of Thailand for hosting the roundtable, especially for showing admirable hospitality to the Brunei Darussalam delegation. She also conveyed appreciation to ADB for organizing this roundtable and providing a sharing and learning opportunity for the delegates.

Justice Hussain then explained that Brunei Darussalam's Department of Environment, Parks and Recreation was set up in July 2002 to supervise the preservation of the environment. The government has also formulated the 10th National Development Plan, which emphasized the need to consider environmental factors in attaining the target standard of living and per capita income of the people.

While air quality in Brunei Darussalam was generally good, its Pollutant Standards Index (PSI) falls below the guidelines set by the US Environmental Protection Agency (EPA), European Union, and the World Health Organization (WHO). Justice Hussain clarified that moderate air quality days were primarily attributed to the transboundary haze pollution coming from neighboring countries during the dry season. While localized forest and bush fires and open burning also contribute to the diminution of air quality in the country, the government does not perceive these factors to be a major cause for concern. For Justice Hussain, the penal provision, which proscribes open burning during certain periods, had been difficult to enforce due to constraints on human resources. At the international level, Brunei Darussalam is a signatory to the ASEAN Agreement on Transboundary Haze Pollution and submits regular updates to the ASEAN Secretariat.

Justice Hussain shared that on water quality, the country's rivers are generally still in pristine condition, with the exception of the Brunei River. Solid waste pollution is most evident in Kampong Ayer, which is heavily polluted by kitchen garbage, bottles, plastic bags, and discarded household goods. Continuous indiscriminate dumping of solid wastes has affected the mangrove forests, without which the country will become vulnerable to tsunamis and fish and prawns will lose their habitats. To address water pollution, Brunei introduced a river water quality monitoring network under the 2007–2013 National Development Plan and initiated the Sungai Brunei Clean-Up Project and several other cleanup activities and conservation efforts. The Department of Environment, Parks and Recreation also set up a house-to-house garbage

collection system and several recycling facilities and launched awareness-raising campaigns in Kampong Ayer. Instituting sewage treatment and disposal system in the newly built Kampong Ayer settlement projects have significantly improved waste management; elsewhere, the government resettles the residents to reduce the pollution load.

Justice Hussain concluded by informing participants that the Government of Brunei Darussalam is still developing the Environmental Protection and Management Order (2012). Although the legislature has not yet enacted pertinent laws, the government ensures that pollution control measures are in place and wants its Green Building initiatives to result in a National Green Building Certification Scheme. Presently, Brunei Darussalam courts play a limited role in dealing with pollution, so the country's judiciary would like to report on the implementation of the Environmental Protection and Management Order (2012) during the next roundtable.

## ■ Discussion

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During question and answer time, Judge Malanjum asked Justice Kohli if the reason why India's judiciary adjudicates environmental cases liberally is because of their constitutional mandate. Justice Kohli affirmed that their courts' liberty in handling environmental cases is because of Article 31 of their Constitution—a fundamental provision in their Constitution that compels their courts to view the people's right to environment as a right to life. The Constitution also provides for the inherent powers of the judiciary, which can directly intervene in matters involving national interest, even without a petition first being filed before it.

While expressing appreciation and respect for Brunei Darussalam's fewer pollution concerns, Justice Bersamin asked Justice Hussain how their country disposed of the solid and chemical wastes. In her response, she said that Brunei Darussalam exports its solid wastes to countries that have waste treatment facilities. Chief Justice Kifrawi added that their small population also justifies why they have fewer problems and, thus, less experience in addressing environmental challenges.

Justice Bersamin also asked Justice Phromnoi (i) if Thailand's administrative courts strictly apply the polluter pays principle in deciding environmental cases, and (ii) what can administrative courts do in cases where the polluter takes a significantly long period in rehabilitating the damage caused. Justice Phromnoi answered the first question in the affirmative, and to the second question, she said that the Pollution Control Department is duty-bound to demand reparation from the polluter. Citing *Mae Moh Case* and the *Klity Creek Case*, she explained that if the court finds that the environmental harm could still be felt after a long time, then the court can also order the payment of punitive damages. Pornchai Manussiripen, a justice of the Supreme Administrative Court of Thailand and the judge who decided the *Klity Creek Case*, added that since in the *Klity Creek Case*, the complainants only recently discovered the extent of the damage caused by the polluters, the court applied a liberal interpretation of the statute of limitations. Thus, should the parties need a longer period of time to prove the damages sustained, the court could extend the period for presenting evidence to prove the damages caused by at most 2 years. If the complainants succeeded in proving their claim, then the court could order the payment of the appropriate compensation.

Judge Sukatipan further commented that if a big mining corporation was operating upstream and caused a toxic waste leakage causing damage to the people downstream, the people downstream could either (i) file a civil case and ask for compensation from the corporation, or (ii) file an administrative case against the concerned government agency for failing to maintain the water quality in the creek. On this note, Chief Justice Kifrawi asked Judge Sukatipan if the plaintiff in that case could enjoy double recovery from both the corporation and the government agency. Judge Sukatipan referred to a case where a relative of a person who died when a discotheque caught fire filed two cases—one with the Bangkok Metropolitan Administration, questioning the construction permit of the establishment, and another with the civil court. In that case, the court, which took cognizance of the case later than the other court, limited the award, taking into consideration the compensation to be awarded by the first court.

To end the session and the first day of the roundtable, Bathan-Baterina turned over the floor to the afternoon chairpersons. Judge Sukatipan requested Justice Comsatyadham to give some brief concluding remarks. Justice Comsatyadham expressed appreciation in having learned a lot from the day's discussions and thanked the resource persons for having highlighted the urgency of addressing the region's common environmental challenges. Finally, he thanked the resource persons, facilitators, and participants for their valuable contribution to this roundtable.

# HIGHLIGHTS

## DAY 2: 17 NOVEMBER 2013

### ■ SESSION 5 Access to Environmental Adjudication

Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand, and Srunyoo Potiratchatangkoon, judge of the Central Administrative Court of Thailand, cochaired the morning sessions and briefly introduced the facilitator and the speakers for Session 5.

Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of the Asian Development Bank (ADB), served as session facilitator. She presented the main highlights of this session—the initiatives undertaken by the four judiciaries to enhance the capacity of their judges to decide environmental cases, and these included establishing environmental specialization, special rules of procedure, and judicial trainings. Specifically, Thailand has established green benches and has a presidential recommendation that, among others, limits the period of resolving environmental cases to 1 year. The Philippines has set up 117 environmental courts and promulgated special rules of procedure for environmental cases. Malaysia has initiated environmental training sessions, while Indonesia began its environmental certification program for judges. Dr. Mulqueeny also told participants that ADB has signified its desire to work with a judiciary that will exemplify leadership in advocating environmental justice, both at national and regional levels.

#### Thailand

Pairoj Minden, president of a chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court of Thailand, started with the last questions he posed during the Second ASEAN Chief Justices' Roundtable on Environment—"Should trees have standing?" and "Who can claim for trees?" (from the classic Christopher D. Stone environmental ethics book).<sup>8</sup> These are the very same questions he would like to answer in his presentation this morning.

To emphasize that law and society are indivisible, Judge Minden reminded participants of the Latin maxim, "*Ubi societas, ibi jus*," that is, "where there is a society, there is law." Any damages caused to the environment would inevitably impact the nearby community, the members of which share a common lifestyle, culture, and belief system. As such, the community should be given its community rights, or the right to protect its environment, and the natural resources upon which the people depend for their livelihood and daily needs, among others. This is a right that is necessarily created by the very relation between the community and the environment, and as such is considered *de facto*.

Since 1995, the Government of Thailand has pursued various political reform efforts, including drafting the 1997 Constitution (also called the People's Constitution), reorganizing its constitutional organs, and

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<sup>8</sup> C. Stone. 2010. *Should Trees Have Standing?: Law, Morality, and the Environment* (3rd ed.). New York: Oxford University Press.

establishing administrative courts that perform a judicial review of the administrative acts to determine if these have been performed within the state agencies' powers and to adjudicate administrative cases. The 1997 Constitution recognized the community rights of indigenous communities and their members to (i) participate in the preservation, exploitation, and management of their environment and natural resources; (ii) protect the natural resources and biodiversity to promote their sustainability; and (iii) sue state authorities in case they fail to perform their mandates or abuse their powers. Accordingly, community rights are no longer de facto rights, but are rights protected by no less than the People's Constitution, and the 2007 Constitution.

Judge Minden noted that despite the fact that community rights are already provided for in the Constitution, state agencies refused to recognize these rights because they perceived the relevant constitutional provisions as not being self-executing provisions and nugatory in the absence of implementing legislation. This mistaken belief was reinforced by another constitutional provision, which requires the Cabinet to annex to the 2007 Constitution a law on community rights within 1 year of the Constitution being ratified. However, to date, the Cabinet of Thailand has not satisfied this mandate. This absence of implementing legislation led to questions as to the enforceability of community rights—a matter that the Supreme Administrative Court already settled in 2007 when it held that the absence of laws prescribing the conditions and/or procedure for the observance of legal rights does not justify a competent agency's failure or refusal to protect such rights. In a case it decided in 2009, the Constitutional Court confirmed that the Constitution intends this legal principle of community rights to be immediately executory.

To illustrate the application of community rights, Judge Minden cited three landmark decisions. First, in the *Pig Farming Case*, Supreme Administrative Court Order No. 96/2555, the plaintiffs filed an action to annul the building permit for the establishment of a pig farming business, which could cause water and noise pollution and, thus, harm the quality of the environment. The court recognized the plaintiffs' constitutional right to (i) participate in the conservation, preservation, and exploitation of natural resources and biodiversity; and (ii) protect, promote, and preserve the environment's healthy, sanitary, and habitable quality.

Second, in the *Biomass Power Plant Case*, Supreme Administrative Court Order No. 726/2555, the plaintiffs sued the Energy Regulatory Commission for issuing to the private defendant company a license to operate a biomass power plant based on the Wiang Nuea Subdistrict Administrative Organization's (SAO) approval, but without advising or seeking the consent of the Council of the Wiang Nuea SAO. The court held that the plaintiff was entitled to bring the action to annul the license to operate.

Finally, in the *Tesco Lotus Case*, Supreme Administrative Court Order No. 157/2556, the plaintiffs sued the chief executive of the Wang Kra Jae SAO for issuing the Tesco Lotus Department Store a license to build in the Wang Kra Jae subdistrict without first conducting the required EIA, and even if the construction of the building would cause extremely heavy traffic. Since the plaintiffs were people who lived and/or did business in that subdistrict, their welfare would necessarily be affected by the construction of the mall. Thus, the court recognized their right to file the case with the administrative court.

Judge Minden concluded by sharing the Baan Sam Kha chief's opinion that the forest belongs to their community, and not to the government, which only takes care of it for the benefit of the people. Being



the real owners of the forest, the people of Baan Sam Kha had to protect the village's environment and natural resources for the benefit of future generations. Judge Minden also quoted the chief's memorable words, "[T]o be able to protect and conserve forest and environment, one must identify his mind with environmental conservation consciousness, and to be able to put out forest fires in the most effective way, one must beat out the fire of selfishness first."

### Philippines

Diosdado M. Peralta, associate justice of the Supreme Court of the Philippines, discussed the Philippine judiciary's special rules of procedure for environmental cases and the benefits and challenges consequent to having these rules in place. Justice Peralta explained that as the traditional definition of "separation of powers" require an actual controversy to first be filed in court to enable the court to act on it, it took a revolutionary constitution and a chief justice—then Chief Justice Reynato S. Puno—to effect proactive judicial solutions to environmental problems. The Supreme Court ensured that these solutions would increase access to justice for those seeking to enforce environmental rights and promote environmental justice. Thus, in 2009, then Chief Justice Puno and the rest of the Supreme Court convened 600 representatives and/or stakeholders in environmental enforcement in the Forum on Environmental Justice. During the forum's workshops, participants identified impediments to environmental justice from which a committee drafted the special rules of procedure for environmental cases to remove those impediments. The rules were then reviewed and finalized by the Sub-Committee on the Rules of Procedure for Environmental Cases. On 13 April 2010, the then Chief Justice promulgated these rules as the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, to achieve the following four objectives:

- (i) the protection and advancement of the people's constitutional right to a balanced and healthful ecology;
- (ii) the provision of a simplified, speedy, and inexpensive procedure for the enforcement of environmental rights and duties recognized by the Constitution, existing laws, rules and regulations, and international agreements;
- (iii) the introduction and adoption of innovations and best practices that guarantee the effective enforcement of remedies and redress for violations of environmental laws; and
- (iv) the courts' continuous monitoring and ability to exact compliance with the orders and judgments they issue in environmental cases.

Justice Peralta then highlighted the salient features of the Rules of Procedure for Environmental Cases that were designed to attain these objectives. First, the rules follow the simplified and expedient procedure of the Philippine judiciary's existing summary procedure to shorten environmental litigation. Second, the rules have liberalized the *locus standi* requirement to file environmental cases by allowing the filing of citizen's suits, which encourage the intervention of citizens who are affected by an act that can harm the environment or who have environmental rights similar to those that the plaintiff seeks to enforce, so they may likewise protect their rights. Citizen's suits serve as an affirmation of the doctrine of intergenerational equity, which was first recognized in the landmark case of *Oposa v. Factoran*, G.R. No. 10108, 30 July 1993.

Third, the rules enhance access to justice by enabling courts to issue (i) writs of *kalikasan* (or writs of nature) to prevent environmental damage, which can prejudice the life, health, or property of inhabitants



in two or more cities or provinces; (ii) writs of continuing mandamus (writs of continuing mandate) to compel the performance of an act or series of acts specifically prescribed by law or final judgment, which shall remain effective until the judgment is fully satisfied; and (iii) environmental protection orders to compel or restrain the performance of specific acts in order to protect, preserve, and/or rehabilitate the environment in appropriate instances.

Fourth, the rules allow the filing of strategic lawsuits against public participation (commonly called “SLAPP suits”) against those enforcing environmental laws. Lastly, the rules allow for the adoption of the precautionary principle to bridge gaps between factual findings and scientific certainty and, thus, enable courts to take preemptive action to preserve and protect the environment. The Philippine Judicial Academy then launched information dissemination campaigns and training sessions to make sure that judges, prosecutors, law enforcers, legal practitioners, and other key stakeholders understood the rules and effectively applied them. In addition, the Supreme Court, with the support of several organizations including the United Nations Development Programme (UNDP) and the United States Agency for International Development (USAID), launched last 13 November 2013 the *Citizen’s Handbook on Environmental Justice* as a guidebook on the different environmental laws and rules.

In conclusion, Justice Peralta related that pending before the Philippines’ superior courts were 20 petitions for the issuance of writs of *kalikasan* and continuing mandamus, which attest to the Filipino people’s growing awareness of their environmental rights, duties, and obligations. He noted that cooperation among different branches of government, together with scientific and technological advancements, helped make the prosecution of environmental cases more accessible and effective. For Justice Peralta, an increase in international environmental conventions and joint environmental campaigns is indispensable in perpetuating a well-balanced, healthy, and sustainable biodiversity. He ended by saying that a healthy ecology is not only extremely important to the present generation, but it is a heritage and birthright of future generations.

## Malaysia

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, first talked about the three kinds of forums environmental cases could be filed—the environmental courts, civil courts, and tribunals. In September 2012, the Federal Court of Malaysia established the first environmental courts in Kuala Lumpur and Shah Alam. These environmental courts succeeded in dealing with environmental cases expeditiously. That same year, out of 21 cases filed before the Kuala Lumpur environmental court, 17 cases had been disposed of, while out of 63 cases filed before the Shah Alam environmental court, 33 cases had been decided. In places where no environmental courts had yet been established, environmental cases would have to be filed before civil courts, which exercise jurisdiction over civil suits, such as compensation claims for environmental damages, and applications for judicial review to quash administrative decisions and to reexamine development plans. However, in handling environmental cases, civil courts confront two problems: (i) *locus standi* or legal standing because the plaintiff needs to show real injury; and (ii) the limited resources of poor litigants, who could barely afford legal services. Lastly, people could also bring cases before administrative tribunals, statutorily mandated to handle appeals in environmental matters. However, people would still need to exhaust administrative remedies before filing appeals before the tribunals, lest there be conflicting opinions rendered by the administrative courts and the tribunals.

