

A stylized illustration of bamboo stalks and leaves in various shades of green and yellow, serving as a background for the top half of the cover.

# FOURTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT

## ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION

The Proceedings

**FOURTH  
ASEAN CHIEF JUSTICES'  
ROUNDTABLE ON ENVIRONMENT  
ROLE OF THE JUDICIARY IN  
ENVIRONMENTAL PROTECTION**

The Proceedings



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#### Notes:

In this publication, "\$" refers to US dollars.  
ADB recognizes "Vietnam" as Viet Nam and "Hanoi" as Ha Noi.

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# FOREWORD

In the modern world, economic development can easily come at the expense of ecological balance and sustainability. Only when most people fully grasp the true value of the environment, and how it nurtures us all, will they understand the importance of protecting the environment and using it in a sustainable manner. This is an area where the judiciary has a critical role to play. In the exercise of its core functions, the judiciary is frequently asked to determine the legality of challenged laws or executive actions and to impose sanctions for environmental injuries. But the judiciary can also play a more dynamic role in environmental protection. Recent judicial activism in Southeast Asia, for instance, has led to improved access to justice through streamlined court procedures, and to more innovative orders aimed at long-term environmental protection. There have also been cutting-edge decisions reinforcing citizens' rights to a clean environment. The judiciary can and should use the wisdom derived from its experience to lead and educate the environmental law enforcement chain. While judicial power is naturally constrained by the separation of powers doctrine, judiciaries can still work collaboratively with all arms of government to combat environmental crime.

The Fourth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment (or the "Fourth Roundtable"), with the theme of the "Role of the Judiciary in Environmental Protection," highlighted this relationship between the judiciary and the other branches of government. Equally important, however, the roundtable brought together representatives of Southeast Asian judiciaries to discuss their unique role in shaping and furthering environmental justice.

The Asian Development Bank (ADB) recognizes the critical role of the judiciary in (i) strengthening environmental law enforcement, (ii) establishing systems based on the credible rule of law, and (iii) promoting environmental justice. Since the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, held in 2010, ADB Office of the General Counsel, through the Law, Justice and Development Program, has been supporting the efforts of the region's judiciaries to enhance their capacity to analyze environmental issues and adjudicate environmental cases. Aside from assisting the host judiciary in convening the annual roundtable, ADB is also fulfilling the role of temporary secretariat until 2016. ADB is delighted to see the ongoing collaboration between Asian judges. Such collaboration is fundamental for combating transnational environmental crimes and ensuring that judiciaries remain on the cutting edge in their delivery of justice.

Under the leadership of the Supreme People's Court of Viet Nam, the ASEAN judiciaries held the First ASEAN Judicial Working Group on Environment Meeting, on 15–16 September 2014. The working group designed the agenda of the Fourth Roundtable and deliberated on proposals raised during previous roundtables in order to formulate the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision (or the "Proposed Hanoi Action Plan"). As its name suggests, the plan contains practical initiatives that will enable the Southeast Asian judiciaries to implement A Common Vision on Environment for

ASEAN Judiciaries (or the “Jakarta Common Vision”). The plan was submitted to the participants during the Fourth Roundtable and approved in February 2015.

This volume records the speakers’ presentations, the panel remarks, and the rich discussions during the Fourth Roundtable. It satisfies the judges’ need for a baseline for advancing the understanding and sharing of each judiciary’s legal and judicial systems, environmental jurisprudence, and experiences in environmental adjudication.

**Christopher L. Stephens**

General Counsel

Office of the General Counsel

# ACKNOWLEDGMENTS

A number of individuals from the Asian Development Bank (ADB) and the Supreme People's Court of Viet Nam have tirelessly and wholeheartedly devoted their time, energy, and talents to ensuring the resounding success of the Fourth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment.

The Supreme People's Court of Viet Nam, under the outstanding leadership of Chief Justice Truong Hoa Binh and Deputy Chief Justice Bui Ngoc Hoa, graciously hosted the ASEAN chief justices, justices, judges, and senior officers of their judiciaries. Chief Justice Truong gave the welcome and opening remarks and presented the heads of delegations with tokens of appreciation before wrapping up and closing the roundtable. Permanent Deputy Chief Justice Bui chaired the First ASEAN Judicial Working Group on Environment Meeting and all the sessions of this Fourth ASEAN Chief Justices' Roundtable on Environment; he also delivered the introduction to the roundtable and some closing remarks.

ADB expresses its utmost appreciation and gratitude to those who facilitated the sessions and stimulated the discussions: Permanent Deputy Chief Justice Bui, permanent deputy chief justice of the Supreme People's Court of Viet Nam; Atty. Harsha Fernando, legal and governance consultant of ADB; Mr. Michael Dyson, law enforcement and governance consultant of ADB; Dr. Scott Robertson, regional coordinator of the Wildlife Conservation Society (WCS) and WCS Wildlife Trafficking Program, and country director of the WCS Viet Nam Program; Justice Rachel Pepper, judge of the New South Wales Land and Environment Court in Australia; Justice Presbitero J. Velasco Jr. associate justice of the Supreme Court of the Philippines; and Justice Adolfo S. Azcuna, chancellor of the Philippine Judicial Academy, retired associate justice of the Supreme Court of the Philippines, former constitutional commissioner who helped draft the 1987 Constitution, and former executive secretary under President Corazon Aquino.

From ADB, Mr. Christopher Stephens, general counsel, gave the welcome remarks, while Dr. Kala K. Mulqueeney, principal counsel, facilitated a session and led a remarkable team under the ADB Office of the General Counsel's Law, Justice and Development (LJD) Program. The team comprised Ms. Aysha Qadir, senior counsel; Ms. Kristine Melanie M. Rada, legal operations assistant; Atty. Francesse Joy J. Cordon, legal consultant; and Ms. Ma. Imelda T. Alcala, LJD operations analyst.

Atty. Cordon prepared and edited this record of proceedings.



# ABBREVIATIONS

ADB	Asian Development Bank
AJNE	Asian Judges Network on Environment
ASEAN	Association of Southeast Asian Nations
PRC	People's Republic of China
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ICC	indigenous cultural community
ICPO	International Criminal Police Organization or ICPO–INTERPOL
IP	indigenous people
IPRA	Indigenous Peoples' Rights Act of 1997
Lao PDR	Lao People's Democratic Republic
NGO	nongovernment organization
NCIP	National Commission on Indigenous Peoples
NCR	native customary rights
PNCCA	Philippine National Commission for Culture and the Arts
RAFT	Responsible Asia Forestry and Trade (initiative)
SLAPP	strategic litigation against public participation
US	United States
VEA	Viet Nam Environment Administration
WCS	Wildlife Conservation Society
WWF	World Wildlife Fund

# EXECUTIVE SUMMARY

The Asian Development Bank (ADB) and the Supreme People's Court of Viet Nam convened the Fourth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment, on 12–14 December 2014 at Hotel Meliá Hanoi, Ha Noi, Viet Nam. The roundtable forms part of ADB's continuing commitment to “strengthen...the legal, regulatory and enforcement capacities of public institutions on environmental considerations...” and to strengthen judicial capacity to enforce environmental laws, develop environmental jurisprudence, and steer the legal profession in these countries toward systems that are based on the credible rule of law, have integrity, and promote environmental justice.

The roundtable discussions were divided into nine sessions. Session 1 covered the theme of ASEAN Judiciaries' Cooperation on the Environment: The Jakarta Common Vision and the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision. Justice Takdir Rahmadi of the Supreme Court of Indonesia gave an overview of A Common Vision on Environment for ASEAN Judiciaries (or the “Jakarta Common Vision”).<sup>1</sup> He also walked the participants through the origins of the annual ASEAN Chief Justices' Roundtable on Environment and the broader Asian Judges Network on Environment. Mr. Ngo Cuong of the Supreme People's Court of Viet Nam, updated the participants on the results of the First ASEAN Judicial Working Group on Environment Meeting. Dr. Kala K. Mulqueeny of ADB discussed the history of the ASEAN Chief Justices' Roundtable on Environment and the ASEAN Judicial Working Group on Environment. She also briefed the participants on the proposed outcome document for the Fourth ASEAN Chief Justices' Roundtable on Environment—the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision (or the “Proposed Hanoi Action Plan”). Thereafter, the ASEAN delegations reported on their progress so far in implementing the Jakarta Common Vision.

The second part of the roundtable featured the various environmental challenges confronting the judiciary. In Session 2, on the theme of Balancing the Rights of Indigenous People and Environmental Protection, Atty. Harsha Fernando of ADB drew attention to the 370 million indigenous people (IP) around the world representing almost 5,000 indigenous cultures in 90 countries, and to the fact that while IPs constitute only 6% of the world's population, they hold 80% of the remaining biodiversity. Justice Presbitero J. Velasco Jr. of the Supreme Court of the Philippines talked about IP rights under Republic Act No. 8371, or The Indigenous Peoples' Rights Act of 1997. Justice Tan Sri Richard Malanjum of the High Court of Sabah and Sarawak and the Federal Court of Malaysia, an indigenous person himself, shared the Malaysian experience in dealing with IPs, particularly the Orang Asli and the Orang Asal (or Anak Negeri). Atty. Lucille Karen E. Malilong-Isberto of the Philippine National Commission for Culture and the Arts narrated the case of the Ibaloy, whose council of elders signed a memorandum of agreement with a power company and the local government authorities, and the issues that arose when the government

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<sup>1</sup> ADB, Supreme Court of Indonesia, United Nations Environment Programme (UNEP). 2011. A Common Vision on Environment for ASEAN Judiciaries. Outcome document agreed upon at the Inaugural ASEAN Chief Justices' Roundtable on Environment. Jakarta, Indonesia. 5–7 December.

sold the Ibaloy people's land to the company which subsequently failed to abide by the memorandum of agreement.

Three participants gave panel remarks. Justice Rahmadi discussed the adat communities in Indonesia and the relevant laws governing their rights.<sup>2</sup> Justice Khamphanh Sitthidampha of the People's Supreme Court of the Lao People's Democratic Republic (Lao PDR), spoke of the Lao PDR government's efforts to develop the countryside by implementing infrastructure projects and offering alternative sources of livelihood to ensure nature preservation. Lastly, Justice Suntariya Muanpawong of the Supreme Court of Thailand said that her country had no problems with IPs because the country had never been colonized. But the government and the public had started talking about native customary rights.

In Session 3, on Illegal Logging and Deforestation, Timber Trafficking, and Trade, Mr. Michael Dyson, of ADB, linked the existence of criminal networks to poor governance or to the minimal or nonexistent success in preventing the criminal exploitation of natural resources. He also stressed the judges' important role in combating environmental crime—by rendering decisions that can deter offenders from committing environmental crime and by lobbying for stricter laws and sentencing options. Justice Le Van Minh of the Supreme People's Court of Viet Nam described his country's relevant laws and regulations, particularly its new penal code provisions governing forest-related crimes. Mr. Rizal Bukhari, of The Nature Conservancy – Indonesia Program, highlighted the Responsible Asia Forestry and Trade (RAFT) program, an Asia-Pacific regional platform for advancing trade in responsibly harvested and manufactured wood products, and RAFT's methods of addressing illegal logging, deforestation, and illegal timber trafficking. Atty. Malilong-Isberto talked about the plight of farmers and IPs, who help fight illegal logging, but with only identification cards and very minimal, if any, training in dealing with illegal loggers.

Three panel participants made remarks in Session 3. Justice I Gusti Agung Sumanatha of the Supreme Court of Indonesia spoke about a forest fire case pending before the country's appellate court that questions the legal standing of the Ministry of Environment to file a case by itself under Article 69, Law No. 32/2009 on Environmental Protection and Management on causing environmental damage and clearing land by fire. Although the court upheld the ministry's legal standing, the compensation ordered miserably failed to compensate for the damage caused. Justice U Tha Htay of the Supreme Court of the Union of Myanmar enumerated the drivers of illegal logging and timber trafficking: the lucrative nature of these crimes, town development schemes, and urbanization. To deal with the adverse impact of illegal logging, the Myanmar government plans to replant logged areas and promote sustainable forest management. Justice Malanjum linked the decline in the number of illegal logging cases filed in Malaysia since the 1980s to (i) the increased support for anti-illegal logging initiatives, (ii) strict monitoring of the remaining forests, (iii) the fact that only a few trees remained to be cut, (iv) the Malaysian government's adoption of sustainable forest management practices, and (v) the court's imposition of stricter penalties against illegal loggers.

Session 4 addressed the theme of Illegal Wildlife Crime, Trafficking and Trade. Dr. Scott Robertson, of the Wildlife Conservation Society (WCS), gave specific examples of the consequences of illegal trafficking in Viet Nam—the extinction of species across Earth; the spread of diseases to humans, at

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<sup>2</sup> *Masyarakatadat*, or *adat*, communities are groups of people living in a particular area who are bound together by their traditional rules and are led by functionaries.

great economic cost and impairment of public health; and the collapse of the rule of law. He ended by calling on the participants to be more professional, organized, and cooperative at the international level; and more innovative than the wildlife traffickers. Justice Dam Van Dao of the Supreme People's Court of Viet Nam elaborated on the amended Article 190 of the Penal Code on "*Breaching regulations on protection of animals on the list of endangered, precious and rare species prioritized for protection.*" The amended provision criminalizes hunting, catching, killing, trafficking, and trading wildlife. The provision does not require prosecutors to establish severe damage or a previous commission of the same violation, or a previous imposition of an administrative penalty. Additionally, the severity of the damage is the only factor in determining the penalty to be imposed. Justice Syed Mansoor Ali Shah of the Lahore High Court in Pakistan narrated how he had heard and decided the Big Cats (Exotic Felids) Case with the help of the World Wildlife Fund (WWF) as amicus curiae and of a wildlife commission, as a way of illustrating how the court can be innovative if it truly wants to protect the public's fundamental rights.

Dr. Roberton, the session facilitator, divided Session 4 into two parts. After the first set of speakers, he allowed the participants to ask questions or comment on the topic. During this time, he explained that WCS is part of the One Health Consortium of organizations participating in the Emerging Pandemic Threats Program, for which WCS analyzes wildlife species and the threats they pose to humans. The participants also had the opportunity to discuss how judicial engineering can work in both common law and civil law systems. In addition, ADB showed a video to highlight the lucrative nature of wildlife crime and its adverse impacts on humans, biodiversity, and the government, as well as on national, regional, and worldwide security.

Three speakers gave panel remarks. Justice Htay talked about how Myanmar's rich biodiversity has attracted numerous illegal wildlife traffickers, and described recent government efforts to halt the massive extinction of many species. Justice Somsack Taybounlack of the People's Court of the Middle Region of the Lao PDR discussed his country's dual approach to dealing with people illegally hunting wildlife—administrative action and criminal action. He explained that the Lao PDR faces several challenges: (i) the fact that it is a least developed country, and the people depend on natural ecosystems as a source of livelihood; (ii) the lack of environmental courts and of the capacity for environmental adjudication; and (iii) inadequate financial support and equipment. The last to speak was Justice Malanjum, who shared a news article appearing on the *Al Jazeera* website describing Malaysia as a hot spot for wildlife trafficking. He expressed high hopes that the government might better combat the illegal wildlife trade with the establishment of its new coordinating committee, and through proper training and efforts to increase judges' and judicial officers' awareness of environmental and wildlife issues. He also hoped that motivating Malaysia's IPs to participate in ecotourism might address the problem of the lack of public awareness and the smugglers' exploitation of IPs in committing wildlife crime.

In Session 5, on the theme of Updates on Judicial Environmental Institutions: Courts, Rules and Access to Environmental Justice, the participants heard from Justice Rachel Pepper of the New South Wales Land and Environment Court in Australia, who cited the changes in the Australian government—at both the federal and state levels—that have hampered access to environmental justice. These include the abrogation of open legal standing provisions or the imposition of severe restrictions in some jurisdictions and reduced funding for environmental defenders offices. But she also discussed the innovations introduced into her court to expedite proceedings, reduce the cost of litigation, and enhance access to environmental justice.

Justice Ubonrath Luivikkai of the Supreme Court of Thailand presented an analysis of her country's current court system and recommendations for improvement, based on Justice Brian J. Preston's 12 characteristics of successful environmental courts. Justice Velasco then briefed the participants on the Rules of Procedure for Environmental Cases, particularly the provisions on (i) relaxing the legal standing requirements; (ii) deferring, or even exempting, the payment of filing fees; (iii) streamlining proceedings; (iv) allowing applicants to file petitions for the issuance of a writ of *kalikasan* (or writ of nature);<sup>3</sup> and (v) recognizing the remedy of continuing mandamus.<sup>4</sup>

Three participants gave panel remarks. Justice Rahmadi talked about the right of environmental nongovernment organizations (NGOs) to file cases in the interest of environmental protection, as held in the case of *Indonesian Environmental Forum vs Pulp Paper Corporation, et al.*, and the right to access information about the environment. He also discussed the provision in the Environmental Management Act 2009, which provides a defense against strategic litigation against public participation (SLAPP). And he talked about environmental alternative dispute resolution in Indonesia. Permanent Deputy Chief Justice Bui Ngoc Hoa of the Supreme People's Court of Viet Nam identified four issues in Viet Nam where he wanted further research to be done: (i) the creation of the best possible court system for ensuring the public's access to justice, (ii) the reduction of court fees, (iii) the shortening of the time required to handle environmental cases, and (iv) the organization of alternative dispute resolution mechanisms. Justice Malanjum related one case filed by several West Malaysia residents against an Australian company that had an agreement with the Government of Malaysia to process toxic materials in West Malaysia. The residents lost the case due to the lack of expert evidence regarding the threats posed by the toxic materials and to the presumption of regularity of the approval of the Australian company's environmental impact assessment. During question-and-answer time, the participants talked more about the presentation of expert evidence.

In Session 6, on The Judiciary, the Executive and Environmental Protection, Justice Velasco suggested that the legislature be included in the session title because coordination, not just between the judiciary and the executive, but also with the legislature is indispensable for securing environmental protection. According to Justice Velasco, such coordination might be difficult in countries like the Philippines, where the judiciary scrupulously maintains its independence from the other branches of government to maintain its impartiality and independence. Dr. Duong Thanh An of the Ministry of Natural Resources and Environment, Viet Nam, identified the four key challenges in environmental protection in Viet Nam as (i) increasing environmental pollution, (ii) degrading biodiversity, (iii) threatened environmental security, and (iv) the need to strengthen the community as a vital player in managing the environment. Justice Shah discussed how he had handled a case concerning the Ravi River cleanup and how his court, with the help of the Ravi River Commission and judicial engineering, had found a more viable and cheaper homegrown solution to an environmental problem.

<sup>3</sup> A writ of *kalikasan*, or writ of nature, is issued by the court in favor of a person or entity whose constitutional right to a balanced and healthful ecology has been violated or threatened, and when the environmental damage is of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.

<sup>4</sup> A writ of continuing mandamus is issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment, and which shall remain effective until judgment is fully satisfied.

Four panelists talked about how the separation of powers operates within their countries. Mr. Aedit bin Abdullah of the Supreme Court of Singapore shared that Singapore's situation is different. The courts do not have many environmental cases. The judiciary gives leeway to the other two branches of government in matters involving complex policy issues. Justice Htay said that the three branches of government need to maintain a proper balance in the performance of their respective tasks in protecting the environment. He added that it is the judiciary's role to take action against the people who violate the environmental conservation laws and procedures and to evaluate city and town development in terms of environmental protection. Justice Taybounlack reiterated his point that there were two approaches to environmental violations: administrative and criminal. Judges determine whether the prosecutor's case is sufficient for further action. Lastly, Justice Chiv Keng of the Supreme Court of Cambodia pointed out the Cambodian judiciary's four biggest challenges: (i) the insufficient number of judges and prosecutors, (ii) interference by corrupt court officials in proper case adjudication, (iii) the inadequacy of evidence available to the prosecution, and (iv) the limited involvement of the public.

During question-and-answer time, the other participants remarked on their respective judiciary's relationships with the other branches of government. Mr. Sarawut Benjakul, of Thailand's Office of the Judiciary and Institute of Legal Education of the Thai Bar Association, noted that his country's judiciary is free to propose amendments to current laws. Justice Malanjum said that Malaysia has a coordinating committee that enables the government's three branches to better understand each other's perspectives. Justice Sumanatha explained that the Supreme Court of Indonesia and the Ministry of Environment had signed a memorandum of understanding before establishing the green bench, and they jointly conduct certification training on environmental issues. Justice Velasco said that the Philippine judiciary is authorized to promulgate its own rules of procedure. Permanent Deputy Chief Justice Bui said that no agency in Viet Nam can interfere in the court's decision making, and that the legislature solicits the court's opinion during lawmaking. Additionally, the judiciary and the relevant agencies can draft joint circulars and interministerial circulars to resolve emerging issues. In such instances, the Vietnamese courts can consult with relevant government agencies in deciding cases involving a particular industry or a specialized area. Justice Shah said that the Pakistan Constitution authorizes the judiciary to engineer the exercise of fundamental rights and effective law enforcement.

In Session 7, on Assessment of Damages in Environmental Cases, Justice Pepper framed the session by highlighting the complex issues that can arise in the course of trying and deciding an environmental case. Justice Merideth Wright, of the Environmental Law Institute, gave a presentation on some of the methods of assessing environmental damages, and on the connection between damage assessment and environmental law enforcement economics. She also emphasized that enforcement does not necessarily translate into compliance, and that any enforcement or compliance program must address the prevention of environmental harm; the compensation for individuals, communities, and the national patrimony affected by environmental harm; and the adoption of incentives to deter crime.

Justice Muanpawong discussed the Klity Creek case and a public land encroachment and deforestation case to point out the need for a clear definition of the value of nature and of compensation for human injuries; a clear holder of rights to sue for environmental damage; and for new laws, sentencing guidelines, training programs, and a system of presenting expert witnesses. Justice Jose P. Perez of the Supreme Court of the Philippines elaborated on his country's Rules of Procedure for Environmental Cases, which allow the parties themselves to prove environmental damage.



In Session 8, on Environmental Institutional Reforms and Training Institutes, Justice Adolfo S. Azcuna, of the Philippine Judicial Academy, told the participants that the academy is mandated to train all judges and court personnel in the Philippines. Justice Chu Xuan Minh, of the Judge Training School of Viet Nam, explained that the school teaches two main skills to judges: court management and legal analysis for deciding cases and disputes within their jurisdictions. He suggested that there be a manual or a benchbook on international law and jurisprudence to help enhance the quality of judicial training. Justice Sumanatha spoke about the development and functions of the Judicial Training Center in Indonesia. The complete initial training course lasts for 2 years and has three parts: court administration and leadership training, acting registrars training, and adjudication training. Subsequent judicial education falls into two categories—one for judges with 1 to 5 years of professional experience and the other for more experienced judges. Mr. Benjakul explained that the Judicial Training Institute in Thailand offers the following specialized instruction: an environmental law course, a development law course, and an on-the-job training program on managing court affairs. He highlighted the environmental law twinning program offered by Thailand in collaboration with foreign universities and the Cambodian and Vietnamese judiciaries.

In Session 9, on Cooperation among ASEAN Judiciaries on Environmental Protection, the participants deliberated on the Proposed Hanoi Action Plan and focused on the following suggested actions: (i) provide sample content for rules of procedure for environmental cases, (ii) translate the record of proceedings, (iii) invite experts to judicial training and conferences, (iv) prioritize the attendance of ASEAN chief justices at the annual roundtable, (v) rotate the head of the roundtable every year, (vi) share notes on organizing the roundtable, and (vii) create a secretariat. Toward the end of this last session, the participants agreed in principle on the plan (as revised during that session).

The plan officially took effect on 10 February 2015. Brunei Darussalam and Singapore support efforts to protect the environment and recognize the work of the ASEAN Chief Justices' Roundtable on Environment. They also noted that the Hanoi Action Plan does not require a binding commitment from their respective countries.

# HIGHLIGHTS

## DAY 1: 13 DECEMBER 2014

### ■ OPENING CEREMONY

#### ■ Introduction to the Roundtable

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Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam, greeted all the roundtable participants: the distinguished Association of Southeast Asian Nations (ASEAN) chief justices, senior members of ASEAN judiciaries, and Mr. Christopher Stephens, general counsel of the Asian Development Bank (ADB). On behalf of the Supreme People's Court of Viet Nam, he expressed his great honor in hosting the Fourth ASEAN Chief Justices' Roundtable on Environment (or the "Fourth Roundtable"), with the theme "Role of the Judiciary in Environmental Protection." He welcomed all of the ASEAN delegations, especially their chairs, who would be enriching the discussions with their insights into the handling of environmental disputes, as well as the experts who would be sharing their experiences in dealing with environmental issues.

#### ■ Welcome and Opening Remarks

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Chief Justice Truong Hoa Binh of the Supreme People's Court of Viet Nam welcomed delegates and gave the opening remarks. He began by recognizing the presence of the distinguished chief justices; deputy chief justices and justices of the ASEAN judiciaries; Mr. Christopher Stephens, of ADB; Mr. Nguyen Khanh Ngoc, deputy minister of justice; and Mr. Ngo Duc Manh, deputy chair of the Foreign Affairs Committee of the Vietnamese Parliament. On behalf of the Supreme People's Court of Viet Nam, he warmly welcomed them, as well as the ADB representatives, scholars, and experts attending the Fourth Roundtable, with the theme "Role of the Judiciary in Environmental Protection."

Chief Justice Truong said that the Supreme People's Court of Viet Nam was honored to host this roundtable in the midst of extremely alarming global environmental issues. Environmental protection requires the joint efforts and commitment of all countries. With its functions and duties, the judiciary has a critical role in environmental protection. Chief Justice Truong observed that the presence of the chief justices and senior justices at the roundtable proves their commitment to serve in this role.

To prepare for this roundtable, the Supreme People's Court of Viet Nam also hosted the First ASEAN Judicial Working Group on Environment Meeting, in September 2014. During the meeting, the group discussed and proposed the topics for this roundtable's agenda. Chief Justice Truong said that he looked forward to the participants from each ASEAN judiciary sharing their expertise and experiences in environmental adjudication, the application of environmental laws and case law development, and the developments within their judicial systems to better respond to environmental disputes and contribute to environmental protection. He also expected that the ASEAN judiciaries' joint efforts to protect the environment will have a more positive impact, not just within the region, but all over the world.



Chief Justice Truong highlighted the timeliness of this conference for the Vietnamese people. Viet Nam adopted a new Constitution in 2013 and passed the Law on Environmental Protection in 2014. Both feature new provisions to address many environmental issues. The Viet Nam judiciary is also keenly aware of its important role in safeguarding the environment. Thus, the judiciary established a national working group on environment, organized seminars and training courses on the environment, and sent judges to international conferences to learn from the experiences of other courts in deciding environmental disputes. The Viet Nam judiciary would like to continue enhancing its capacity and ability to better respond to the people's needs. It also seeks to contribute more to environmental protection for Viet Nam's sustainable development.

Chief Justice Truong ended his opening remarks by thanking everyone for his or her presence at the roundtable and ADB for cohosting this event. He then declared the roundtable open, wished the participants good health and happiness, and invited the participants' contributions to environmental protection.

## Welcome Remarks

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Mr. Christopher Stephens, general counsel of ADB, welcomed all of the participants to the Fourth ASEAN Chief Justices' Roundtable on Environment. Mr. Stephens acknowledged the attendance of Chief Justice Truong and Permanent Deputy Chief Justice Bui of the Supreme People's Court of Viet Nam, the chief justices and senior members of the judiciaries, and the distinguished speakers. Mr. Stephens expressed ADB's support for the Supreme People's Court of Viet Nam in convening the roundtable. He also lauded the progress made by many ASEAN judiciaries since the Third Roundtable. Mr. Stephens' welcome remarks addressed four key points.

First, he discussed ADB's assistance to judicial cooperation in the region and support for natural capital and the rule of law. Mr. Stephens explained that since the Third Roundtable, ADB has collaborated with the Asian judiciaries in launching the Asian Judges Network on Environment during the Second Asian Judges Symposium on Environment. At that event, ADB and its partners convened more than 150 judges from around the world to discuss the theme "Natural Capital and the Rule of Law." Mr. Stephens explained that both ideas were vitally important to ADB and to this roundtable. ADB's Environment Operational Directions 2013–2020 enumerated its objectives for supporting efforts in Asia and the Pacific to conserve natural capital and protect ecosystem services in order to reduce poverty, increase resilience, and achieve green economies. Mr. Stephens confirmed that ADB remains committed to investing in natural capital—comprising the forests, freshwater, and ocean ecosystems—as well as the biodiversity and benefits they provide.

The Asian Judges Network on Environment is a pan-Asia regional network enabling the region's judiciaries to collectively address their common environmental and legal challenges and to exchange knowledge about their successes and challenges in the field of environmental adjudication. The network can also link the work being done within Southeast Asian countries with the work done by judiciaries in South Asia, the People's Republic of China (PRC), Mongolia, and other developing countries and regions of the world. The links can be established through the ASEAN Chief Justices' Roundtable on Environment and the parallel South Asia Judicial Roundtable on Environment.

Both roundtables have played a vital role in strengthening the rule of law and environmental protection. The 2014 host judiciaries, the Supreme People's Court of Viet Nam and the Supreme Court of Sri Lanka, showed a great commitment to environmental adjudication. The Supreme Court of Indonesia has issued a decree establishing a judicial certification program on environment. The Federal Court of Malaysia and the Supreme Court of Pakistan have established environmental courts and instituted judicial training on environmental law and adjudication. Most recently, Indonesia, Myanmar, Thailand, and Viet Nam have established national judicial working groups on the environment.

Second, Mr. Stephens discussed Viet Nam's recent significant contributions to the protection of natural capital and the environment within Southeast Asia and the Greater Mekong Subregion. As one of the 10 most biologically diverse countries in the world, Viet Nam adopted its Green Growth Strategy for 2011–2020, which aims “to achieve a low carbon economy and to enrich natural capital” by 2050. Viet Nam also intensified its environmental legal framework by amending the Law on Environmental Protection in 2005, and again in 2014. The law's innovative features include (i) the requirement for national plans, policies, and overall development strategies to undergo strategic environmental assessments; and (ii) the expansion of the Ministry of Natural Resource and Environment's functions to include the complete management of all persistent organic pollutants and pollutants with severe environmental impacts, due to their ability to resist normal degradation and to bioaccumulate within living organisms. Additionally, in 2014, Viet Nam's Prime Minister issued a decree urging executive and enforcement agencies of the Government of Viet Nam to eliminate transnational organized environmental crime and illegal wildlife trade.

Third, Mr. Stephens commended the Supreme People's Court of Viet Nam's commitment to preserving natural capital and the environment. At the national level, the government has amended the Law on the Organization of People's Courts to allow more effective resource allocations among the courts as well as important improvements in adjudication. Under the leadership of Chief Justice Truong and Permanent Deputy Chief Justice Bui, ADB has worked with the Supreme People's Court of Viet Nam since the Third Roundtable on strengthening the courts' judicial capacity to decide environmental cases. ADB has been impressed with the judiciary's considerable progress, which has included the following: (i) quickly establishing a national judicial working group on environment; (ii) signing a memorandum of understanding with ADB signifying the judiciary's commitment to increasing its capacity to decide environmental cases; (iii) completing a study on the effectiveness of environmental adjudication in Viet Nam's courts; (iv) hosting the first ever ASEAN Judicial Working Group on Environment Meeting, held in September 2014; (v) preparing for the Fourth Roundtable, including drafting the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision (or the “Proposed Hanoi Action Plan”);<sup>5</sup> and (vi) seeking ADB's support in assessing the judiciary's requirements for advancing environmental adjudication and training.

Finally, Mr. Stephens discussed the overall progress made by the ASEAN judiciaries in promoting regional cooperation on the environment since the first Asian Judges Symposium, in 2010. Together, these judiciaries have established the ASEAN Judicial Working Group on Environment, and many ASEAN

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<sup>5</sup> The Hanoi Action Plan to Implement the Jakarta Common Vision became officially binding on 10 February 2015, the deadline set by Chief Justice Truong in a letter sent to the ASEAN chief justices on 6 January 2015.

countries have formed national-level working groups. The Asian Judges Network on Environment should seize ownership of its agenda, while the ASEAN Chief Justices' Roundtable on Environment should create new informal institutional arrangements through the ASEAN Judicial Working Group on Environment. Mr. Stephens noted that greater institutionalization and capacity building at the national level would be required to avoid having these networks turn into mere talking shops.

In conclusion, Mr. Stephens said that he looked forward to joining the participants in the succeeding information exchange, collaborating on concrete steps, and finalizing the Proposed Hanoi Action Plan. He expressed ADB's eagerness to work with the ASEAN judiciaries as the region prepared for the establishment of the ASEAN Economic Community in 2015. He thanked the participants and wished them good luck with the roundtable conference.

## **■ Introduction of Delegates of Each ASEAN Judiciary**

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Permanent Deputy Chief Justice Bui thanked Mr. Stephens for his welcome remarks. He then invited the delegations to introduce their members.

### *Brunei Darussalam*

Justice Pengiran Hajah Rostaina Pengiran Haji Duraman, judicial commissioner and chief registrar of the Supreme Court of Brunei Darussalam, extended her chief justice's warm regards to the participants. She expressed gratitude for the hospitality shown to them, and noted that rapid economic development has led to environmental problems requiring the judiciaries' urgent attention. She felt honored to be present at the conference and to share knowledge with everyone there. Magistrate Hajah Ery Sufitriana Hj Abdul Rahman, of the Bandar Magistrate's Court of Brunei Darussalam also attended.

### *Cambodia*

Justice Chiv Keng, vice president of the Supreme Court of Cambodia, introduced himself and his fellow delegates: Justice Tarachhath Kong of the Supreme Court of Cambodia and Prosecutor Somarith Keng of the Ministry of Justice of Cambodia. He said that his group was delighted to attend this roundtable and thanked the Supreme People's Court of Viet Nam and ADB for cohosting this important forum.

### *Indonesia*

Justices Takdir Rahmadi and I Gusti Agung Sumanatha of the Civil Chamber of the Supreme Court of Indonesia greeted the participants before introducing themselves. Judge Prim Haryadi, vice chief judge of the Court of First Instance of West Jakarta, was also present.

### *Lao People's Democratic Republic*

Justice Khamphanh Sitthidampha, president of the People's Supreme Court of the Lao PDR, expressed pleasure at being invited to this meeting and thanked ADB for sponsoring his delegation's attendance. He then introduced the other members of the Lao PDR delegation: Justice Somsack Taybounlack, vice

president of the People's Court of the Middle Region; and Judge Phongurn Chanthanakhone, judge and deputy director of the Research and Training Institute for Judges of the Lao PDR. Justice Sitthidampha hoped to gain experience and perspective on improving his country's court system.

### Malaysia

Justice 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 and introduced his fellow delegate: Judge Ahmad Sazali Bin Omar, a sessions court judge. He expressed gratitude for the invitation, anticipated the rich discussions and know Chief Justice U Htun Htun Oo's warm regards and apologies for his inability to attend the roundtable. Deputy Director Aye Aye Hlaing of the International Relations Unit, Research Department of the Office of the Supreme Court of the Union of Myanmar, also attended.

### Philippines

Justice Presbitero J. Velasco Jr., associate justice of the Supreme Court of the Philippines, greeted the participants. He introduced his colleagues: Justice Jose P. Perez, also an associate justice of the Supreme Court of the Philippines, as well as chair of various court committees and former court administrator; and Justice Adolfo S. Azcuna, the chancellor of the Philippine Judicial Academy, retired associate justice of the Supreme Court of the Philippines, former constitutional commissioner who helped draft the 1987 Constitution, and former executive secretary under President Corazon Aquino.

Justice Velasco relayed Hon. Chief Justice Maria Lourdes P.A. Sereno's greetings to Chief Justice Truong, the Viet Nam judiciary, and the ASEAN judicial delegations, as well as her apologies for her inability to join the roundtable due to some unexpected and unavoidable pressing concerns and tight schedule. He noted that Chief Justice Sereno had pledged the full support of the Philippine judiciary for implementing the Proposed Hanoi Action Plan, once approved, and for realizing A Common Vision on Environment for ASEAN Judiciaries (or the "Jakarta Common Vision"). He also extended Chief Justice Sereno's appreciation to the Supreme People's Court of Viet Nam for making splendid arrangements and showering the Philippine delegation with warm hospitality. Justice Velasco finished by communicating Chief Justice Sereno's offer to host the next roundtable, should there be no other takers and subject to the approval of the other chief justices.

### Singapore

Mr. Aedit bin Abdullah, judicial commissioner of the Supreme Court of Singapore, greeted the participants and introduced his colleagues: Ms. Lee Mei Teng, organizational development specialist; and Mr. Ho Lian-Yi, justices' law clerk at the Supreme Court of Singapore. He thanked the Supreme People's Court of Viet Nam and ADB for the hospitality shown to them and for the opportunity to take part in this conference. They wished everyone a productive meeting.

### Thailand

Justice Ubonrath Luivikkai, president of the Environmental Division of the Supreme Court of Thailand, greeted the participants and introduced her fellow delegates—Justice Suntariya Muanpawong, secretary

of the Environmental Division of the Supreme Court of Thailand; Justice Surasak Keereevichien and Justice Sorasak Wachasiddhisilpa of the Supreme Court of Thailand; and Mr. Sarawut Benjakul, deputy secretary-general of the Office of the Judiciary and secretary-general of the Institute of Legal Education of the Thai Bar Association. Justice Luivikkai expressed her desire to learn more, in the interest of developing Thailand's own green bench. She wished everyone a successful meeting and the ASEAN region prosperity and success.

The introductions were followed by a photo-call and coffee break.

# PART I

## ASEAN ENVIRONMENTAL CHALLENGES AND JUDICIAL COOPERATION

### ■ **SESSION 1** ASEAN Judiciaries' Cooperation on the Environment: The Jakarta Common Vision and the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision

The first session of the roundtable summarized the ASEAN judiciaries' considerations when signing A Common Vision on Environment for ASEAN Judiciaries (or the "Jakarta Common Vision") and established a forum for the delegations in which to discuss their accomplishments and challenges in implementing the vision. The session also reviewed the outcomes of the First ASEAN Judicial Working Group on Environment Meeting, including the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision.

#### ■ **Jakarta Common Vision**

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Justice Takdir Rahmadi, of the Civil Chamber of the Supreme Court of Indonesia, the host judiciary of the First ASEAN Chief Justices' Roundtable on Environment, presented the background of the Jakarta Common Vision.

Justice Rahmadi discussed the history of the ASEAN Chief Justices' Roundtable on Environment. At the first Asian Judges Symposium, held at ADB headquarters in Manila on 28–29 July 2010, the participants agreed that there was a need for ASEAN chief justices to have a forum for sharing their experiences in leading their respective courts. It was agreed that a forum would be particularly valuable for ensuring that each country's economic activities were consistent with the principles embodied in the Rio Declaration (1992) concerning sustainable development. During that symposium, then Chief Justice Harifin A. Tumpa of Indonesia offered to host the Inaugural ASEAN Chief Justices' Roundtable on Environment (or "Inaugural Roundtable").

On 5–7 December 2011, the Supreme Court of Indonesia hosted the First Roundtable in Jakarta, with ADB's support. The ASEAN chief justices signified their strong commitment to ensuring sustainable development within their respective countries and agreed on their common goals through 2020 in a monumental document now known as the "Jakarta Common Vision."

Justice Rahmadi explained that participants at the Second ASEAN Chief Justices' Roundtable on Environment (or the "Second Roundtable"), held in Melaka, Malaysia, in 2012, also discussed the need for regional cooperation and agreed to draft a memorandum of understanding on regional cooperation. At the Third ASEAN Chief Justices' Roundtable on Environment, held in Bangkok, Thailand, in 2013, the participants realized the importance of developing an action plan to accelerate the implementation of the Jakarta Common Vision. The First ASEAN Judicial Working Group on Environment Meeting, held in Ha Noi, Viet Nam, in 2014, served as the forum for drafting this action plan and for preparing for the Fourth Roundtable.

Justice Rahmadi said that Indonesia fully supports the idea of having an action plan in place. Thus, Chief Justice Muhammad Hatta Ali of the Supreme Court of Indonesia created a national working group on environment pursuant to the plan and extended Indonesia's environmental law certification program for judges based on the Jakarta Common Vision. Justice Rahmadi explained that the national working group had helped the Supreme Court monitor and evaluate the certification program. Justice Rahmadi conveyed Chief Justice Ali's support for the establishment of the ASEAN Judicial Working Group on Environment. Justice Rahmadi further confirmed that Chief Justice Ali would join the final session of the roundtable to personally express his support for the Proposed Hanoi Action Plan.

### ■ ASEAN Judicial Working Group on Environment: First Meeting

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Mr. Ngo Cuong, director general of the International Cooperation Department of the Supreme People's Court of Viet Nam, reported on the results of the First ASEAN Judicial Working Group on Environment Meeting, cohosted by the Supreme People's Court of Viet Nam and ADB and held on 15–16 September 2014. Representatives from Cambodia, Indonesia, the Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, and Viet Nam attended the meeting.

The concept of the ASEAN Judicial Working Group on Environment was first discussed at the Third Roundtable. Delegates had agreed that the working group could serve as a forum for ASEAN judiciaries to exchange information and experiences in protecting the environment and deciding environmental disputes.

Mr. Ngo explained that the First ASEAN Judicial Working Group on Environment Meeting had three overarching objectives: (i) to design an agenda for the Fourth Roundtable, (ii) to advance regional cooperation among ASEAN judiciaries, and (iii) to draft the action plan for realizing the Jakarta Common Vision.

This Fourth Roundtable agenda featured two main groups of proposed topics, as agreed during the working group meeting: (i) the common environmental challenges faced by Southeast Asian judiciaries and their joint efforts to protect the environment, and (ii) the critical environmental issues faced by judiciaries. Mr. Ngo explained that these issues included balancing the rights of indigenous people (IP) and environmental protection; illegal logging and deforestation, timber trafficking, and trade; wildlife crime and illegal trafficking and trade; updating judicial environmental institutions, including courts, rules, and access to environmental justice; the role of the judiciary and the executive in environmental protection; assessing damages in environmental cases; and reforming environmental institutions and training institutes.

Mr. Ngo also mentioned that the working group had agreed on the importance of the Jakarta Common Vision as a guiding document at least until 2020, and on the need for an action plan to implement the Jakarta Common Vision. Thus, the group discussed and reached a consensus on the proposals raised during the Third Roundtable and the Second Asian Judges Symposium, including the operational framework and frequency of meetings of the working group. The group agreed to have one face-to-face meeting and a teleconference between the annual roundtables to review each judiciary's implementation of the Jakarta Common Vision and other cooperation programs on the environment.



To promote regional cooperation among the judiciaries, the group decided to establish national judicial working groups on environment prior to the Fourth Roundtable; share information on the Asian Judges Network on Environment (AJNE) website, especially environmental laws and significant environmental jurisprudence; and organize seminars and training courses for ASEAN judges. The group also wanted to write a manual on environmental adjudication as a tool to assist judges in deciding environmental disputes.

Finally, Mr. Ngo shared how the working group discussed the concrete steps laid down in the Proposed Hanoi Action Plan. He concluded by providing a recap of what transpired during the First ASEAN Judicial Working Group on Environment Meeting.

### ■ Proposed Hanoi Action Plan to Implement the Jakarta Common Vision

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Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, expressed delight over the progress made by the ASEAN judiciaries in furthering regional cooperation on environmental issues since 2010. She further expressed her gratitude for the efforts made by the Supreme People's Court of Viet Nam in organizing the roundtable. Dr. Mulqueeny then spoke about the Proposed Hanoi Action Plan, the ASEAN contribution to the AJNE, the progress reports to be made by the ASEAN judiciaries, and the proposed coordination among the ASEAN Judicial Working Group on Environment, the ASEAN Law Association, and the ASEAN Chief Justices' Conference on Environment.

First, Dr. Mulqueeny recounted how the ASEAN Chief Justices' Roundtable on Environment started with the first Asian Judges Symposium, during which two significant events happened: the participants requested creation of the AJNE and Indonesia's Chief Justice Tumpa invited the ASEAN chief justices to the Inaugural Roundtable. The annual roundtable has aimed to (i) provide a forum for information sharing among the ASEAN chief justices and senior judiciary on the region's common environmental challenges, (ii) highlight the critical role of ASEAN chief justices and the senior judiciary as leaders of national legal communities and as champions of the rule of law and environmental justice, and (iii) provide a means of continuing the cooperation among ASEAN chief justices and senior judiciary.

Dr. Mulqueeny further explained that participants at the Inaugural Roundtable also agreed on the Jakarta Common Vision, which addresses the region's common environmental challenges, such as climate change, illegal logging, illegal wildlife trade, and pollution, as well as legal or institutional challenges such as those relating to evidence and legal standing to file environmental cases. She outlined the key aspects of the Jakarta Common Vision, which highlights the judiciary's role in law enforcement and environmental protection and the importance of regional coordination and cooperation. It also seeks to improve environmental laws, encourage information sharing on the region's environmental challenges, and impose appropriate penalties. Appropriate penalties might include innovative sanctions for environmental offenses beyond simple compensatory damages. Such sanctions could include requiring offenders to clean up damage, undergo community service, undergo environmental training, and restore habitats and original environmental conditions. The Jakarta Common Vision also requires judiciaries to publish judgments in environmental cases; promote environmental law training in law schools, bar associations, and judicial training institutes; hold annual conferences; establish environmental courts, tribunals, benches, and judicial certification programs; and adopt environmental rules of procedure, as well as alternative environmental-dispute resolution mechanisms.



The Jakarta Common Vision is a normative statement that requires a road map for implementation. Dr. Mulqueeny explained that the Proposed Hanoi Action Plan is intended to serve as this road map by enumerating the concrete steps that the ASEAN judiciaries can take to achieve the Jakarta Common Vision. The plan requires the creation of the ASEAN Judicial Working Group on Environment and of the national working groups on environment to promote regional coordination. The Jakarta Common Vision is also a political document in relation to judges and an aspirational document that recognizes the different priorities of member countries.

Dr. Mulqueeny also briefly discussed the progress in Malaysia and Thailand, where the second and third roundtables took place. The Federal Court of Malaysia founded environmental courts and proposed the creation of the ASEAN Judicial Working Group on Environment. Afterward, the Third Roundtable provided the forum for ASEAN judges to raise proposals for enhancing judicial cooperation on environmental protection. The participants in the First ASEAN Judicial Working Group on Environment Meeting deliberated on the proposals. Meanwhile, shortly after the Third Roundtable, over 150 representatives of judiciaries around the world, resource persons, and government officials convened at the Second Asian Judges Symposium and attended the formal launch of the AJNE.

Dr. Mulqueeny explained the ASEAN Judicial Working Group on Environment's composition. Its members are either chairs of national judicial working groups or are representatives appointed by their countries' chief justices. Two representatives drawn from the ASEAN Judicial Working Group on Environment sit on the Steering Committee advising the AJNE. The Proposed Hanoi Action Plan would require the following actions: (i) the institution of national working groups on environment to translate discussions at the annual roundtable to the country level, (ii) the appointment of a chair, (iii) the posting of a list of scientific and technical experts, (iv) the conduct of national needs assessments and environmental twinning programs, (v) the sharing of sample content for rules of procedure on environmental cases, (vi) the preparation of a record of proceedings of each annual roundtable; and (vii) coordination with the AJNE. Dr. Mulqueeny said that AJNE coordination relied upon each of the national judicial working groups collaboratively working on the pan-Asian agenda and preparing an AJNE vision statement that is consistent with the Jakarta Common Vision and the Bhurban Declaration.

Dr. Mulqueeny stressed that the Proposed Hanoi Action Plan is not binding. She explained that the plan was borne out of proposals raised at previous roundtables and deliberated on at the First ASEAN Judicial Working Group on Environment Meeting. Lastly, she briefly outlined the achievements made at the national level, including the establishment of environmental courts, environmental training, and the national judicial working groups.

## **ASEAN Judiciaries' Reports on Their Implementation of the Jakarta Common Vision**

Permanent Deputy Chief Justice Bui started by commenting on the Jakarta Common Vision and the Hanoi Action Plan. He stated that both documents seek to increase regional cooperation and coordination among ASEAN judiciaries with respect to environmental adjudication. They also highlight the need for coordination among other stakeholders. He emphasized the need for ASEAN countries to properly resolve environmental cases, including through alternative dispute resolution mechanisms.

Permanent Deputy Chief Justice Bui then focused the discussion on the First ASEAN Judicial Working Group Meeting. Held in September 2014, it was the first of its kind. He considered it a breakthrough, particularly because it facilitated the preparation of the roundtable's agenda based on the ASEAN judiciaries' three shared concerns and interests: (i) the need for enhanced cooperation among ASEAN judiciaries in tackling the diverse environmental issues adversely affecting the region; (ii) the establishment of the regional working group of judges to discuss environmental issues and share information on environmental dispute resolution online, through the AJNE, and through workshops; and (iii) the drafting of the Hanoi Action Plan to realize the Jakarta Common Vision.

He then posed several questions to participants. First, should the national working groups make recommendations regarding the establishment and working mechanism of the regional working group? Is there a need to designate a chairperson of the regional working group? Should the regional working group meet once or twice a year? Or should there be just be one annual face-to-face meeting, along with various online conferences? And how should the ASEAN judiciaries share their experiences in environmental adjudication?

Justice Syed Mansoor Ali Shah, judge of the Lahore High Court in Pakistan, first thanked and praised ADB for convening Asian judges in regional and subregional conferences. He suggested identifying champion judges in all member countries who could form a cohesive regional working group and move the environmental justice agenda forward. He noted that binding documents were not necessary and emphasized his desire to connect with judges in other jurisdictions to discuss environmental case adjudication. While he thought that ADB had done an excellent job in bringing judges together, the judges should lead the discussion about case law and jurisprudence.

Dr. Mulqueeny seconded Justice Shah's suggestion of identifying champion judges, and then invited the participants to share what their respective judiciaries have done to achieve the Jakarta Common Vision. She also reminded everyone of the suggestion made during the First ASEAN Judicial Working Group on Environment to meet twice a year—the first meeting to be held months before the annual roundtable and the second meeting to be held just a day before, or in conjunction with the roundtable. These meetings could help the group identify champion judges and move their agenda forward, beyond meetings.

### Malaysia

Justice Malanjum reported that Malaysia had succeeded in establishing green courts, but the jurisdiction of these courts has been confined to criminal matters. East Malaysia has started a coordinating committee composed of representatives from government agencies and nongovernment organizations (NGOs). The committee has met twice and discovered two things: first, the Malaysian populace is indifferent toward the environment; and, second, the enforcement agencies lack the capacity and initiative to investigate and ensure compliance.

### Viet Nam

Chief Justice Truong referred to the widespread trafficking in ivory, rhino horns, and tigers in Viet Nam. Regional cooperation is indispensable in combating transnational organized crime. He also noted that

Viet Nam lacks experience in dealing with environmental issues like pollution, for instance, in assessing the environmental impact of violations. The Viet Nam judiciary needs to learn from the experiences of other countries, including those outside Southeast Asia, in order to improve its system. Chief Justice Truong called for ADB support, so that information exchange could happen.

### Pakistan

Justice Shah agreed with Justice Malanjum's observation that law enforcement agencies are failing in the performance of their duties. That is why a strong, proactive judiciary that is well versed in these laws and knowledgeable about the relevant issues is needed to prompt the executive to effectively enforce the laws. Regular courts do not have the time or experience to deal with these issues. It is the constitutional courts that must decide environmental cases and issue writs of continuing mandamus, if necessary to ensure enforcement.

According to Justice Shah, judges must be able to understand environmental laws and the issues involved in order to take the lead in law enforcement. One good way of increasing this understanding is through forums like this roundtable, which promotes regional cooperation and sheds light on what other countries have been doing in terms of environmental adjudication, as participants share ideas and innovative practices.

### Philippines

Justice Presbitero J. Velasco Jr., associate justice of the Supreme Court of the Philippines, reported that since the Supreme Court issued the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, in 2010, 2,249 new cases had been filed before the regional trial courts, amounting to an increase of about 153%. The Supreme Court of the Philippines attributes this increase to the deferment of the requirement to pay filing fees in environmental cases; the filing fees constitute a lien on any award granted by the trial court. He stated that courts cannot protect the environment on their own (*motu proprio*). A case must first reach the court, so courts must charge minimal filing fees or none at all for environmental cases. Moreover, petitions are required for the issuance of writs of *kalikasan* (or writs of nature) and writs of continuing mandamus filed before the Court of Appeals or the Supreme Court.

Justice Velasco also disclosed that there were about 10 petitions for the issuance of a writ of *kalikasan* or a writ of continuing mandamus that had been referred by the Supreme Court to the Court of Appeals. He expected that the Supreme Court would decide on some of these petitions by early 2015.