Finally, Judge Malanjum discussed the challenges that Malaysia's judiciary has faced in adjudicating environmental cases. First, judges need to carefully balance the need for economic development versus the community's rights and duties. Second, existing legislation is not strong enough to deter the commission of environmental crimes. At times, environmental laws, like the Atomic Energy Licensing Act (1984), can even be one-sided in favor of developers. Third, law enforcement agencies have been very lax in ensuring compliance with the law and apprehending violators. At times, corruption and conflicting perspectives among various concerned ministries and departments explain this lenient law enforcement attitude. Fourth, courts are unaware of pressing environmental issues and are, therefore, ill-equipped to decide environmental cases. Fifth, the public's lack of awareness about environmental damages can also prevent them from filing lawsuits. Finally, financial difficulties of poor litigants and insufficient resources of state agencies lead to weak law enforcement. To illustrate, Judge Malanjum showed a picture of a local community that lacked the resources to stop the construction of Murum Dam Project and, therefore, resorted to protesting—seldom effective as a means of seeking redress from the government.

### Indonesia

Dr. Andriani Nurdin, vice chief judge of the High Court of Banten, Indonesia, also the chief judge of Central Jakarta District Court, and an experienced environmental court judge, informed participants of the fundamental laws that Indonesia's legislature promulgated to protect the people's right to a healthy environment. She also told them that some of the decisions rendered by Indonesia's judiciary failed to satisfy the public's expectations.

Despite the initial public disappointment on how the courts handled environmental cases, for Judge Nurdin, the judiciary did render a few decisions that manifested the court's judicial activism. She cited a few cases to illustrate her point. In a case decided by the Central Jakarta District Court in 1998, the court first recognized the legal standing of NGOs to file environmental cases, even if said legal standing was not provided for in their environmental laws. Aside from the general provision on public participation under Law No. 4 (1982), the court also studied the benefits of recognizing such standing and the development of legal standing in developed countries.

Second, in *Bangkinang Land and Forest Fires Case*, Criminal Case No. 19/Pid-B/2001/PN.BKN registered 29 September 2001, the Bangkinang District Court applied the principle of corporate criminal liability under Law No. 23 (1997) in punishing the manager of the defendant company as a functional perpetrator. On appeal, the Court of Appeal and the Supreme Court of Indonesia modified the judgment of the Bangkinang District Court, but retained its application of the principle of corporate liability.

Third, in a civil case filed by the people affected by a landslide against the President of the Republic of Indonesia, Minister of Forestry, Governor of West Java, Major of Garut District, and Perhutani Inc. (a state enterprise) the court considered the case a class action under Article 37 paragraph 1 of the Environmental Management Act, and applied the precautionary principle, laid down in Principle 15 of the Rio Declaration on Environment and Development (1992).

Lastly, Judge Nurdin enumerated the following advances made by Indonesia's judiciary in an effort to increase access to environmental justice: (i) promulgating the Supreme Court Regulation No. 1 (2002), which provides for the procedure governing class actions; (ii) recognizing citizen suits under the

Chief Justice of the Supreme Court's Decree No. 36 (2013), which provides the procedure for filing citizen suits; (iii) recognizing environmental protection and management as the primary approach and criminal sanctions as the last approach; (iv) allowing the filing of SLAPP suits; and (v) initiating the environmental certification program for judges given that many environmental cases need judges who are aware of environmental issues and possess special knowledge and skills in handling environmental cases.

The environmental certification program constitutes an important step in realizing the Jakarta Common Vision—that competent judges should hear and decide environmental cases. Indonesia's judiciary also conducts judicial training sessions that cover environmental laws at the national and international levels; administrative, criminal, and civil enforcement; and ADR.

## ■ Discussion

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During question and answer time, Chief Justice Kifrawi asked Judge Malanjum why Malaysia's environmental courts have only dealt with criminal cases, while the civil aspect of such cases and claims for compensation were still being handled by the civil courts. Judge Malanjum answered that Malaysia's judiciary has to reach that stage where the environmental courts could efficiently hear and decide all aspects of an environmental case due to their heavy court dockets.

Dr. Mulqueeny requested Judge Malanjum to explain what determines whether an environmental case should be filed with environmental courts rather than environmental tribunals. In response, Judge Malanjum said that the provisions of the relevant environmental legislation ultimately decide which remedial track should be followed. On the other hand, in the Philippines, Justice Peralta told participants that first- and second-level environmental courts exercise civil and criminal jurisdiction over environmental cases, depending on the imposable penalty and on whether the offender was caught in the act of violating relevant environmental laws. However, only the Court of Appeals and the Supreme Court could entertain a petition for the issuance of a writ of *kalikasan* or a writ of continuing mandamus.

Justice Velasco then asked Judge Nurdin to elaborate on Indonesia's SLAPP suit and to confirm if law enforcers, against whom a case had been filed by a person arrested for committing an environmental offense, were the only ones who could invoke the defense that the said case was filed solely for the purpose of harassing them so that they would release the person arrested. Judge Nurdin answered that anybody could invoke this defense in a SLAPP suit.

Dr. Mulqueeny asked the other delegations to discuss how environmental cases are decided in their respective jurisdictions. Deputy Prosecutor Sophana shared that in Cambodia law enforcers would apprehend the offender and investigate the case. They would then submit their findings to the prosecutor, who would also personally examine the case. If the prosecutor found that there was cause to further prosecute the offender, he or she would then file the necessary case in court.

Deputy Chief Justice Tuong informed participants that at present, Viet Nam does not yet have environmental courts. Thus, the adjudication of environmental cases would depend on the nature of the case. Justice Kohli shared that in India, superior courts could also entertain environmental matters. However, their National Green Tribunal, which is currently headed by a retired chief judge of

the Supreme Court, adjudicates environmental cases full time. Judge Chanthaluonnavong said that the Lao PDR does not yet have an environmental court. Hence, the aggrieved party must file the case either with the civil court or the criminal court, depending on the nature of the case. Civil courts could order the defendant to pay compensation for the environmental damages caused, while criminal courts could punish the defendant and also order him to pay compensation. Since the country is small, the members of the People's Supreme Court of the Lao PDR are contemplating on setting up administrative chambers at every court level.

Lastly, Justice Woo told participants that Singapore does not confront the kind of environmental issues that other countries in Southeast Asia do, so they do not have environmental courts. Singapore's administrative agencies have been performing their functions well so the people do not have to file lawsuits just to get redress from the government. Dr. Mulqueeney then asked him if they have any transboundary environmental issues, especially considering Singaporean companies' investments in other countries in Southeast Asia, and any potential cross-jurisdictional challenges. Justice Woo answered that while Singapore faces some transboundary issues, it is extremely difficult to find evidence that a particular citizen of Singapore, agency, or corporation caused the environmental damage being suffered by other countries in the region.

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## ■ SESSION 6 Interim Relief Measures—Preventing Irreversible Harm to the Environment

To start Session 6, the session's cochairs—Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand, and Srunyoo Potiratchatangkoon, judge of the Central Administrative Court of Thailand—introduced the facilitator and the speakers.

Peter Wulf, member of the Australian Administrative Appeals Tribunal, a barrister, and scientist, framed the session on available interim relief measures, beginning with the concept of *locus standi*. Australia's very broad *locus standi* requirements simply require the plaintiff to have been involved in any way in a specific issue within the last 2 years. He would like the judiciaries in Southeast Asia to also reach that point where they have liberal legal standing requirements and could, therefore, increase access to environmental justice. Finally, before handing the floor to the first speaker, he asked everyone to reflect on the questions of (i) how the concept of ecological sustainability should be considered in awarding interim relief, and (ii) how fast these matters could be heard in relation to the interim relief.

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### ■ Injunctive Relief and Environmental Administrative Law Cases

Gritsana Changgom, an independent scholar and legal advisor in Thailand, began with an introduction to justice and injunctive relief. He explained the concept of Aristotle's *epieikeia* (or equity) by giving an example: supposing under Greek law, a foreigner, who climbed the city walls, should be sentenced to death as an enemy or a traitor. However, applying *epieikeia*, if a foreigner indeed climbed the city walls, but not because he was an enemy or a traitor, he would not be sentenced to death. By way of contrast, Changgom cited the example of the cruel Lucius Veratius, who would go out into the streets, followed

by his slave carrying a money box, and indiscriminately hit the face of innocent bystanders. By instantly compensating his victims, he would not be penalized because he complied with his legal duties. Through these examples, Changgom stressed that natural justice must be favored over a strict interpretation of the law in the right situation. He then laid down the theoretical architecture of injunctive relief by tracing the court's power to issue injunction orders to its general judicial power. The court's exercise of its *jurisdictio* (power to apply laws) and *imperium* (power to command) would determine the quality of justice it administers, especially considering that its decisions have the effect of a *res judicata* (a matter finally decided on its merits) over the resolved dispute.

Changgom also explained the concept of “comparative injunctive relief” in reference to the kind of injunctive relief that could be given under Roman law, common law, French administrative law, and German administrative law. Clearly, in the West, an interim order awarding injunctive relief is not a decision on the merits of the case. As such, it did not have a *res judicata* effect on the dispute, nor could it establish any *ratio decidendi* (rationale for the decision). However, an interim order was fully enforceable among the parties such that noncompliance could be considered contempt of court and, therefore, be penalized with a penal or administrative sanction. For a court to grant an injunctive order, the applicant must establish three conditions: (i) *fumus boni juris* (smoke of a good right), that is, there is sufficient legal basis for the relief sought; (ii) *periculum in mora* (danger in delay), which means that the applicant could suffer irreparable damage from the performance of the act that he or she seeks to be enjoined; and (iii) “balancing of interests,” that is, that his or her interest should prevail over that of the defendant, any third party, the public, or even the environment.

Finally, based on an analysis of the injunctive relief awarded by courts of different jurisdictions in environmental cases, Changgom noted that courts also need to resort to four basic principles of environmental law in awarding injunctive relief by applying: (i) the precautionary principle, (ii) the polluter pays principle, (iii) the principle of prevention, and (iv) the cooperation principle. He also noted that while ordinary cases adopt the anthropocentric approach, involving private interest litigation and the people's individual civil rights, environmental cases entail more complex litigations, involving public interest litigation and the people's environmental rights and duties. He ended by sharing a quote from Magdi Sami Zaki:

If man were perfect, laws would not be necessary.

If all laws were perfect, we would not need to turn to equity.

Laws correct the errors of man.

Equity corrects the errors of the law.

## Thailand

Wuttichai Sangsamran, judge of the Central Administrative Court of Thailand, characterized environmental disputes as connected with various fields of science. For Judge Sangsamran, the courts' need to rely on expert witnesses explains why environmental case proceedings tend to take a long time. In addition, since it is extremely difficult to restore the environment to its original condition, courts are empowered to provide interim relief measures to protect the public interest and protect the environment from greater or irreversible harm, pending the resolution of the dispute.

In Thailand, environmental disputes can be classified into two categories: (i) those involving private interests where the plaintiff sues another private individual, corporation, or organization due to the damage the latter caused; and (ii) those involving public interest, where the plaintiff charges administrative agencies due to their failure to properly perform their government functions or for their neglect in performing their duties.

This second category of environmental disputes falls under the jurisdiction of administrative courts. In such cases, administrative courts can order that the implementation of the administrative agencies' by-laws and orders be suspended provided that (i) they are possibly unlawful; (ii) their continued implementation could cause a grave injury that would be difficult to remedy; and (iii) such suspension would not impede the administration of state affairs or the provision of public services.

Administrative courts could also order other provisional remedies provided under the Civil Procedure Code, if there are sufficient grounds for such order and it will not hinder the continuous administration of state affairs. To illustrate the court's application of these conditions, Judge Sangsamran shared four cases: (i) the case involving the Governor of Phuket's notification prohibiting diving in Phuket, (ii) the *Biomass Power Plant Case*, (iii) the *Map Ta Phut Case*, and (iv) the case concerning coal transportation.

In conclusion, Judge Sangsamran emphasized that the administrative courts' primary consideration in adjudicating environmental cases is to protect the public interest. The courts need to swiftly resolve environmental disputes. They need to issue, on their own initiative, interim relief orders that play a key role in protecting the public and the environment from any grave and irreparable damage pending the courts' adjudication of environmental cases. Compliance with such interim relief orders should be strictly monitored and ensured. He then urged the delegations to ensure not only that the rule of law prevails, but also that environmental justice is secured for the present and future generations.

### Philippines

Lucas P. Bersamin, associate justice of the Supreme Court of the Philippines, talked about interim relief measures under the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, which the court drafted to protect and advance the people's right to a balanced and healthful ecology, and expedite proceedings to enforce this right through the effective execution of remedies and redress for violations of environmental laws.

To achieve these objectives, these rules implemented radical changes to the regular rules of procedure in order to provide urgent relief for environmental cases. First, the plaintiff is now required to submit all pieces of evidence supporting the cause of action at the time of filing the complaint. Second, pleadings and other written submissions—such as a motion to dismiss; a motion for bill of particulars; a motion for an extension of time to file pleadings (except to file the answer); a motion to declare the defendant in default; reply; rejoinder; and third party complaint, all of which ordinarily cause delay in the proceedings—are prohibited. A pleading, which may be necessary to thresh out issues in environmental cases involving complex facts, serves as an exception. Third, the parties are encouraged to maximize the benefits of a pre-trial to facilitate immediate settlements, the simplification of issues, and the use of discovery procedures. Fourth, the parties are required to submit affidavits of their witnesses in place of direct examination to expedite trial. Lastly, environmental trials have been limited to 1 year, subject to extension as circumstances may warrant.



Justice Bersamin also expounded on four new interim relief measures provided under the special rules of procedure for environmental cases: environmental protection orders, writs of *kalikasan*, writs of continuing mandamus, and consent decrees. First, courts can now issue an environmental protection order to compel a person or government agency to perform, or not to perform, an act in order to protect, preserve, or rehabilitate the environment. An environmental protection order issued to provide interim relief is called a temporary environmental protection order (TEPO). A TEPO is only issued in matters of extreme urgency. Moreover, the applicant must establish that he or she would suffer grave injustice and irreparable injury without the TEPO. The TEPO is effective for only 72 hours, subject to extension if the applicant proves that its effectivity should be extended in a summary hearing. As an example of the court's issuance of a TEPO, Justice Bersamin discussed *Boracay Foundation, Inc. v. The Province of Aklan*, G.R. No. 196870, 26 June 2012, where the Province of Aklan obtained an environmental compliance certificate to begin a reclamation project aimed at rehabilitating, renovating, and expanding the existing jetty port that services Boracay Island, a known tourist destination in the Philippines. The petitioner asserted that the Province of Aklan failed to comply with the rules in acquiring an environmental compliance certificate and that the reclamation project would upset the area's ecological balance. After examining the facts of the case, the Supreme Court issued a TEPO to restrain the Provincial Engineering Office of Aklan and the contractor from doing any construction activities until further notice from the Supreme Court.

On the second remedy, a natural or juridical person, entity authorized by law, people's organization, NGO, or any public interest group accredited by or registered with any government agency may file a petition for the issuance of a writ of *kalikasan* with the Court of Appeals or the Supreme Court on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. Should the court find the application meritorious, the court shall issue the writ, ordering the respondent to (i) cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage; (ii) protect, preserve, rehabilitate, or restore the environment; (iii) monitor strict compliance with the decision and orders of the court; (iv) make periodic reports on the execution of the final judgment; and (v) such other relief relating to the people's right to a balanced and healthful ecology or to the protection, preservation, rehabilitation, or restoration of the environment, except the award of damages to individual petitioners. Justice Bersamin then spoke about *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, G.R. No. 194239, 22 November 2011, where the Supreme Court issued in 2010 a writ of *kalikasan* with TEPO enjoining the First Philippine Industrial Corporation and First Gen Corporation from operating the White Oil Pipeline system and the Black Oil Pipeline system until further orders. The writ also ordered both corporations to check the structural integrity of the White Oil Pipeline system, while undertaking measures to prevent unfortunate incidents that could arise due to a leak in the pipeline, and to submit a report within 60 days from receipt of the writ.

Third, the Court of Appeals and the Supreme Court can issue a writ of continuing mandamus to compel any agency or officer of the government to perform an act or series of acts decreed by final judgment, which shall remain effective until the judgment is fully satisfied. By way of example, Justice Bersamin cited *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, 18 December 2008, where concerned residents of Manila Bay sought to compel several government agencies to perform their respective duties in the cleanup, rehabilitation, and protection of



Manila Bay. These residents claimed that the water quality of the Manila Bay had already fallen below the prescribed standard and the government agencies' continuous neglect to abate pollution in the bay constituted a violation of environmental laws. In this case, the Supreme Court stressed the significance of the Manila Bay as a water resource and historical landmark and directed the agencies to work together and perform their respective mandates in cleaning up and rehabilitating the bay, and to submit a quarterly progressive report on their compliance with the court's decision.

Lastly, environmental courts could issue a consent decree approving the settlement between concerned parties based on the public interest and the public policy on environmental protection and preservation. For Justice Bersamin, this remedy could persuade the parties to think of comprehensive and mutually acceptable solutions, exact actual compliance, and even settle issues other than those submitted to the court. Besides, the agreement is open to public scrutiny and could be enforced through court order.

To end, Justice Bersamin characterized the Rules of Procedure for Environmental Cases as an important way for the Philippine judiciary to contribute its share in governing the country and protecting the environment.

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## ■ Discussion

During question and answer time, Judge Malanjam asked Justice Bersamin if there was a provision under Philippine law prohibiting the issuance of an injunctive order against government agencies. Justice Bersamin said that the Philippine judiciary observes the principle of presumption of regularity of performance of official functions. This means that they presume that government agencies complied with all the relevant laws, rules, and regulations in fulfilling their respective mandates. As such, courts do not normally issue injunctive orders against government agencies lest they impede the governance of the state through the agencies' performance of their official duties. However, should the petitioner, who sought the issuance of an injunctive order in the form of an environmental protection order, a TEPO, or a writ of *kalikasan*, successfully dispute the presumption, the Supreme Court could issue the temporary restraining order or injunction sought.

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## ■ SESSION 7 Court-Annexed Alternative Dispute Resolution

Kasem Comsatysadham, vice president of the Supreme Administrative Court of Thailand, and Prapot Klaisuban, judge of the Chiang Mai Administrative Court of Thailand, cochaired the afternoon sessions and briefly introduced the distinguished speakers and the facilitator for Session 7. They then turned over the floor to Dr. Wanhua Yang, legal officer of the Division of Environmental Law and Conventions of the United Nations Environment Programme's (UNEP) Regional Office for Asia and the Pacific, as session facilitator.

Dr. Yang framed the session by highlighting the role of ADR in finding solutions to complex environmental disputes. This session would particularly discuss court-annexed ADR mechanisms. As each country has its own unique ADR procedure and experiences, the speakers were invited to share their country's experiences in using ADR. Dr. Yang then invited the first speaker to the podium.

## Thailand

Montri Sillapamahabundit, secretary of the Court of Appeal, Region 1, Thailand, began by sharing that ADR is not a new practice in Thailand. It has been part of Thailand's culture for hundreds of years, serving as the main form of settling a wide array of disputes as Thailand gradually became a modern society. To this day, judges themselves would urge the parties to resolve their disputes before the hearing as part of its case management system because the successful settlement of the conflict at this stage would mean one less case for the courts to decide, an opportunity to save time, and the parties' consensual reconciliation. If the parties themselves decided how best to resolve their dispute, they would be more likely to comply with what they have agreed on. Moreover, the amendment of the Public Administration Act in 2007 further provided an impetus for the rise of ADR as an effective means of settling disputes, since the law required government agencies to set up their own mediation system for resolving community disputes. Other institutions, like stock exchanges, insurance companies, and academics expressed interest in having trained mediators help resolve disputes. Judge Sillapamahabundit then discussed the different forms of dispute resolution mechanisms in Thailand, namely, negotiation, mediation, conciliation, arbitration, and litigation. He identified negotiation as the simplest form of ADR because in this mode, the parties themselves would attempt to settle their conflict without the intervention of any third party.

Before talking about court-annexed ADR in Thailand, Judge Sillapamahabundit briefed participants on Thailand's dual-court system. Aside from regular courts of justice, which have general jurisdiction, Thailand's administrative courts, led by the Supreme Administrative Court, decide administrative disputes involving state agencies or public officials and/or determine the legality of administrative acts, orders, or contracts. Administrative courts also decide most of the environmental cases, which are normally characterized by (i) a large number of stakeholders; (ii) a lengthy litigation due to the number of stakeholders, potential witnesses, and the complexity of issues; (iii) a high cost of legal and other professional services; (iv) a power imbalance in favor of influential corporations or organizations; (v) a high value of environmental damages; and (vi) legal-oriented outcomes. The environmental divisions, headed by judges who are experts on environmental matters, handle these cases.

Judge Sillapamahabundit also made some recommendations in order to have an effective mediation system for the resolution of environmental cases. First, the government should strongly support the creation of such a system and enact laws or issue rules governing mediation and other forms of ADR, especially suited to settling environmental disputes. Second, rules and regulations on the entire mediation system should be in place. Third, neutral mediators should have adequate training to prepare them for dealing with stakeholders and organizing the hearing process. Fourth, the people must be informed of what mediation is and the advantages it offers, so that they can appreciate the importance of ADR in resolving environmental cases. Lastly, strong government support is indispensable in making ADR mechanisms work.

## Malaysia

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, shared that ADR, particularly mediation, is part of Malaysia's justice system. In civil cases, courts are authorized under Order 34 Rule 2(2) of the Rules of Court 2012, to order the parties to submit their dispute to mediation to secure the just, expeditious, and economic disposal of their case. Also, under Practice Direction No. 5 of 2010, there are two types of mediation: (i) court-assisted mediation and (ii) private mediation conducted by private mediators chosen by the parties themselves. Recently, under Practice Direction No. 2 of 2013, mediation was made compulsory in personal injury cases. In criminal cases, plea-bargaining is recognized as a form of ADR. However, at present, there are no special laws or rules that apply ADR in environmental cases. Thus, the courts can apply the ADR procedure in general civil cases and even compound offenses in lieu of prosecution. He also highlighted the proactive approach adopted by NGOs in putting an end to environmental conflicts.

Judge Malanjum identified several challenges that hamper the use of ADR to help resolve environmental cases. These challenges include (i) distrust in the system due to power imbalance in favor of state agencies and large corporations, (ii) limited resources to enlighten the public on the benefits of resorting to ADR, and (iii) the mediators' need for special knowledge on environmental issues to effectively aid in the settlement of environmental disputes.

In conclusion, Judge Malanjum called on relevant government agencies and NGOs to be more committed in protecting the environment by devoting more resources, introducing environmental issues in school curricula, and educating the public. He also suggested the submission of environmental disputes before independent tribunals, instead of an appeals process within government departments, to produce a more effective, objective, and satisfactory outcome.

## Viet Nam

Tuong Duy Luong, deputy chief justice of the Supreme People's Court of Viet Nam, talked about ADR in Viet Nam with the assistance of Tran Vu, his interpreter, who later delivered the deputy chief justice's remaining speech on his behalf.

To strengthen environmental protection, Viet Nam has enacted several environmental laws, enhanced law enforcement, and initiated propaganda and education campaigns on environmental issues. These efforts shaped the means by which the Government of Viet Nam resolves the increasing number of environmental disputes. These methods include in-court and out-of-court settlements.

Resolution inside the court involves ordinary environmental litigation in accordance with the Laws of Civil Litigation of Viet Nam, which require judges to create the best conditions for the parties to negotiate and reconcile. If the parties arrive at a resolution of their dispute at the first instance through mediation, the court records the successful mediation. Within a period of 7 days from the time the court prepares a memorandum of this outcome, the parties are free to modify the provisions of their agreement, and thereafter, the judge will render a decision recognizing the agreement. Failure of the parties to immediately reconcile their differences does not preclude a resolution after trial or even at the appellate court level, and such resolution can also be judicially approved and given binding effect.

Commune-level People's Committees handle the resolution of environmental disputes outside the court pursuant to Article 122 of the Environmental Protection Act (2005) and the Law on Local Resolution (2013). This involvement of state agencies outside regular court procedure appears to be a unique characteristic of dispute resolution in Viet Nam. Deputy Chief Justice Tuong, however, acknowledged that based on Viet Nam's experience of out-of-court resolution of environmental disputes, it appears that their current methods of settling cases outside the courtroom have failed in satisfying the people's expectations. Thus, Viet Nam is currently studying how best to resolve such cases, which parties to involve, and what procedure should be implemented. Plaintiffs have also faced difficulties in gathering evidence and assessing damages. Given these problems, the deputy chief justice expressed his desire to learn from the experiences of other ASEAN judiciaries in settling environmental disputes and protecting the environment.

### Singapore

Woo Bih Li, justice of the Supreme Court of Singapore, explained that Singapore does not confront the same type of environmental challenges as other larger nations do. Their environmental concerns have been successfully addressed by their highly proactive and efficient administrative agencies, including the Public Utilities Board and the National Environment Agency, and their public education campaigns. These explain why Singapore has very limited experience in resolving environment disputes through ADR. However, Justice Woo recognized the many benefits of having environmental disputes undergo ADR. These benefits include the (i) preservation of relationships; (ii) flexibility in resolving complex issues; (iii) availability of pragmatic and/or creative solutions; (iv) time and cost savings; and (v) a controlled outcome, which is decided by the parties themselves.

Justice Woo identified the Primary Dispute Resolution Centre and the Singapore Mediation Centre as providers of ADR services like mediation and neutral evaluation. The court's mediation process is voluntary. Thus, even if all civil disputes should undergo ADR, the parties can choose not to participate for justifiable reasons. Justice Woo, however, also recognized several challenges to court-annexed ADR, including the (i) imposition of additional stress on the court's time and resources; (ii) public's perception of independence and impartiality; (iii) risk of having parties undergo mediation to "dry run" their case; and (iv) possibility that the judge, who served as the mediator, can be summoned to present evidence.

Justice Woo noted that environmental problems at the international level could not be resolved by domestic courts alone due to problems of jurisdiction, justiciability, and enforceability of any decision rendered by domestic courts. These problems could, therefore, be resolved through ADR and the enforcement and compliance mechanisms provided under the international and regional environmental agreements, to which Singapore is a state party. For Singapore, consensus-building and close regional cooperation among the ASEAN member states could even eliminate the need to resort to ADR mechanisms like conciliation, consultation, and cooperation.

## Discussion

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During question and answer time, Justice Chuenchompoonut related some limitations of the use of mediation as a means of solving environmental conflicts. For instance, the number of parties involved should not be too many. Otherwise, mediation would be extremely difficult if not futile to conduct. Also, in cases where communities themselves might have caused the pollution, identifying the parties involved could pose a problem. In response, Justice Velasco said that under the Philippines' Rules of Procedure for Environmental Cases, in cases where there are a lot of parties involved, the judge issues and publishes an order briefly discussing the case and enjoining similarly situated interested persons and communities to intervene in the case. Alternatively, these interested parties can join forces and file a class suit. The Philippines also adopts other ADR mechanisms, such as (i) a pre-litigation *barangay* conciliation system covering disputes between citizens of the same or adjoining *barangays*, which serve as the smallest local government units in the Philippines; (ii) court-annexed mediation, which takes place prior to trial; (iii) preliminary conferences before the clerk of court, who can also encourage the parties to settle their case amicably; (iv) judicial dispute resolution, which adopts the principles of early neutral evaluation; and (v) pretrial proper.

Deputy Chief Justice Imam Soebechi Soekarno asked Justice Woo and Judge Sillapamahabundit how Indonesia's judiciary could increase the people's and the judges' enthusiasm for ADR. Justice Woo answered that Singapore courts might take into account a party's refusal to pursue ADR on the question of costs. He also said that as litigants rely on their lawyers for advice, it is important that lawyers are convinced about the benefits of ADR. Justice Chuenchompoonut added that the Supreme Administrative Court of Thailand had motivated judges to promote the use of ADR in resolving disputes by emphasizing that the successful use of the ADR would mean less work for the judges themselves. Parties are also enjoined to participate by reminding them that dispute resolution through ADR would allow parties to remain friends, save time and money, benefit from the advice of a neutral third party, and thereafter, move on with their lives. Judge Sillapamahabundit suggested including the percentage of cases referred to mediation over a certain time as part of the criteria used in evaluating the performance of judges and mediators and promoting ADR through awareness-raising events like celebrating a mediation month. Judge Malanjum recommended the conduct of seminars and information dissemination campaigns to inform the public of ADR and its benefits, the publication of successfully mediated disputes, and stressing the cost savings to the parties should they arrive at a mediated settlement.

Justice Kohli shared that there are also court-annexed mediations and private mediations in India. All members of the Delhi subordinate judiciary are trained mediators. There is also a mediation center, ran by lawyers, who competently administer mediation proceedings. To encourage mediation, courts can return part of the court fees they paid, if the case is settled at the pre-issues stage. If the case is settled at the post-issues stage, the courts proportionately reduce the reimbursed fees. India's judiciary also encourages pre-litigation mediation, where the settlement is given the seal of the mediation center. Post-litigation mediation is also encouraged, and the resulting mediated agreements are returned to the court, which certifies the agreements in the form of a consent decree. Should the mediation fail, the mediator is prohibited from divulging the facts of the case to the court; he or she may only report that the dispute was not settled through mediation. There are also mediation proceedings in India that are handled by lawyers on a pro bono basis.

## ■ SESSION 8 Execution of Court Orders and Judgments

Hima Kohli, judge of the High Court of Delhi, served as session facilitator. Justice Kohli framed the session by highlighting the challenges to enforcing court orders and judgments in environmental cases.

### *Thailand*

Prof. Wisitsora-At, director-general of the Legal Execution Department of the Ministry of Justice of Thailand, delivered a concise presentation on the execution of judgments rendered by administrative courts of Thailand in environmental cases. He first distinguished between the effective date of decisions rendered by the courts of justice and the effective date of decisions rendered by administrative courts. In the first type, decisions could be immediately executed, while in the second type, decisions must first be final before they could be executed.

Prof. Wisitsora-At then enumerated the different means of implementing the decisions rendered in environmental cases. First, administrative courts could compel performance by enjoining government agencies, state enterprises, and defendant corporations to perform a certain act or series of acts or to cease and desist from the performance thereof. Second, administrative courts could also revoke by-laws and orders issued by government agencies. Third, administrative courts could award monetary compensation in favor of the plaintiffs. However, this last type of judgment could be very time-consuming, especially if the defendants decided to exhaust all means to avoid paying compensation. In such instances, the courts would even have to resort to public auction of the defendants' properties. In environmental cases involving a large number of defendants, who had connections in the upper echelons of government, the execution of the judgment could become highly politicized. Similarly, since certain state properties are exempt from the execution of court judgments, it would be extremely difficult if not impossible for the plaintiffs to exact monetary compensation from defendant government agencies and state enterprises. Defendant corporations could also raise the defense of bankruptcy and thus impede the execution of awards of monetary compensation and/or the compulsory performance of orders requiring large cash disbursements. Lastly, since no existing legal infrastructure for cross-border enforcement of judgments had yet been implemented, it would be very hard, if not impossible, for administrative courts to exact compliance with their orders if the defendants were located in another country or if any other aspect of the case involved another country.

Considering these challenges, Prof. Wisitsora-At emphasized that execution of judgment should be used as a last resort. It would be better for plaintiffs to recover property or compel the defendants to pay compensation beforehand. One way of doing this is by passing the risk of undergoing a difficult execution of judgment process to someone else or engaging the services of a third party to manage the cleanup. For instance, a particular set of wrongdoers could set up compensation funds, from which the plaintiffs could derive compensation. The defendants could also be asked to buy insurance policies to ensure the certain and prompt execution of the court judgment. Lastly, Prof. Wisitsora-At raised his desire to improve international cooperation on cross-border issues, including the recognition of foreign judgments and resorting to arbitration proceedings.

Prof. Wisitsora-At concluded by reiterating his assertion that execution should be used as a last resort and urged countries to cooperate, especially on enforcing judgments and orders involving cross-border issues.



## Philippines

Presbitero J. Velasco, Jr., associate justice of the Supreme Court of the Philippines, explained the framework for enforcing judgments rendered by Philippine courts in environmental cases. To start, he explained that obtaining a favorable judgment is only part of winning a case. The second and more important part is having that judgment enforced through a writ of execution.

Justice Velasco then discussed the procedure for enforcing judgments rendered in environmental cases. Since the regular rules of procedure on execution of judgments apply in a suppletory manner in environmental cases, upon a motion for writ of execution, environmental courts are to direct the sheriff or the execution officer to enforce the court's judgment based on the finale of the decision, which the Philippine judiciary denotes as the "dispositive of the decision" or the *fallo*. Normally, these dispositive portions entail an order to pay a certain sum of money and/or a directive to undertake, or refrain from performing a specific act aimed to protect, preserve, or rehabilitate the environment. Should the losing party fail or refuse to comply, the court may not only direct that the act be done at the losing party's expense, but may also hold the losing party in contempt, and thus put him or her in jail or compel him or her to pay a fine until he or she complies.

To expedite the enforcement of judgments in environmental cases, the Rules of Procedure for Environmental Cases, provide that such judgments "shall be executory pending appeal unless restrained by the appellate court." What this means is that the decision rendered in an environmental case is immediately enforceable, even if the losing party files a motion for reconsideration of the decision and/or an appeal. The exception is when the appellate court issues a restraining order to prevent the enforcement of the assailed decision. In contrast, judgments in ordinary cases are usually executory only after these have attained finality. In addition, the rules require the submission of periodic reports not just from the sheriff, but also from the losing party and other third parties, such as a court-appointed commissioner with the necessary expertise and academic background to monitor compliance with the judgment. Lastly, the court may order the defendants to submit a program of rehabilitation or restoration of the environment, the expenses for which shall be borne by the judgment debtor or the violator. The violator may also be asked to contribute to a special class fund, from which the court can draw money to defray these rehabilitation or restoration expenses.