He also noted that Philippine laws proscribe even the mere possession of illegal wildlife and illegal wildlife products, and treat such acts as "*malum prohibitum*."<sup>6</sup> Consequently, law enforcement agencies may arrest the persons in possession of illegal wildlife products, but they do not have to arrest the hunter. Such laws make it very easy to convict the possessor, reducing the demand for—and therefore the supply of—illegal wildlife products. For instance, proscribing the possession or eating of shark fin soup makes

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<sup>6</sup> "*Malum prohibitum*" is a Latin phrase meaning "wrong due to being prohibited." It refers to any conduct that is unlawful by virtue of statute, as opposed to conduct that is "wrong in itself" ("*malum in se*").

it possible to prosecute both the restaurant owners and the customers ordering shark fin soup, and has led many to refuse to eat the soup. Consequently, Justice Velasco called for new laws or amendments to environmental legislation to deal with illegal wildlife hunting. He also urged the courts to solicit strong support from law enforcement agencies and prosecutors, who are vital when it comes to arresting the offenders, filing cases, and presenting the evidence in court.

Finally, Justice Velasco noted that, in the Philippines, there is a Justice Sector Coordinating Council, composed of representatives from the judiciary; prosecutors; and officials from the Department of Justice, the Department of Interior and Local Government, and relevant agencies. He found the council to be an effective forum for advancing collaboration and coordination between the judiciary and the different pillars of the criminal justice system.

### *Thailand*

Justice Ubonrath Luivikkai, president of the Environmental Division of the Supreme Court of Thailand, added that the judiciary and the prosecution must work together. The courts of the ASEAN member countries can learn about effective prosecution from each other's experiences, and from the experiences of countries outside the region, such as the United States (US) Department of Justice.

Dr. Mulqueeny recapped the discussion in this session and reiterated that, as per Justice Malanjam's comments, the lack of awareness and desensitization among lower court judges is a vital issue. Successful evidence gathering by law enforcement officers and successful prosecution will not necessarily lead to a conviction if the trial court judge is not sensitized to the significance of environmental and wildlife crimes. Judges, as leaders of the legal profession and the judiciary, must guarantee that their message is heard throughout the legal profession and the entire law enforcement chain. She also responded to Chief Justice Truong's request to provide an opportunity for information exchange, noting that ADB currently has a team of international experts in Viet Nam working with their courts and enforcement agencies to identify enforcement requirements for promoting environmental justice and strengthening the fight against environmental and wildlife crime. She added that similar resources are available for assisting the Malaysian Federal Court. Finally, she concurred with Justice Velasco's suggestion to reduce filing fees in order to improve access to justice and to foster firm cooperation between judges and prosecutors, among others. However, she also commented that such joint efforts might be more successful in civil law jurisdictions than in common law jurisdictions. Fostering such collaboration is something ADB had started doing at the two Asian Judges Symposiums.

# PART II

## ASEAN ENVIRONMENTAL CHALLENGES

As an introduction to the afternoon sessions, the participants watched a video on natural capital and the rule of law.

### Natural Capital Video

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The video was coproduced by ADB; the Asia's Regional Response to Endangered Species Trafficking (ARREST) Program, under the United States Agency for International Development (USAID); Freeland Foundation; and the World Wildlife Fund (WWF). The video highlighted the fact that the economic value of the Earth's natural ecosystems—the forests, mountains, rivers, oceans, and wildlife—amounts to trillions of US dollars. These ecosystems form the foundation of many Asian economies, providing billions of people with their source of livelihood. However, they are being destroyed faster than Earth can regenerate them, thereby depriving governments, corporations, and even criminals the billions of dollars their ecosystem services generate.

The video defined natural capital as “the land, air, water, and living things, and all formations that make up the stock of natural assets that gives us a free flow of valuable ecosystem services such as food, water, timber, pollination, and climate regulation. It is everything in the environment, living or nonliving, and it lies at the foundation of the economy.” In the video, Mr. Bruce Davis, vice president for administration and corporate management at ADB, described natural capital as the wealth nature has provided and the key to the health and well-being of human society. He described natural capital as being “capital deposited in nature's bank.” And he added, “We should be using only the interest.” But humankind has begun depleting the principal of this natural capital. Justice Presbitero J. Velasco associate justice of the Supreme Court of the Philippines, highlighted how the concept of natural capital “recognizes the economic value of ecosystem services in addition to their aesthetic value.” He also said that many conflicts over natural capital resources arise from the perceived conflict between economic development and the environment.

Healthy ecosystems provide four main services with tremendous economic benefits: (i) provisioning services for food, medicine, and timber; (ii) regulating services such as water filtration, crop pollination, and climate regulation; (iii) supporting services such as nutrient cycling and soil formation regulation; and (iv) cultural services, which refer to the psychological and emotional benefits of our relationship with natural ecosystems.

People who appreciate the intrinsic importance of natural capital are surprised to find out its immense economic worth. In 1997, economists valued natural capital to be at least \$33 trillion globally, with marine and coastal ecosystems valued at \$20.8 trillion and terrestrial ecosystems valued at \$12.55 trillion. In 2007, 13 governments agreed to study the global economic benefits of biodiversity, as well as the costs of biodiversity loss, action, and inaction. As part of this effort, a team of international experts, working

under The Economics of Ecosystems and Biodiversity (TEEB) initiative, analyzed the link between economics and ecology to show the relationship between biodiversity and ecosystem services, and their importance to human well-being. The team discovered that it costs \$45 billion a year to preserve the world's ecosystem services, valued at \$5 trillion. In other words, the preservation of natural capital offers a more than a 100:1 return.

The Asia-Pacific region is home to many biologically diverse hot spots, including the Heart of Borneo (one of the most biologically diverse ecosystems on Earth, with 3 million tons of stored carbon), the Mekong River (the world's largest inland fishery, providing a vital source of food and income for 60 million people), the Himalayas (supplying freshwater to 1 billion people via 7 major rivers, including the Ganges and the Brahmaputra), and the Coral Triangle (providing food, income, and storm protection to 120 million people). All of these ecosystems are threatened by the over-consumption of the region's natural capital, and this consumption far exceeds the environment's capacity to regenerate. In fact, ADB and WWF have estimated that the region consumes 90% more than it can regenerate every year.

The video also enumerated the various threats to ecosystems in Asia and the Pacific—habitat destruction, pollution, overconsumption, overpopulation, and climate change. According to the United Nations, the global destruction of natural ecosystems costs at least \$6.6 trillion each year, with that cost expected to grow annually and even reaching \$28 trillion by 2050. Over the last decade, the region lost over 18 million hectares of forest cover due to deforestation; 10 million hectares due to forest fires; and about \$4.5 trillion of forest cover each year due to forest fires, poor forestry practices, and uncontrolled legal and illegal logging activities. Asia's mountains and upland ecosystems are in danger due to increasing human population, haphazard infrastructure development, and low investment in conservation. Freshwater environments are threatened by large dam projects altering natural water flow. Coastal and marine ecosystems and marine biodiversity are in danger due to overfishing and destructive fishing practices, valued between \$10 billion and \$23 billion annually. Coastal development, unsustainable use of resources, and environmental degradation are causing the loss of mangroves, sea grasses, wetlands, and stalk marshes that are essential for water quality, biodiversity, and fish habitats. The illegal wildlife trade puts Asia's biodiversity at risk, while Asia's consumption of illegal wildlife in turn risks Africa's biodiversity. Ultimately, climate change aggravates each environmental impact.

Several officers and senior judiciaries from NGOs spoke their minds in the video about the loss of vital natural capital and its causes. Mr. Liu Ning, chief operations officer of the Freeland Foundation, called illegal wildlife trade a transnational, organized crime that generates as much as \$10 billion for criminals globally. He explained that at least 1,000 rangers had died in the last 10 years protecting the world's ecosystems. Chief Justice Tun Arifin bin Zakaria of the Federal Court of Malaysia said that he had issued a directive establishing environmental criminal courts for wildlife cases, and instructed the Malaysian judiciary to treat wildlife crime as being of the utmost gravity and to apply the strongest penalties appropriate to each case. Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Malaysian Federal Court, added that many governments do not regard environmental issues as a high priority. In addition, the lack of good laws, strong penalties, and convictions, coupled with weak enforcement, translates into poor governance and corruption. Justice Velasco noted that in some places environmental and natural resource laws are weak, and in only a few places are they enforced well. The substance of these laws is mostly a matter for policy makers and lawmakers, but judicial interpretations



also have a bearing on laws. Justice Hima Kohli, judge of the High Court of Delhi, asserted that the judiciary has a critical role in environmental governance, environmental law enforcement, law interpretation, arbitration of claims, and adjudication. He said that judges can influence lawyers and law enforcement officials, helping them to realize the importance of the environment and natural capital.

From ADB, Mr. Davis pointed out that coordinated action is needed to lessen the decline of natural capital and to guarantee sustainable development. Mr. Christopher Stephens, general counsel, stated that ADB's investment in natural capital and environmental governance serves one of the core pillars of its environmental strategy—to stress environmentally strategic growth.

Finally, the video drew attention to the need for law enforcement officers and judiciaries to have a deeper understanding of the economic value of natural capital and its contribution to development, so that they will strengthen the enforcement of relevant laws. Chief justices and the senior judiciary must lead the legal profession, law enforcement community, and broader public by highlighting the importance of preserving natural capital for their own generation and generations to come.

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## ■ **SESSION 2**   **Balancing the Rights of Indigenous People and Environmental Protection**

After the video presentation, Permanent Deputy Chief Justice Bui opened the second session and invited the speakers and panelists to come up front. The session facilitator, Atty. Harsha Fernando, legal and governance consultant of ADB, welcomed and introduced the eminent speakers and panelists for this session. To set the tone for the session, Atty. Fernando remarked that the law and jurisprudence concerning the rights of indigenous peoples (IPs) have developed a protectionist approach, both at the national and international levels. He also stated that there are about 370 million IPs in the world, representing almost 5,000 different indigenous cultures in 90 countries. The legal framework concerning IPs presents a strong link between land rights and their other rights. While IPs only constitute about 6% of the world's population, they hold 80% of the remaining biodiversity. It is therefore time that everyone consider the relationship among land, environment, IP rights, and the vision of the region's judiciaries in terms of environmental protection. To end, he quoted the anthropologist Mr. Darrell Addison Posey:

Western science may have invented the words “nature,” “biodiversity,” and “sustainability”, but it certainly did not initiate the concepts. Indigenous, traditional and local communities have sustainably utilized and conserved a vast diversity of plants, animals, and ecosystems since the dawn of Homo sapiens. Furthermore, human beings have molded environments through their conscious and unconscious activities for millennia—to the extent that it is often impossible to separate nature from culture.

Atty. Fernando said that the quotation made him realize that biodiversity and the environment are largely within the control of IPs, who are evolving their way of life to meet the advances in the rest of the world. In turn, the world might want to help the IPs protect their rights while preserving the environment.

## ■ Presentations

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### Philippines

Justice Presbitero J. Velasco Jr., associate justice of the Supreme Court of the Philippines, told the participants that before the Spaniards colonized the Philippines, the IPs' ancestors had claimed their lands as their own. Following colonization, the Spaniards introduced the regalian doctrine, which treats all lands as belonging to the state. This doctrine continued to govern the land laws after the Philippines' independence. However, in its 1909 decision in *Cariño vs. Insular Government*, the Supreme Court found that lands held by individuals under a claim of private ownership since before Spanish conquest (since time immemorial) had never been incorporated into the lands belonging to the state (i.e., public land).

Justice Velasco noted that Republic Act No. 8371, The Indigenous Peoples' Rights Act of 1997 (IPRA), was enacted even before the Government of the Philippines had declared it a state policy to protect the rights of the IPs to their ancestral domains, to ensure their economic and cultural well-being. The IPRA guarantees the right of cultural integrity, that is to say, the right of IPs to adhere to their respective customs, beliefs, traditions, and practices. The IPRA also recognizes sustainable traditional resource rights and adheres to the principle of self delineation, which respects and acknowledges the IPs' recognition of ancestral domains via their respective council of elders or leaders. To protect and conserve ancestral domains, the IPRA grants IPs the right to participate in decision making with regard to their ancestral domains and cultural practices; the right to exercise free and prior informed consent with regard to matters impacting their ancestral domains; the right to protect, conserve, develop, and manage their ancestral domains or lands; the right to develop, exploit, harvest, and extract natural resources; the right to safe and clean air and water; the right to have an indigenous justice system; and the right to be compensated for the cost of development and the use of natural resources.

The National Commission on Indigenous Peoples (NCIP), established under the IPRA, is an independent agency under the Office of the President. It takes charge of formulating and implementing policies, plans, and programs to recognize, protect, and promote the rights of indigenous cultural communities (ICCs) and IPs. The NCIP is also responsible for ensuring the recognition of IPs' and ICCs' ancestral domains and lands, and it may issue ancestral domain land titles. The NCIP can hear all claims and disputes involving the IPs' rights. The NCIP may also certify that a business proponent has free and prior informed consent from an indigenous cultural community to use their ancestral domains.

Justice Velasco stressed that the NCIP's authority to issue ancestral domain land titles conflicts with the Land Registration Authority's power to issue land titles on all private and public lands. This is problematic because some of the ancestral domain land titles issued by the NCIP (certificates of ancestral land title or certificates of ancestral domain title) overlap with public lands and titled private lands. Justice Velasco also noted that large portions of the hundreds of hectares claimed by IPs and ICCs have previously been declared and recognized as public land under the regalian doctrine, or lands of public domain that are owned by the state.

He narrated that in *Alvarez vs. PICOP Resources, Inc.*, G.R. Nos. 162243, 164516, and 171875, 3 December 2009, the Supreme Court held that "[a]ncestral domains, therefore, remain as such even



when possession or occupation of these areas has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals/corporations.” Thus, this case confirmed that the government’s issuance of timber license agreements did not deprive ICCs and IPs of their right to possess and occupy their ancestral domains.

The IPRA requires mining companies wishing to operate within ancestral domains to secure the free and prior informed consent of the local IPs. The consent must be obtained pursuant to the IPs’ customary laws; without any external manipulation, interference, and coercion; and after full disclosure of the intent and scope of the activity in language understandable to the community. This requirement, however, still fails to prevent the displacement of IPs.

IPRA provided several means of developing natural resources in ancestral domains without sacrificing the rights of the IPs. For instance, the law authorized the ICCs and IPs, through their councils of elders (or leaders), to enter into agreements with anyone for the development of these resources. The NCIP must provide assistance in the negotiation process and ensure that at least 30% of the proceeds are reserved for development projects, social services, and infrastructure in accordance with the ICC’s ancestral domain sustainable development and protection plan. Should the council of elders agree to a project proposal, the proponent and the council shall enter into a memorandum of understanding containing the benefits due to the ICCs and IPs, the measures to protect the latter’s rights, the proponent’s responsibilities, and the penalties for any violation of the agreement. The proponent must also comply with Presidential Decree No. 1586, which governs the country’s environmental impact statement system.

Strict enforcement of the IPRA and the mining laws is needed to maintain a rational and orderly balance between protecting and preserving the ancestral domains and developing natural resources found within ancestral domains. This approach is needed not only for the benefit of the ICCs and IPs, but also for the country’s economy.

Finally, Justice Velasco said that the barometer for environmental protection is the IPs; the protection and preservation of their ancestral domains translates into the protection and preservation of the environment.

## Malaysia

Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, spoke about the Malaysian experience in dealing with IPs. As an indigenous person himself, he felt that IPs are nondominant sectors of society that are often disregarded. But IPs are very concerned about preserving, developing, and transmitting their cultures, ways of life, and traditions to the future generations.

In Malaysia, there are two groups of IPs—the Orang Asli and the Orang Asal (or Anak Negeri). The Orang Asli, in Peninsular Malaysia, comprise only about 0.6% of the national population, while the Anak Negeri, in Sabah and Sarawak, comprise about 60% of Sabah’s population. The IPs’ rights are protected under the Federal Constitution, the Aboriginal Peoples Act 1954, and the United Nations Declaration on the Rights of the Indigenous Peoples.

Justice Malanjum emphasized that the IPs treasure nature and rely on nature for their source of livelihood. He considered the IPs to be part and parcel of the environment. That most IPs have yet to join the urban population does not mean that they do not want cash and modern amenities. In fact, such desires have resulted in conflicts between the IPs' exercise of their rights and the relevant authorities' duty to preserve the environment. The Malaysian government's practice of granting title over the IPs' ancestral lands made the issue of native customary rights (NCR) controversial, and resulted in cases filed by the IPs and the government against each other.

Malaysia uses the Torrens system of land titles, wherein the register of land holdings maintained by the state is the ultimate determinant of land ownership. Through the years, the courts have begun to recognize the claims of IPs, and have therefore acknowledged the IPs' ownership over their ancestral domains, even when the IPs do not have the corresponding titles. But the extent of such ancestral domains remains an issue—should NCR extend to areas where the IPs' forefathers “used to roam to forage for their livelihood in accordance with their tradition?”<sup>7</sup> The IPs, especially those living in Sarawak, contend that their NCR should not be confined to the cultivatable land areas. The Malaysian Court of Appeal adopted the concept of *pemakai menoa*, or settlement areas, to which NCR are attached, and held that the IPs' rights extend to areas where they could farm, hunt, and fish.<sup>8</sup>

To provide IPs with modern amenities, state governments entered into joint ventures with the IPs to develop their lands. In the process, the government minimized the practice of slash-and-burn farming, which was prevalent among the IPs. It was intended that once the NCR lands were developed, the IPs would have a regular source of income. Moreover, the government limited the extent to which the IPs could hunt for their meat, pick their vegetables from forests, and fish from rivers through relevant legislation. This legislation also created protected areas like forest reserves and wildlife sanctuaries, and imposed licensing requirements. Violations by the IPs of these laws resulted in prosecutions and convictions.

In conclusion, Justice Malanjum acknowledged the challenges in balancing environmental protection with the rights of the IPs. But given the close relationship between IPs and nature, any step taken to protect the environment is also a step to protect the IPs. Environmental protection must take into consideration the welfare of the IPs. Educating the IPs on the rationale for environmental legislation, and involving them in environmental protection and ecotourism, could be the way to achieve a good balance between income generation and nature preservation.

## Philippines

Atty. Lucille Karen E. Malilong-Isberto, head of the National Committee on Monuments and Sites of the Philippine National Commission for Culture and the Arts, discussed a case that came before the commission following a request for assistance by the Ibaloy.

<sup>7</sup> *Sagong Bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002] 2 MLJ 591, at page 615.

<sup>8</sup> A *pemakai menoa* (also spelled *pemakai menua*) is an adat Iban term referring to “a territorial domain of a longhouse community, where customary rights to land resources were created by pioneering ancestors.”

The Ibaloy were traditionally rice farmers and gold panners. In the 1950s, the Philippine government started building big dams and drove the Ibaloy out of their ancestral home, which used to comprise rice fields and a river rich with gold. Some members of the Ibaloy were paid money, but others were not. Some were moved to another province, where most of them died because it was not the kind of place they were used to; they had been relocated from a mountain and river to a jungle. They were given carabaos to assist them in rice farming, but the soil was not conducive to rice cultivation. So the Ibaloy eventually sold all of their farming implements and used their remaining money to return to their homeland in Benguet, Itogon. However, by the time they returned to their ancestral lands, their farms had already been inundated and converted into a dam run by the National Power Corporation, a government-owned and -controlled corporation. There was also no more gold to be found in the river.

The Ibaloy nevertheless wanted to develop their cultural heritage site. Their Council of Elders signed a memorandum of agreement with the local government units and with the private energy company that had taken over the dam from the state company. Since 2009, when the memorandum was signed, the Ibaloy have been unsuccessful in their attempts to regain possession of their land, as the private power company has never recognized their ancestral domain. Atty. Malilong-Isberto then identified the questions that arose as a result of the government's decision to expropriate this ancestral domain, convert it into a dam, and subsequently sell it to a private corporation. She asked: What happens to the land when the public use for the expropriation—that is, the construction of the dam originally operated by the government—no longer exists and the project has been sold to a private corporation? Did that land cease to be ancestral domain after the private corporation seized ownership thereof? Who should represent the Ibaloy? What is the customary law in this case, especially when the Ibaloy do not form one homogenous group? Can the families that disagreed with the sale reclaim the land? Do they have recourse under the IPRA? Lastly, is the Council of Elders, which is registered with the Securities and Exchange Commission just so it could open a bank account, required to produce a secretary's certificate just to withdraw the payment supposedly deposited in the bank?

Atty. Malilong-Isberto concluded by citing the separate opinion of former Justice Reynato S. Puno in *Cruz vs. Secretary of Environment and Natural Resources, et al.*, G.R. No. 135385, 6 December 2000. Justice Puno stressed that “the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities’ right to their ancestral land, but more importantly, to correct a grave historical injustice to our indigenous people.” Atty. Malilong-Isberto expressed the hope that the Philippine Supreme Court would soon have the chance to deliberate on these issues, and that the judges would strive to correct any instances of grave historical injustice brought before them.

## ■ Panel Remarks

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### Indonesia

Justice Takdir Rahmadi, of the Civil Chamber of the Supreme Court of Indonesia, said that in Indonesia the concept of IPs is closely related to the concept of *masyarakat adat*, or adat communities. A *masyarakat adat* is defined as a group of people who live in a particular area, bound by their traditional rules, and led by functionaries. There are hundreds of adat communities in Indonesia, broadly falling into 19 main groups.

Justice Rahmadi pointed out that Indonesia's legal framework respects the rights of IPs. Article 18B, paragraph 2 of Indonesia's 1945 Constitution recognized the existence and traditional rights of adat communities and IPs, insofar as they still existed and in accordance with the principle of Indonesia as unitary state. The Forestry Act of 1999 recognizes that an adat forest may exist within state land. The Water Act of 2004 recognizes the IPs' water rights, provided the exercise of those rights does not contravene national interest and national laws.

IPs can gain economic benefits from the natural resources within their lands, but they can be prosecuted and imprisoned for violating criminal laws. For instance, the Environmental Management Act of 2009 prohibits the setting of forest fires, while the Act concerning Prevention and Eradication of Deforestation of 2013 prohibits anyone living in or around forest areas from engaging in illegal logging.

### *Lao People's Democratic Republic*

Justice Khamphanh Sitthidampha, president of the People's Supreme Court of the Lao PDR, mentioned that there have been only a few environmental lawsuits in his country, but environmental problems are beginning to increase as a result of people's behavior and foreign investments. The Government of the Lao People's Democratic Republic has enacted laws and issued regulations to increase the public's awareness of the importance of environmental protection and to penalize those who would violate environmental laws. But there are still people engaged in shifting cultivation and hunting because they have no other means of earning their living.<sup>9</sup> Thus, the government tried to develop the countryside by initiating various infrastructure projects and offering alternative sources of livelihood that would allow for nature preservation. These include setting up village forests and promoting ecotourism.

### *Thailand*

Justice Suntariya Muanpawong, secretary of the Environmental Division of the Supreme Court of Thailand, said that Thailand does not have a problem with IPs because it had never been colonized. Nonetheless, the government and the public have begun talking about community rights, and about the right to protect the environment and the natural resources that the people depend on for their livelihood and daily needs, among other issues. There is also proposed legislation on community forests and community fisheries.

## **Discussion**

Atty. Fernando opened the floor for questions and comments. To start the discussion, he expressed his own thoughts about the challenges faced by IPs. It appeared to him that problems arise because of the IPs' lack of resources, resulting in their desire to change their way of life. This desire for change must be balanced with the need to regulate land development and resources. He then asked the speakers if there is a way to use natural resources that would minimize the direct impact on the environment.

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<sup>9</sup> Shifting cultivation, also known as "slash-and-burn agriculture," is an agricultural system in which a person or group of persons use a piece of land, only to abandon or alter its initial use a short time later. The land is cleared and the vegetation burned, providing a source of nutrients from the ash. The soil remains fertile for a few years thereafter. Once the soil's fertility is exhausted, the user moves on and clears another area of land.

The first to respond, Justice Velasco began by clarifying that the Philippine land regime is governed by the Torrens system and the regalian doctrine.<sup>10</sup> Thus, the National Commission on Indigenous Peoples (NCIP) and the Department of Environment and Natural Resources had started studying how they might address the conflicts that arise when claimed ancestral land overlaps with privately titled lands (registered under the Torrens system) and public lands.<sup>11</sup> He suggested that the NCIP should obtain technical surveys of claimed ancestral lands so that it might incorporate the exact land area into the technical description of the ancestral lands before issuing ancestral land titles. Adding such technical descriptions could remove any doubt as to who really owns the land—whether the IPs, the government, or other private individuals.<sup>12</sup> But first, the NCIP's power to issue certificates of ancestral domain title recognizing the rights of ICCs and IPs to possess and own their ancestral domains must be reconciled with the Land Registration Authority's power to issue Torrens titles.

Justice Velasco also noted that, even where ancestral domains are not formally titled, the IPRA provides sufficient safeguards to protect the IPs' rights to their ancestral domains and to the natural resources within those domains. But enforcement of this law remains a problem. The IPRA requires project proponents to secure the free and prior informed consent of the ICCs impacted by the project. However, the leaders of ICCs (such as councils of elders) might not have the education needed to come to the right decision regarding the terms and conditions of the project. Similarly, the members of the ICC or IP concerned might not be educated enough to understand how they could protect their rights under the contract and whether to approve or overturn the decision of the council. The NCIP is therefore responsible for protecting the rights of the ICCs and IPs. He noted that if there is any negligence or error in judgment on the part of the NCIP, its officers could be held criminally responsible for failing to ascertain the best arrangements for the ICCs and IPs. In other words, Justice Velasco believes that the government is still in the best position to protect the IPs.

Atty. Fernando thanked Justice Velasco for sharing his insights and invited everyone for tea.

<sup>10</sup> This land regime can inhibit recognition of ancestral land titles because ancestral domain titles must be registered with the Philippine Register of Deeds, managed by the Land Registration Authority, after the NCIP has recognized and issued the relevant ancestral land title. If there is a prior registered title over the land, the NCIP and IPs cannot formally register the ancestral land title, limiting formal recognition of the claim.

<sup>11</sup> On 24 July 2015, the Department of Agrarian Reform, Department of Environment and Natural Resources, Land Registration Authority, and the NCIP, through their duly authorized representatives, approved the operating manual providing for the creation of a joint regional committee to resolve conflicts involving the implementation of relevant laws. For more information, see Department of Environment and Natural Resources. *Joint Operating Manual for DENR, DAR, NCIP, LRA formalized*. 2015. <http://caraga.denr.gov.ph/index.php/96-region-news-items/latest-news/494-joint-operating-manual-for-denr-dar-ncip-lra-formalized>

<sup>12</sup> Prior to the issuance of certificates of ancestral domain titles and certificates of ancestral land titles, the Ancestral Domains Office of the NCIP investigates all applications for official delineation of ancestral domain boundaries. Afterward, the office prepares a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks therein.

### **SESSION 3** Illegal Logging and Deforestation, Timber Trafficking, and Trade

Mr. Michael Dyson, law enforcement and governance consultant of ADB, facilitated the third session. He introduced the speakers and panelists for this session and framed it around the themes of law enforcement and forest governance. He said that, over the past decades, many countries around the world have dismantled organized criminal networks operating in their territories.