Justice Velasco also explained that since petitions for the issuance of writs of *kalikasan* and writs of continuing mandamus can only be filed with the Court of Appeals or the Supreme Court, these tribunals can, after rendering a decision, forward the case to the Regional Trial Court for execution. The Supreme Court can also opt to issue and implement the writs by itself pursuant to its constitutional authority to promulgate rules on procedure and practice or suspend their operation in a given case. He then detailed the enforcement of the Supreme Court's writ of continuing mandamus in the case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, 18 December 2008, by way of example. Here, the Supreme Court decided to oversee the implementation of its decision by creating the Manila Bay Advisory Committee, chaired by Justice Velasco himself, as well as a permanent technical working group. The Supreme Court also prescribed completion periods and required the concerned government agencies to submit their plans of action and status reports as an exercise of its judicial power and as part of the execution stage of a final decision.



To end his presentation, Justice Velasco said that with strong cooperation and collaboration among the three coequal branches of government, it is possible to see the fruition of the *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay Decision*—a more beautiful Manila Bay.

## Malaysia

Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, began his presentation on the execution of judgments and orders rendered by environmental courts in Malaysia with some case examples where the defendants used various means of stalling execution. In one instance, the court even had to issue a writ of mandamus to compel a government agency to comply with its lawful order.

Judge Malanjum next discussed the challenges to the successful execution of judgments and orders in environmental cases. First, in rendering judgments, courts are constrained by the range of possible penalties provided under relevant laws. At times, the law does not even provide for appropriate penalties against offenders. Second, in cases filed against large corporations, the corporations would send junior officers in place of their chief executive officer (CEO). Since these junior officers have no authority to bind these corporations, there was nothing much that the court could do. Third, there had been instances where the plaintiffs, due to lack of resources and illiteracy, belatedly filed actions in court—when irreversible environmental degradation already occurred. Finally, there had been reported incidents of large corporations resorting to underhanded maneuvers like hiring thugs to instill fear in the local communities and bribe the police. Dissatisfied plaintiffs adversely affected by the environmental damage caused by the defendants and their stubborn refusal to comply with the court's final judgments and orders would then resort to protest and public outcries, which had been rarely effective.

Finally, Judge Malanjum described the characteristics of Malaysia's civil society that also impede the enforcement of environmental laws, rules, and regulations and the execution of judgments in environmental cases. Malaysians would simply suppress what they feel inside to avoid criticisms, conflicts, disagreements, and controversies in their interpersonal dealings. They would rather avoid disputes and silently desire their problems to disappear. However, they failed to realize that this attitude was what allowed big corporations to continuously tyrannize them, and that environmental protection is not the sole responsibility of the government but rather is an issue that requires everyone's full participation to guarantee positive consequences.

## Discussion

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During question and answer time, Justice Chuenchompoonut shared that Thailand's laws allow execution of court judgments against state properties in certain instances, and that the Ministry of Finance or the defendant government agency may be the appropriate agency to reimburse the money paid to satisfy the judgment. He also said that court officers could be charged with abusing their authority, so he urged courts to aid the enforcement efforts of their execution officers.

Justice Bersamin was surprised by the fact that Prof. Wisitsora-At works at the Ministry of Justice of Thailand. He then asked if the Ministry of Justice is under the judiciary, to which Prof. Wisitsora-At

responded that the Ministry of Justice was once integrated in the court system. However, due to the separation of powers, the Ministry of Justice is no longer connected with the courts. The Legal Execution Department of the Ministry of Justice had enforced decisions rendered by the courts of justice, while the Bureau of Decision Execution of the Office of Administrative Courts had enforced decisions rendered by the administrative courts of Thailand. Justice Bersamin sought confirmation with Justice Chuenchompoonut as to whether administrative courts could render judgments requiring the defendant government agency or official to set up a fund, from which the expenses for complying with the court's judgment could be defrayed. Justice Chuenchompoonut confirmed this and he also said that in many cases they have required government agencies and government officials guilty of committing tortious acts against individuals, communities, and organizations, to pay compensation. In response, Justice Bersamin said that under Philippine jurisdiction, state properties are exempt from execution, in recognition of the concept of sovereignty.

Justice Peralta asked Prof. Wisitsora-At what they do if the losing party refused to comply with the court's judgment. Prof. Wisitsora-At responded that their actions depend on the contents of the order. If the order pertained to a money judgment, then they would seize the defendant's funds or garnish the defendant's funds deposited with the bank; and if the order entailed specific performance, then they could enjoin the losing party to comply. However, in general, they could not compel performance. Justice Peralta again asked Prof. Wisitsora-At whether, indeed, they could resort to ADR to enforce judgments. Prof. Wisitsora-At affirmed this statement and added that in cases where courts had found it extremely difficult to exact compliance with their orders, concessions could be made to the party that obstinately refused to comply with the court order. ADR could also help in binding persons and institutions that did not take part in the case and against whom no judgment had yet been rendered. Justice Chuenchompoonut also commented that the law does not strictly govern settlements. Hence, there could be concessions between the local communities and the defendants, for instance, in staying the enforcement just so they could enjoy peace and order.

A member of the Thailand delegation asked Judge Malanjum how their courts allowed big corporations to just send their junior officers and if the courts could summon the CEO specifically to appear. Judge Malanjum answered that their courts recognized corporations as juristic persons, so their judgment need not be enforced against the CEO. Justice Kohli then asked the delegations if any of their courts had experienced a need to specifically call on the CEO or any senior corporate officer, or any high-ranking officer of an administrative agency to appear. On this note, Justice Peralta answered that Philippine courts had actually enforced judgments against CEOs in cases where these CEOs were personally responsible for the act or omission complained of. This is especially so if the CEOs were being held criminally liable for an act they committed. Should they fail to appear before the court, when summoned, they could be arrested. In civil cases, any corporate officer duly authorized by the corporation via a board resolution could appear before the courts. But, in some cases, the courts could require the personal appearance of CEOs or any other corporate officer, and should the CEOs fail to appear, they could be held in contempt. Justice Velasco also mentioned that Philippine courts had summoned the CEO and/or other corporate officers of a judgment debtor corporation to personally appear in court and identify the corporation's assets and the location of the assets.

Justice Chuenchompoonut remarked that, in Thailand, the parties would assert that the corporate officer's power of attorney was false or defective, and so the CEO had to personally appear in court to

verify the validity of said power of attorney. Justice Kohli said that other judiciaries could also summon corporate officers for the same purpose. Judge Malanjam asked if this power was conferred by legislation or by court order. Justice Kohli said that courts were empowered to take processes to ensure satisfaction of decrees, while court officers enforcing court orders were considered as simply acting on behalf of the courts and were therefore protected from charges against them in relation to their official acts. Justice Chuenchompoonut then suggested looking at the corporation's balance sheet, which should serve as the best evidence of whether or not the corporation had any assets, and whether or not it caused any illegal transfer of assets, and summoning the person who prepared the balance sheets to explain any sudden transfer of assets.

Changgom shared that from a conceptual, practical, and comparative perspective court decisions could be enforced harmoniously and systematically, with both judicial methods and nonjudicial methods. He observed that most countries in Asia have enacted environmental laws, which cannot properly and practically cope with the existing environmental problems in each country and stated that using his proposed integrated design of legal infrastructure, courts should be able to impose administrative and penal sanctions in addition to civil damages systematically, effectively, and efficiently. He also said that environmental administrative agencies, which obstinately deny any responsibility in protecting the environment on the ground that they have no duty or technical expertise to undertake environmental cleanup or to seek environmental damages from the polluters, should be told otherwise.

Justice Kohli closed the session. Justice Comsatyadham described this roundtable as very fruitful. Participants actively took part in discussions ranging from enhancing access to environmental justice, *locus standi*, interim relief measures to execution of court judgments, and the use of ADR. He called on the delegates to reflect on the role of the judiciary in resolving environmental disputes for the sake of all humankind and the generations yet to be born. Finally, he said that participants should not limit their sight to national environmental concerns, but rather they should look at the broader scheme of environmental protection.

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## ■ SESSION 9 Cooperation among ASEAN Judiciaries

Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, facilitated the session. She gave a rundown of what had been discussed during this roundtable, including the comments and responses during question and answer portions; recounted the outcomes of the previous ASEAN Chief Justices' Roundtable meetings; and called on participants to think about the next steps they would like to take to further regional integration and accelerate the fulfillment of the Jakarta Common Vision. She also asked them how to ensure that the ASEAN Chief Justices' Roundtable on Environment would have meaningful impact and how to maximize the participation of their chief justices during these events. She suggested that there needed to be a balance between high-level judicial discussions and low-level concrete discussions. She also asked participants to consider ensuring that their respective judiciaries are consistently represented by at least one participant from past roundtables, together with new representation so that the roundtables could successfully balance continuity from the preceding roundtable and including new people thinking about these issues so as to share regional knowledge with them. Hence, the roundtable work is not limited to a small number of persons, ensuring that the results

of the roundtables are disseminated nationally. Finally, she asked the delegations to speak about what their judiciaries needed in terms of tools and capacity to guarantee environmental protection and, in this context, she invited them to reflect on the kind of outcome they would like this roundtable event to produce.

To provide a stimulus, Dr. Mulqueeny reminded the participants of the suggestions during the Second ASEAN Chief Justices' Roundtable on Environment and those shared by participants during informal conversations. She also reminded participants of the suggestion of Judge Malanjum at the start of the roundtable that each ASEAN delegation should have a report card or a benchmark of their accomplishments in dealing with environmental challenges in the form of a checklist of the Jakarta Common Vision's goals against which each judiciary's progress can be assessed.

Justice Velasco proposed for each ASEAN judiciary to create an environmental committee within their respective jurisdictions to work on the projects proposed at each ASEAN Chief Justices' Roundtable on Environment and to serve as focal points for national and regional coordination. In turn, the head of these committees could serve as the focal points for each country to facilitate regional coordination.

Chief Justice Kifrawi indicated his desire to confer with the other justices of the Supreme Court of Brunei Darussalam as his country was small, without many environmental cases at present, and they needed to discuss the best way to resource them. Singapore said this would have to be referred to its chief justice for approval. Wiwiek Awiati, reform advisor at the Judicial Reform Team Office of the Supreme Court of Indonesia and member of the Working Group on Environmental Judges Certification, confirmed that the intention of the first roundtable was to establish a common strategy or common set of goals as part of the environmental judicial program of each ASEAN judiciary. She then put forth the idea of having the focal points suggested by Justice Velasco to be the same persons who will attend each succeeding roundtable to guaranty continuity in the roundtable discussions. There was discussion about the need for continuity and having the chief justices attend the roundtables.

Judge Malanjum agreed with Justice Velasco's idea, but considered that ADB should be the one to request their preferred representative or attendee from each judiciary. For Judge Malanjum, the opening remarks of the next roundtables should also discuss the results achieved by each judiciary because at present, one would have to exert a lot of effort in order to see the results. He also suggested having an exchange of current environmental legislation among the judiciaries so that particularly useful or exemplary provisions could be considered and adopted, as well as holding environmental twinning programs, wherein judiciaries can be trained by the other judiciaries who have established expertise in particular areas such as ADR. Dr. Mulqueeny pointed out that the roundtable had indeed produced results, citing Indonesia's judicial certification program on environment and Malaysia's very own green benches and environmental training. Chief Justice Zakaria had publicly attributed, as per his video on the AJNE website, his vision for Malaysia's judiciary to joining the Inaugural ASEAN Chief Justices' Roundtable on Environment and hearing the work of his peers. Both of these initiatives could not have been possible had it not been for the attendance of Chief Justice Tumpa and Chief Justice Zakaria in the earlier roundtables.

Justice Chuenchompoonut commented that the earlier roundtables had been information exchange forums among participants. He wanted to have a record of the proceedings of each roundtable, on which they could all comment and agree to avoid repeatedly discussing the matters they had already agreed on.

Lastly, he suggested rotating the head of the roundtables every 3 years, with the next head bearing the responsibility of hosting the meeting.

Deputy Chief Justice Tuong would like the organizing committee of the current host judiciary of the roundtable to share its experiences in convening the roundtable with the judiciary that will host the next roundtable. He also suggested that ADB sponsor conferences among ASEAN justices to discuss environmental matters and to include mediators, given that many environmental disputes are also resolved through mediation.

Justice Woo (i) pointed out that the ASEAN judiciaries have different backgrounds, (ii) repeated that Singapore does not face environmental challenges, and (iii) expressed reservations about coming up with a binding resolution or document given the participants' possible lack of authority to enter into an agreement on behalf of their respective judiciaries and their need to refer to their chief justices and other stakeholders.

Dr. Mulqueeny agreed that the participants could not come up with a binding document at this point. She further commented that even the non-controversial points of the draft memorandum of understanding being deliberated during the Second ASEAN Chief Justices' Roundtable on Environment, such as formulating a working group on environment, had not been achieved. She then proposed that the participants come up with a common understanding at least of how they would like to proceed. Dr. Mulqueeny noted the statement made by Justice Woo during his presentation in Session 7 that Singapore does not face the same kind of environmental problems besetting other countries in Southeast Asia and the fact that some judiciaries have different priorities. Thus, she suggested that those judiciaries that agreed on common solutions or common proposals should collaborate, and that if there was a minority who could not, they could opt not to participate in that collaborative initiative. This would ensure that those judiciaries that wanted to collaborate and cooperate could proceed to work further on the ASEAN regional integration on environmental challenges. The purpose of these roundtables, she explained, is not to come up with either a binding or consensus-based document but to help ensure that regional environmental collaboration could proceed among those regional judiciaries that desired to do so. She also said that this option takes into consideration the different priorities of the various ASEAN countries and facilitates cooperation, where useful.

Justice Velasco recommended using the AJNE website for sharing information and strengthening the capacity of judges to appreciate scientific evidence. The website can also list scientists and technical experts who can offer opinions in environmental cases and even train judges. He also suggested exploring the possibility of harmonizing the ASEAN judiciaries' rules of procedure for environmental cases, and perhaps coming up with a set of model rules that can be adopted by those without special rules yet. Having model rules of procedure for environmental cases can also help international environmental law practitioners immediately grasp the rules applicable in other countries. Peter Wulf, member of the Australian Administrative Appeals Tribunal, a barrister, and scientist affirmed that Justice Velasco's suggested judicial training process had already been initiated in Queensland, Australia.

In response to Justice Chuenchompoonut's desire to have detailed proceedings of all the ASEAN Chief Justices' Roundtable on Environment meetings, Dr. Mulqueeny invited Francesse Joy J. Cordon, consultant legal research associate at ADB, to explain the process of preparing the proceedings, including

the proceedings of the first two roundtables. Cordon, in turn, explained that she had watched and listened to audio-video recordings of the past roundtables, and confirmed these with participants and presenters.

Noting that the participants could not render a decision at this moment, Justice Velasco suggested coming up with concrete proposals and giving each delegation sufficient time to signify their position on each proposal. He added that focal persons should be appointed to administer the website so that the ASEAN judiciaries could upload their decisions and other information. Dr. Mulqueeny responded that ADB has already engaged a consultant for this purpose.

In summary, the delegates confirmed that a binding decision for their respective courts could not be taken at the meeting. However, delegates representing nine ASEAN judiciaries affirmed the Jakarta Common Vision and made a series of proposals to hasten the realization of this vision. It was generally agreed that the proposals be made to the ASEAN chief justices and considered within a working group to help plan the next ASEAN Chief Justices' Roundtable on Environment. Singapore would refer these matters to its Chief Justice for his approval. These proposals included the following:

- (i) forming national environmental committees or National Working Groups on Environment, which would serve as focal points for regional coordination;
- (ii) establishing an ASEAN Judiciaries Working Group on Environment comprised of the chairperson of each National Working Group or persons appointed by their chief justices;
- (iii) prioritizing the attendance of chief justices at the annual ASEAN Chief Justices' Roundtable on Environment and having the ASEAN Judiciaries Working Group on Environment ensure that priority issues were included in the roundtable agenda to encourage the participation of chief justices;
- (iv) holding interim virtual meetings, and if possible one face-to-face meeting, of the ASEAN Judiciaries Working Group on Environment with the support of ADB;
- (v) submitting progress reports on the implementation of the Jakarta Common Vision at each ASEAN Chief Justices' Roundtable on Environment, and submitting interim reports to the ASEAN Judiciaries Working Group on Environment; and
- (vi) engaging in environmental twinning programs to share their lessons learned.