Mr. Dyson pointed out that, despite this success, there is much to be done. The fact that these criminal networks exist means that governments in many countries have had little or no success in stopping the criminal exploitation of natural resources. They cannot effectively enforce natural resource laws because they lack the following attributes: political will, resources, capacity, interagency cooperation, transparency, and performance monitoring. However, governments have recently taken more positive steps to strengthen policy and legislation in order to better protect natural resources and enhance law enforcement. The strong support and guidance from the international community—especially from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, ASEAN Wildlife Enforcement Network, and the ICPO—made this marked improvement possible.

Governments strive to protect their natural resources. But they face challenges in the form of criminal exploitation, pollution, climate change, and land encroachment, among others. To overcome these challenges, they need a strong political will, specific laws and institutional structure, and an environmental crime management strategy that is dynamic enough to combat the multifaceted nature of environmental and wildlife crime.

Criminals, like businessmen, see the demand for a commodity and plan how they can fill the demand, and assess the risks and rewards from their enterprise. They offer various natural resources, such as timber and wildlife, only in black markets. Supply, on the other hand, is determined by the accessibility of natural resources as compared with cost, the existence and effectiveness of security measures, the level of corruption, and the penalties when caught within the area of operation. The heads of criminal organizations evade capture and conviction by hiring middlemen or transporters, whom they consider to be disposable assets; paying off corrupt officials; and suffering minimal penalties in the unlikely event that they do get captured.

In conclusion, Mr. Dyson underscored the judges' important role in combating environmental crime. Judges render decisions that should clearly convey to the convicted offenders, and to the offenders who have not yet been caught, that whatever benefit they derive from their criminal enterprise is not worth the risk of arrest, prosecution, and conviction. In addition, they can lobby for stricter laws and sentencing options to penalize offenders in accordance with the gravity of the crime or violation, deter offenders and the general public from committing similar offenses, and establish conditions that allow for the offender's rehabilitation. In Mr. Dyson's opinion, sentencing should be an act of denunciation or condemnation of the offender's conduct in order to influence cultural change in the long term and protect the community from the criminal.



## Presentations

### *Viet Nam*

Justice Le Van Minh, director of the Institute for Judicial Science of the Supreme People's Court of Viet Nam, briefed the participants on Viet Nam's experience in dealing with deforestation and illegal logging.

First, Justice Le gave general information about the status of forests and deforestation in Viet Nam. Citing statistics from the Ministry of Agriculture and Rural Development, he said that Viet Nam has nearly 14 million hectares of forests. Between 2007 and 2013, more than 12,600 hectares, or nearly 1,900 hectares per year, were destroyed. This damage impedes Viet Nam's sustainable development and aggravates adverse environmental conditions and calamities.

Second, he discussed the relevant criminal laws and regulations of Viet Nam. In 1987, Viet Nam enacted its first law against deforestation. In 1989, Viet Nam amended its Penal Code to provide more comprehensive coverage of forest-related crimes and stricter penalties. The 1999 Penal Code features three types of forest-related crimes. Article 175 deals with breaching the regulations on forest exploitation and protection and the illegal timber trade. Article 176 deals with breaching the regulations on forest management through abuse of government position or power. Specifically, the first paragraph of this provision makes it illegal to commit any of the following acts and cause serious consequences or to repeatedly commit such acts, despite prior sanction: (i) to assign or recover forests or forestland, (ii) to illegally permit the transfer of the use or purpose of forests or forestlands, or (iii) to illegally permit the exploitation or transportation of forest products. The second paragraph considers the following as aggravating circumstances: (i) committing the crime in an organized manner, (ii) committing the crime more than once, and (iii) causing very serious consequences. Article 189 deals with forest destruction, such as by causing forest fires. The 1999 Penal Code also increased the maximum imposable penalty from 3 years to 15 years in prison.

Third, he mentioned that most of the courts' time and energy had been focused on trying criminal environmental cases. Between 2007 and 2014, the entire Viet Nam judiciary resolved 2,801 cases involving 5,357 defendants charged with committing environmental crimes. Specifically, there were 2,299 cases involving 4,568 defendants in forestry-related crimes.<sup>13</sup> However, these numbers do not adequately reflect Viet Nam's considerable legal challenges in combating deforestation. For instance, in 2013, of the 2,700 defendants charged with environmental crimes, just over 100 were prosecuted. About 24,000 offenders paid administrative fines because the evidentiary burden of proving that an environmental offense has caused serious consequences is so high that it is easier to establish administrative violations. Justice Le noted that organized crime networks are currently responsible for many environmental offenses. The crime networks use sophisticated criminal tactics like utilizing vehicles with fake license plates to transport wood, as such vehicles can be abandoned to evade arrest, and exploiting the poor and people from ethnic groups living in forests to transport illegal timber.

<sup>13</sup> Of these cases, 1,232 cases involved 2,501 defendants charged with violating Article 175 of the Penal Code; 18 cases involved 39 defendants charged under Article 176 of the Penal Code; and 1,049 cases involved 2,028 defendants charged under Article 189 of the Penal Code.

Finally, Justice Le shared his recommendations on how to combat deforestation in Viet Nam. Government agencies and the judiciary should stop relying on the imposition of administrative fines. They should treat environmental offenses as crimes meriting stricter penalties. This necessarily includes promoting the prosecution, investigation, and court trial of deforestation crimes. The government should also aim to alleviate poverty and raise the living standards for the ethnic groups being exploited in environmental crimes; this should be done through projects to build roads, schools, and hospitals, and through other infrastructure projects with social benefits. The government must also further international cooperation and the extradition of criminals, and share information on transnational environmental crimes to improve investigation efforts. Lastly, judiciaries must encourage international cooperation on training and share information and experiences in prosecuting forestry-related crimes.

### *Indonesia*

Mr. Rizal Bukhari, the national forestry policy senior manager of The Nature Conservancy –Indonesia Program, thanked the Supreme People’s Court of Viet Nam and ADB for the opportunity to speak at the roundtable. He then introduced his organization and its projects.

The Nature Conservancy is an international nongovernment organization (NGO) operating in 35 countries in North America (including the US), Central and South America, Africa, Asia and the Pacific, and Europe to conserve land and water and combat illegal logging and timber trafficking, among other problems. It promotes the implementation of the Responsible Asia Forestry and Trade (RAFT) initiative. RAFT is a regional platform for countries in Asia and the Pacific to advance trade in responsibly harvested and manufactured wood products. RAFT receives financial support from Australia and the US, as well as technical support from its core partners—the Institute for Global Environmental Studies; The Forest Trust; The Nature Conservancy; the Tropical Forest Foundation; TRAFFIC; and the Global Forest and Trade Network of the World Wildlife Fund (WWF). RECOFTC The Center for People and Forests also supports RAFT, specifically, its operations in Myanmar.

RAFT operates in eight Asian countries: Cambodia, the People’s Republic of China (PRC), Indonesia, the Lao PDR, Malaysia, Papua New Guinea, Thailand, and Viet Nam. Its projects include combating domestic and transborder illegal logging through such activities as lobbying for new laws, ensuring that consumers purchase only legal timber, verifying the sources of wood products, facilitating forest conversion and various legal logging activities, reducing carbon emissions from forestry-related practices, building the capacity of relevant government agencies and other stakeholders, and achieving third-party certification of sustainable forest management practices.

Mr. Bukhari outlined the various issues involved in illegal logging, deforestation, and illegal timber trafficking in Indonesia. Domestic issues include the lack of good governance, weak law enforcement, and socioeconomic challenges. Regional and international issues include the huge global demand for timber and the lack of cooperation among producer and consumer countries.

To address these issues, RAFT runs a range of programs. It provides the private sector with demonstration models for reducing impact logging and carbon emissions. It provides training materials on timber chain-of-custody and export and import requirements. RAFT helps factories, industry associations, and training institutions establish a national timber legality verification system and market



linkages, obtain Forest Stewardship Council certification, and improve training programs. It further provides technical support to encourage forest concessionaires to adopt best management practices in the field of sustainable forest management. RAFT also researches carbon management practices and their possible integration into reduced-impact logging standards.<sup>14</sup>

Mr. Bukhari explained that RAFT also provides technical assistance to the Government of Indonesia to develop and implement a system for confirming the legality of timber—like a timber legality assurance system—and to learn from other Asia-Pacific Economic Cooperation (APEC) member countries. As a research and development center, RAFT studies and documents the current state of compliance with the statutory requirements, assesses the need for capacity building and other training at the regional level, creates a pilot test compliance system, and disseminates information about the policies and practices that increase trade in legal wood products taken from responsibly managed sources.

Between 2006 and 2013, RAFT succeeded in having almost 1.3 million hectares of tropical forest certified by the Forest Stewardship Council and it is working on certification of another 2 million hectares of forest. Mr. Bukhari explained that, in that same time frame, RAFT also supported 81 manufacturers in their efforts to improve their wood and fiber sourcing system, with 20 factories now applying chain-of-custody practices. RAFT also taught nearly 1,300 timber traders about changing market requirements, with an emphasis on the timber legality requirements prevailing in Australia, the European Union, and the US. RAFT also contributed to the development of national timber legality verification systems in Indonesia and the PRC, as well as chain-of-custody guidelines endorsed by the ASEAN for legal and sustainable timber. RAFT also helped promote the adoption of carbon management practices that can reduce carbon emissions by as much as 37% without decreasing timber production.

In conclusion, Mr. Bukhari summarized The Nature Conservancy's achievements in Indonesia. The organization has helped advance sustainable forest management, linked production forest management to climate change, supported the implementation of timber legality verification schemes, provided technical support on Forest Stewardship Council certification to forest concessionaires, and aided forest management units and NGOs in implementing sustainable forest management.

## Philippines

Atty. Lucille Karen E. Malilong-Isberto, head of the National Committee on Monuments and Sites of the Philippine National Commission for Culture and the Arts, delivered her talk, "Fighting at the Frontlines: The Guardians of the Forest."

Atty. Malilong-Isberto outlined the status of Philippine forests. Currently, the Philippines only has 1% primary forest cover. But the Department of Environment and Natural Resources claims that the country has 23% forest cover—only because the department used the Food and Agriculture Organization's definition of a "forest," which includes coconut plantations. To protect this forest cover, the Philippine government set a logging ban, although with several exceptions, such as mining and felling of sick trees. The government also instituted a national greening program to restore millions of hectares of forest area

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<sup>14</sup> Reduced impact logging is defined as "the intensively planned and carefully controlled implementation of timber harvesting operations to minimize the environmental impact on forest stands and soils."

and criminalized the cutting of trees without a permit issued by the Department of Environment and Natural Resources.

The country's remaining forest cover is found in areas guarded by IPs and in protected areas. But the question is: who guards these forested areas? There are not enough forest rangers, as most of them have been killed by illegal loggers. Thus, IPs and farmers are at the forefront of the fight against illegal logging because they are keenly aware that, once the forests are gone, they will not have any water for their farms. These IPs and farmers help guard the forests for free; all they get from the government are a raincoat and an identification card. If they arrest someone, they can only hold that person for a few hours; otherwise they can be sued for illegal detention or kidnapping. This is because the Philippine Constitution and laws grant the accused rights against deprivation of their liberty without due process of law and against unreasonable searches and seizures, which render any evidence procured during an illegal search inadmissible in court.

Various NGOs provide IPs and farmers with legal training. But many forest guardians are illiterate and ill-equipped to confront illegal loggers. In cases wherein the loggers are armed, these guardians just hide or run. They also frequently cannot seize evidence because the evidence is usually a felled log or huge tree that is very heavy. This means that we need to question what actions constitute the crime and what evidence can be presented in court. Also, are there circumstances when these forest guardians could file a case themselves? This could be important because these forest guardians face strategic lawsuits against public participation, kidnapping, and grave threats.

Atty. Malilong-Isberto also questioned the possibility of filing a petition for the issuance of a writ of *kalikasan* to stop a government project that could harm the environment. To illustrate, she said that there were instances wherein the Department of Public Works and Highways had cut trees to clear roads and meet international standards for highways. Some people filed petitions for the issuance of writs of *kalikasan*, but failed. In its defense, the responsible Department official blamed the road contractors, who allegedly started cutting the trees to meet their deadline and get paid immediately. Thus, she recommended educating public officials on the need to protect forests. She also recommended the acceptance of secondary evidence of environmental crimes. Such an allowance would be important given the difficulty in gathering and presenting primary evidence in court and the protections of the rights of the accused, which frequently frustrate the ability to gather or present the evidence of a crime.

She ended by expressing her appreciation for the chance to speak about forests, her desire for everyone to raise public awareness of their dependency on the forest, and her hope that a forest will grow in everyone's heart.

## ■ Panel Remarks

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### Indonesia

Justice I Gusti Agung Sumanatha, of the Civil Chamber of the Supreme Court of Indonesia, told the participants about a forest fire case pending before the appellate court. In this case, the Ministry

of Environment filed a case under Article 69, Law No. 32/2009 on Environmental Protection and Management against PT/Palm Oil Planting Corporation for causing a huge forest fire (damaging about 1,000 hectares of forest cover) in Sumatra sometime between 2009 and 2012 as a result of illegal land clearing, thereby damaging the environment.<sup>15</sup> The ministry asserted legal standing under Article 90, Law No. 32/2009 on Environmental Protection and Management, which authorizes any government institution or regional government responsible for dealing with environmental issues to file a civil case against anybody causing environmental pollution or damage inflicting environmental loss.

In its defense, Palm Oil denied having cleared land by fire and blamed another plantation company operating nearby for causing the forest fire. Moreover, Palm Oil argued that the wording of Article 90, Law No. 32/2009 requires both the central government (represented by the Ministry of Environment) and the local government to file the lawsuit. Consequently, the company argued that the case should be dismissed for failing to include the local government as an indispensable party. The Ministry of Environment asserted that the defendant's defense must fail because according to the Supreme Court's Decree No. 36 KMA/SK/XI/2013 on the guidelines for dealing with environmental cases of a civil nature, the word "and" in Article 90 means alternatively, so the plaintiff can be either the central government or the local government, acting separately.

The court of first instance ruled that Palm Oil violated the law on torts and ordered that the company pay damages amounting to 114,303,419,000 rupiah (about \$1,796,235,937); refrain from planting within the peatland, covering 1,000 hectares; and restore the damaged area, at a cost expected to reach 251,765,250,000 rupiah (about \$3,956,709,940). According to the National Aeronautics and Space Administration (in the US), 20 hot spots were detected in the burnt area from 2009 to 2011.

To conclude, Justice Sumanatha stated that assessing the amount of environmental damage and the cost of rehabilitation are the hardest parts of environmental law enforcement. Judges must rely on an expert's research and report. He also stated that peatland fire is serious, complicated, costly, irreversible, and irreparable. In this case, for instance, the slow rate of peat growth means that it will take years for the peat to fully grow back to its undamaged state, and there will be a loss of the peat's function as a natural water reservoir.

## Myanmar

Justice U Tha Htay, justice of the Supreme Court of the Union of Myanmar, noted that illegal logging is a big problem in his country. About half of Myanmar's land area is covered by forests. But illegal logging and timber trafficking and trade have significantly reduced Myanmar's forests to satisfy the huge market demand in neighboring countries for Myanmar's famous timber. The lucrative nature of these environmental crimes also attracts criminal networks to Myanmar, where they operate mainly in remote and insurgent areas, where there is limited law enforcement. Town development schemes and urbanization also drive illegal logging and deforestation.

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<sup>15</sup> Article 69, Law No. 32/2009 prohibits anyone from (i) committing any action that causes contamination or environmental damage or (ii) committing land clearing by fire.

Aware of the adverse impact of illegal logging and timber trafficking and trade, the Government of the Union of Myanmar plans to transplant timber to logged areas, persuading private companies to generate long-term profits from managing timber plantations. In addition to law enforcement agencies taking action against traffickers and traders, mobile teams of law enforcement officials investigate and apprehend shipments, motor vehicles, and any other means of transporting illegal timber. Justice Htay also mentioned that the Ministry of Environmental Conservation and Forestry and international institutions like the European Union have also discussed ways in which Myanmar could encourage sustainable forest management and eradicate the illegal timber trade.

## Malaysia

Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, outlined the Malaysian perspective on illegal logging, deforestation, and illegal timber trade. In the 1980s to 1990s, illegal logging was a big problem in Malaysia because there was a lot of timber to cut down then. About 200 to 300 cases were filed each year. But in 2013, the number of cases filed had dropped to fewer than 100 cases for four reasons: (i) the increased support for anti-illegal logging initiatives, (ii) strict monitoring of the remaining forests, (iii) the fact that only a few trees remained to be cut, and (iv) the government's adoption of sustainable forest management practices and the courts' imposition of stricter penalties against illegal loggers.

Justice Malanjum remarked that the biggest problem is weak law enforcement and corruption. But, hopefully, with more public awareness of the negative effects of illegal logging and deforestation, Malaysia can end illegal logging and deforestation for the benefit of future generations.

## Discussion

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Mr. Dyson explained that he lives and works in Tasmania, Australia, as a forest practices officer, investigating illegal logging cases. In 2014, the new government claimed that more trees were cut illegally in Tasmania than legally. He noted that law enforcement is also a problem in Tasmania and identified the problems in the system. First, the relevant laws and penalties are outdated. Mr. Dyson explained that the laws are unclear, nonspecific, confusing, and contain loopholes for wealthy criminals to exploit the poor. Second, law enforcement officers lack the necessary investigation skills to outsmart the criminals and present strong, compelling evidence in court. Third, the weak evidence brought before the courts also impairs the judges' ability to decide environmental cases. Mr. Dyson suggested the entire law enforcement chain needed repair. He then invited the participants to ask questions and provide comments.

Justice Velasco recounted that the Philippine Rules of Procedure for Environmental Cases allow apprehending officers to simply conduct a physical inventory of the seized items in the presence of the accused or the person found in possession of evidence, such as illegal timber. Apprehending officers may then submit the inventory and pictures of the seized items to the court. However, apprehending officers must also sign the physical inventory. Thereafter, the photographer could simply authenticate the pictures, which would be sufficient evidence on which to convict the accused. Justice Velasco explained that this is why the chain of custody must be carefully managed. Also, once the photographs have been authenticated, the judge may auction off the seized items.

Chief Justice Truong discussed the *Central Part Forest Case*, which arose from the abuse of state policy after a typhoon damaged several coastal provinces in Viet Nam. After the storm, the government approved a forest management company's purchase of planks from four Central Part provinces on the pretext that the planks were to be given to the local communities as allowance in the aftermath of the storm. The company executives then sold their right to buy the planks to other trading companies, which, in turn, connived with illegal loggers to carry out illegal logging activities. Law enforcement officers investigated the case. The proceedings cost about 12 billion Vietnamese dong—much lower than the profit made by traders and illegal loggers. But investigators failed to gather enough evidence, and the criminals were allowed to go free. This case taught the Vietnamese government a lesson: it must involve local residents in forest management and increase the police officers' investigative and law enforcement skills. He expected that, with the amendments to the Law on Court Organization and the Criminal Procedure Code, the court would be able to order investigators and prosecutors to fix any loopholes in an investigation and clarify any ambiguities. Additionally, the courts would be able to collect evidence and confirm the authenticity of evidence.

Chief Justice Truong added that international cooperation is indispensable in combating forest destruction crimes, illegal logging and timber trafficking, and wildlife trafficking, especially within Southeast Asia.

Dr. Mulqueeny asked Justice Sumanatha how the National Aeronautics and Space Administration data were collected, how Indonesian courts received these data as evidence, and if a certified environmental judge heard the forest fire case he had described. She also asked Justice Le to clarify (i) the difference between the two forest crimes—one contained in the section on economic crimes and the other in the section on environmental crimes, and (ii) the difference between the application of administrative fines for illegal logging and the application of the Penal Code.

Justice Sumanatha responded that all experts testifying in a court case must be listed by the Ministry of Environment, and that a certified judge had heard the forest fire case. He also noted that people are now demanding that only certified judges hear environmental cases.

Justice Le explained that Viet Nam's concept of a violation is unique. The violation will only be dealt with under criminal law if it is perceived as posing a threat to society. Other acts that are not specified in the Penal Code are treated as violations of the administrative laws that should be handled and, if appropriate, fined by the relevant authorities. Under the law, serious environmental offenses can merit 15 years' imprisonment and a fine. The level of seriousness is, in turn, determined by the violation's adverse impact on the country, its people, and on sustainable development. Moreover, to eliminate bias in determining whether an environmental offense should be treated as a crime or as an administrative violation, concerned government agencies must qualify and quantify the damage done to society. This helps to properly classify the offense, bearing in mind any consequences on sustainable development.

Mr. Dyson then thanked the speakers and panelists before lettering the chair finalize the session. Chief Justice Truong closed the session and the first day of the roundtable. Afterward, the participants made a courtesy visit to President Truong Tan Sang, who held a reception for them in the Presidential Palace in Ha Noi. They were then treated to a delicious dinner by the Supreme People's Court of Viet Nam.

During the dinner, Chief Justice Truong welcomed the participants and again said, on behalf of the Supreme People's Court of Viet Nam, that it was a great honor to host the Fourth Roundtable. He said that global warming, drastic rises in sea level, floods, and droughts have resulted in severe natural disasters all around the world, endangering all life on Earth. At the national level, a country's courts must resolve environmental disputes; decide cases of environmental violation; and actively participate in environmental protection by enforcing environmental laws and by influencing individuals, organizations, and enterprises to properly deal with nature.

Chief Justice Truong emphasized the importance of the annual roundtable as a forum for ASEAN judiciaries to share experiences and best practices in environmental protection. This sharing can help identify the best forms of cooperation and coordination among ASEAN judiciaries, not only in the field of environmental protection but in other areas as well. The judiciaries' joint efforts in preserving nature will play a part in developing greener environments within the region and all over the world.

As chief justice of the host country and on behalf of the Supreme People's Court of Viet Nam, he again thanked all of the delegates for attending the roundtable and for sharing their precious experiences. He expressed his confidence that the dinner reception would allow the delegates to feast on Vietnamese cuisine, get to know one another, and continue their discussions, through which he hoped the ASEAN judiciaries could advance cooperation and contribute to the creation of a united, developed, and sustainable ASEAN community.

# HIGHLIGHTS

## DAY 2: 14 DECEMBER 2014

Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam, welcomed everyone back to the roundtable and introduced the facilitator of the fourth session.

### ■ **SESSION 4**   **Illegal Wildlife Crime, Trafficking and Trade**

Dr. Scott Robertson, regional coordinator of the Wildlife Conservation Society (WCS) and WCS Wildlife Trafficking Program, and country director of the WCS Viet Nam Program, facilitated the fourth session. He began by highlighting some the consequences of wildlife crime: (i) the extinction of species across the planet; (ii) the spread of diseases to humans, at great economic cost and impairment of public health; and (iii) the weakening of the rule of law. He noted that wildlife criminals are professional, organized, cooperating internationally, and very innovative—as our governments should be.

Dr. Robertson also updated the participants on the severity of wildlife trafficking in elephants and rhinoceroses. Wildlife poaching, especially of elephants, is uncontrollable. About 96 elephants are killed every day in Africa. Over 20,000 elephants were killed in 2013 alone. Poaching is likewise driving rhinos to extinction. A total of 1,116 rhinos, or over 3 per day were poached in 2014, whereas only 13 rhinos were poached in 2007 and 83 rhinos in 2008. This rapid escalation of rhino poaching is due to the Asian demand for rhino horn.

The illegal wildlife trade creates and spreads diseases to humans. Many of the serious diseases currently affecting humans, such as Ebola and severe acute respiratory syndrome (SARS), originated in animals and jumped to humans as a result of this trade. Humans acquired HIV (human immunodeficiency virus) by eating primates, SARS by eating wildlife in general, and Ebola by having contact with primates in Africa. These diseases also damage economies worldwide. HIV costs the world \$10 billion annually, while SARS costs \$30 million. The cost of the current Ebola outbreak has yet to be determined.

Dr. Robertson said that criminals do not just break wildlife laws, but many other laws as well. For instance, a wildlife trafficker WCS is investigating in Viet Nam is breaking not just the wildlife crime provisions of the Penal Code, but also laws on trading in firearms, threatening enforcement officers, smuggling, bribery, tax evasion, money laundering, and murder. Despite the wildlife traffickers' frequent violations of other laws, the Vietnamese government and public rarely perceive them as serious criminals. This mind-set needs to change. Even if the government does not consider wildlife crime to be a high priority, the other crimes associated with it should certainly be seen as priorities.

Dr. Robertson next discussed how current law enforcement efforts have been ineffective. Enforcement tends to focus on the people transporting the illegal wildlife products, rather than on the criminals actually financing, organizing, and coordinating the trafficking networks. Celebrating a seizure of illegal wildlife



products is insufficient for deterring criminals, unless it is accompanied by their arrest, prosecution, and punishment. Law enforcement efforts succeed only when the masterminds of wildlife crimes, such as the financiers and coordinators, are brought to justice.

WCS analyzed the criminal justice response to rhino horn trafficking in Asia. In one country studied, enforcement officers made 19 rhino-horn arrests between 2008 and 2013. Of these arrests, only one person was jailed and about five or six people were made to pay administrative fines. The remaining cases continue to be investigated. There have been no additional arrests, and investigators have not looked further into the offenders' sources, buyers, or contractors. This is an example of how justice systems in the region have yet to target the people behind wildlife crimes.

WCS also compared the prescribed penalties for wildlife crimes with those for other crimes under the Penal Code. The maximum imposable penalty for wildlife crimes is 7 years' imprisonment—the same as for tax evasion or creating a computer virus. This creates doubt as to whether the government is indeed taking wildlife crimes seriously. For government agencies that are truly serious, Dr. Robertson recommended prosecuting wildlife criminals for the other related offenses they commit. In his opinion, government action or inaction drives consumer behavior. This was evident in the firecracker ban imposed by the Vietnamese government in 1995. Although the government did very little awareness raising, its law enforcement officers strictly enforced the ban, and thereby discouraged people from using firecrackers to celebrate the Lunar New Year.

Dr. Robertson concluded by encouraging the participants to be more professional, organized, cooperative internationally, and innovative than the wildlife traffickers they should be stopping. He also lauded the increasingly proactive stance of judiciaries around the world.

## Presentations

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### *Viet Nam*

Justice Dam Van Dao, deputy chief judge of the administrative court of the Supreme People's Court of Viet Nam, gave a presentation on illegal wildlife trafficking in Viet Nam.

Article 190 of the Penal Code (1999), titled "Breaching regulations on the protection of precious and rare wild animals," was amended in 2009, and the new version is titled "Breaching regulations on protection of animals on the list of endangered, precious and rare species prioritized for protection." Justice Dam explained that the amended provision criminalizes hunting, catching, killing, trafficking, and trading protected wildlife. In proving a crime, it is not necessary to establish severe damage or prior commission of the same violation; and administrative penalties are not required. The extent of the damage is important only in determining the penalty to be imposed.

Article 190 makes it illegal for anyone to hunt, catch, kill, transport, or trade wildlife listed as belonging to a precious and rare species; or to transport or trade in products made from precious and rare wildlife species. Offenders face the following penalties: (i) a fine of 5 million to 50 million Vietnamese dong (D),

(ii) noncustodial reform of up to 2 years, or (iii) imprisonment of 6 months to 3 years. The crime is aggravated under any of the following circumstances: (i) commission in an organized manner, (ii) commission with abuse of position or power, (iii) using banned hunting or catching tools, (iv) commission in prohibited areas or during prohibited times, or (v) causing very severe or particularly serious consequences. An aggravated crime attracts more serious penalties, specifically: (i) imprisonment for 2–7 years; (ii) a fine of D2 million to D20 million; and (iii) a 1–5-year ban from holding certain posts, practicing certain occupations, or doing certain jobs.

In addition, the amended provision criminalized the trade in body parts of these wild animals and the act of illegally growing or keeping endangered, precious, and rare wildlife. It also increased the maximum imposable penalties: (i) from D50 million to D500 million as the main fine, (ii) from D10 million to D100 million as a supplementary fine, and (iii) from 2 years to 3 years of noncustodial reform.

Justice Dam also cited data from the Forest Protection Department on the seizures and the number of cases filed. From 2009 to 2013, a total of 5,376 cases under Article 190 of the Penal Code were filed nationwide. About 59,326 specimens were seized, of which 3,267 belonged to the list of endangered, precious, and rare animals. However, these numbers do not represent all violations because many remain undocumented.

The database of the Supreme People's Procuracy's Criminal Statistics Bureau also revealed that in 2009, there were 70 breaches of the regulations on the protection of endangered, precious, and rare animals. While all these breaches were deemed criminally constituted and investigated, only 62 cases were filed in court. In 2010, 103 similar cases were criminally constituted and investigated, with 58 cases filed in court. In 2011, 83 such cases were criminally constituted and investigated, with 53 cases filed in court. In 2012, 100 cases were criminally constituted and investigated, and 69 cases filed in court. Finally, in 2013, 113 such cases were criminally constituted and investigated and 76 cases were filed in court. According to the Statistics and Information Synthesis Department of the Supreme People's Court, of the foregoing cases, 51 cases involving 72 defendants were filed in court, while 11 cases involving 15 defendants were sent back to the Procuracy Office for further investigation.

Justice Dam also summarized the sentences issued by the courts in relation to these offenses. The courts imposed a D100 million fine against the defendants in one case, noncustodial reform against the defendants in three cases, and suspended imprisonment in another. The courts further ordered that (i) 23 defendants serve up to 3 years' imprisonment and (ii) one defendant serve more than 3 years' imprisonment. Of these defendants, 7 belonged to ethnic minorities, 1 was female, 1 was between 16 and 18 years of age, and 12 were between 18 and 30 years of age.

With the wildlife trafficking situation growing more serious and complicated, Viet Nam's Prime Minister asked the Supreme People's Court and the Supreme People's Procuracy to direct the offices under their administration to collaborate with the investigating agencies in intensifying enforcement efforts against criminals violating Article 190. Justice Dam also said that the Supreme People's Court, Supreme People's Procuracy, Ministry of Public Security, Ministry of Justice, Ministry of Finance, and Ministry of Agriculture and Rural Development were developing an interministerial circular on the prosecution of ivory and rhino horn traffickers, among others.

From Justice Dam's point of view, the huge profits derived from wildlife trafficking attract wildlife crime networks. Relevant ministries, like the Ministry of Natural Resources and Environment, Ministry of Industry and Trade, Ministry of Health, and Ministry of Agriculture and Rural Development, must intensify their interagency coordination efforts and harmonize their application of wildlife laws, circulars, decrees, and other regulations. However, Justice Dam pointed out the lack of data on illegal wildlife products and the inadequate international cooperation. Hence, despite the Viet Nam government's significant efforts, more was needed. He looked forward to hearing from their colleagues and the experts on the further improvements they could make.

## Pakistan

Justice Syed Mansoor Ali Shah, judge of the Lahore High Court in Pakistan, told the participants how he had decided a case filed before his court concerning endangered felids (tigers). Human and animal rights activist Feryal Ali Gauhar filed this public interest petition against the election commissioner of Pakistan before the Green Bench of Lahore High Court presided over by Justice Shah. The petition stated that several wild felids had been illegally imported into Pakistan and paraded by one political party during the last national elections. These tigers posed a threat to human life, and they had also been brought out of their natural habitat.

Justice Shah appointed World Wildlife Fund (WWF) as *amicus curiae* (or friend of the court) to study the laws related to wildlife and help the court evaluate the parties' claims. He also constituted a commission of experts, comprising technical experts, government lawyers, and members of civil society and international nongovernment organizations (NGOs). Justice Shah further explained that he constituted a wildlife commission to (i) assess compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (ii) contact the concerned government authorities, (iii) monitor the importation of wild cats, (iv) gather data regarding imports, and (v) oversee the proper enforcement of the Pakistan Trade Control of Wild Fauna and Flora Act.

The review conducted by the commission and WWF resulted in some key findings. It confirmed that Pakistan ratified CITES in 1976 and enacted the Pakistan Trade Control of Wild Fauna and Flora Act in 2012. Justice Shah noted that the act implemented CITES and regulated the importation and exportation of exotic species into or from Pakistan. The Climate Change Division of the Ministry of Environment exercises management authority for these activities; however, neither the Climate Change Division nor the Ministry of Environment would interact with each other. The scientific authority was not yet established, and the Wildlife Department, acting in a *de facto* capacity, only dealt with indigenous wild animals, not exotic animals. Additionally, the Climate Change Division had issued 47 import permits covering several big cat species from December 2006 to April 2014. There were also 49 big cats dispersed among eight breeding farms in Punjab.

As a result of its review, the wildlife commission recommended the following: (i) to set up proper management and scientific authorities; (ii) to mandate the Election Commission of Pakistan to prohibit the parading of animals during election campaigns; (iii) to require the scientific authority to advise the management authority if the importation of an animal would be detrimental to the survival of the species involved and to other indigenous species; (iv) to require the proposed recipient to provide suitable housing

and care for the wild animal; (v) to prohibit the use of wild animals for commercial purposes; and (vi) to address the current disconnect between CITES and the local implementing law regarding the distinction between wild animals and exotic animals.

After reviewing the facts and evidence before his court, Justice Shah directed the Government of Pakistan to immediately establish a management authority and a scientific authority pursuant to CITES. Pending the establishment of these authorities, he ordered that the wildlife commission oversee and approve the Wildlife Department's recommendations before any import or export permits could be issued. Justice Shah stated that, instead of waiting for the government to constitute the proper authorities, his most recent court order invoked the constitutional right to life, which also includes the right to have biodiversity and the ecosystems protected.

In Justice Shah's opinion, the court can be innovative if it truly wants to protect the public's fundamental rights. In this case, the Lahore High Court mandated the wildlife commission to oversee matters until such time as a proper management authority and scientific authority were created to redress the gap in the law and enforce the fundamental right to life. It also required that there be a reasoned basis for the issuance of import and export permits and that the Wildlife Department investigate compliance with wildlife laws and regulations. Justice Shah mentioned that the court had even sent notices to the CITES secretary general requesting assistance.

Lastly, Justice Shah shared his lessons learned. An environmental judge should engage in judicial engineering, develop green jurisprudence, and expand judicial frontiers. If needed, judges must also access regional green jurisprudence and share judicial innovations through judicial roundtables such as this. They must also review their own progress through a judicial working group on the environment, identify champion environmental judges, and apply the environmental principles they learned.

## Discussion

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At this juncture, Dr. Robertson invited the participants to ask one or two questions. Justice Azcuna asked Justice Shah if the Pakistan Constitution provides for the protection of the right to life and right to environmental protection. Justice Shah confirmed that Pakistani nationals have a right to life, but said that they do not have a right to environmental protection. During the first South Asia Judicial Roundtable on Environment, there was a proposal to include the right to environmental protection in the Pakistan Constitution. In the meantime, judges can invoke the right to life to protect the environment.

Mr. Bukhari then asked Dr. Robertson how WCS discovered the connection between human interaction with wildlife species and disease outbreaks. Dr. Robertson answered that WCS collaborates with the World Health Organization. WCS is also part of the One Health consortium of organizations working on the Emerging Pandemic Threats program, where they analyze wildlife species, the viruses they can spread, and the potential threats to humans, as well as humans who are in contact with wildlife.

Mr. Bukhari also asked if WCS had previously collaborated with ICPO. Dr. Robertson confirmed that WCS had worked with ICPO. However, generally speaking, ICPO's headquarters in Lyon function as a secretariat that helps ICPO member countries. WCS works with national police agencies and with

the national central bureaus of ICPO in order to support national participation and the use of ICPO resources. In other words, while ICPO simply facilitates the coordination of police departments around the world, WCS works at the national level. In Dr. Robertson's opinion, countries actually need to start sharing information with each other and let ICPO supply the tools needed for international cooperation.

Justice Perez asked if judicial engineering would work better in a common law or civil law system. Justice Shah answered that judicial engineering has worked in common law systems, but he thought that it could also work in civil law systems, given that common law and civil law systems have adopted elements from each other. Justice Perez also asked what Justice Shah would do if an administrative officer failed to follow a court order because he did not know what to do. Justice Shah said that, in such an instance, the court can cite the administrative officer in contempt of court.

Justice Velasco asked Justice Dam about the penalties imposed in Viet Nam for mere possession of endangered species. Justice Dam responded that Article 190 defines several acts as constituting wildlife crime. Thus, the penalty of up to 7 years under this provision also applies to the mere possession of endangered species. Permanent Deputy Chief Justice Bui added that the Supreme People's Court of Viet Nam had not yet seen a case in which a criminal penalty was imposed for the capture of endangered, precious, and rare wildlife species; only administrative fines had been imposed so far. Justice Velasco expressed an interest in this provision because it allows law enforcement officers to arrest anyone in possession of endangered species. The courts can also easily convict anyone caught in possession of illegal wildlife species or their derivatives. However, Justice Velasco felt that the Vietnamese government should still strive to reduce the demand and supply for illegal wildlife products by penalizing the buyers.

Justice Velasco also commented on Dr. Robertson's statement regarding the inefficiency of courts in deciding wildlife crimes. From Justice Velasco's perspective, courts merely render judgment based on the evidence presented by the prosecution. All the pillars of the criminal justice system, particularly the prosecutors and the police, are equally responsible for inefficiencies in the system. Mr. Abdullah agreed that the judiciary is just one part of the justice system, and that the executive branch needs to be involved.

## ■ Combating the Illegal Wildlife Trade Video

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Before moving on to the panel remarks, Dr. Robertson played a video produced by the Asian Development Bank (ADB), TRAFFIC, and WWF on the global illegal wildlife trade. The video highlighted the billions of dollars criminals make from the illegal wildlife trade and how this trade funds insurgencies and terrorism, destabilizes governments and economies, robs countries of their valuable natural resources, and causes tens of thousands of deaths each year. In the video, Chief Justice Tun Arifin bin Zakaria of the High Court of Malaysia described wildlife crime as "serious, transnational organized crime" that can threaten national security. And Mr. Christopher Stephens, general counsel of ADB, stated that wildlife crime impacts biodiversity, communities, and entire economies; and he described wildlife crime as a threat to sustainable economic development.

The video also provided statistics on how lucrative the illegal wildlife trade is for the criminals involved. Listed as one of the world's top illegal trades, trafficking in animals and animal parts alone generates \$8 billion–\$10 billion every year. This amount, combined with the \$4.2 billion–\$9.5 billion every year from

illegal, unreported, and unregulated fishing and the \$7 billion yearly from the illegal timber trade, comes to \$19.2 billion–\$26.5 billion in annual profits. Dr. Robert D. Hormats, then under secretary of state for economic growth, energy, and the environment at the US Department of State, confirmed that criminals are making huge amounts of money in the illegal wildlife trade.

The video also talked about the alarming effects of wildlife trafficking on biodiversity. Each year, poachers slaughter tens of thousands of elephants and millions of tropical fish and other marine species, including sharks, sea turtles, and manta rays, to satisfy the increasing global demand for wildlife and their byproducts. In 2011 alone, these poachers slaughtered 40,000–60,000 pangolins. Rhino poaching in South Africa increased 5,000% from 2007 to 2012, and tens of thousands of humphead wrasse are illegally imported into the People's Republic of China (PRC) every year. At present, only 3,200 tigers remain in the wild.

Asia is now a major consumption hub and hot spot for criminal wildlife trafficking. Elephant tusks and rhino horns are transported regularly from Africa into Asia, feeding an insatiable demand for these products. Additionally, millions of sharks, including illegally sourced great white and whale sharks from both Asia and Latin America, find their way to Asian markets. On behalf of ADB, Mr. Stephens expressed deep concern about the widespread trafficking in wildlife products throughout Asia and the Pacific, and the immense harm this crime does to economies throughout the region.

Mr. Khalid Pasha, acting head of TRAFFIC India, said in the video that the evidence shows that illegal wildlife trade is linked to other transnational crimes, such as drug trafficking. General Jean-Claude Ella-Ekogha, chief of staff of the Gabonese armed forces, noted that North Gabon has 6,000 traffickers, including illegal gold miners who are also poaching. These criminals are engaged in trafficking in gold, ivory, humans, drugs, and arms; and they are making the area into a lawless zone. The National Parks Agency can do nothing, so the state is compelled to send in the army to enforce the law in the area.

Wildlife crime syndicates harm not just wildlife and their natural environment, but humans as well. They also threaten national, regional, and worldwide security. The video included interviews with Mr. Andile Mhlongo, a ranger at the Hluhluwe–iMfolozi Park, in South Africa; Dr. Joseph Okori, WWF African Rhino Programme Manager; and Dr. Kent Hughes Butts, director of the National Security Issues Group of the Center for Strategic Leadership, at the US Army War College. They all described how poachers (well-trained and well-armed, with high-powered rifles, rocket-propelled grenades, night vision scopes, and armored vehicles) jeopardize the lives of innumerable people, particularly rangers assigned to protected areas. Since 1985, over 1,000 park rangers have died in the line of duty. Ms. Ginette Hemley, senior vice president of WWF Conservation Strategy and Science, added that wildlife crime threatens local communities and, on a broader scale, threatens economies at the local and national levels worldwide. Dr. Donald Kaberuka, president of the African Development Bank, said, “Tackling organized crimes such as illicit wildlife trafficking is essential. National governments and regional institutions such as my own [must] do everything they can to tackle illicit wildlife trafficking.”

Heads of global wildlife crime syndicates continuously take part in these brutal and subversive activities, convinced that they can act with impunity due to weakly enforced laws and regulations, poor enforcement mechanisms, lack of effective prosecution, and low penalties. Even in countries with strong



laws and law enforcement efforts, governments do not consider illegal wildlife trade to be a high-level political priority, and so do not actively prosecute the offenders. Mr. Shenaaz Khan, national wildlife trade policy officer of TRAFFIC Southeast Asia, explained in the video that many illegal wildlife traders are lawyers or at least know the law. They therefore know how to circumvent the law. Dr. Hormats added that these syndicates bribe and/or intimidate judges, border guards, rangers, and villagers, and seize control of parts of a country, crippling the entire government process.

Leaving wildlife crime syndicates unchecked increases wildlife crime and its adverse effects. Governments must understand that wildlife crime is a serious transnational organized crime requiring urgent action. Mr. Stephens seconded this point, and referred to ADB's commitment to working with all levels of national governments to help raise awareness of the issue, help promulgate appropriate laws and regulations, and help with effective law enforcement. Dr. Bindu Lohani, then vice-president of ADB for knowledge management and sustainable development, urged the pooling of resources to collectively combat the illegal wildlife trade.

Chief Justice Zakaria discussed his responsibility, as chief justice of the Federal Court of Malaysia, for guaranteeing that the entire Malaysian judiciary applies the highest standards in upholding the rule of law. For this reason, he has issued a directive establishing environmental criminal courts to hear and decide wildlife cases. He has also directed the Malaysian judiciary to bear in mind the serious nature of wildlife crime and to mete out the strongest penalties possible. Likewise, he encouraged other judiciaries, prosecutors, and law enforcement agencies to adopt a serious approach wildlife crime, bearing in mind its magnitude and consequences. In closing, the video demanded "stronger enforcement," "effective prosecutions," "stronger penalties," and "better collaboration," and urged viewers to "stop wildlife crime."

## ■ Panel Remarks

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### Myanmar

Justice U Tha Htay, justice of the Supreme Court of the Union of Myanmar, spoke about illegal wildlife trafficking and trade. Myanmar is a biodiversity hot spot with about 258 mammal species, 153 reptile species, 82 amphibian species, 1,056 bird species, 775 marine and freshwater fish species, and 118,000 plant species. Myanmar's rich biodiversity attracts countless illegal wildlife traffickers, who resort to various tactics to kill and smuggle wildlife from the country. The fact that protected areas are situated along the borders and are not surrounded by fences complicates protection efforts.

Aware of the extinction of numerous species, the government enacted the Protection of Wildlife and Protected Areas Law and implemented its provisions to combat illegal wildlife hunting and trade. The police have seized many wildlife specimens. Justice Htay explained that the courts have imposed strict penalties against the offenders and confiscated the wildlife species in their possession. Despite these efforts, the illegal wildlife trade continuously drives wildlife species to extinction. Hence, Justice Htay proposed to strengthen the staff, increase funding, prepare materials, build capacity, gather and share data and information, raise public awareness, and promote regional and international coordination.



### *Lao People's Democratic Republic*

Justice Somsack Taybounlack, vice president of the People's Court of the Middle Region of the Lao PDR, first greeted the participants and expressed his pleasure at being able to attend the roundtable.

He then commented on the state of biodiversity and wildlife crimes in the Lao PDR. The widespread degradation and depletion of natural resources have forced the Lao PDR government to pay more attention to the unsustainable consumption of natural resources in order to preserve the environment and ensure the country's long-term development. The government has adopted many environmental and wildlife laws, signed the ASEAN Agreement on the Conservation of Nature and Natural Resources in 1985 and the Convention on Biological Diversity in 1996, and developed a national strategy for the conservation and sustainable use of the nation's biodiversity. The government also commemorates its National Tree Planting Day every June 1 and its Wildlife and Aquatic Reservation Day every July 13. Despite these efforts, there are still people who choose to violate environmental and wildlife laws and regulations. They cut down trees, clear land, practice shifting cultivation, and hunt.

To deal with people illegally hunting wildlife, the government may choose to bring an administrative or criminal action. Under the administrative approach, the offender would be educated and fined in accordance with law. Under the criminal action, which is usually taken against serious criminals and repeat offenders, police and forest officers arrest the accused, investigate the case, gather evidence, and seize the wildlife specimens and other objects connected with the crime. The investigator then prepares and submits his case file to the prosecutor for further action. The prosecutor will accept the case if sufficient evidence is available to support it. The court must then decide the verdict and impose the appropriate penalties if the accused is found guilty.

Justice Taybounlack also mentioned that the Lao PDR continues to face environmental challenges. First, it is a least developed country, and many people live in and derive their livelihood from natural ecosystems because of poverty. In addition, there is limited infrastructure and the Lao PDR does not yet have an environmental court. This means that judges are less experienced in handling environmental disputes. Some court officers are unable to speak foreign languages or access information technology. Financial support and equipment are also limited. However, the Lao PDR government strives to overcome these challenges. Justice Taybounlack expressed his hope that he and his colleagues would learn valuable lessons from the roundtable that would prove applicable to the development of their court system and the strengthening of their cooperation with other ASEAN countries in the fight for sustainable environment use.

### *Malaysia*

Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, discussed a news report from Al Jazeera in November 2014. It described Malaysia as a hot spot for wildlife trafficking, particularly because of the high-value species found in the country and the light sentences being imposed on offenders. The news article illustrated its point by referring to the case of international wildlife trader Anson Wong. Wong was sentenced by the Shah Alam High Court to 5 years' imprisonment. But the Court of Appeal reduced Wong's penalty to 17.5 months' imprisonment. Justice Malanjum also noted that judicial officers had been rendering very light sentences

for wildlife trafficking: fines of only up to 12,000 ringgit (about \$3,159.31) and imprisonment of only up to 3 months.

Justice Malanjum expected that, with the establishment of a judiciary coordinating committee, there would be stricter penalties and stronger enforcement. The biggest challenge in effective wildlife law enforcement is the huge demand for illegal wildlife products. As long as demand remains high, the killing of wildlife species will continue. Of late, the most in-demand illegal wildlife species are porcupines and pangolins. He hoped that the setting up of the coordinating committee—along with proper training of judges and judicial officers and efforts to increase their awareness of environmental and wildlife issues—would end the illegal wildlife trade. Other challenges include the lack of public awareness and the smugglers' inducing indigenous peoples (IPs) to participate in wildlife trafficking because IPs have no other source of livelihood. This issue could be addressed by motivating the IPs to participate in ecotourism, which generated 5 billion ringgit (about \$1,316,378,950) for Eastern Sabah in 2013.

In conclusion, Justice Malanjum enumerated the fundamental rights upheld in Malaysia—the right to life, to a clean environment, and to have animal rights protected. He expressed the hope that the ASEAN Chief Justices' Roundtable on Environment would raise the awareness of environmental and wildlife issues among Malaysian judges and that, by the next roundtable, he would see marked improvement in their handling of environmental cases.

Permanent Deputy Chief Justice Bui thanked all of the speakers, panelists, and participants for their presentations and comments, and recapped the speakers' key points. First, even though many countries have a comprehensive legal and regulatory framework for protecting wildlife and preventing wildlife crime, there still is a huge demand for illegal wildlife products. Second, the judiciary alone cannot be responsible for fighting wildlife crime; other government agencies like the police and the prosecutors should likewise be involved. Third, wildlife trafficking transcends national borders. Each country may have its own regulations in place, but international cooperation mechanisms are needed to combat this type of crime. Fourth, judges must impose severe penalties for wildlife offenses to serve as a deterrent. He then invited everyone to a tea break before moving on to the fifth session of the roundtable.

Dr. Robertson thanked Permanent Deputy Chief Justice Bui for wrapping up the fourth session and highlighting vital points. He also thanked the speakers for their talks, the panelists for their remarks, and the participants for their questions and ideas.

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## **SESSION 5** Updates on Judicial Environmental Institutions: Courts, Rules, and Access to Environmental Justice

Justice Rachel Pepper, judge of the New South Wales Land and Environment Court in Australia, served as session facilitator. She briefed the participants on the changes in the Australian government, both at the federal and the state levels. During 2014, she had noticed a significant decrease in access to environmental justice in Australia. First, some of the jurisdictions deleted or abrogated their open legal standing provisions, while others imposed severe restrictions on the right of people to bring environmental actions when they have not been directly affected by pollution or by the protested government decision. Second, financial

funding had been cut back for all environmental defenders offices, which are law centers that assist people with filing environmental cases, advise governments, write submissions, and filter unmeritorious or vexatious cases. Indeed, Environmental Defenders Office of Queensland had not even received any government funding. Lastly, court fees had increased as part of the government's attempt to get more revenue.

Justice Pepper also described the innovations introduced in the New South Wales Land and Environment Court to expedite proceedings, reduce the cost of litigation, and enhance access to environmental justice. The court simplified the procedure for challenging government decisions in judicial review proceedings and posted the relevant information on its website. It had also enriched the information available online and distributed this information to stakeholders. The court had maintained its open standing provisions; promoted alternative dispute resolution to resolve cases without the need for court hearings, in accordance with what the parties wanted; and issued orders for pro bono representation. And it had issued protective cost orders, which enabled the court to cap the costs payable by losing parties. The court may also require each party to pay its own costs.

She then introduced the speakers and panelists for this session.

## Presentations

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### *Thailand*

Justice Ubonrath Luivikkai, president of the Environmental Division of the Supreme Court of Thailand, spoke about the need for ASEAN countries to work together and confront their similar environmental problems. She pointed out that environmental and wildlife crimes involve issues of environmental injustice, economic injustice, and social injustice. To focus on these issues in environmental cases, the courts of justice and the administrative courts started developing specialized divisions at the higher and lower court levels, sentencing guidelines, rules and procedures, and personnel, as well as training and capacity-building programs. At the Supreme Court, there were 12 justices deciding environmental cases and 5 research judges.

Justice Luivikkai presented an analysis of the current court system of Thailand and the recommendations for improvement based on the 12 characteristics of successful environmental courts identified by Justice Brian J. Preston, chief judge of the New South Wales Land and Environment Court. These 12 characteristics are as follows: the courts must (i) have status and authority (i.e., the court must be specialized and authorized); (ii) be independent from government and impartial; (iii) have a comprehensive and centralized jurisdiction to hear and decide all matters falling under environmental laws; (iv) be presided over by knowledgeable and competent judges and members; (v) operate as a multi-door courthouse, with courts providing all kinds of alternative dispute resolution mechanisms; (vi) provide access to scientific and technical expertise; (vii) facilitate access to justice; (viii) achieve just, quick, and cheap resolution of disputes; (ix) be responsive to environmental problems and relevant; (x) develop environmental jurisprudence; (xi) be guided by a set of underlying ethos and mission; and (xii) be flexible and innovative, and provide a value-adding function.

The Thailand judiciary has been striving to attain these attributes. For instance, it would also apply environmental laws and principles in resolving cases before resorting to other penalties, such as educating offenders about environmental and wildlife issues or compelling them to redress the damage they have done to the environment. But moving forward, the judiciary could create a comprehensive environmental law enforcement system only with the support of the public; civil society groups; academics; as well as ASEAN and foreign environmental courts and tribunals, investigators, prosecutors, and other related government officers;

## Philippines

Justice Presbitero J. Velasco Jr., associate justice of the Supreme Court of the Philippines, gave an overview of how the Supreme Court's issuance of the Rules of Procedure for Environmental Cases had benefited court litigants and aided environmental protection in the Philippines.

First, the rules relaxed the legal standing requirements, enabling any Filipino citizen or Philippine legal entity to file an environmental case in the name of public interest. The relaxed requirements eliminate the need to prove benefit or injury to the suitor caused by the subject matter of the case. Since the rules were adopted, 2,249 new environmental cases have been filed in 14 judicial regions, for a total of 3,710 pending cases, compared with the 1,461 pending cases just prior to the rules' commencement. This amounts to an increase of 153%.

Second, the rules defer the payment of filing fees in ordinary environmental complaints. Fees are treated as a lien on a successful judgment. Moreover, the rules exempt the suitor from paying filing fees in petitions for the issuance of a writ of *kalikasan* (a writ of nature) and in petitions for continuing mandamus. Justice Velasco surmised that this treatment of filing fees caused the marked increase in the total number of environmental cases.