Justice Velasco suggested that ADB forward the proposals to the chief justices for agreement. The roundtable delegations proposed to convene and have a side meeting during the Second Asian Judges Symposium in December 2013 in Manila in order to nominate their focal points and provide updates as to what they had done after this roundtable. He also said that this side meeting could serve as an excellent forum for the ASEAN judiciaries to express their respective positions on these proposals.

Deputy Chief Justice Tuong, on behalf of the Supreme People's Court of Viet Nam, again offered to host the Fourth ASEAN Chief Justices' Roundtable on Environment in 2014. Hence, representing the Supreme People's Court of Viet Nam, he welcomed the chief justices and senior judges to the next roundtable and asked them what topics they would like to discuss to ensure the success of the event.



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## ■ SOUVENIR PRESENTATION

Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand, presented mementos and tokens of appreciation to the various ASEAN delegations for attending the Third ASEAN Chief Justices' Roundtable on Environment, and for actively participating in the discussions. On behalf of the countries and judiciaries they represented, the following graciously received their tokens: Dato Seri Paduka Haji Kifrawi, chief justice of the Supreme Court of Brunei Darussalam; Ly Sophana, deputy prosecutor at the Prosecution Office to the Phnom Penh Court of First Instance, Cambodia; Imam Soebechi Soekarno, deputy chief justice of the Supreme Court of Indonesia; Khamphanh Sitthidampha, president of the People's Supreme Court of the Lao PDR; Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia; Mya Thein, judge of the Supreme Court of the Republic of the Union of Myanmar; Presbitero J. Velasco, Jr., associate justice of the Supreme Court of the Philippines; Woo Bih Li, justice of the Supreme Court of Singapore; Dr. Hassavut Vititviriyakul, president of the Supreme Administrative Court of Thailand; and Tuong Duy Luong, deputy chief justice of the Supreme People's Court of Viet Nam. Judge Malanjum also presented Justice Comsatyadham with a gift, expressing gratitude to the Supreme Administrative Court of Thailand for the warm welcome and hospitality they had extended to the Malaysian delegation. Finally, on behalf of the ADB, Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, received the Supreme Administrative Court's memento, symbolizing the extraordinary and commendable partnership between the Supreme Administrative Court of Thailand and ADB.

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## ■ CLOSING REMARKS

To officially close the Third ASEAN Chief Justices' Roundtable on Environment, Kasem Comsatyadham, vice president of the Supreme Administrative Court of Thailand, thanked all the ASEAN delegations for their active participation in the fruitful discussions and for their commitment in making the justice system a part of environmental protection; and for the speakers, experts, and justices who graciously shared their expertise and perspectives throughout this roundtable event. He also attributed the success of this roundtable to the strong collaboration between the Supreme Administrative Court of Thailand and ADB. Together, both institutions tried to stimulate a meaningful exchange of valuable knowledge and insights on environmental matters. He especially expressed gratitude to Christopher Stephens, general counsel of ADB, Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, and his colleagues for their support for this roundtable and hoped that the two institutions would be able to cooperate again in the future. Lastly, he expressed his desire for the Supreme People's Court of Viet Nam to also enjoy the same cooperation of all the stakeholders involved in organizing this roundtable and in ensuring a successful turnout.

Dr. Mulqueeny, described the past 2 days as filled with constructive discussions and hoped that all participants had learned a lot from the presentations. On behalf of ADB, she thanked the Honorable Dr. Hassavut Vititviriyakul, president of the Supreme Administrative Court of Thailand; Kasem Comsatyadham and Vichai Chuenchompoonut, vice presidents of the Supreme Administrative Court of Thailand; and their exceptional team from the Supreme Administrative Court of Thailand for organizing the roundtable and making it eventful. She also expressed heartfelt gratitude to Christopher Stephens,



general counsel of ADB; her entire team from the ADB Office of the General Counsel, Kristine Melanie M. Rada, Francesse Joy J. Cordon, Ma. Celeste Sanial-Gois, and Ma. Imelda T. Alcala; and to Peter Wulf, who is also a consultant at ADB, for their indispensable support for the event. She also recognized the special participation of Hima Kohli, judge of the High Court of Delhi, for discussing India's judicial innovations and insights on dealing with environmental issues; Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, for graciously and patiently delivering five presentations; and Tuong Duy Luong, deputy chief justice of the Supreme People's Court of Viet Nam, for taking the baton from the Supreme Administrative Court of Thailand and agreeing to host the Fourth ASEAN Chief Justices' Roundtable on Environment. For Dr. Mulqueeny, these roundtables should not only provide an annual forum for discussing the judiciary's role in protecting the environment, but more importantly, serve as a platform for encouraging ASEAN judiciaries to take a more proactive role in realizing the Jakarta Common Vision. Thus, ADB looks forward to continuous cooperation among the ASEAN judiciaries to guarantee a more sustainable development of the region. She finally invited all participants to attend the Second Asian Judges Symposium at the ADB headquarters in Manila in 3 weeks.

# APPENDIX 1



## Background Paper

### **Third ASEAN Chief Justices' Roundtable on Environment: ASEAN's Environmental Challenges and Legal Responses<sup>1</sup>**

*Prepared as background for discussion at the  
Third ASEAN Chief Justices' Roundtable on Environment  
Royal Orchid Sheraton Hotel, Bangkok, 15–18 November 2013*

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and Dr. Kala K. Mulqueeny, Principal Counsel, Asian Development Bank

Southeast Asia is one of the world's most biodiverse regions. However, the region has also experienced significant environmental change, which threatens economic growth and the development that it has achieved. The environmental challenges of the member countries of the Association of Southeast Asian Nations (ASEAN) are now attributed to climate change (which results in increased hazardous natural disasters), threats to the region's forests from unsustainable and illegal logging and wildfires; threats to biodiversity from habitat destruction and illegal wildlife trade, and uncontrolled urbanization that affect development planning and cause transborder pollution.

The judiciary plays a critical role in managing and constraining these challenges. Hence, the Supreme Administrative Court of Thailand is hosting this Third ASEAN Chief Justices' Roundtable on the Environment—the regional judicial meeting that aims to expand collaboration and cooperation to enhance the judiciary's role in developing and enforcing environmental law in the region.

At the Asian Judges Symposium held in Manila, Philippines in July 2010, cohosted by the Supreme Court of the Philippines and other partners, the Chief Justice of the Philippines and participating justices called for an Asian Judges Network on Environment (AJNE). Subsequently, the Chief Justice of the Supreme Court of Indonesia invited the ASEAN Chief Justices to Jakarta in 2011 to establish

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<sup>1</sup> The views expressed in this paper are those of the authors and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent. ADB does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequence of their use. Use of the term “country” does not imply any judgment by the authors or ADB as to the legal or other status of any territorial entity. The authors are grateful to Brenda Jay Angeles Mendoza and Francesse Joy J. Cordon for their helpful comments.

the ASEAN Chief Justices' Roundtable on Environment as an opportunity for the chief justices and designates of the ASEAN courts to develop judicial cooperation on the environment. During the first ASEAN Chief Justices' Roundtable on Environment in Jakarta in December 2011, the Chief Justice of the Supreme Court of Indonesia announced his adoption of the Indonesian Chief Justice's Decree on Environmental Certification of Judges, which was supported by the Asian Development Bank (ADB). On that occasion, the ASEAN chief justices and senior judiciary representatives agreed on "A Common Vision on Environment for ASEAN Judiciaries" (the "Jakarta Common Vision"). They also agreed that the Chief Justice of Malaysia would host the Second Roundtable in Malaysia.

The Second ASEAN Chief Justices' Roundtable on Environment was held in Melaka, Malaysia in December 2012. During that event, the Acting Chief Justice of the Federal Court of Malaysia announced the adoption of environmental courts in Malaysia and described the environmental training conducted during the year. The chief justices and representatives of the senior judiciary also considered the draft Melaka Memorandum of Understanding among ASEAN Judiciaries (ASEAN Memorandum of Understanding) and agreed to form a working group to continue to develop the draft ASEAN Memorandum of Understanding. Finally, the Supreme Administrative Court of Thailand agreed to host the Third ASEAN Chief Justices' Roundtable on Environment in 2013.

This background paper is prepared for the Third ASEAN Chief Justices' Roundtable on Environment, which will focus on current environmental problems and environmental procedural law in the ASEAN region.

The present environmental problems are universally recognized as their impact explicitly affects the world at regional and international levels. Such problems have arisen from direct and indirect human actions. Examples of direct human impacts include solid wastes, and air and water pollution. Problems occurring from indirect human actions include climate change, floods, desertification, and forest fires. These problems generally occur in environmentally affected areas, while the problems resulting from humankind's indirect actions have broader impacts. Environmental problems impact not only nations but the entire world.

In the last decade, ASEAN has increasingly recognized the importance of environmental protection and preservation at the regional and international levels. These issues will be discussed in Sessions 1–4, which set out the environmental challenges of ASEAN countries, including climate change, sustainable forest management, biodiversity and wildlife protection, pollution problems, and the role of the courts in providing remedies to aggrieved people.

For the judiciary in each nation, civil and administrative procedures are a vital tool for the courts. A court judgment or order on its own does not efficiently and effectively provide justice for people and/or the environment that may be impacted. The proper environmental remedy for aggrieved persons is embedded in the legal proceedings—from filing the complaint in court, throughout the legal proceedings, and up to the execution of judgments. Justice for the people requires that the basis for accessing the court (such as standing) is a straightforward process where the filing of a case, burden of proof, court judgment or order, and the execution of judgment are streamlined and unimpeded.

These issues will be discussed in Sessions 5–8 on the right of access to environmental justice, interim relief measures in environmental cases, alternative dispute resolution (ADR) applied by the court in environmental cases, and the execution of court orders and judgments in environmental cases. Session 9 will be reserved for discussing cooperation on environment among the ASEAN judiciaries.

## A. ASEAN Current Issues on Environmental Problems

### ○ SESSION 1 Climate Change—Science, Economics, and Law

Climate change is a global environmental problem that all nations, both industrial and developing countries, play a role in and will be affected by.

On 27 September 2013, the Intergovernmental Panel on Climate Change (IPCC), the world's scientific intergovernmental body, issued its Fifth Assessment Report on Climate Change. The report stated unequivocally that climate change is happening and is human-induced. ADB has conducted research indicating that the economic effects of climate change on the ASEAN region will be significant.

ASEAN member states—located in tropical, coastal, and island areas—have been significantly damaged by natural disasters, such as hurricanes, floods, and droughts on an annual basis. Climate change makes natural disasters more significant and more frequent. In addition, it is difficult to predict the impacts of climate change. For example, the central region of Thailand may experience devastating floods; northern Myanmar may experience an unusual snowstorm; and Java, Indonesia may experience landslides as a result of excess flooding.

Several plaintiffs have raised a small number of climate change prosecutions. For example, in Thailand, in the Global Warming Case, plaintiffs claimed compensation against administrative agencies as a result of extensive flooding on the grounds that the agencies had not done enough against climate change in Thailand.

Beyond the region, the Inuit Circumpolar Council, representing the indigenous peoples called “Inuit” (originally called Eskimo) who live in the Arctic, have filed suit. They complained to the Inter-American Commission on Human Rights that the United States was violating their human rights because it emits the most carbon dioxide (CO<sub>2</sub>) leading to significant climate change impacts, which affect them.

This session will consider human actions that cause climate change, the impact of climate change, the litigation of disputes over climate change, and potential damage. It will also consider existing cases. More specifically, it will update ASEAN chief justices and their designees on the latest science and economics, including those from the IPCC report for the ASEAN region. It will then consider the current state of international law and developments in national jurisprudence on climate change. The Thailand Supreme Administrative Court will share information on the case of the Stop Global Warming Association. During question and answer time, chief justices from participating judiciaries will share information from their respective jurisdictions on climate change and any relevant legal developments.

### Legal Issues and Questions

- (1) What is the current science and economics behind climate change?
- (2) Is the existing law applied effectively to the problem of climate change?
- (3) How are cases related to climate change justiciable, if at all?
- (4) Do the courts have any role in relation to climate change, or will they only be adjudicating at earlier stages?

### ○ SESSION 2 Forests, Illegal Logging, Forest Fires, and Transboundary Haze

The ASEAN region is one of the most densely forested areas in the world. As of 2010, the 10 member countries collectively had a total of 213.3 million hectares (ha) of forestland, covering 49% of their combined total land area.<sup>2</sup> However, the extent and proportion of forest cover in the ASEAN region varies greatly from nation to nation.

The second half of the 20th century saw a dramatic reduction in forest cover in many ASEAN countries. Between 2000 and 2007, forest cover in ASEAN declined by 18.35 million ha—an average of approximately 1.3% per year. The ASEAN region's forests constantly confront various threats to their existence. Rising populations have led to increased encroachment on these areas, human settlement and conversion to agricultural land for food production, while infrastructure development, such as mines, hydropower facilities, and roads, has made previously forested areas susceptible to damage.<sup>3</sup>

ASEAN member states urgently need to address the drivers of forest loss and degradation. Since the 1990s, Sustainable Forest Management has been an important topic in international deliberations on forestry issues and environmental policies and is now widely accepted by intergovernmental, regional and national conservation and development institutions.<sup>4</sup> Broadly speaking, forest management encompasses the administrative, legal, technical, economic, social, and environmental aspects of conservation and use of forests. It implies various degrees of deliberate human intervention, ranging from actions aimed at safeguarding and maintaining the forest ecosystem and its functions, to favoring specific socially or economically valuable species or groups of species for the improved production of goods and services.<sup>5</sup> However, improperly issued planning permits and concessions that do not accord with legislation have led to problems.

<sup>2</sup> Food and Agriculture Organization of the United Nations. 2010. *Global Forest Resources Assessment 2010: Main Report*. Rome; FAO and ASEAN Secretariat. 2009. *Fourth ASEAN State of the Environment Report 2009*. Jakarta; RECOFTC, ASFN, and SDC. 2010. *The Role of Social Forestry in Climate Change Mitigation and Adaptation in the ASEAN Region: Assessment 2010*. Bangkok. p. 15. <http://countrystat.org/home.aspx?c=FOR>

<sup>3</sup> RECOFTC, ASFN, and SDC. 2010. *The Role of Social Forestry in Climate Change Mitigation and Adaptation in the ASEAN Region: Assessment 2010*. Bangkok. p. 16.

<sup>4</sup> B. Wolfslehner et al. 2003. *A System Analysis Approach for Assessing Sustainable Forest Management at Forest Management Unit Level*. <http://www.fao.org/docrep/article/wfc/xii/0690-b4.htm>

<sup>5</sup> FAO. Forestry and Sustainability. [http://www.fao.org/sd/erp/toolkit/Books/SARDLEARNING/CD-SL/m\\_4sl\\_3\\_en.html](http://www.fao.org/sd/erp/toolkit/Books/SARDLEARNING/CD-SL/m_4sl_3_en.html)

Illegal logging and unbridled development are causing a devastating toll on forest landscapes across the ASEAN region, disrupting the services healthy forest ecosystems provide and disrupting the lives of people. In 2013, deforestation in Brunei Darussalam, Cambodia, Indonesia, Thailand, and Viet Nam made international news. Rampant forest fires, illegally lit to clear forest and peatland for agriculture, denude vast tracks of land each year and pollute the air with smoke haze across Asia and as far away as Canada. In July 2013, Indonesia's Environment Minister Balthazar Kambuaya said that Malaysia would discuss the appropriate punishment for companies involved in the recent Indonesian forest fires that caused severe air pollution at the 15th Meeting of the Sub-Regional Ministerial Steering Committee on Transboundary Haze Pollution.<sup>6</sup> Similarly, ASEAN ministers responsible for the environment discussed these issues during the 14th Informal ASEAN Ministerial Meeting on the Environment and 9th Meeting of the Conference of the Parties to the ASEAN Agreement on Transboundary Haze Pollution in Surabaya, Indonesia on 25 September 2013.<sup>7</sup>

For Thailand, forest resources have been a fundamental component of rural life. At least 5 million people depend on forest resources for their livelihood. During the 1960s and 1970s, timber extraction, subsistence farming, and commercial agriculture served as the primary drivers of deforestation. Thus, forest cover declined from 53% of the country's total area in 1961 to 25% in 1998.