Third, the rules streamlined environmental proceedings by prohibiting parties from filing pleadings, which tends to delay proceedings, and instituting procedural tools intended to expedite cases and reduce litigation expenses. These procedural tools include (i) filing verified pleadings; (ii) running continuous trials; (iii) using judicial affidavits instead of direct examination in order to cut the length of trials in half; (iv) imposing a 1-day examination of witness rule, wherein the presentation of a witness must be completed in one hearing; (v) imposing a best witness rule, which authorizes the court to disallow the presentation of witnesses whose testimony would merely corroborate the testimony of other witnesses; (vi) imposing a fixed disposition period, which is 1 year reckoned from the date of the filing of the complaint up to adjudication; (vii) maximizing the pretrial stage; (viii) facilitating court-annexed mediation; (ix) issuing consent decrees; and (x) effecting deposition and discovery measures.

Fourth, the rules enable parties to file a petition for the issuance of a writ of *kalikasan* directly with the Court of Appeals or the Supreme Court. The petition must state that the suitor's constitutional right to a balanced and healthful ecology is threatened or violated by an unlawful act or omission involving environmental damage of such a magnitude as to "prejudice the life, health or property of inhabitants in two or more cities or provinces." To date, 10 petitions for a writ of *kalikasan* have been filed directly with the Supreme Court, which remanded the petitions to the Court of Appeals for reception of evidence. Bypassing the trial courts results in shorter time frames for issuing final and executory judgments on these petitions.

Justice Velasco then discussed most of the writ of *kalikasan* petitions. One of them asked for the cancellation of all mining applications in a province. Another sought an injunction against the leveling of a mountain—the case discussed by Atty. Malilong-Isberto. In that case, the Court of Appeals issued a cease and desist order to prohibit a proposed mining project that would have leveled the mountain. Another petition asked for the prohibition of fish cages in a lake. Another attempted to prevent the creation of a landfill along the coastlines. Another was filed to stop the reclamation of a portion of Manila Bay. One petition sought to stop the construction of the Jalaur hydroelectric project. Another sought to stop the operation of a coal-fired power plant, while still another demanded that the respondent permanently close an oil pipeline that was leaking more than a million liters into a barangay in a commercial city. Still another sought to stop the testing of genetically modified eggplants. And another petition asked for relief from the pollution caused by a 1996 copper mining disaster. The Supreme Court had not yet decided any of these cases, but the senior justices anticipated resolving many of them in early 2015.

Fifth, the rules also recognized the remedy of continuing mandamus,<sup>16</sup> first issued by the Supreme Court in *Metropolitan Manila Development Authority, et al. vs. Concerned Residents of Manila Bay, et al.*, G.R. Nos. 171947-48, 18 December 2008. In this case, the Supreme Court constituted the Manila Bay Advisory Committee to monitor the compliance of 10 government agencies with its order to rehabilitate and restore the water quality of Manila Bay. The joint efforts of these agencies resulted in a partial restoration of the water quality. Schools of fish had been observed in the bay. People using the bay for water sports had also noted a significant improvement in water quality. More than 19,000 families of informal settlers living along rivers and waterways that drain into Manila Bay were to be relocated by the end of 2014.<sup>17</sup> Water concessionaires installed water treatment facilities, while thousands of volunteers

<sup>16</sup> A writ of continuing mandamus is available as a remedy when a government agency or officer unlawfully neglects a duty imposed upon them by law in connection with the enforcement or violation of environmental laws or rights. The court may order the government agency or officer to perform an act or series of acts that shall remain effective until the decision is fully satisfied. Submission of periodic reports is required to monitor and validate compliance.

<sup>17</sup> Further to its first set of orders in *Metropolitan Manila Development Authority, et al. vs. Concerned Residents of Manila Bay, et al.*, G.R. Nos. 171947-48, 18 December 2008, the Supreme Court issued a resolution on 15 February 2011 containing additional orders. These orders included a requirement that the Metropolitan Manila Development Authority submit to the court on or before 30 June 2011 the names and addresses of the informal settlers in Metro Manila who, as of 31 December 2010, owned and occupied houses, structures, constructions, and other encroachments established or built along the Pasig, Marikina, and San Juan rivers; the Parañaque, Zapote, and Las Piñas rivers in the National Capital Region (NCR); the Navotas, Malabon, Tullahan, and Tenejeros rivers; and connecting waterways and esteros in violation of relevant laws. Moreover, the Metropolitan Manila Development Authority was required to submit its plan for the removal of these informal settlers and the demolition of their houses, structures, constructions, and encroachments, together with the completion date for these activities, on or before 30 June 2011, for full implementation by 31 December 2015. The Department of Public Works and Highways and the local government units in Bataan, Bulacan, Cavite, Laguna, Pampanga, and Rizal had been similarly ordered to submit the names and addresses of the informal settlers in their respective areas who, as of 30 September 2010, owned or occupied houses, structures, constructions, and other encroachments built along the Meycauayan, Marilao, Obando (Bulacan) rivers; the Talisay (Bataan) River; the Imus (Cavite) River; the Laguna de Bay Lake; and other rivers, connecting waterways and esteros that discharge wastewater into the Manila Bay, in violation of the law. And they had to jointly submit a plan for the removal of the informal settlers and demolition of their structures, together with the completion dates for these activities, by 30 June 2011, for full implementation by 31 December 2012. Pursuant to these orders, in June 2014, the government of Tarlac City awarded lots in a relocation site and gave construction materials and financial assistance to about 100 families ejected from riverside homes in Masalasa Creeks, which drains into Manila Bay.

launched massive cleanups. Justice Velasco was delighted to see the government agencies comply with the directives of the Supreme Court through the Manila Bay Advisory Committee.

Subsequently, in *Boracay Foundation, Inc. v. The Province of Aklan*, G.R. No. 196870, 26 June 2012, the Supreme Court issued a writ of continuing mandamus enjoining the provincial government from reclaiming the foreshore land facing the popular Boracay Island. The Supreme Court ordered the Department of Environment and Natural Resources to review the environmental compliance certificate issued to the Province of Aklan. The court also ordered the province to secure approval from the affected barangays and municipal councils.

For Justice Velasco, the surge in environmental cases filed since the rules were adopted attested to the Filipino people's growing awareness of the need to mitigate global warming and settle some environmental concerns. He also thought it demonstrated that the Filipino people had acknowledged that the rules were an effective tool for protecting and advancing their right to a healthful ecology. He found the struggle for environmental protection and preservation encouraging, given the full support of the trained green courts.

## ■ Panel Remarks

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### Indonesia

Justice Takdir Rahmadi, of the Civil Chamber of the Supreme Court of Indonesia, described three important pieces of Indonesian legislation related to the environment. The first was the Environmental Management Act of 1982, which recognized the right of everyone to live in a good-quality environment and to participate in environmental management. Based on this law, the court, in the 1988 case of *Indonesian Environmental Forum vs. Pulp Paper Corporation, et al.*, recognized the right of environmental nongovernment organizations (NGOs) to file a case in the interest of environmental protection.

The second act, the Environmental Management Act of 1997, acknowledged the right of persons to have access to information about the environment. In addition, the act allowed the filing of class actions, based on the court's ruling in *Indonesian Environmental Forum vs. Pulp Paper Corporation, et al.* on the legal standing of NGOs in environmental cases. Subsequently, the Supreme Court issued Supreme Court Rule No. 1 of 2002 to guide the filing of class actions.

The third act, the Environmental Management Act of 2009, contains a defense against strategic litigation against public participation (SLAPP). The specific provision states, "Everybody who fights for his or her environmental right shall not be criminally prosecuted and be subject to civil liability." A SLAPP is a lawsuit usually brought by the proponent of economic activities against individuals or NGOs in order to stop any objection or opposition from the latter.

Justice Rahmadi also discussed the case of *Panggon Mandiri Corporation vs. Rudy*. Panggon Mandiri Corporation wanted to build a hotel on its own land in Batu City, East Java, which was near a water spring called "Gemulo." The defendant was the chair of a community forum for the preservation of Gemulo. He



publicly expressed the community forum's objection to Panggon Mandiri's project, which would threaten the existence of the spring. The corporation argued that the defendant's activities, including sending letters to a number of government agencies and organizing public demonstrations against the proposed project, constituted libel and slander that damaged its reputation. The Court of First Instance of Malang upheld the validity of the defendant's activities on the ground that he was exercising his environmental rights under the Environmental Management Act of 2009.

Justice Rahmadi also outlined the operation of Indonesia's environmental alternative dispute-resolution mechanism. Both the Environmental Management Act of 1997 and the Environmental Management Act of 2009 allowed for voluntary environmental mediation. There is also a court-annexed mediation program for civil disputes, including private environmental disputes, on a compulsory basis under Supreme Court Rule No. 2 of 2008.

Finally, Justice Rahmadi referred to two more laws: (i) the Act Concerning Legal Aid Funding for Poor People to Bring Lawsuits, which allows poor litigants to file environmental lawsuits; and (ii) the Chief Justice Decree No. 36 of 2013 Concerning the Guideline for Environmental Case Handling (SK KMA 36/2013), which officially interprets some ambiguous substantive and procedural statutory provisions.

### Viet Nam

Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam, spoke about three issues in Viet Nam that he thought needed further research. The first is the creation of the best possible court system for ensuring the public's access to justice. One way to achieve this would be to minimize court fees or, in some cases, completely exempt the plaintiff from paying court fees. Another would be to shorten the time required to handle cases and to organize alternative dispute-resolution mechanisms.

Viet Nam has seen an increasing number of environmental violations causing serious damage. These include water pollution caused by the Vedan Mono MSG factory and a chemical company in Dong Nai Province hiding fertilizer and pesticides underground. The biggest challenge, however, is in measuring the damage arising from environmental violations. Owing to the terrible consequences of environmental violations and the difficulty in assessing damage, courts often resolve disputes outside of formal court proceedings—through negotiations, administrative measures, and out-of-court settlements.

In conclusion, Permanent Deputy Chief Justice Bui expressed his desire to learn more from the other countries' experiences, particularly from those that have specialized divisions or environmental courts. He then said that the Supreme People's Court had requested that the Asian Development Bank (ADB) help organize training courses on environmental issues, litigation procedures, and lawmaking to enable courts to quickly and efficiently handle environmental infringements in the future.

### Malaysia

Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, informed the participants that Malaysia had started creating environmental



courts that dealt only with criminal matters. He anticipated that these environmental courts would be established throughout all the states in Malaysia within 1 or 2 years. However, he still found the need to sensitize the judges sitting in these courts to the importance of protecting the environment.

Furthermore, Justice Malanjum advised that Malaysian courts did not have any special rules applicable to environmental cases, unlike in the Philippines and New South Wales. The Federal Court would like to study these rules and see if they could be applied to Malaysia, with any needed modifications.

Justice Malanjum proceeded to discuss one case, wherein residents of a certain area in West Malaysia sued an Australian company that had an agreement with the Malaysian government to process toxic materials in their area. The residents lost the case because of the lack of expert evidence on the danger posed by the toxic materials. It was further presumed that the government's decision to approve the Australian company's environmental impact assessment was valid and proper. Justice Malanjum suggested that officers from the executive branch adjust their mind-set and be more stringent when approving environmental impact assessments.

He also noted that a number of factors constrain the development of environmental justice in Malaysia: (i) Malaysian courts did not issue writs of continuing mandamus, (ii) many Malaysian lawyers would not specialize in environmental law because they thought there was no money in it, (iii) the government did not offer legal aid in environmental cases, and (iv) there was no support provided for getting expert evidence in environmental cases. Justice Malanjum thought that these factors helped to explain why, even though Malaysia had always suffered from a transborder haze at times during July and August each year, nobody filed a lawsuit. He also thought that these factors explained why no one sued over the poisoning of a river and the lack of alternative water sources in one village.

## ■ Discussion

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Justice Pepper opened the floor for questions and comments. She expressed an interest in hearing about what had been happening in other jurisdictions, especially with regard to any rules or procedures that might enhance access to environmental justice. Justice Shah said that there was no problem with legal standing in Pakistan; any citizen could come forward to raise an issue of public importance. He also said that the major cases relating to public interest litigation, such as environmental and human rights cases, were brought before constitutional courts, which could interpret fundamental rights.

Justice Merideth Wright, a distinguished judicial scholar at the Environmental Law Institute and former judge of the Vermont Environmental Court, discussed a paper she had prepared for another conference.<sup>18</sup> The paper featured the procedures in Vermont and in many other jurisdictions around the world that related to access to environmental justice and similar issues. Moreover, she said that specialized courts could enhance environmental law access by holding hearings in the location where the dispute arose, instead of requiring the litigants to go to some central location. This practical method made it easier

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<sup>18</sup> The paper was made available to participants in their roundtable papers.

for litigants to participate and for the court to view the dispute location, illuminating some elements of the case. She also pointed out that in civil litigation in America, each party would bear its own costs. This system probably resulted in fewer cases being filed, but it did enable parties to file cases without worrying that they might bankrupt themselves in the process if they lose.

Mr. Abdullah said that Singapore had no special rules for environmental cases because it had few environmental issues.

Justice Pepper commented on Justice Malanjam's point about the expenses related to soliciting expert opinion. The cost of expert services is significant. In Australia, some environmental defenders organizations have prepared a list of experts who are passionate about protecting the environment and are willing to render services on a pro bono basis, or at a much reduced rate. She illustrated this point by explaining how the New South Wales Land and Environment Court was assisted by the services of a specialized avian expert procured by the applicant in a case involving a critically endangered bird whose last remaining habitat was in the middle of an industrial site in New South Wales.

Justice Perez asked who accredits the experts in New South Wales. Justice Pepper answered that these experts had usually written papers about their areas of expertise, had presented at conferences, and were recognized specialists in their field. She explained there was no formal process of accreditation, but that experts must adhere to a code of conduct before they can provide expert evidence. This code requires experts to be objective and impartial, and to have particular knowledge or expertise in the subject of dispute. Such adherence, however, does not prohibit any party from challenging the expertise of the expert.

Justice Perez also asked if parties are able to dispense with the requirement of first qualifying the experts before letting them testify or give their expert opinion. Justice Pepper explained that the Australian court system effectively skips this prerequisite by requiring experts to list their qualifications, including the papers they have written, and attach the list to their report. The courts may also hold mini hearings to determine whether experts are qualified, especially in cases where the parties dispute the experts' qualifications to give their opinions on a case. Justice Perez suggested inviting these experts to the next roundtable to guide the judges. In response, Justice Pepper said that the International Union for the Conservation of Nature is a good organization for providing expert advice.

Magistrate Hajah Ery Sufitriana Hj Abdul Rahman, of the Bandar Magistrate's Court of Brunei Darussalam, added that Brunei's court had not heard any civil environmental cases yet.

Atty. Fernando remarked that in Sri Lanka, a dialogue had just started on whether the courts should simplify their procedures to make it easier for average citizens to file an environmental case. He noted that court proceedings could be made more accessible by using simpler language in the court procedures and by providing templates for filing pleadings in court. Atty. Fernando's group also thought that court officials should be directed to be more accommodating and service-oriented, and to develop manuals for lower court staff so they might understand how they should treat an environmental case.

Dr. Mulqueeny noted that Justice Luivikkai's PowerPoint presentation contained a list of landmark judicial decisions in Thailand. She requested a copy of those cases for an ADB research project and for circulation to the other ASEAN judiciaries. She also asked if the list included all of Thailand's key environmental cases. Dr. Mulqueeny then praised the Philippine judiciary's innovations, especially those intended to increase access to environmental justice. And she noted that many public interest lawyers had commended the use of the writ of continuing mandamus. However, the Court of Appeals's decision to dismiss some of the petitions for the issuance of writs of *kalikasan* that had been remanded by the Supreme Court signifies the need to sensitize judges in the Court of Appeals to environmental issues. In response to Permanent Deputy Chief Justice Bui's comments, Dr. Mulqueeny confirmed that ADB was conducting a needs assessment on the points he raised. She further happily noted the Supreme People's Court of Viet Nam's interest in creating specialized environmental courts and ensuring that expert judges were looking at environmental cases.

At this juncture, Dr. Mulqueeny discussed another ADB technical assistance project aimed at empowering environmental champions, and she suggested that this project could be used to evaluate experts.

In response to Dr. Mulqueeny's questions, Justice Luivikkai said that Thailand's trials were usually public and judgments were published. But the Thailand judiciary had experienced challenges when it came to posting these decisions online because of a lack of staff.

Justice Velasco said that in three of the writ of *kalikasan* petitions decided by the Philippine Court of Appeals, the suitor won. In one case, the Court of Appeals granted the suitor's petition to stop a mining company from leveling a portion of a mountain on the grounds that the mountain acts as a buffer against storm surges and strong sea level fluctuations. In another case, the Court of Appeals granted the Greenpeace Foundation Philippines's demand to cease the field testing of genetically modified eggplants on the grounds it posed a clear and present danger to the ecology. Lastly, in a case filed by former Representative Teddy Casiño et al. against Redondo Peninsula Energy Inc., a proponent of the construction and operation of a coal-fired power plant, the Court of Appeals held that the Redondo Peninsula's environmental compliance certificate was defective. However, Justice Velasco noted that the Supreme Court must still hear these cases following the Court of Appeals's consideration of further evidence.

Permanent Deputy Chief Justice Bui concluded the session by asking how the participants could integrate the experiences shared by the speakers and panelists in lawmaking, law interpretation, and environmental adjudication. He mentioned his request to ADB to prepare a collection of all the experiences and good practices of various courts within and beyond Southeast Asia as a reference, in the interest of improving their courts' efficiency.

Before the participants stopped for lunch, Dr. Mulqueeny encouraged them to share their thoughts on video. She also assured Permanent Deputy Chief Justice Bui that ADB was indeed preparing a volume on the proceedings of the roundtable. It is for this purpose that Atty. Francesse Joy J. Cordon, an ADB legal consultant, was present at the roundtable to serve as rapporteur.

## ■ SESSION 6: THE JUDICIARY, THE EXECUTIVE, AND ENVIRONMENTAL PROTECTION

Justice Presbitero J. Velasco Jr., associate justice of the Supreme Court of the Philippines, facilitated the sixth session. He stated that the legislature should have also been included in the session title and that the coordination among the three branches of government on environmental protection and environmental dispute resolution would differ in each country, depending on the country's constitution and political structure. In some countries, like the Philippines, this coordination might be difficult because the judiciaries in these countries have scrupulously guarded their independence from the two other branches of government, so as to maintain their impartiality and independence—guideposts of a well-functioning and effective judicial branch worthy of public trust and respect. He also recounted that, in some countries, the executive and the legislature had occasionally asserted that the judiciary had exceeded its jurisdiction and encroached on the jurisdiction of the executive and legislature. He then invited the first speaker to come up front and deliver his presentation.

### ■ Presentations

#### *Viet Nam*

Dr. Duong Thanh An, director of the Department of Policy and Legal Affairs and chief of the Vietnam Green Label Office, both under the Viet Nam Environment Administration (VEA), Ministry of Natural Resources and Environment, Viet Nam, pointed out the judiciary's important role in environmental protection and gave a presentation on Viet Nam's environmental framework. He discussed the environmental challenges in Viet Nam, the country's environmental management scheme, the new provisions of the Law on Environmental Protection 2014, and the bylaws for implementing the law.

First, Dr. Duong cited the Law on Environmental Protection 2014, which seeks to address four key challenges in environmental protection in Viet Nam: (i) the increasing environmental pollution; (ii) degraded biodiversity; (iii) threatened environmental security; and (iv) the need to strengthen community capacity as a vital player in managing the environment—important given that the locals were in the best position to discover environmental problems. In terms of pollution, two of the biggest problems are (i) widespread water pollution in the industrial zones in rural areas, due to household waste and the spread of pesticides and plastic after use, and (ii) the oil spill in coastal areas. Unfortunately, environmental administrators lack the capacity to manage waste and deal with environmental issues.

Dr. Duong next gave an overview of environmental management in Viet Nam. A new article of the new Constitution focuses on human rights—Article 43, Chapter 2. It recognizes the right to live in a healthy environment. Another new article, Article 33, enumerates the responsibilities of state authorities when it comes to environmental protection. There is also an amended 2014 Law on Environmental Protection. On 25 August 2014, the Prime Minister issued Directive No. 26/CT-TTg to guide the effective implementation of this law and to develop and implement the criteria for supervising enforcement.

The Ministry of Natural Resources and Environment and its VEA lead government efforts in preserving the environment. A network of provincial and district staff receives 1% of the country's total budget to implement environmental programs every year. To promote international cooperation, the government has also signed various treaties.

Dr. Duong informed the participants that Viet Nam still lacks the capacity and staff needed to fully protect the environment. They also lack the financial resources and the mechanism to enable the government agencies to cooperate with each other. Mr. Duong recommended that the workforce be well trained and imbued with a high sense of responsibility.

In conclusion, Dr. Duong invited the roundtable participants to read Viet Nam's national state of environment report, *Viet Nam: 2/3 of the Way Achieving the Millennium Development Goals and Towards 2015*, and to visit the VEA website for more information. He also offered to answer any queries sent by e-mail. On behalf of the VEA, he thanked the Supreme People's Court of Viet Nam, ADB, and all the participants for giving him time to speak, and he wished them all good health.

## Pakistan

Justice Syed Mansoor Ali Shah, judge of the Lahore High Court in Pakistan, discussed a case concerning the Ravi River to illustrate his thoughts on judicial oversight and pollution cleanup. He began by giving an account of the river—a historical and cultural icon of Pakistan. The 720-kilometer-long river serves as a border between India and Pakistan and passes through Lahore, where over 10 million people rely on it as a freshwater reservoir. Over time, large amounts of industrial effluents as well as agricultural and municipal wastewater have polluted the river, transforming it from a river remembered as part of the Lahore people's childhood into a “sludge carrier.”

The Public Interest Litigation Association of Pakistan and several others filed a petition before the Lahore High Court concerning the Ravi River, asserting their right to life, and praying for access to clean drinking water and a healthy environment. To acquire help in deciding the case, Justice Shah appointed the International Union for Conservation of Nature, the World Wildlife Fund (WWF), local nongovernment organizations (NGOs), universities, and environmental experts as *amici curiae*. He also constituted the Ravi River Commission of experts, comprising economists, scientists, government lawyers, members of civil society and of the chamber of commerce, and representatives of international NGOs. Justice Shah made sure that he involved government lawyers to clarify his intention of facilitating a judicial mediation, instead of an adversarial proceeding. He then issued a writ of continuing mandamus and adopted a rolling review of the writ's implementation to make sure the Ravi River was cleaned up.

During the proceedings, it emerged that the government had been talking to foreign consultants about the situation of the Ravi River since 1995. In 2009, the Japan International Cooperation Agency (JICA) conducted a study on Lahore's water supply, sewerage, and drainage, and recommended the installation of stabilization ponds and trickling filters, which would cost 42 billion Pakistan rupees (PRs) (about \$412,513,080). In 2011, Egis Bceom International (France) conducted a feasibility study on the establishment of a wastewater treatment plant, and proposed the adoption of an activated sludge process, which would cost PRs12 billion (about \$117,860,880). Neither project proceeded because of the lack of funds.

The Ravi River Commission aimed to propose a sustainable road map for restoring the natural ecology of the river by coming up with an effluent discharge reduction plan, studying bioengineering solutions with respect to ecosystem restoration, and preparing a financial strategy and mechanism. The solution had to be cost-effective because the court did not have the money and could not wait for billions of rupees to be allocated to the Ravi River's restoration. The commission recommended a homegrown solution—setting up a bioremediation project based on having the National Agricultural Research Centre construct wetlands near Islamabad. Big ponds with local vegetation and microorganisms would be set up along the river to purify the water flowing through.

Over 50 acres of land to accommodate 10 cubic feet per second of wastewater could be the starting point. Estimated to be worth PRs50 million (about \$491,087), the project cost much less than the first two proposals, so the government approved it. In addition, WWF Pakistan offered to pay the Ravi River Commission's operating expenses. The government commenced construction of a bioremediation treatment system in Babu Sabu.

Justice Shah pointed out the court's role in enabling a much cheaper, homegrown solution to an environmental problem. He then shared his lessons learned. First, the court does not always have to resort to inquisitorial proceedings when it can involve stakeholders in participatory justice. Second, public participation is also very important for giving the public a sense of ownership over the solution. Third, cost-effective homegrown solutions can be available, making it unnecessary to wait for years to acquire the huge sums of money needed to address an environmental challenge. Fourth, courts must consider using green mediation and adopting a constitutional and fundamental rights-based approach to resolving environmental disputes and protecting nature. Fifth, the court can use the concept of natural capital to negotiate funds for a project. Sixth, sustainable solutions can be reached by considering both those issues brought to the court and those not yet considered. Seventh, the court, the parties, and all stakeholders should have regard for climate change and the other ramifications of environmental challenges. Lastly, the environmental rule of law requires an expeditious, innovative, unconventional, non-adversarial, and pro-adaptation approach to environmental problems.

## ■ Panel Remarks

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### *Singapore*

Mr. Aedit bin Abdullah, judicial commissioner of the Supreme Court of Singapore, was the first to give his panel remarks. He said that like many common law countries, Singapore maintains a separation of powers between the judiciary, the executive, and the legislature. The legislature actively passes new laws, while the executive strictly enforces the laws. Within this context, the Singapore judiciary defers to the other two branches in matters within the latter's jurisdiction.

Mr. Abdullah also said that the Singapore courts had ruled that complex cases involving different policy outcomes are not suitable for judicial determination in Singapore. Environmental protection is mainly handled by the other two branches of government.



## Myanmar

Justice U Tha Htay, justice of the Supreme Court of the Union of Myanmar, spoke about the Myanmar government's constitutional mandate to protect and conserve the natural environment, as confirmed by President U Thein Sein in his first inaugural address to the Union Parliament.

From Justice Htay's viewpoint, the three branches of government should properly balance their respective tasks in protecting the environment. The legislature should enact new laws on environmental conservation, review existing laws, and amend laws as needed. The executive must strictly enforce the laws. The judiciary takes serious action against those people who violate the laws, and has procedures in place for environmental conservation and for assessing city and town development vis-à-vis environmental protection. As a country transitioning to a democratic system, the government must expand its cities and towns, build infrastructure, and deal with opposition to government actions. He concluded that governments should develop comprehensive town development plans that incorporate environmental protection before implementing those plans. Further, government activities should be transparent to the public and the media.

## Lao People's Democratic Republic

Justice Somsack Taybounlack, vice president of the People's Court of the Middle Region of the Lao PDR, referred again to the court's two approaches to environmental violations—the administrative approach, wherein the local authority would simply fine the offender, and the criminal approach, which involves the filing of a criminal case against the accused. The second approach is for serious criminals like repeat offenders.

Under the second approach, an investigating officer (such as a forest officer) must detain and investigate an accused, seize objects relating to the accused crime, and collect evidence. After evidence gathering, the investigator must prepare and send the case file to the prosecutor, who would then examine the case file. After the prosecution, judges must evaluate whether the case file is already adequate for further action. If so, the prosecutor will prepare a prosecution settlement and file the case in court, so that the court may decide the criminal case.

## Cambodia

Justice Chiv Keng, vice president of the Supreme Court of Cambodia, said that Cambodia's three branches of government, while also separate from each other, have a common mission of protecting the environment. The National Assembly of Cambodia has enacted various laws, while the executive has issued many sub-decrees on the environment.

Justice Keng said that environmental ministry officers committed environmental violations in 2009. In response, the president of the Supreme Court of Cambodia focused the court on adjudicating all environmental cases from 2010, in an effort to start dismantling environmental crime syndicates. Thus, between 2010 and 2014, 5,582 environmental cases were filed in court, of which many were filed by people adversely affected by projects with severe environmental impacts. This number, however, fails to reflect the real number of environmental disputes and violations because most of the cases are still being resolved by administrative agency officers.



In conclusion, Justice Keng identified the three biggest challenges facing the Cambodian judiciary. First, it has insufficient numbers of judges and prosecutors. Second, on the whole, the Cambodian judiciary lacks the special skills necessary to decide environmental cases. Third, corrupt court officials interfere with proper case adjudication. The last challenge relates to inadequate evidence available to the prosecution and limited public involvement. Overcoming these challenges would significantly help the Cambodian court improve its system.

## Discussion

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Justice Velasco requested that the other judicial delegates share their experiences in coordinating or collaborating with the executive or even the legislative branch to protect the environment.

Mr. Benjakul said that the independence of Thailand's judiciary allows it to propose amendments to current laws.

Justice Malanjum apprised the group that Malaysia also maintains a separation of powers among the legislature, the executive, and the judiciary. There are times when two or all three branches have conflicting positions on environmental issues, and the way the court has decided a case would leave the other branches unhappy. However, a coordinating committee has allowed each branch to understand the others' perspectives.

Justice Sumanatha mentioned that the Supreme Court and the Ministry of Environment had signed a memorandum of understanding prior to the establishment of the green bench, and had jointly conducted certification training on environmental issues. Moreover, under Article 90 of Law No. 32/2009, the Ministry of Environment, the central government, and the local governments can sue anyone committing environmental violations. Despite these arrangements, the judiciary maintains its independence by excluding the Ministry of Environment from participating in any part in the court's evaluation of the ministry's environmental protection programs.

Dr. Mulqueeny recapped the discussion. She noted that while the majority of the judiciaries operate in states that apply the separation of powers model, ensuring a certain level of independence from the other branches of government, some judiciaries operate under different circumstances. For instance, the Singapore judiciary would probably never issue writs of continuing mandamus. She then asked which judiciaries would be able to issue a writ of continuing mandamus. Dr. Mulqueeny also asked Dr. Duong how the Supreme People's Court helps draft circulars with the Ministry of Natural Resources and Environment and other ministries, and which other judiciaries would also be involved in some form of promulgation of rules and procedures.

Justice Velasco responded that the Philippine Constitution grants the judiciary the power to promulgate its own rules of procedure. Permanent Deputy Chief Justice Bui announced that only in the latest Viet Nam Constitution are there provisions on the separation of powers among the three branches of government, and on the nonintervention of each branch into the others' performance of their mandates. No agency can interfere in the courts' adjudication of cases. The legislature does solicit court opinions during lawmaking. In fact, whenever the current laws fail to address new behaviors or new

events, Viet Nam's legal system permits the judiciary and relevant agencies to draft joint or interministerial circulars to settle those emerging issues. Conversely, the Vietnamese courts can consult with relevant government agencies in deciding cases involving a particular industry or a specialized area.

Justice Shah also remarked that the boundaries separating each government branch are usually very clear. The Pakistani judiciary does not interfere in political or economic policy matters. Pakistan, however, is much more populous and has a bigger government than Singapore and many other countries. It also has a less sophisticated court system compared with those of Singapore and other small countries. In addition, not everybody is above the poverty line; not everyone can come to court to access justice or even engage the services of counsel. Thus, Pakistan values the concept of social justice, and the courts more actively assist the people in attaining justice and striving to correct social injustice.

Justice Shah added that the Pakistan Constitution recognizes all kinds of fundamental rights. The courts can engineer the exercise of these rights and effective environmental law enforcement. He advocates for judicial innovation and scholarship, but judicial activism does not necessarily mean bending the rules. Activism means that the courts can be slightly more proactive in interpreting the Constitution and the current laws, bearing in mind the size of governance and the size and nature of the population.

Before closing the session, Justice Velasco encouraged the judiciaries to work with their other branches of government to overcome the big challenges of climate change and environmental degradation. In the Philippines, relevant government agencies created the Justice Sector Coordinating Council, comprising prosecutors from the Department of Justice and police under the Department of Interior and Local Government. The Philippine judiciary participates in the council only for the purposes of expediting prosecution and adjudication, and guaranteeing an effective prosecution and adequate presentation of evidence. The judiciary should interact with and help the other branches of government, within the boundaries of the judiciary's mandate under the separation of powers model, to solve environmental problems. He then thanked all the speakers, panelists, and all the participants for their active contributions during the session.

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## ■ SESSION 7: ASSESSMENT OF DAMAGES IN ENVIRONMENTAL CASES

Justice Rachel Pepper, judge of the New South Wales Land and Environment Court in Australia, recalled that on her way to this roundtable, she had read a newspaper article that could properly frame the theme of this session, as it involved issues on environmental damage assessment. The article reported on Bangladesh's efforts to clean up about 350,000 liters of furnace oil spilled from an oil tanker that sank on 9 December 2014, and that could damage the Sundarbans, the world's largest mangrove forest, a UNESCO World Heritage Site, and home to the rare Bengal tigers and river dolphins. Officials from the Ministry of Environment and Forests said that the oil tanker had to be towed to a river bank in order to prevent any further spillage. Aside from the overpowering stench of oil, ducks were dying after swimming in the slick, which covered 50–70 square kilometers.

She then discussed the issues that could arise from the incident. If criminal prosecution were to be pursued, would the imposition of a monetary fine be appropriate or adequate in this situation? In

her opinion, fines would probably be too low and could not restore or repair the environment. If civil remedies were to be pursued, who should pursue those remedies? Who would be entitled to receive any damages? How would the damages be calculated? What would be the most appropriate remedy? If it is compensation, how should the courts determine the appropriate compensation? What would be the value of natural capital lost?

An Australian court would probably be unable to address the issues involved. Should a civil case be filed, the court must look at issues of loss and ownership of the damaged mangrove forest, polluted water, and the dying fish and ducks. Traditional remedies in torts dealing with such issues as nuisance or negligence would have issues in proving the existence of a duty of care, particularly in respect of an asset that no individual, group or entity owns—such as a mangrove forest or a river—and in establishing causation. Should a criminal case be filed instead, the monetary fines would be too low and insufficient to restore the environment. The New South Wales Land and Environment Court would probably be able to impose a monetary penalty for such restoration. Alternatively, if restoration was impossible, the court could direct the defendant to pay a certain amount of money to fund a specific environmental project, such as a cleanup, or to give an enforceable undertaking, whereby the defendant agrees to remediate damage or undertake a certain environmental project. An enforceable undertaking would be a viable solution that the court could continue to supervise long after the case has been decided and the fine has been levied.

After framing the relevant issues for the session, Justice Pepper introduced the speakers.

## Presentations

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### *United States of America*

Justice Merideth Wright, a distinguished judicial scholar at the Environmental Law Institute and former judge of the Vermont Environmental Court, began by explaining that within the federal government system of the US, each state can have its own judiciary, as well as its own environmental laws and procedures. Her presentation focused on some of the methods of assessing environmental damages and on the connection between damage assessment and environmental law enforcement economics.

Justice Wright reiterated that enforcement does not necessarily translate into compliance. There is a need to determine the actual effect of an enforcement program within a given jurisdiction. Any enforcement and compliance program must address the prevention of environmental harm; the compensation of individuals, communities, and the national patrimony affected by environmental harm; and the adoption of incentives to deter crime.

Effective monetary penalties must be in place to remove the economic benefit or profit from committing illegal logging, wildlife trafficking, or any other environmental crime, including any savings on the cost of compliance. These penalties must also enable the government to recover any money spent in remediating environmental damage and compensating affected communities or the nation for the damage caused. For instance, while there might not be any profits to be derived from disposing of waste

improperly or illegally, someone might still choose to dispose of their garbage improperly because it is cheaper than doing it correctly. Therefore, the cost savings should be reflected in the penalty so that the savings would not incentivize people to violate the regulations on correct waste disposal. In addition, the challenge of estimating the value of natural resources illegally traded can be addressed by surveying what the traffickers are paying for these resources.

To ascertain how much penalty should be imposed on the offenders to compensate for the damage they caused, one must take into account the ecosystem services that nature provides. Justice Wright then discussed the four categories of services performed by the ecosystem: (i) provisioning services, like the food, drinking water, fuel, fiber, medicines, and genetic resources; (ii) regulatory services, such as climate change mitigation, air cleanup, water purification, waste decomposition, and pollination; (iii) cultural services, or nonmaterial benefits, including the spiritual, religious, and aesthetic benefits offered by nature, sometimes measured in terms of recreation and tourism services that people would pay to either enjoy or maintain; and (iv) supporting services, such as soil formation, habitat creation, and nutrient cycling.

Lastly, Justice Wright stressed that it is sometimes impossible to put a value on the amount of ecosystem services destroyed at the time of the violation or at the time a case is heard. In these instances, it would be more practical to require the violator to create or contribute to a fund for the eventual remediation of the damage. For example, a fund could be set up to shoulder the medical expenses to be incurred at a later date or the cleanup expenses that are not yet known. In the US, certain government departments serve as trustees of such funds to manage and pay them out to the affected people at some future time, once they qualify to receive any sum of money from these funds.

## Thailand

Justice Suntariya Muanpawong, secretary of the Environmental Division of the Supreme Court of Thailand, began by discussing the Enhancement and Conservation of the National Environmental Quality Act of 1992. The law has two important sections that include the “polluter pays” principle and provide for the offender’s civil liability to the state for causing any environmental damage.

She then discussed two landmark cases in Thailand—the *Klity Creek Case* and a public land encroachment and deforestation case. In the first case, the Lead Concentrates Company, a lead mining company, discharged toxic waste into a creek near Klity Creek. Lead sediment contaminated the water, killed the fish and aquatic wildlife in the area, and poisoned the locals who drank water or ate the marine life coming from the creek. Many people died, while others suffered physical deformities. The people therefore had to find alternative sources of water and food. In 2008, the Pollution Control Department filed a civil case against the company and seven persons, claiming compensation for violating the Civil and Commercial Code, as well as the Enhancement and Conservation of the National Environmental Quality Act, by polluting Klity Creek and causing untold damage.

Both the lower court and the Court of Appeal ordered Lead Concentrates to pay about 30 million baht (B) (about \$859,107) to compensate the villagers suffering from lead contamination, but dismissed the appeal for Lead Concentrates to clean up the creek. However, Justice Muanpawong confirmed with scientists that the court should have ordered the company to pay at least B100 million (about \$2,863,691). She opined that this undervaluation of environmental damages was due to the public’s and

the prosecutor's lack of knowledge about the methods of measuring environmental damage or the nature of damage caused, which was why the prosecution asked for such a small amount of money.

The second case involved public land encroachment and deforestation. The Royal Forestry Department sued three villagers and claimed compensation under the Civil and Commercial Code and the Enhancement and Conservation of National Environmental Quality Act because the villagers cut trees in watershed areas and occupied land inside a national forest reserve. The three defendants pleaded guilty and were sentenced to imprisonment. The Royal Forestry Department claimed compensation for the total value of natural resources the villagers destroyed and environmental losses, such as topsoil loss, water loss, nutrient loss, increases in temperature, and loss of carbon sequestration benefits. The department guided the court in ascertaining the amount of damage using a computer program and a damage assessment-based approach.

Justice Muanpawong said that these two cases highlighted the need for a clear definition of the value of nature and compensation for human injuries, as well as new laws, sentencing guidelines, training programs, and systems of presenting expert witnesses. She also noted that the Royal Forestry Department had kept the money instead of attempting to restore the damaged forest.

### Philippines

Justice Jose P. Perez, associate justice of the Supreme Court of the Philippines, as well as chair of various court committees and former court administrator, commenced by highlighting what he had learned during the roundtable, such as methods of environmental damage assessment and the need to champion environmental judges. He then shared the relevant provisions of the Philippine Rules of Procedure for Environmental Cases.

Justice Perez said that the environmental rules of procedure had shifted the focus from liability to relief. The Philippine Constitution contains the fundamental right of the people to a healthful and balanced ecology (Section 16, Article II): "The state shall protect and advance the right of the people to a balanced and healthful ecology in accordance with the rhythm and harmony of nature." The legislature referred to this constitutional right in numerous environmental laws.

The Philippine Supreme Court is mandated to promulgate rules concerning the protection and enforcement of constitutional rights, and it issued the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC. The rules allow the parties themselves to assess environmental damage. Court-annexed mediation is available to assist the parties in settling their dispute. If mediation fails, the court shall still strive to settle the dispute. If the court is successful reaching a settlement, it must issue a consent decree laying down the agreement between the parties and witnessed by the court. Justice Perez recounted Atty. Malilong-Isberto's earlier statement on the winning bidder's noncompliance with the mediated agreement. Despite this incident, Justice Perez thought that mediation remains a powerful tool in measuring environmental damage.

Only after all efforts to amicably settle a dispute have failed will the case proceed to trial. During trial, as the rules provide, the parties may submit secondary evidence such as photographs and videos

to prove the illegal act and the consequent damage. The parties may also resort to discovery procedures like ocular inspection and the production and inspection of documents or things. The rules also follow the precautionary principle, which allows the court to rule in favor of environmental preservation in the absence of adequate or exact scientific proof of environmental harm.

Justice Perez agreed with Justice Pepper's enumeration of the issues that face the court. He further added that it is vital for the court to fully appreciate the evidence before measuring damage. He then ended with a hope that the answers to these issues would become known to all the judges in the succeeding roundtables.

## ■ Discussion

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Justice Pepper asked participants how they calculate environmental damage and how they get the evidence needed for such calculations. Justice Malanjum said that in Malaysia, they sometimes auction off the objects of the crime to discover the public's valuation of these items. He also said that judges must be able to ask the right questions to find the answers to these issues. For instance, environmental harm may be assessed by calculating the cost of treating an affected person's illness or the foregone income because he was sick.

Justice Malanjum also suggested conducting a special workshop on damage assessment, to which Justice Pepper agreed. It was decided that the training session could help the judges better understand damage assessment and the underlying economic principles, and to apply these concepts when determining the penalties to be imposed and when soliciting expert advice.

Permanent Deputy Chief Justice Bui seconded Justice Pepper's statement that environmental damage assessment might involve tangible objects, which could be easier to value compared with intangible objects. There should be a rule prescribing the method for attaching a value to the damage. He also agreed with Justice Malanjum's suggested methods for determining damages, and thought that those methods could be useful in a case of a polluted river or spring that people use to catch fish, particularly if many people have suffered. He noted there are various factors to consider in determining the appropriate compensation—the presence of other factors that could have killed the fish, the age and size of the fish, the market for the fish, and the market value of the fish.

Permanent Deputy Chief Justice Bui gave a second example of a challenging case: air pollution and related respiratory illnesses. He discussed the challenge of determining the impact area for residents suffering from respiratory illnesses due to the air pollution. He noted the court should consider whether to invite experts and determine what environmental principles should be adopted. In his opinion, the court should set the method for measuring the damage and coming up with a reasoned decision. Otherwise, the court risks demanding unreasonable amounts of compensation from defendants.

Justice Pepper thanked all the speakers and expressed the need for more discussion, training or capacity building efforts, and creative thinking by the judges in using the various techniques and concepts in conducting environmental damage assessments.



## SESSION 8: Environmental Institutional Reforms and Training Institutes

Justice Adolfo S. Azcuna, the chancellor of the Philippine Judicial Academy, retired associate justice of the Supreme Court of the Philippines, former constitutional commissioner who helped draft the 1987 Constitution, and former executive secretary under President Corazon Aquino, facilitated the eighth session. He introduced the session speakers and the sole panelist, who all head judicial training schools in Southeast Asia. Justice Azcuna explained the session would focus on the different methods and strategies for training judges in their respective judiciaries.

Justice Azcuna explained that the Philippine Judicial Academy, an adjunct body of the Supreme Court, is statutorily mandated to train all judges and court personnel, including sheriffs and stenographers, in the Philippines. His main objective in attending the roundtable was to learn how to train judges and court personnel for the purpose of achieving the Jakarta Common Vision, particularly to ensure that judges play their part in ensuring sustainable economic development and environmental protection. He likewise stated the shared objective of the judiciaries in the member countries of the Association of Southeast Asian Nations (ASEAN) and their judicial training institutes of mapping out an action plan to achieve the Jakarta Common Vision through regional coordination and cooperation.

### Presentations

#### *Viet Nam*

Justice Chu Xuan Minh, rector of the Judge Training School of Viet Nam, discussed judicial training in Viet Nam with respect to the achievement of the Jakarta Common Vision and the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision. Both documents encourage the ASEAN judiciaries to incorporate environmental law training into the curriculums of law schools and judicial training schools.

Justice Chu told the participants that his school is the only institution providing training courses for judges, aspiring judges, court secretaries, and other judicial staff. His school also offers long-term training courses, and mid-term and short-term on-the-job training courses. Before 2014, the Ministry of Justice's Judiciary Academy was in charge of offering these training courses. In 2014, the Judge Training School replaced the Judiciary Academy in providing fundamental training in adjudication and teaching the students the two main skills of judges—court management and legal analysis for deciding cases and disputes within their jurisdictions.

The Judge Training School immediately began conducting training programs for judges, Supreme People's Court staff, and other judicial officers, as well as advanced training for judges with international integration practices. Environmental cases are taught together with civil damages, compensation, and restitution. Experienced judges comprise most of the teaching staff to ensure the quality of training. The school also has an environmental twinning program with the Korean International Cooperation Agency to help the school build its infrastructure and train lecturers by organizing study tours of courts in the Republic of Korea to help them gain more experience in managing hearings.



To enhance the quality of judicial training, Justice Chu suggested a number of initiatives. First, that there be a manual or a benchbook on international law and jurisprudence, with each country's laws, regulations, and precedents constituting separate chapters of the book. The benchbook would enrich Viet Nam's trial experience and help train judges and other court staff. Second, the school would benefit from the technical support of international experts and their experience in deciding environmental disputes. Third, there should be in-depth training courses at the regional level for ASEAN judges who are active lecturers in their respective jurisdictions to help improve environmental law training for judges. Finally, the ASEAN judicial training institutes should collaborate with each other to share experiences in planning training courses for court staff.

Justice Chu expressed his hope to organize special training courses on environmental protection before thanking the participants for listening.

## Indonesia

Justice I Gusti Agung Sumanatha, of the Civil Chamber of the Supreme Court of Indonesia, discussed the establishment and functions of the Judicial Training Center of the Supreme Court of Indonesia.

In 2006, then Chief Justice Bagir Manan of Indonesia reorganized the Indonesian courts, including the Judicial Training Center. Previously, the Supreme Court and the Ministry of Justice jointly trained judges. But after the reorganization, only the Supreme Court managed this training. In 2008, the training program aimed to create professional judges and court staff. The training material featured content on the national training of candidate judges, the continuing judicial education of judges, and certification training for senior judges.

The complete initial training course lasts for 2 years and includes centralized training and an intensive mentoring program in a pilot court. Centralized training has three parts: (i) court administration and leadership training of judges, followed by on-the-job training in a pilot court; (ii) training to become acting registrars, with a requirement that the candidates apply their skills in assisting senior judges; and (iii) adjudication skills. The mentoring program, in turn, involves the close supervision of trainees on a monthly basis to guarantee their proper implementation of current policies and programs. In the end, the Judicial Training Center conducts an overall evaluation, as well as a written and oral examination. The center submits the names of successful candidates to the President, who then appoints the judges.

The continuing judicial education falls into two categories—one for judges with 1 to 5 years of working experience, and the other for more experienced judges. The center provides a forum for trainees to exchange knowledge and experiences with a trainer or a senior judge. It also teaches three topics: good law conduct, trial and decision-making skills in criminal cases, and trial and decision-making skills in civil cases. Each course lasts for 3 days, with each judge taking the next course 2 months after he or she has taken the previous one.

The third program, certification training, covers two general categories—topics ordered by law and topics that the Supreme Court deems important, such as mediation and environmental issues. A team of justices, senior judges, external experts, and registrars designs the training curriculum. Meanwhile, a pool of trained trainers provides consistent and interactive training.

The judicial certification program on environment prepares those who aspire to be environmental judges in accordance with Chief Justice Decree No. 26 of 2013. The certification program is a rigorous process consisting of the following stages: (i) the selection process, consisting of sending open invitations through the Supreme Court website to judges wanting to apply for the program; (ii) environmental and administrative selection; (iii) competence selection, involving a written test and interview; (iv) integrated selection, through a written test, interview, public reporting on compliance, and a recommendation by the Supreme Court Internal Supervision Unit; and (v) a final test.

This entire process is designed to guarantee that only judges who have the dedication, curiosity, patience, and affection for nature are certified to be environmental judges. The selection process runs for 12 days, with 2 days for selection and testing, 9 days for training, and 1 day for a field trip. Training is facilitated through case studies and sharing of experiences and methodologies. A course manager evaluates the candidates daily and in accordance with the prescribed assessment criteria. The names of successful trainees are then submitted to the chief justice for appointment and certification of their competence to hear and decide environmental cases.

Justice Sumanatha also said that certified judges who render good decisions are given opportunities to participate in international workshops and conferences on environmental law. The evaluation process of certified judges also ensures that the incentives given do not prejudice or interfere with their independence in hearing cases.

### Thailand

Mr. Sarawut Benjakul, deputy secretary-general of the Office of the Judiciary and secretary-general of the Institute of Legal Education of the Thai Bar Association, first gave a profile of Thailand. With a population of 65 million, the country has 1.3 million cases each year that are handled by 4,300 judges and 12,000 court officials nationwide. To build the capacity of judges and officials, the Judicial Training Institute conducts courses in a 19-story building with 200 rooms designed for training. About 35,000 candidates apply to be barristers at any given time, and they must undergo a 1-year course and pass the final examinations.

Half of the 1.3 million cases filed every year are civil cases, while the other half are criminal cases. Most criminal cases deal with drug trafficking, while most civil cases deal with consumer complaints. The need to protect the public interest and the environment guides judges in deciding these cases. As part of its efforts to enhance the capacity of judges and promote awareness among stakeholders of the importance of the environment, the Office of the Judiciary established an environmental division in each court of appeal and at the Supreme Court level, and an environmental green bench in the civil courts.

Continuous judicial education is important for properly exercising the duties of each post. For this reason, the Thai judiciary designed a training program consisting of in-house courses for all the judges sitting in the Supreme Court, the central and regional courts of appeal, and the courts of first instance, among others. Thus, apart from the 1-year basic training course, there is also specialized judicial training for another year, joint training with the judiciary of the Lao People's Democratic Republic (Lao PDR), and international academic lectures given by officers from other countries, from such institutions as the Singapore College of Law and Kyushu University, in Japan.

The Judicial Training Institute offers two specialized areas of instruction: (i) an environmental law course focusing on contemporary legal issues regarding international resources and developmental law, which is being offered in collaboration with foreign universities; and (ii) on-the-job training in managing the affairs of high courts for judges and court personnel. There are also lectures offered for other judges, public prosecutors, lawyers, university professors, and businesspersons on topics such as the environmental situation in Thailand, judicial training in environmental and industrial issues, and the enforceability of environmental laws.

Mr. Benjakul concluded by drawing attention to the environment-related classes being offered in partnership with foreign universities and through a collaboration with the Cambodian and Viet Nam judiciaries. Demand for these specialized training programs has been high despite the admission fees, which are needed to cover the course costs.

## ■ Panel Remarks

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### *Lao People's Democratic Republic*

Judge Phongurn Chanthanakhone, judge and deputy director of the Research and Training Institute for Judges of the Lao PDR, stated that there are few criminal environmental cases in the Lao PDR. Any such case is considered minor and resolved through mediation or administrative procedure. The offender simply pays compensation for the damage caused. This is why the Lao PDR has not established a specific court chamber for environmental matters and why the Research and Judicial Training Institute has not offered any environmental law training courses.

Judge Chanthanakhone took the opportunity to thank the Government of Viet Nam and the Viet Nam people's courts, as well as the Government of Thailand, for providing financial support to enable the Lao PDR judicial officers to take part in training programs in these countries. These seminars enabled the Lao PDR court officials to bring back important knowledge and experiences to their country. He also expressed his hopes of learning a lot from the discussions and information exchange and of working with the other ASEAN judiciaries in the future. He then wished the roundtable great success.

## ■ Discussion

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Justice Azcuna opened the floor for discussion. Deputy Director Hlaing discussed Myanmar's judicial training programs. The Supreme Court of Myanmar has a training department that manages a training center offering two kinds of programs. The first program is an initial training course for junior judges and the other is a refresher course for experienced judges. Neither training program has a special curriculum for environmental issues. She explained that the Supreme Court of the Union of Myanmar had received an invitation from the Supreme Court of Indonesia to attend a judicial training seminar on environmental issues that would be taking place in January 2015. She then requested that the delegates share their environmental law training curriculums and invite her judiciary to any training course for environmental matters.

Mr. Abdullah told the participants that Singapore had just set up its own judicial training institute.

Justice Malanjum said that the Malaysian Federal Court has two training centers. One is an academy for judges that usually offers training courses during the weekends. The other offers classes for judicial officers.

At this juncture, Justice Azcuna acknowledged the arrival of Chief Justice Muhammad Hatta Ali of the Supreme Court of Indonesia.

Then Chief Justice Khawaja Imtiaz Ahmad of the Lahore High Court, in Pakistan, related that the Pakistani judiciary is also working hard to address environmental issues. He was optimistic that his country's judiciary's efforts would bear fruit.

Prosecutor Somarith Keng of the Ministry of Justice said that Cambodia is in the process of establishing its environmental courts. The priority, however, is to create commercial courts. The training school for judges and prosecutors similarly prioritizes the training of judges and prosecutors in civil, criminal, labor, administrative, and marine law. Judges also participate in seminars organized by nongovernment organizations (NGOs). Despite the current shortage of judges and prosecutors in Cambodia, the courts are exerting their utmost effort in handling environmental cases. He explained that Cambodia hoped to establish a special training program in environmental law soon, with the support of the other ASEAN members.