However, a growing realization of the importance of forests for environmental protection, ecosystem services, and livelihoods, led to a series of measures supporting forest management to protect forests. One of the significant measures is the enactment of the National Reserved Forest Act, B.E. 2507 (1964) for reserved forest areas, while a second was a logging ban in 1989 to protect the remaining forest areas. These measures, however, were predominantly aimed to preserve the forest areas while allowing people to exploit and live in the area as well. As a result, there has been a dramatic reduction of the reserved forests. Moreover, despite the logging ban, deforestation and forest degradation remained rampant to satisfy the demand for land for agricultural and development purposes, and for expansion of settlements and infrastructure.<sup>8</sup>

Thailand has zoned some areas as conservation or protection areas (such as a national park, wildlife sanctuary, forest park, nonhunting area, and arboretum and botanical garden) without any participation from local communities and research or survey for the protection of community rights. Such action has increased conflicts over overlapping territorial claim areas between local communities and the state and has made the preserved areas illegally exploited by some groups of people.

In this session, the facilitator and resource persons will discuss these issues. The presenting delegations will explain the legal issues in their respective countries, including any successes and challenges they have

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<sup>6</sup> CleanBiz.Asia. 2013. ASEAN members call for prosecution of forest fire setters. 25 July. <http://www.cleanbiz.asia/news/asean-members-call-prosecution-forest-fire-setters#.UxPmTty5KMM>

<sup>7</sup> ASEAN. 2013. 14th Informal ASEAN Ministerial Meeting on the Environment and 9th Meeting of the Conference of the Parties to the ASEAN Agreement on Transboundary Haze Pollution. *ASEAN Secretariat News*. 25 September. <http://www.asean.org/news/asean-secretariat-news/item/14th-informal-asean-ministerial-meeting-on-the-environment-and-9th-meeting-of-the-conference-of-the-parties-to-the-asean-agreement-on-transboundary-haze-pollution>

<sup>8</sup> See footnote 3, p. 89.



experienced with implementing regulations and enforcement. During question and answer time, chief justices from participating judiciaries will share their experiences.

### *Legal Issues and Questions*

- (1) What are the threats to ASEAN's forest resources? How do people and local communities in ASEAN countries participate and exchange knowledge and intelligence on forest management?
- (2) How do ASEAN countries deal with the legal issues on forest and reserved forest encroachment? How effective is the implementation and enforcement of laws to prevent forest encroachment in ASEAN countries?
- (3) How do ASEAN countries deal with the issue of illegal logging and trade of rare flora? What legal issues arise and what legal disputes or administrative or criminal cases are heard before the courts? Are such cases coming to the courts? Why or why not?
- (4) How can ASEAN judiciaries develop international cooperation to increase the effectiveness of efforts to combat unsustainable and illegal logging and transboundary haze and to prevent the smuggling of logs and illegal log trades?

## ○ **SESSION 3** Biological Diversity and the Illegal Wildlife Trade

### ***Biodiversity***

ASEAN countries have become aware of the importance of protecting endangered species and conserving biological diversity for the purpose of using biological resources in a sustainable manner. The Convention on Biological Diversity (CBD), which countries adopted in 1992 at the Rio Earth Summit, is the principal international agreement that creates a framework for the protection of biodiversity, including species, genetic resources, and ecosystems. The objectives of the CBD are to ensure the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the exploitation of genetic resources.<sup>9</sup>

Each of the member countries has agreed to implement the provisions of the CBD as far as possible and as appropriate, including imposing legal measures on biological diversity protection or adopting measures to protect the ecosystem from threats of contamination by alien species.

Threats to biodiversity include habitat destruction from rampant economic development, the introduction of invasive species, overconsumption, overpopulation, the illegal wildlife trade, and climate change.

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<sup>9</sup> Convention on Biological Diversity. Art. 1.

## ***Illegal Wildlife Trade***

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international instrument that plays a major role in the protection of plant and animal species. CITES was adopted to regulate the international trade of endangered plant and animal species. In signing this convention, member countries commit to implement measures, including designating management authorities and scientific authorities to support the local enforcement of CITES and engaging in the suppression of trade on endangered species of wild fauna and flora.

In March 2013, Thailand's Prime Minister vowed to end the illegal ivory trade in her country at the ASEAN CITES meeting in Thailand. In June 2013, the Government of the Philippines, symbolically "crushed" illegal wildlife contraband, established a new task force, and committed to work toward ending the trade. Viet Nam's Ministry of Environment has also increased its fight against illegal wildlife trade within and beyond the country's borders and requested assistance to do so, while Indonesia has recently begun revising legislation to prevent illegal trade in marine products, which include species recently listed by CITES.

The illegal wildlife trade is a multibillion-dollar business backed by enormous demand. Estimates of the volume of illegal wildlife trade in endangered species range from \$10 billion to \$40 billion a year.<sup>10</sup> It is the fourth largest illegal trade after drugs, human trafficking, and counterfeits.<sup>11</sup> It often encompasses organized cross-border criminal ventures involving corruption, money laundering, and the exchange of illegal wildlife for other forms of contraband, such as narcotics and ammunition. There is, thus, a need for penalties and their enforcement to match the charge. However, the illegal wildlife trade is not the only threat to biodiversity.

This session will update participants on these issues since the 2012 roundtable event. The session will discuss the judiciary's role in contributing to the protection of biodiversity and combating illegal wildlife trade. The speakers will highlight cases that have been brought in their jurisdiction and any reasons for the lack or absence of such cases filed in their courts.

To achieve the goals of CBD and CITES, member countries must be aware of their duty to effectively comply with the provisions of these conventions. At the roundtable, delegates will be asked to share their experiences and opinions concerning these issues.

## ***Legal Issues and Questions***

- (1) What are the roles of judiciaries in your country on the compliance with the provisions of CBD and CITES? How extensive is the experience of the courts in this particular issue?
- (2) What legal challenges are there, if any, to the proper enforcement of these conventions in the courts?

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<sup>10</sup> L. Wyler and P. Sheikh. 2013. *International Illegal Trade in Wildlife: Threats and U.S. Policy*. <http://www.fas.org/sgp/crs/misc/RL34395.pdf>

<sup>11</sup> World Wildlife Fund. Stop Illegal Wildlife Trade. [http://www.wwf.sg/what\\_we\\_do/stop\\_illegal\\_wildlife\\_trade](http://www.wwf.sg/what_we_do/stop_illegal_wildlife_trade)

- (3) What is the judiciary's role in contributing to the protection of biodiversity and combating illegal wildlife trade? What cases have you had in your jurisdiction and why are there less such cases than expected?

#### ○ **SESSION 4** Pollution and the Role of the Court

ASEAN countries have rich natural resources that provide the region and the world with their life support systems. However, the ASEAN region is also highly populated. As of mid-2011, approximately 605 million people lived in the region.<sup>12</sup> Population density is especially high in Southeast Asia's megacities. In a study of 125 metropolises around the world, (i) Manila ranked the 15th most densely populated city, with a population density of around 10,550 people per square kilometer (km<sup>2</sup>); (ii) Jakarta ranked 17th, with a population density of 10,500 people per km<sup>2</sup>; and (iii) Bangkok ranked 37th, with a population density of around 6,450 people per km<sup>2</sup>.<sup>13</sup> These statistics imply that, among ASEAN countries, there are increasing pressures on the region's natural resources due to urbanization and transboundary environmental issues, such as air, water, and land pollution and the destruction of biological diversity.

Natural damages resulting from the deterioration of environmental quality or pollution lead to environmental disputes. Many environmental disputes have been brought to the Administrative Court of Thailand. Several of the judgments and orders rendered by the court have yielded extensive impact to the society. Many international environmental principles have been applied to effectively alleviate and remedy the grievances.

In this regard, the Administrative Court of Thailand devotes this section to sharing the pollution problems and the role of courts in remedying them, the challenges they face, and the impact of their judgments on the society. Such challenges include the determination of damages, the issuance of environmental restoration orders, and the appointment and/or engagement of expert witnesses.

#### *Legal Issues and Questions*

- (1) What is the pollution situation in your country? What are your country's major pollution problems?
- (2) What cases have come before the courts and what approaches were taken by the court in determining environmental pollution issues? What principles of international law were applied to these decisions?
- (3) What is the role of courts and their judgments in remedying pollution problems?

<sup>12</sup> ASEAN. 2013. *ASEAN Statistical Yearbook 2012*. [http://www.asean.org/images/2013/resources/statistics/statistical\\_publication/ASEANStatisticalYearbook2012.pdf](http://www.asean.org/images/2013/resources/statistics/statistical_publication/ASEANStatisticalYearbook2012.pdf)

<sup>13</sup> City Mayors. The largest cities in the world by land area, population and density. <http://www.citymayors.com/statistics/largest-cities-density-125.html>

## ○ SESSION 5 The Right of Access to Environmental Justice

Many countries have focused on environmental issues and societies have widely discussed environmental justice. While ASEAN has no common basis for environmental justice, Article 10 of the Rio Declaration on Environment and Development (1992), recognized by ASEAN countries, sets out rights related to environmental justice. These are the right to environmental information, right to participate in decision-making processes, and right to access to environmental justice. These rights seek to preserve the right of the people to have access to the courts through procedures that are “fair, equitable, timely and not prohibitively expensive.”<sup>14</sup>

*Locus standi* is the initial issue to be determined—whether the litigant has a standing to file the case with the court in civil litigation. As discussed at the Second ASEAN Chief Justices’ Roundtable on Environment in Melaka, this issue is one that will need to be determined in each country. However, in environmental litigation, its application has been found to be restricted to cases seeking compensation based on environmental law. In public interest litigation cases, the Supreme Court of India has innovated new methods for providing access to justice to large masses of people (see *SP Gupta & Ors v. President of India & Ors*).

In the landmark case of *Oposa v. Factoran*, G.R. No. 10108, 30 July 1993, the Supreme Court of the Philippines, recognized the principle of intergenerational equity, which widened the scope of *locus standi*. This principle became embedded in the country’s Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, in 2010. In Thailand, the Administrative Court has considerably relaxed the strict approach to standing to sue in environmental cases. The Administrative Court’s standing rules are broader than in many jurisdictions as they include the interested person that will inevitably be aggrieved or injured. According to the Recommendation of the President of the Supreme Administrative Court on the Administrative Court proceedings concerning Environmental Issue, the court not only must interpret an injured person in a broad manner, but must also take into account the rights of the local community, indigenous community, private organizations (including NGOs), associations, juristic persons, or interest groups.

The Supreme Administrative Court of Thailand has decided several remarkable cases. Firstly, in the *Map Ta Phut Case*, the Supreme Administrative Court established a new standard. The court stated that it was required to recognize the rights of a person to live in good and healthy environment and the rights of the people to participate in enhancing and conserving environmental quality. It further considered that such rights must be immediately protected once the Constitution was promulgated. Secondly, while the plaintiff, the Sri Tawaravadee group, was only a group of people that assembled to study history and archaeology and to preserve and protect historical and archaeological areas of Nakhonpathom Province, the court deemed that it was a person that is to be inevitably aggrieved or injured or maybe aggrieved

<sup>14</sup> The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (also known as the Aarhus Convention) is the only legally binding international instrument on environmental democracy that implements Principle 10 of the Rio Declaration on Environment and Development. Article 9, paragraph 4 of the Aarhus Convention requires the procedure before a court of law or another independent and impartial body established by law to be “fair, equitable, timely and not prohibitively excessive.” See UNECE. Public Participation. <http://www.unece.org/env/pp/welcome.html>

or injured. As such, it was entitled to file an administrative case as the court accepted that the plaintiff's group was formed for the public interest and has community rights that shall be protected according to Sections 64, 66, and 67 of the 2007 Thai Constitution.

While standing is one key issue in facilitating access to the courts, there are many others that ease the time and resources of plaintiffs, such as rules that shift the burden of costs away from public interest litigants and rules that expedite environmental cases to ensure that cases do not drag on for years.

### *Legal Issues and Questions*

- (1) What approaches were taken by courts in ASEAN countries to expand standing for environmental plaintiffs?
- (2) Besides standing, what other ways can the courts offer to assist access to environmental justice?
- (3) To what extent does corruption within the judiciary limit access to justice and how can this be reduced?
- (4) What international environmental law principles have been used to facilitate access to environmental justice before domestic courts?
- (5) What class action and community rights are available in courts in ASEAN countries?
- (6) What innovative ways have ASEAN courts used to deal with problems and obstacles of access to justice of their people?

## **B. ASEAN Environmental Procedure Law**

### **○ SESSION 6** Interim Relief Measures in Environmental Cases—Preventing Irreversible Harm to the Environment

Environmental cases are viewed as having special characteristics and connected to the other sciences—such as natural science, social science, or economics. The case procedures, thus, rely on clear and reliable facts, apparent evidence from several aspects, and on expert witnesses in various fields. As such, proceedings relating to environmental matters require extensive time that can affect the protection of public interest and the environment and may not be done in due course, nor remedied or restored to the original conditions. The law has thus provided interim relief measures as a key mechanism that the courts may use (i) to protect the right to life or natural rights; (ii) to stop, prevent, or relieve an expansion of damage; or (iii) to prevent the public interest or environment from being further damaged before the court's adjudication.

In Thailand, environmental cases may be submitted to both the Court of Justice and the Administrative Court. The Court of Justice has the competence to try and adjudicate civil cases on environmental matters in which rules and procedures concerning the prescription of provisional measures shall be as prescribed by the Civil Procedure Code and the Recommendation of the President of the Supreme Court on the Court Proceedings concerning Environmental Issue.

The Administrative Court has the competence to try and adjudicate administrative cases on environmental matters relating to the use of administrative powers or actions in accordance with environmental laws. This is the area of law where most disputes arise from physical actions taken by administrative or private entities. The interim relief measures in administrative cases are categorized into two, namely, suspension of execution of by-laws or administrative orders, and provisional remedy.

In Thailand, a provision that prescribes interim relief measures in administrative cases is provided in Article 66 of the Act on the Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999). This act empowers the court to prescribe any measures or methods to relieve any damage to relevant parties for a temporary period of time before the court's adjudication, regardless of whether there is any petition from any of such parties, and to render orders to relevant administrative entities or state officials for specific performances. Rules and procedures concerning the prescription of interim relief measures shall be as prescribed by the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000), which categorizes interim relief measures into two, namely, suspension of execution of by-laws or administrative orders (Clause 69–74), and provisional remedy (Clause 75–77).

### *Legal Issues and Questions*

- (1) Who is the person entitled to file a motion for interim relief measures?
- (2) What are the regulations and conditions in considering interim relief measures?
- (3) What are the challenges that each delegation faces in interim relief measures issues? How could this be resolved?
- (4) Is there any need for a particular set of regulations or conditions for interim relief measures in environmental cases?

## **○ SESSION 7 Court-Annexed Alternative Dispute Resolution**

Environmental disputes commonly arise in implementing economic development, particularly in emerging countries where progress in infrastructure, industries, and tourism has dramatically expanded. Thailand is one such country currently preparing economic development policies that affect a lot of people. While environmental disputes have been increasing, traditional dispute resolution like litigation may not be appropriate to the specific characteristics of environmental disputes. Some dispute resolution experts strongly believe that ADR, such as mediation, is more suitable for environmental disputes than traditional dispute resolution.

According to environmental protection laws in Thailand, a number of government agencies and courts have their own jurisdiction over environment disputes. Consequently, there is no single organization that takes the lead role in integrating an effective mechanism of dispute resolution into environmental disputes. ADR mechanisms in Thailand require improvement to be able to fully deal with numerous environmental disputes, which are costly and complex in nature, time consuming, characterized by power imbalances between parties, and prone to accelerating violence. They also frequently involve high volumes of damages and a lot of stakeholders. To have a successful ADR mechanism in environmental disputes, some actions and principles should be considered.



### *Legal Issues and Questions*

- (1) Should laws or court rules on ADR in environmental disputes be enacted to guide the mechanism, or are there existing laws or rules in your country?
- (2) Should ADR be a primary dispute resolution mechanism at the beginning of disputes?
- (3) Should judges undertake ADR, and can laypersons be trained to conduct this process?

## ○ **SESSION 8** Execution of Court Orders and Judgments in Environmental Cases

Res judicata is concretely established if parties are bound to perform with respect to a judgment or an order rendered by a court. This term is Latin for “a matter already judged,” and may refer to two concepts: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) continued litigation of such cases between the same parties, which is different between the two legal systems. In this latter usage, the term is synonymous with “preclusion.” In the case of res judicata, the matter cannot be raised again, either in the same court or in a different court. A court will use res judicata to deny the reconsideration of a matter. The execution of judgment is a vital procedure to complete the trial and adjudication of court.

Environmental cases are distinct from ordinary cases in that the court tries to adjudicate such cases with a consideration of the law and the impacts on the ecological system, economy, society, and the public. In certain cases, the court should have a broad knowledge and academic perspective on the environment to deliver judgments and orders that serve the best interest of protecting the environment and natural resources.

Any person vested with the authority to execute a judgment or an order in environmental cases is required to consider the various impacts while aiming for the overall environmental and natural resources protection and the sustainable development of social and economic systems of nations. All of these behaviors will be an essential factor in fulfilling the court’s intention to remedy injury and grievance of plaintiffs and the environment. To accomplish the execution of a judgment or order in practice, it is necessary to organize a meeting to critically analyze the relevant evidence and collect both academic and practical information. The topics of this meeting will be collectively considered, including the challenges related to the process of executing judgment or order. This approach will often resolve the complexity of the execution process, and will be beneficial to the court proceeding, the public, and ensure the sustainable management of natural resources.

### *Legal Issues and Questions*

- (1) What are the general principles, system, and procedures in the execution of judgment or order in each court?
- (2) What is the system and procedure of executing judgments or orders in cases where the court revokes by-laws or orders? Do you have any challenges?
- (3) Do you have problems in the execution of judgments or orders against the private and public sectors in environmental cases?

- (4) What is the system and procedure of executing judgments or orders in cases where the court issues orders for the payment or delivery of properties? Do you have any challenges?
- (5) What is the system and procedure of executing a judgment or order in cases where the court orders a person to act or refrain from acting? Do you have any challenges?
- (6) What is the system and procedure of executing a judgment or order in cases where the court orders an interim relief measure? Do you have any challenges?
- (7) Is it necessary to provide public participation in the process of executing a judgment or order in environmental cases?
- (8) Do you have any specific system and procedure in executing a judgment or order in environmental cases for the expedient and effective execution of such judgment or order?
- (9) Do you have any other challenges in executing judgments or orders in environmental cases? And how do you solve these problems?

## ○ **SESSION 9** Cooperation among ASEAN Judiciaries

This session will consider future cooperation among ASEAN judiciaries, including at the upcoming Second Asian Judges Symposium to be held at the ADB headquarters in Manila. Chief justices or their designees can identify their needs and expectations for the roundtable, the working group, and for the AJNE.

This can be embodied in a Bangkok Declaration on future cooperation and the continuing needs of the ASEAN Chief Justices' Roundtable on Environment.

The session will specifically identify the next steps for the roundtable, the outcomes that the chief justices are seeking from the roundtable, and the hosts of the fourth roundtable. It will also discuss how the roundtable and the interim cooperation advance the capacity of judges to decide environmental cases.

# APPENDIX 2



## Program of The Third ASEAN Chief Justices' Roundtable on Environment *"ASEAN's Environmental Challenges and Legal Responses"*

15–18 November 2013

Royal Orchid Sheraton Hotel, Si Phraya Road, Bangkok, Thailand

### Friday, 15 November 2013

1:00–3:00 PM	Arrival and registration of participants at the hotel	Lobby
4:30–5:30 PM	Departure of participants to the Administrative Court	Lobby
5:30–6:30 PM	Court visit	
6:30–8:30 PM	Dinner at the Reception Hall, Administrative Court premises, Chaengwattana Road <i>Attire: Smart casual</i>	

### Saturday, 16 November 2013

8:00–8:30 AM	Registration	Ballroom 2–3
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### OPENING CEREMONY

8:30–8:40 AM	Opening Remarks (10 minutes) • The Honorable Dr. Hassavut Vithitviriyakul, President, Supreme Administrative Court of Thailand
8:40–8:50 AM	Welcome Remarks (10 minutes) • Mr. Christopher Stephens, General Counsel, Asian Development Bank
8:50–9:05 AM	Keynote Address (15 minutes) • Prof. Dr. Ackaratorn Chularat, Former President, Supreme Administrative Court of Thailand
9:05–9:15 AM	Southeast Asia video produced by ADB (State of the Environment) (10 minutes)
9:15–9:30 AM	Overview: Asian Judges Network on Environment • Dr. Kala K. Mulqueeny, Principal Counsel, Office of the General Counsel, Asian Development Bank (15 minutes)
9:30–10:00 AM	Introduction of Participants (30 minutes)
10:00–10:15 AM	Photo Session
10:15–10:30 AM	Coffee Break

## MORNING SESSION

**Morning Chair:** Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand  
 Mr. Pairoj Minden, President, Chamber of the Administrative Courts of First Instance  
 attached to the Supreme Administrative Court of Thailand

10:30–12:00 PM	<p><b>Session 1: ASEAN Environmental Challenge: Climate Change—Science, Economics, and Law</b></p> <p><b>Session Facilitator:</b> Ms. Glynda Bathan-Baterina, Deputy Executive Director, Clean Air Initiative for Asian Cities Center</p> <ul style="list-style-type: none"> <li>• <b>The State of Climate Change in Thailand and an Update on the Intergovernmental Panel on Climate Change Report, and its Impacts</b>            Assoc. Prof. Dr. Seree Supratid, Director, Climate Change and Disaster Center of Rangsit University (10 minutes)</li> <li>• <b>International Litigation and Legal Developments</b>            Mr. Peter Wulf, Member, Australian Administrative Appeals Tribunal, a Barrister, and Scientist (10 minutes)</li> <li>• <b>Legal Developments and the Global Warming Case</b>            Mr. Srunyoo Potiratchatangkoon, Judge, Central Administrative Court of Thailand (10 minutes)</li> <li>• <b>Question and Answer (1 hour)</b></li> </ul> <p><i>The facilitator will frame the issues, while the resource persons will give short presentations on the current state of climate change from scientific, economic, and legal perspectives as an update to the Second ASEAN Chief Justices' Roundtable on Environment (2012 Roundtable). The facilitator will then frame the issues and invite the delegations to share their country experiences on these issues, and identify problems in deciding and resolving related cases.</i></p>
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12:00–1:15 PM	Luncheon	Giorgio's Restaurant
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## AFTERNOON SESSION

**Afternoon Chair:** Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand  
 Dr. Saitip Sukatipan, Judge, Chiang Mai Administrative Court of Thailand

1:15–2:45 PM	<p><b>Session 2: ASEAN Environmental Challenge—Forests, Illegal Logging, Forest Fires, and Transboundary Haze</b></p> <p><b>Session Facilitator:</b> Dr. Thomas Enters, Regional Coordinator, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) of the United Nations Environment Programme's Regional Office for Asia and the Pacific</p> <ul style="list-style-type: none"> <li>• <b>Ms. Rataya Chantian</b>, President, Seub Nakhasathien Foundation, Thailand (5–10 minutes)</li> <li>• <b>Indonesia</b>            Ms. Josi Khatarina, Senior Researcher, Indonesian Center for Environmental Law (5–10 minutes)            Ms. Lulik Tri Cahyaningrum, SH, MH, Judge, State Administrative Court of Bandung, Indonesia (10 minutes)</li> <li>• <b>Republic of the Union of Myanmar</b>            H.E. Mya Thein, Judge, Supreme Court of the Republic of the Union of Myanmar (10 minutes)</li> <li>• <b>Question and Answer (50 minutes)</b></li> </ul> <p><i>The facilitator will frame the issues, while the resource persons will give short presentations on the current state of ASEAN forests, and their threats, particularly as updated since the 2012 Roundtable. The facilitator will then frame the issues and invite the panelists to share their country experiences on these issues, and identify problems in deciding and resolving related cases, before opening it up to other delegations to share their perspective.</i></p>
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2:45–3:00 PM	Coffee Break
3:00–4:30 PM	<p><b>Session 3: ASEAN Environmental Challenge—Biological Diversity and the Illegal Wildlife Trade</b></p> <p>Session Facilitator: Mr. Rolando A. Inciong, Director, Communication and Public Affairs, ASEAN Centre for Biodiversity</p> <ul style="list-style-type: none"> <li>• <b>Combating Illegal Wildlife Trade</b> (Video) (10 minutes)</li> <li>• <b>Lao People’s Democratic Republic</b> Mr. Sengsouvanh Chanthalonnavong, Judge, People’s Supreme Court of the Lao People’s Democratic Republic (10 minutes)</li> <li>• <b>Viet Nam</b> Mr. Tuong Duy Luong, Deputy Chief Justice, Supreme People’s Court of Viet Nam (10 minutes)</li> <li>• <b>Malaysia</b> The Right Honorable Justice Tan Sri Richard Malanjum, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• <b>Question and Answer</b> (50 minutes)</li> </ul> <p><i>The session facilitators will give short presentations on the current state of biological diversity and the illegal wildlife trade in ASEAN. The chair will then invite the panelists to share their country experiences on these issues, and identify problems in deciding and resolving related cases, before opening it up to other delegations to share their perspective on legal issues relating to biological diversity and the illegal wildlife trade in their jurisdiction, and the impact of their judgment on these issues in deciding cases.</i></p>
4:30–6:00 PM	<p><b>Session 4: ASEAN Environmental Challenge—Pollution</b></p> <p>Session Facilitators: Ms. Glynda Bathan-Baterina, Deputy Executive Director, Clean Air Initiative for Asian Cities Center</p> <ul style="list-style-type: none"> <li>• <b>Ms. Hima Kohli</b>, Judge, High Court of Delhi <i>The Role of India’s Judiciary in Addressing Air and Water Pollution</i> (10 minutes)</li> <li>• <b>Thailand</b> Ms. Maneewon Phromnoi, Justice, Supreme Administrative Court of Thailand (10 minutes)</li> <li>• <b>Malaysia</b> The Right Honorable Justice Tan Sri Richard Malanjum, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• <b>Brunei Darussalam</b> Ms. Lailatul Zubaidah Hussain, Senior Magistrate, Supreme Court of Brunei Darussalam <i>Pollution in Brunei Darussalam—The Law, Control, and Prevention</i> (10 minutes)</li> <li>• <b>Question and Answer</b> (50 minutes)</li> </ul> <p><i>The session facilitators will give short presentations on the current state of air and water pollution in ASEAN from scientific, economic, and legal perspectives. The chair will then invite the panelists to share their country experiences on these issues, and identify problems in deciding and resolving related cases, before opening the floor to other delegations to share their perspective on legal issues relating to pollution in their jurisdiction, and the impact of their judgment on these issues in deciding cases.</i></p>
6:30–8:30 PM	<p>Welcome dinner hosted by the President of the Supreme Administrative Court of Thailand, Ballroom 1</p> <p>Attire: Lounge Suit</p>

## Sunday, 17 November 2013 (Loy Krathong Festival)

### MORNING SESSION

Morning Chair: Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand  
Mr. Srunyoo Potiratchatangkoon, Judge, Central Administrative Court of Thailand

8:30–10:00 AM	<p><b>Session 5: Access to Environmental Adjudication</b></p> <p>Session Facilitator: Dr. Kala K. Mulqueeny, Principal Counsel, Office of the General Counsel, Asian Development Bank</p> <ul style="list-style-type: none"> <li>• <b>Thailand</b> Mr. Pairoj Minden, President, Chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court of Thailand <i>Community Rights in Thailand</i> (10 minutes)</li> <li>• <b>Philippines</b> Justice Diosdado M. Peralta, Associate Justice, Supreme Court of the Philippines <i>Benefits and Challenges of the New Environmental Rules of Procedure</i> (10 minutes)</li> <li>• <b>Malaysia</b> The Right Honorable Justice Tan Sri Richard Malanjum, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• <b>Indonesia</b> Dr. Andriani Nurdin SH, MH, Vice Chief Judge, High Court of Banten, Indonesia, Chief Judge, Central Jakarta District Court, and Experienced Environmental Court Judge <i>Access to Environmental Justice in Indonesia</i> (10 minutes)</li> <li>• <b>Question and Answer</b> (50 minutes)</li> </ul> <p><i>The facilitator will frame the issues, and the speakers will update the participants on new developments since the 2012 Roundtable on the current status of innovations within their own judiciaries that have expanded the ability of environmental judges to decide environmental cases.</i></p>
10:00–10:15 AM	<b>Coffee Break</b>
10:15–11:45 AM	<p><b>Session 6: Interim Relief Measures—Preventing Irreversible Harm to the Environment</b></p> <p>Session Facilitator: Mr. Peter Wulf, Member, Australian Administrative Appeals Tribunal, a Barrister, and Scientist</p> <ul style="list-style-type: none"> <li>• <b>Mr. Gritsana Changgom</b>, Independent Scholar and Legal Advisor, Thailand (10 minutes)</li> <li>• <b>Thailand</b> Mr. Wuttichai Sangsumran, Judge, Central Administrative Court of Thailand (10 minutes)</li> <li>• <b>Philippines</b> Justice Lucas P. Bersamin, Associate Justice, Supreme Court of the Philippines (10 minutes)</li> <li>• <b>Question and Answer</b> (1 hour)</li> </ul> <p><i>The facilitator will frame the issues, and the speakers will update the participants on new developments since the 2012 Roundtable and/or share information on legislation, rules and innovative remedies, including interim relief measures as a key mechanism to protect rights to life or natural rights; or to stop, prevent, or relieve an expansion of damage; or to prevent damage to the public interest or environment before a court has decided a case.</i></p>
12:00–1:00 PM	<p><b>Luncheon</b></p> <p>Giorgio's Restaurant</p>



## AFTERNOON SESSION

Afternoon Chair: Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand  
Mr. Prapot Klaisuban, Judge, Chiang Mai Administrative Court of Thailand

1:00–2:30 PM	<p><b>Session 7: Court-Annexed Alternative Dispute Resolution</b></p> <p><b>Session Facilitator:</b> Dr. Wanhua Yang, Legal Officer, Division of Environmental Law and Conventions of United Nations Environment Programme’s Regional Office for Asia and the Pacific</p> <ul style="list-style-type: none"> <li>• Mr. Montri Sillapamahabundit, Secretary, Court of Appeal, Region 1, Thailand (10 minutes)</li> <li>• Malaysia The Right Honorable Justice Tan Sri Richard Malanjum, Chief Judge of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• Viet Nam Mr. Tuong Duy Luong, Deputy Chief Justice, Supreme People’s Court of Viet Nam (10 minutes)</li> <li>• Singapore Mr. Woo Bih Li, Justice, Supreme Court of Singapore (10 minutes)</li> <li>• Question and Answer (50 minutes)</li> </ul> <p><i>The facilitator will frame the issues, and the speakers will update the participants on new developments since the 2012 Roundtable and/or share information on how environmental alternative dispute resolution may reduce the number of complaints. In this session the preconditions to effective environmental mediation can be queried. What cases are suitable for mediation? What are the limits to environmental mediation? What role should the courts play in the mediation process? How is a mediation agreement enforced?</i></p>
2:30–2:45 PM	<p><b>Coffee Break</b></p>
2:45–4:15 PM	<p><b>Session 8: Execution of Court Orders and Judgment</b></p> <p><b>Session Facilitator:</b> Ms. Hima Kohli, Judge, High Court of Delhi</p> <ul style="list-style-type: none"> <li>• Prof. Wisit Wisitsora-At, Director-General, Legal Execution Department of the Ministry of Justice of Thailand (10 minutes)</li> <li>• Philippines Justice Presbitero J. Velasco, Jr., Associate Justice, Supreme Court of the Philippines (10 minutes)</li> <li>• Malaysia The Right Honorable Justice Tan Sri Richard Malanjum, Chief Judge of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• Question and Answer (1 hour)</li> </ul> <p><i>The facilitator will frame the issues, and the panelists will consider the challenge in ensuring that a judgment or order is executed. It will also consider what happens during the appeal process. Should judgments be stayed during the course of an appeal? Should any fines and damages be undertaken before the final determination of the appeal? What happens when the environment is damaged or destroyed during the appeal process?</i></p>

4:15–5:45 PM	<p><b>Session 9: Cooperation amongst ASEAN Judiciaries</b></p> <p><b>Chairman:</b> Representative, ADB</p> <p><b>Session Facilitator:</b> Dr. Kala K. Mulqueeny, Principal Counsel, Office of the General Counsel, Asian Development Bank</p> <p><i>This session will consider future cooperation among ASEAN judiciaries, including at the upcoming Asian Judges Symposium to be held in Manila. Chief justices or their designees can identify their needs and expectations for the roundtable, the working group, and also for the Asian Judges Network on Environment. What are the next steps for the roundtable? What outcomes do the chief justices seek from the roundtable? How can the roundtable and interim cooperation advance the capacity of judges to decide environmental cases? Who will be the next host? Viet Nam had offered at the 2012 Roundtable to host the Fourth ASEAN Chief Justices' Roundtable on Environment in 2014 but this will need to be confirmed.</i></p>
5:45–5:50 PM	<p><b>Souvenir Presentation (5 minutes)</b></p> <ul style="list-style-type: none"> <li>• Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court, Thailand</li> </ul>
5:50–6:00 PM	<p><b>Closing Remarks (10 minutes)</b></p> <ul style="list-style-type: none"> <li>• Mr. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand</li> <li>• Representative of the Asian Development Bank</li> </ul>
6:30–8:30 PM	<p><b>Riverside cruise dinner at the Loy Krathong Festival</b></p> <p><i>Attire:</i> Casual</p>

### Monday, 18 November 2013

Checkout and departure of participants

# APPENDIX 3

## Transmittal Letter on the Roundtable Results

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Dear Honorable \_\_\_\_\_:

Thank you for your judiciary's participation in the Third ASEAN Chief Justices' Roundtable on Environment (the "Third Roundtable"), held in Bangkok, Thailand on 15–18 November 2013 and hosted by the Supreme Administrative Court of Thailand and the Asian Development Bank (ADB). Your representative(s) from the court attended this Third Roundtable. We are pleased to brief you on the results of this roundtable event in terms of furthering the ASEAN judiciaries' role in developing and enforcing environmental laws in the region, and to share with you the record of proceedings of the Third Roundtable which has been confirmed by all the participants before publication.

At the Third Roundtable, the delegates confirmed that a binding decision for their respective courts could not be taken at the meeting. However, delegates representing nine ASEAN judiciaries affirmed *A Common Vision on Environment for ASEAN Judiciaries* (the "Jakarta Common Vision") and made a series of proposals to hasten the realization of this vision. It was generally agreed that the proposals be made to the ASEAN chief justices and considered within a working group to help plan the next ASEAN Chief Justices' Roundtable on Environment. Singapore would refer these matters to its Chief Justice for his approval. These proposals included the following:

- (i) forming national environmental committees or National Working Groups on Environment, which would serve as focal points for regional coordination;
- (ii) establishing an ASEAN Judiciaries Working Group on Environment comprised of the chairperson of each National Working Group, or persons appointed by their chief justices;
- (iii) prioritizing the attendance of chief justices at the annual ASEAN Chief Justices' Roundtable on Environment and having the ASEAN Judiciaries Working Group on Environment ensure that priority issues were included in the roundtable agenda to encourage the participation of chief justices;

- (iv) holding interim virtual meetings, and if possible one face-to-face meeting, of the ASEAN Judiciaries Working Group on Environment with the support of ADB;
- (v) submitting progress reports on the implementation of the Jakarta Common Vision at each ASEAN Chief Justices' Roundtable on Environment, and submitting interim reports to the ASEAN Judiciaries Working Group on Environment; and
- (vi) engaging in environmental twinning programs to share their lessons learned.

We are also delighted to report that in furtherance of implementing these proposals, the Supreme People's Court of Viet Nam has established an environmental working group following a recent ADB mission to these judiciaries. Moreover, the Supreme People's Court of Viet Nam has offered to host a working level meeting of the ASEAN Judiciaries Working Group on Environment prior to the Fourth ASEAN Chief Justices' Roundtable on Environment.

The judiciaries agreed to collaborate and contribute, and manifested their desire to work toward common goals, even where a judiciary may not wish to participate. We look forward to your judiciary's active participation in the realization of the Jakarta Common Vision, and hope that you may join the interim meeting and the Fourth ASEAN Chief Justices' Roundtable on Environment upon the invitation of the Supreme People's Court of Viet Nam.

Should you have any questions, please do not hesitate to contact me directly at [kmulqueen@adb.org](mailto:kmulqueen@adb.org), cc: Ms. Kristine Melanie M. Rada, legal operations assistant at ADB at [kmrada@adb.org](mailto:kmrada@adb.org).

Sincerely,

**Kala K. Mulqueen**

Principal Counsel

Office of the General Counsel

Asian Development Bank

## ATTACHMENT A

### A Common Vision on Environment for ASEAN Judiciaries

The Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment, held in Jakarta on 5–7 December 2011, brought together chief justices and their designees from the highest courts of Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam, supported by the Indonesian Supreme Court, the Asian Development Bank, and the United Nations Environment Programme.

ASEAN faces common environmental challenges that require good governance to resolve. The foundation of good governance is the rule of law. Chief justices and the senior judiciary are the dedicated institutions of government that are the champions and guardians of the rule of law. Participants agree with the vision statement (below), and to developing an action plan for justice, governance, the rule of law, and sustainable development in ASEAN countries.

The roundtable had three objectives:

- (i) To share information among ASEAN chief justices and the senior judiciary on ASEAN's common environmental challenges.
- (ii) To highlight the critical role of ASEAN chief justices and the senior judiciary as leaders in national legal communities and champions of the rule of law and environmental justice, with the ability to develop environmental jurisprudence, and generate knowledge and action on ASEAN's environmental challenges among the judiciary, the legal profession, and law students.
- (iii) To develop a process for continuing the cooperation and engagement of ASEAN's senior judiciary on environmental issues.

Participants observed that the role of the judiciary in contributing solutions to these challenges is unique. But the entire environmental enforcement chain must be effective, particularly in the area of criminal enforcement where police and prosecutors play key roles. Participants agreed to go back to their national judiciaries and share the results of the roundtable, and further agreed the following:

- (i) The ASEAN judiciaries will collaborate among themselves and, as appropriate, with others engaged in the environmental enforcement processes, to significantly improve the development, implementation, and enforcement of, and compliance with, environmental law and collaborate upon an action plan to achieve it.
- (ii) The ASEAN judiciaries will share information on ASEAN countries' common environmental challenges among their own members and, as appropriate, among the legal profession, law schools, and the general public.
- (iii) The ASEAN judiciaries will share information on environmental challenges and legal issues and best practices in environmental adjudication among themselves, acknowledging the differences among their respective legal systems.
- (iv) The ASEAN judiciaries will impose sanctions and penalties in accordance with their respective laws that are appropriate to the scale of environmental case or crime, and consider innovative remedies, in accordance with their respective legal systems, such as community environmental sentencing, or probation.

- (v) The ASEAN judiciaries will strengthen specialized environmental courts, tribunals, benches, and specialization programs (such as environmental certification), where they exist and consider establishing them where they do not yet exist.
- (vi) The ASEAN judiciaries will implement special rules of procedure for environmental cases where these already exist and consider developing and implementing them where they do not yet exist, which may include special rules of evidence for environmental cases, expediting cases, special remedies, injunctive relief, and other innovative environmental processes.
- (vii) The ASEAN judiciaries will implement special rules and procedures for alternative dispute resolution in environmental cases where these already exist and consider developing and implementing them where they do not yet exist.
- (viii) The ASEAN judiciaries will seek to ensure that judicial decisions on environmental cases are made available to the public and shared within the Asian Judges Network on Environment.
- (ix) The ASEAN judiciaries will ensure that timely and appropriate training on environmental legal issues is available for new and junior judges and all other judges adjudicating environmental cases, including through national judicial institutes, and will share among themselves information on different ways to impart this training, and make training a working component of the ASEAN Chief Justices' Roundtable on Environment.
- (x) The ASEAN judiciaries will encourage law schools to include environmental law in their respective curricula and legal professional associations to provide continuing legal education that includes environmental law and jurisprudence.
- (xi) The ASEAN judiciaries will seek to hold an ASEAN Chief Justices' Roundtable on Environment annually to further cooperation on environment, as a subregional grouping of the Asian Judges Network on Environment.

This statement will be shared at the upcoming Asian Judges Symposium, to be held in Manila in 2012.



# APPENDIX 4

## List of Resource Persons

Resource Person	Designation, Agency
Bathan-Baterina, Glynda	Deputy Executive Director, Clean Air Initiative for Asian Cities Center
Bersamin, Lucas P.	Associate Justice, Supreme Court of the Philippines
Cahyaningrum, Lulik Tri	Judge, State Administrative Court of Bandung, Indonesia
Changgom, Gritsana	Independent scholar and legal advisor in Thailand
Chanthalonnavong, Sengsouvanh	Judge, People's Supreme Court of the Lao People's Democratic Republic
Chantian, Rataya	President, Seub Nakhasathien Foundation in Thailand and Advisor, Tropical Forest Foundation and Society for the Conservation of National Treasure and Environment
Chularat, Ackaratorn	Former President, Supreme Administrative Court of Thailand
Comsatyadham, Kasem	Vice President, Supreme Administrative Court of Thailand
Enters, Thomas	Regional Coordinator, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme), United Nations Environment Programme's Regional Office for Asia and the Pacific
Hussain, Lailatul Zubaidah Hj Mohd	Senior Magistrate, Supreme Court of Brunei Darussalam
Inciong, Rolando A.	Director, Communication and Public Affairs, ASEAN Centre for Biodiversity
Kifrawi, Paduka Haji	Chief Justice, Supreme Court of Brunei Darussalam
Khatarina, Josi	Senior Researcher, Indonesian Center for Environmental Law; and Member, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) and Presidential Delivery Unit for Development Monitoring and Oversight (Unit Kerja Presiden Bidang Pengawasan & Pengendalian Pembangunan or UKP-PPP)
Klaisuban, Prapot	Judge, Chiang Mai Administrative Court of Thailand
Kohli, Hima	Judge, High Court of Delhi
Malanjum, Richard	Chief Judge, High Court of Sabah and Sarawak and Judge, Federal Court of Malaysia
Minden, Pairoj	President, Chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court of Thailand
Mulqueeny, Kala K.	Principal Counsel, Asian Development Bank
Mya Thein	Judge, Supreme Court of the Republic of the Union of Myanmar
Nurdin, Andriani	Vice Chief Judge, High Court of Banten, Indonesia; Chief Judge, Central Jakarta District Court; and experienced Environmental Court Judge
Peralta, Diosdado M.	Associate Justice, Supreme Court of the Philippines

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Resource Person	Designation, Agency
Phromnoi, Maneewon	Justice, Supreme Administrative Court of Thailand
Potiratchatangkoon, Srunyoo	Judge, Central Administrative Court of Thailand
Sangsamran, Wuttichai	Judge, Central Administrative Court of Thailand
Sillapamahabundit, Montri	Secretary, Court of Appeal, Region 1, Thailand
Sitthidampha, Khamphanh	President, People's Supreme Court of the Lao People's Democratic Republic
Stephens, Christopher	General Counsel, Asian Development Bank
Sukatipan, Saitip	Judge, Chiang Mai Administrative Court of Thailand
Supratid, Seree	Director, Climate Change and Disaster Center, Rangsit University
Tuong, Duy Luong	Deputy Chief Justice, Supreme People's Court of Viet Nam
Velasco, Presbitero J. Jr.	Associate Justice, Supreme Court of the Philippines
Vititviriyakul, Hassavut	President, Supreme Administrative Court of Thailand
Wisitsora-At, Wisit	Director-General, Legal Execution Department, Ministry of Justice, Thailand
Woo, Bih Li	Justice, Supreme Court of Singapore
Wulf, Peter	Member, Australian Administrative Appeals Tribunal, a Barrister, and Scientist
Yang, Wanhua	Legal Officer, Division of Environmental Law and Conventions, United Nations Environment Programme's Regional Office for Asia and the Pacific

# APPENDIX 5

## List of Participants

Country/Organization	Participant	
Asian Development Bank (ADB)	Christopher Stephens General Counsel cstephens@adb.org	Kristine Melanie M. Rada Legal Operations Assistant kmrada@adb.org
	Kala K. Mulqueeny Principal Counsel kmulqueeny@adb.org	Francesse Joy J. Cordon Legal Research Associate (Consultant) fcordon.consultant@adb.org
	Christina U. Pak Counsel cpak@adb.org	Ma. Imelda T. Alcala LJD Operations Analyst (Consultant) mialcala.consultant@adb.org
Brunei Darussalam	Dato Seri Paduka Haji Kifrawi Chief Justice Supreme Court	Harnita Zelda Skinner Senior Magistrate Supreme Court
	Lailatul Zubaidah Hj Mohd Hussain Senior Magistrate Supreme Court	
Cambodia	Ly Sophana Deputy Prosecutor Prosecution Office to the Phnom Penh Court of First Instance	
Indonesia	Imam Soebechi Soekarno Deputy Chief Justice Supreme Court	Josi Khatarina Senior Researcher, Indonesian Center for Environmental Law; and Member, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) and the Presidential Delivery Unit for Development Monitoring and Oversight (Unit Kerja Presiden Bidang Pengawasan & Pengendalian Pembangunan or UKP-PPP)
	Dr. Andriani Nurdin Vice Chief Judge, High Court of Banten, Indonesia; Chief Judge, Central Jakarta District Court; and experienced Environmental Court Judge	
	Lulik Tri Cahyaningrum Judge State Administrative Court of Bandung, Indonesia	Wiwiek Awiati Reform Advisor, Judicial Reform Team Office, Supreme Court of Indonesia; and Member, Working Group on Environmental Judges Certification

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Country/Organization	Participant	
Lao People's Democratic Republic	Khamphanh Sitthidampha President People's Supreme Court of the Lao People's Democratic Republic	Sengsouvanh Chanthalonnavong Judge People's Supreme Court of the Lao People's Democratic Republic
Malaysia	Tan Sri Richard Malanjum Chief Judge, High Court of Sabah and Sarawak and Judge, Federal Court of Malaysia	Alwi bin Abdul Wahab Judge Sessions Court in Kuching Sarawak, Malaysia
Republic of the Union of Myanmar	Mya Thein Judge Supreme Court	U Soe Thein Chief Judge High Court of the Mandalay Region
Philippines	Presbitero J. Velasco, Jr. Associate Justice Supreme Court  Diosdado M. Peralta Associate Justice Supreme Court	Lucas P. Bersamin Associate Justice Supreme Court
Singapore	Woo Bih Li Justice Supreme Court	
Thailand	Dr. Hassavut Vitisviriyakul President Supreme Administrative Court  Prof. Dr. Ackaratorn Chularat Former President Supreme Administrative Court  Vichai Chuenchompoonut Vice President Supreme Administrative Court  Kasem Comsatyadham Vice President Supreme Administrative Court  Paiboon Siengkong President Chamber of the Supreme Administrative Court  Sumath Roygulchareon Justice Supreme Administrative Court  Maneewon Phromnoi Justice Supreme Administrative Court	Pairoj Minden President Chamber of the Administrative Courts of First Instance attached to the Supreme Administrative Court  Saitip Sukatipan Judge Chiang Mai Administrative Court  Sranyoo Potiratchatangkoon Judge Central Administrative Court  Wuttichai Sangsamran Judge Central Administrative Court  Prapot Klaisuban Judge Chiang Mai Administrative Court  Montri Sillapamahabundit Secretary, Court of Appeal, Region 1, Thailand  Wisit Wisitsora-At Director-General Legal Execution Department, Ministry of Justice, Thailand

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Country/Organization	Participant	
United Nations	<b>Thomas Enters</b> Regional Coordinator United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) of the United Nations Environment Programme's Regional Office for Asia and the Pacific	<b>Wanhua Yang</b> Legal Officer, Division of Environmental Law and Conventions, United Nations Environment Programme's Regional Office for Asia and the Pacific
Viet Nam	<b>Tuong Duy Luong</b> Deputy Chief Justice Supreme People's Court  <b>Tran Van Thu</b> Deputy Director International Cooperation Department, Supreme People's Court	<b>Tran Vu</b> Interpreter/Translator Supreme People's Court
Other Partner Agencies and Institutions	<b>Glynda Bathan-Baterina</b> Deputy Executive Director Clean Air Initiative for Asian Cities Center  <b>Gritsana Changgom</b> Independent scholar and legal advisor Thailand  <b>Rolando A. Inciong</b> Director Communication and Public Affairs, ASEAN Centre for Biodiversity  <b>Hima Kohli</b> Judge High Court of Delhi	<b>Rataya Chantian</b> President, Seub Nakhasathien Foundation; and Advisor, Tropical Forest Foundation and Society for the Conservation of National Treasure and Environment  <b>Seree Supratid</b> Director Climate Change and Disaster Center, Rangsit University  <b>Peter Wulf</b> Member, Australian Administrative Appeals Tribunal, a Barrister, and Scientist

### **Third ASEAN Chief Justices' Roundtable on Environment ASEAN's Environmental Challenges and Legal Responses The Proceedings**

From 15–18 November 2013, the Association of Southeast Asian Nations (ASEAN) chief justices and their designees convened in Bangkok, Thailand for their third roundtable on environment with the theme “ASEAN's Environmental Challenges and Legal Responses.” Distinguished speakers and the judicial participants shared their knowledge and experiences in dealing with the region's environmental challenges, and the various means and innovations they have implemented to effectively address these challenges. The ASEAN judiciaries agreed on how they could advance regional collaboration and accelerate the implementation of “A Common Vision on Environment for ASEAN Judiciaries” (the “Jakarta Common Vision”), such as by establishing National Working Groups on Environment and an ASEAN Judiciaries Working Group on Environment, and prioritizing the attendance of their chief justices at the annual ASEAN Chief Justices' Roundtable on Environment that is supported by the Asian Development Bank.

### **About the Asian Development Bank**

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to approximately two-thirds of the world's poor: 1.6 billion people who live on less than \$2 a day, with 733 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.