Justice Duraman said that Brunei Darussalam has two court systems. The Shari'a courts adjudicate cases involving Shari'a law. Those wanting to train in Shari'a law attend the Universiti Islam Sultan Sharif Ali. Alternatively, the civil law courts adjudicate civil cases. There is no law school teaching civil law in Brunei, so those aspiring to work in the judiciary must get a civil law degree from a university in Australia, England, Malaysia, or Wales, and receive judicial training. This explains why the number of civil lawyers in Brunei is limited.

Justice Duraman also noted that Brunei is not currently facing any environmental challenges, so justices did not feel the need to institute any special environmental law training. All of the environmental cases are criminal in nature and are therefore brought to the courts of first instance of criminal law, where the defendants are prosecuted.

Chief Justice Truong said he thought that most of the ASEAN judiciaries faced mounting environmental challenges at the national, regional, and worldwide levels. Preventing natural disasters requires better implementation of the rule of law and a strong judiciary capable of identifying and dealing effectively with environmental issues. He concluded that strong laws and competent court staff are needed to enable investigation, prosecution, and trial of the criminal aspects of environmental offenses. In addition, judges must be skilled at dealing with environmental cases.

Chief Justice Truong identified the need to train the court staff. Viet Nam has a school for court staff, which the Viet Nam judiciary wants to develop into an institute or academy offering a college degree. He was certain that environmental training would be part of the curriculum. Chief Justice Truong offered to share knowledge with the other ASEAN judiciaries, and looked forward to learning from their experiences and training activities.

Justice Azcuna thanked all the speakers and the panelist.

## SESSION 9 Cooperation among ASEAN Judiciaries on Environmental Protection

Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, and Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam, facilitated the last session of the roundtable. The session aimed at finalizing and securing the consensus of the ASEAN judiciaries on the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision. Dr. Mulqueeny reminded the delegates that the plan's proposals had been taken from recommendations made by delegates at previous roundtables, and were then deliberated on by the ASEAN Judicial Working Group on Environment during its first meeting, in Ha Noi in September 2014. Furthermore, the document would serve as the action plan required by the Jakarta Common Vision itself. ADB merely added a preamble to guide the reader through the record of the accomplishments of the ASEAN judiciaries since the Inaugural Roundtable was held, in Jakarta in December 2011. Dr. Mulqueeny then invited the delegates to read through the Proposed Hanoi Action Plan and offer their comments.

Justice Rahmadi confirmed Dr. Mulqueeny's statement that the participants in the First ASEAN Judicial Working Group on Environment Meeting deliberated on the document. He then suggested that the roundtable participants listen to the comments of their chief justices, starting with Chief Justice Ali.

Chief Justice Ali then addressed the participants. He announced his agreement with the Proposed Hanoi Action Plan for the following reasons. First, it is the kind of document that is necessary for implementing the Jakarta Common Vision—something that the attendees at the Inaugural ASEAN Chief Justices' Roundtable on Environment had agreed on.

Second, the plan lists the concrete steps that the Supreme Court of Indonesia can take to implement its judicial reform programs. In fact, Chief Justice Ali had constituted Indonesia's national judicial working group on environment, appointing Justice Rahmadi to function as chair, and Justice Sumanatha to function as vice chair. The ASEAN Judicial Working Group on Environment, comprising representatives of the national judicial working groups, provides a good forum for national representatives to discuss ideas and share information and experiences relevant for improving each nation's environmental statutory regimes and environmental jurisprudence. The forum also allows the ASEAN judiciaries to jointly tackle their common environmental problems.

Third, Chief Justice Ali said that he supported environmental law training, whether in Indonesia or in any other ASEAN country. Indeed, as chair of the ASEAN Law Association, he suggested that there be judicial training on environmental law for ASEAN judges. The other chief justices were in favor of his idea, so he declared that the first judicial training program in environmental law would be held at the Judicial Training Center in Indonesia in January 2015.

Fourth, he had no objection to sharing environmental law and landmark environmental decisions on the Asian Judges Network on Environment (AJNE) website. Such postings would enable the ASEAN public to access the information, which is consistent with Indonesia's judicial transparency program, as mandated by the Public Information Disclosure Act of 2008.

Finally, Chief Justice Ali thanked Chief Justice Truong Hoa Binh, of the Supreme People's Court of Viet Nam, for graciously hosting the Fourth Roundtable, all the members of the organizing committee for

their assistance, and ADB representatives for facilitating the roundtable. He recognized the indispensable support of ADB in all the programs of the ASEAN Chief Justices' Roundtable on Environment.

Dr. Mulqueeny acknowledged Indonesia's full support for the Proposed Hanoi Action Plan and asked the other participants for their comments. In response, Justice Velasco pointed out that several provisions of the proposed action plan needed clarification, specifically, those regarding

- (i) sample content for rules of procedure for environmental cases,
- (ii) translated record of proceedings,
- (iii) experts in judicial training and conferences,
- (iv) prioritizing the attendance of ASEAN chief justices at the annual roundtable,
- (v) head of the roundtable every year, and
- (vi) notes on organizing the roundtable.

A seventh matter, raised by Chief Justice Truong, concerned ADB's role as permanent administrator of the AJNE.

Chief Justice Truong advised the judiciaries that the proposed document is not binding. The ASEAN judiciaries could freely adopt its provisions or not, depending on their situation. Justice Malanjam reported that, despite having informed his chief justice about the outcome of the First ASEAN Judicial Working Group on Environment Meeting, he had not received any feedback. Justice Velasco recommended that the participants come up with a final version of the Proposed Hanoi Action Plan, subject to the approval of their chief justices.

Dr. Mulqueeny told the participants that ADB had supported the working group meeting as the venue for planning the roundtable, including the drafting of the Proposed Hanoi Action Plan. ADB then made sure that all of the ASEAN chief justices received a copy of the draft action plan a few months before the roundtable, to give them the opportunity to comment.

To help move the discussion forward, Permanent Deputy Chief Justice Bui seconded Chief Justice Truong's reminder that the Proposed Hanoi Action Plan was a nonbinding road map to encourage the ASEAN judiciaries to learn from one another. He then proposed that the group agree to the plan in principle, for the time being, and then submit it to their chief justices for final approval.

### *Re: Sample Content for Rules of Procedure for Environmental Cases*

Justice Velasco suggested deleting some of the sentences in the original paragraph and simply stating, "The ASEAN judiciaries agree to provide sample frameworks and content for possible environmental rules of procedure for the members."

Permanent Deputy Chief Justice Bui said that the ASEAN judiciaries do not need to have uniform rules of procedure for environmental cases, meaning the plan's content could function as reference material. Chief Justice Truong added that any requirement to have uniform rules would be better incorporated into a regional treaty, not an action plan. Justice Velasco affirmed that the agreement to provide sample frameworks does not require harmonization or uniformity in the environmental rules of procedure among the ASEAN judiciaries.



The final wording of the proposal states, “The ASEAN judiciaries agree to provide sample frameworks and content for environmental rules of procedure, so as to illustrate content for judiciaries considering such rules.”

### *Re: Translated Record of Proceedings*

Justice Velasco deemed the provision to be unnecessary because the secretariat was expected to document these proceedings. Dr. Mulqueeny agreed that recording the proceedings was a secretariat function. She emphasized that the proposal requires translations.

Justice Velasco suggested the following variation: “The ASEAN judiciaries agreed that the proceedings shall be translated in the ASEAN languages, so the non-English-speaking justices could read and review,” or alternatively, that the “the proceedings be translated into ASEAN languages.” Hence, the final wording reads, “The ASEAN judiciaries agree that they will translate proceedings into ASEAN languages.”

### *Re: Experts in Judicial Training and Conferences*

From Justice Velasco’s perspective, it is not only mediators who should be invited to the annual roundtable, but also experts, scientists, and other resource persons. However, the number of these resource persons would depend on the funder’s discretion. Dr. Mulqueeny said that ADB had supported the attendance of scientists and various experts at these roundtables, but there were also instances in which only judges should be invited to judicial conferences. The provision was worded to reflect the judges’ willingness to listen to other experts.

Chief Justice Truong expressed concern about involving mediators in judicial proceedings. Justice Velasco responded that mediators in environmental cases are different from ordinary mediators. Environmental mediators are capable of threshing out and facilitating the issuance of a consent decree. Dr. Mulqueeny explained that “judicial conferences” referred to events such as this roundtable, and that there was no suggestion that mediators should be engaged to resolve a dispute. Instead, they were asking for mediators to come and speak on environmental mediation.

Chief Justice Truong then proposed that the title specify “experts,” and that extending invitations to experts to speak at the roundtable be dependent on the topics. The final wording states, “The ASEAN judiciaries agree to include experts, scientists, and other resource persons where relevant to the topics under discussion.”

### *Re: Prioritizing the Attendance of ASEAN Chief Justices at the Annual Roundtable*

Justice Velasco asked why this was proposed and sought clarification on the connection between the ASEAN Chief Justices’ Roundtable on Environment and the ASEAN Chief Justices’ Conference. Dr. Mulqueeny said that this proposal was raised during the Third Roundtable. She then explained that the two conferences were separate and distinct from each other.

Justice Velasco then suggested deleting this provision because the attendance of chief justices at the annual roundtable is expected anyway. Otherwise, it would appear as if the participants are obligating



their chief justices to attend. Chief Justice Truong disagreed, and said that the word “prioritizing” signifies that the chief justices’ attendance is not compulsory. Ideally, the presence of more chief justices at the roundtable would allow for better results.

Dr. Mulqueeny thought that it was a secretariat function to ensure that chief justices attend roundtable meetings, and she therefore recommended deleting this proposal. She then deleted it after confirming the participants’ concurrence.

### *Re: Head of the Roundtable Every Year*

Justice Velasco suggested deleting the reference to the status quo and restating the provision to be, “The ASEAN judiciaries agree to rotate the roundtable chair annually. The ASEAN judiciaries agree to have the chair of the roundtable to be automatically the chair for that ASEAN Chief Justices’ Conference.” Chief Justice Truong asked what the mechanism for the rotation should be.

Dr. Mulqueeny explained that the ASEAN Chief Justices’ Conference is different from the ASEAN Chief Justices’ Roundtable on Environment. The first covers broader topics (not necessarily confined to environmental issues) and meets once every 2 years, whereas the second focuses on environmental issues and meets annually. Thus, it would be difficult, if not impossible, to maintain the link between the two events.

Justice Velasco then suggested the rewording, “The ASEAN judiciaries agree to rotate the roundtable chair annually.” This became the final wording.

### *Re: Notes on Organizing the Roundtable*

Justice Velasco asked whether this is a function of the secretariat. He also asked whether the AJNE includes other non-ASEAN member countries. To clarify the intent of this proposal, the wording was changed to “The ASEAN judiciaries agree on the desirability of continuity between roundtables; and that the current host judiciary chairs should share experiences with the next host judiciary.”

### *Re: Secretariat*

Chief Justice Truong highlighted the significant role of ADB as permanent administrator of the AJNE. Justice Velasco queried whether ADB should be called the “permanent administrator,” “administrator,” or “secretary-general,” and if ADB would only be serving as temporary secretary-general for the next 2 years.

Dr. Mulqueeny agreed that it would be better for ADB to temporarily serve as secretariat for the next 2 years, during which time resources would be made available. Justice Velasco stressed the need to establish a secretariat already, even if ADB would be fulfilling that role temporarily. Thus, the final provision read, “The ASEAN judiciaries agree to establish a position of Secretary General and permanent secretariat. ADB agrees to temporarily perform the function for 2015–2016.”

### *Re: Overall Plan Review*

After the deliberations, Justice Velasco, on behalf of the Philippine delegation, approved in principle the Proposed Hanoi Action Plan, as reworded. He then encouraged the other participants to likewise approve the plan in principle, subject to ratification by their supreme courts. Justice Malanjam supported the recommendations by the Philippine delegation and agreed with the Proposed Hanoi Action Plan, as amended.

Justice Duraman said she would need to speak to her chief justice regarding Brunei's stand on the action plan. Nonetheless, on behalf of the Brunei Darussalam delegation, she agreed in principle with the Proposed Hanoi Action Plan, but subject to a final confirmation<sup>19</sup>

Chief Justice Truong recapped the discussion. The participants, with the exception of Singapore (which had reservations), approved the Proposed Hanoi Action Plan in principle. Within 1 month from the closing of this roundtable, the other judiciaries should communicate any reservations. Failure to object within the time given shall mean concurrence, and the plan would thereafter be considered to be an official document. Everyone agreed.

### *Re: Next Roundtable*

Moving forward with the environmental justice agenda, Dr. Mulqueeny apprised the participants that the Supreme Court of Cambodia would host the Fifth ASEAN Chief Justices' Roundtable on Environment in 2015. Afterward, the Supreme Court of the Philippines would host the Sixth ASEAN Chief Justices' Roundtable on Environment in 2016. She then invited the head of the Cambodian delegation, Justice Chiv Keng, vice president of the Supreme Court of Cambodia, to speak.

Justice Keng, on behalf of Supreme Court of Cambodia President Dith Munty, expressed great pleasure in being given the honor of hosting the Fifth ASEAN Chief Justices' Roundtable on Environment in Siem Reap, Cambodia. He took the opportunity to acknowledge and thank ADB for its support and encouragement to assume this very important role. He then urged everyone to combat the region's environmental challenges as one ASEAN community and to attain the post-2015 vision. He also mentioned that the ASEAN Vision 2020 calls for a green ASEAN community and an established mechanism for guaranteeing environmental sustainability.

In closing, Justice Keng thanked the Supreme People's Court of Viet Nam and ADB for providing the Cambodian delegation the opportunity take part in the Fourth Roundtable. He commended the ASEAN judiciaries for working together to deal with environmental issues, and congratulated them for having achieved the objectives of this roundtable. As host of the next roundtable, he promised that Cambodia

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<sup>19</sup> In response to a letter dated 6 January 2015 that Chief Justice Truong had sent to all the ASEAN chief justices, Brunei Darussalam expressed full support for efforts to protect the environment and recognition of the roundtable's relevance to many ASEAN countries. Furthermore, Brunei adopted Singapore's position and similarly noted that the Hanoi Action Plan does not require a binding commitment.

would continue working with the current host, the Supreme People's Court of Viet Nam, and the other judiciaries in order to improve access to environmental justice. Again, he thanked the participants for trusting in Cambodia's capacity and leadership to host the next roundtable, and looked forward to welcoming delegates next year in Cambodia.

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## **CLOSING SESSION**

### **Closing Remarks**

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Dr. Kala K. Mulqueeny, principal counsel at the Office of the General Counsel of ADB, expressly thanked the special people who made the roundtable a huge success. First, she thanked Chief Justice Truong Hoa Binh of the Supreme People's Court of Viet Nam; Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam; and the entire Supreme People's Court of Viet Nam for their leadership in convening this roundtable to respond to the region's common environmental challenges and to look at the critical role of the judiciary in the environmental law enforcement chain. Second, she again thanked the participants for coming, enriching the discussion, and making huge progress in charting a road map for regional cooperation on environmental issues, especially in agreeing in principle to the Proposed Hanoi Action Plan. Lastly, she thanked her ADB Law, Justice and Development Team and the secretariat of the Supreme People's Court of Viet Nam's International Cooperation Department for their extensive work to ensure the success of this roundtable.

Permanent Deputy Chief Justice Bui emphasized the topics discussed: (i) the role of the judiciary in environmental protection; (ii) the experiences of not only ASEAN judiciaries, but also of Australian, Pakistani, and US courts in adjudicating environmental cases; and (iii) the Proposed Hanoi Action Plan, which the participants had agreed to in principle.

### **Souvenir Presentation**

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Mr. Tran Van Thu, deputy director of the Supreme People's Court of Viet Nam's International Cooperation Department, appreciated the opportunity given to the Supreme People's Court of Viet Nam to welcome the ASEAN delegations present at the roundtable. He then asked Dr. Mulqueeny, on behalf of ADB, and the heads of the ASEAN delegations, to come up to the proscenium to receive tokens from Chief Justice Truong Hoa Binh of the Supreme People's Court of Viet Nam. On behalf of their respective delegations, Justice Pengiran Hajah Rostaina Pengiran Haji Duraman, Justice Chiv Keng, Chief Justice Muhammad Hatta Ali, Justice Khamphanh Sitthidampha, Justice Tan Sri Richard Malanjum, Justice U Tha Htay, Justice Presbitero J. Velasco Jr., Mr. Aedit bin Abdullah, and Justice Ubonrath Luivikkai received the host's gifts. At this point, Mr. Tran asked Chief Justice Truong to give his closing speech.

Chief Justice Truong highlighted the progress collectively made by the ASEAN judiciaries throughout the roundtable. They shared experiences and discussed many issues relating to their roles in deciding environmental cases and cooperating with other ASEAN judiciaries. They talked about the balance between the rights of indigenous peoples and environmental protection, deforestation, illegal timber trafficking, wildlife trade, the development of judicial institutions specifically focused on dealing with

environmental institutions, community rights concerning the environment, and environmental damage assessment. Addressing these challenges requires each judiciary to reform its environmental institutions, build its capacity to hear and decide environmental cases, and improve the capacity of its staff to administer the courts.

The participants also agreed to advance regional cooperation within the judiciary sector; strengthen the role of the courts in environmental protection; and share information and experiences in various forums, such as through the ASEAN Judicial Working Group on Environment, their respective websites, and workshops jointly organized on topics of common interest. They affirmed the significance of the Jakarta Common Vision in guiding their actions until 2020, reviewed each concrete step enumerated in the Proposed Hanoi Action Plan, and agreed with the plan in principle.

On behalf of the Supreme People's Court of Viet Nam, Chief Justice Truong thanked the chief justices, deputy justices, judges, and all of the participants representing the ASEAN judiciaries for their invaluable contributions to the roundtable. He also thanked ADB for its tremendous support in organizing the event and its continuing assistance. He finally declared the roundtable closed and wished the participants and ADB representatives good health and happiness. He looked forward to future constant collaboration in environmental protection.

After Chief Justice Truong finished his closing speech, Justice Keng presented him, Permanent Deputy Chief Justice Bui, and Dr. Mulqueeny with tokens of appreciation from the Supreme Court of Cambodia. Justice Htay and Chief Justice Ali also gave Dr. Mulqueeny tokens of appreciation from their respective judiciaries.

# APPENDIX 1

## Program of the Fourth ASEAN Chief Justices' Roundtable on Environment “Role of the Judiciary in Environmental Protection”

12–14 December 2014  
Hotel Meliá Hanoi, Ha Noi, Viet Nam

### Friday, 12 December 2014

9:00 a.m.–12:00 p.m.	Arrival and Registration of Participants at the Hotel <i>Welcomed and picked up by the Supreme People's Court of Viet Nam team</i>	Lobby
12:00 p.m.–2:00 p.m.	Free Time	
2:00 p.m.–5:00 p.m.	Sightseeing Program	
6:30 p.m.–8:30 p.m.	Welcome Dinner <i>Hosted by Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam</i> <i>Attire: Smart Casual</i>	Hanoi Club Hotel

### Saturday, 13 December 2014

7:00 a.m.–8:00 a.m.	<b>Breakfast</b>	El Patio
8:00 a.m.–8:30 a.m.	<b>Registration</b>	Ballroom

### OPENING CEREMONY

Chair: Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice,  
Supreme People's Court of Viet Nam

8:30 a.m.–8:40 a.m.	Introduction to the Roundtable <b>Permanent Deputy Chief Justice Bui Ngoc Hoa</b> , Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam
8:40 a.m.–9:00 a.m.	Welcome and Opening Remarks <b>Chief Justice Truong Hoa Binh</b> , Chief Justice, Supreme People's Court of Viet Nam
9:00 a.m.–9:15 a.m.	Welcome Remarks <b>Mr. Christopher Stephens</b> , General Counsel, Office of the General Counsel, Asian Development Bank
9:15 a.m.–9:45 a.m.	Introduction of Delegates of Each ASEAN Judiciary
9:45 a.m.–10:00 a.m.	Photo Session
10:00 a.m.–10:15 a.m.	Coffee Break

## Part I ASEAN Environmental Challenges and Judicial Cooperation

### MORNING SESSION

Chair: Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice,  
Supreme People's Court of Viet Nam

10:15 a.m.–11:30 a.m.	<p><b>Session 1: ASEAN Judiciaries' Cooperation on the Environment—The Jakarta Common Vision and the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision</b></p> <p>Jakarta Common Vision</p> <ul style="list-style-type: none"> <li>• <b>Justice Takdir Rahmadi</b>, Justice, Civil Chamber, Supreme Court of Indonesia (10 minutes)</li> </ul> <p>ASEAN Judicial Working Group on Environment: First Meeting (10 minutes)</p> <ul style="list-style-type: none"> <li>• <b>Mr. Ngo Cuong</b>, Director General, International Cooperation Department, Supreme People's Court of Viet Nam</li> </ul> <p>Proposed Hanoi Action Plan to Implement the Jakarta Common Vision (20 minutes)</p> <ul style="list-style-type: none"> <li>• <b>Dr. Kala K. Mulqueeny</b>, Principal Counsel, Office of the General Counsel, Asian Development Bank               <ul style="list-style-type: none"> <li>(i) ASEAN Judicial Working Group on Environment</li> <li>(ii) National Judicial Working Groups on Environment</li> <li>(iii) ASEAN Contribution to Asian Judges Network on Environment</li> <li>(iv) Progress Reports</li> <li>(v) Proposed Coordination with ASEAN Law Association and ASEAN Chief Justices' Conference on Environment</li> </ul> </li> </ul> <p>ASEAN Judiciaries' Reports on Their Implementation of the Jakarta Common Vision (10 minutes)</p> <p>Question and Answer (25 minutes)</p> <p><i>The speakers will summarize (i) their achievements and challenges in implementing the Jakarta Common Vision, (ii) the results of the First ASEAN Judicial Working Group on Environment Meeting, and (iii) the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision.</i></p>
11:30 a.m.–1:15 p.m.	Lunch

## Part II ASEAN Environmental Challenges

### AFTERNOON SESSION

Chair: Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam

1:15 p.m.–2:45 p.m.	<p><b>Session 2: Balancing the Rights of Indigenous People and Environmental Protection</b></p> <p>Session Facilitator: Atty. Harsha Fernando, Legal and Governance Consultant, Asian Development Bank</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Presbitero J. Velasco Jr.</b>, Associate Justice, Supreme Court of the Philippines (10 minutes)</li> <li>• <b>Justice Tan Sri Richard Malanjum</b>, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (10 minutes)</li> <li>• <b>Atty. Lucille Karen E. Malilong-Isberto</b>, Head, National Committee on Monuments and Sites, Philippine National Commission for Culture and the Arts (10 minutes)</li> </ul> <p><b>Panel Remarks:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Takdir Rahmadi</b>, Justice, Civil Chamber, Supreme Court of Indonesia (5 minutes)</li> <li>• <b>Justice Khamphanh Sitthidampha</b>, President, People's Supreme Court of the Lao People's Democratic Republic (5 minutes)</li> <li>• <b>Justice Suntariya Muanpawong</b>, Secretary, Environmental Division, Supreme Court of Thailand (5 minutes)</li> </ul> <p>Question and Answer (30 minutes)</p> <p><i>The speakers will make presentations on the basic rights of indigenous people in accordance with their legal systems and on the enforcement of these rights, while ensuring the protection of the environment; on the prevention of encroachment on public lands; and on guaranteeing the means of protecting the environment, while maintaining a balance between justice and economic development. The panelists will be given time to briefly comment on the speakers' presentations or to share updates from their own jurisdictions. The facilitator will then frame the issues and invite the participants to share their countries' experiences with these issues.</i></p>
2:45 p.m.–3:00 p.m.	Coffee Break



3:00 p.m.–4:30 p.m.	<p><b>Session 3: Illegal Logging and Deforestation, Timber Trafficking, and Trade</b></p> <p>Session Facilitator: <b>Mr. Michael Dyson</b>, Law Enforcement and Governance Consultant, Asian Development Bank</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Le Van Minh</b>, Director, Institute for Judicial Science, Supreme People's Court of Viet Nam (10 minutes)</li> <li>• <b>Mr. Rizal Bukhari</b>, National Forestry Policy Senior Manager, The Nature Conservancy – Indonesia Program (10 minutes)</li> <li>• <b>Atty. Lucille Karen E. Malilong-Isberto</b>, Head, National Committee on Monuments and Sites, Philippine National Commission for Culture and the Arts (10 minutes)</li> </ul> <p><b>Panel Remarks:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice I Gusti Agung Sumanatha</b>, Justice, Civil Chamber, Supreme Court of Indonesia (5 minutes)</li> <li>• <b>Justice U Tha Htay</b>, Justice, Supreme Court of the Union of Myanmar (5 minutes)</li> <li>• <b>Justice Tan Sri Richard Malanjum</b>, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (5 minutes)</li> </ul> <p>Question and Answer (45 minutes)</p> <p><i>The facilitator will frame the issues, while the speakers will present overviews of relevant legal provisions and their countries' recent achievements related to the settlement of cases involving deforestation and violations of laws on logging, and on managing and protecting forests. The panelists will be given time to briefly comment on the speakers' presentations, or to share updates from their own jurisdictions. The facilitator will then invite the participants to share their countries' experiences with these issues, focusing on their countries' achievements since the Third Roundtable in terms of legislation and adjudication.</i></p>
4:30 p.m.–6:30 p.m.	Courtesy Visit to the State President
6:30 p.m.–8:30 p.m.	<p>Reception hosted by <b>Chief Justice Truong Hoa Binh</b>, Chief Justice, Supreme People's Court of Viet Nam</p> <p>Attire: Smart Casual</p>

## Sunday, 14 December 2014

7:00 a.m.–8:30 a.m.	Breakfast	El Patio
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### MORNING SESSION

**Chair: Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice,  
Supreme People's Court of Viet Nam**

8:30 a.m.–10:00 a.m.	<b>Session 4: Illegal Wildlife Crime, Trafficking and Trade</b>
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Session Facilitator: **Dr. Scott Robertson**, Regional Coordinator, Wildlife Conservation Society (WCS) and WCS Wildlife Trafficking Program, and Country Director, WCS Viet Nam Program

**Speakers:**

- **Justice Dam Van Dao**, Deputy Chief Judge, Administrative Court, Supreme People's Court of Viet Nam (10 minutes)
- **Justice Syed Mansoor Ali Shah**, Judge, Lahore High Court, Pakistan (10 minutes)

*Combating the Illegal Wildlife Trade Video* by ADB, TRAFFIC, and the World Wildlife Fund (WWF) (10 minutes)

**Panel Remarks:**

- **Justice U Tha Htay**, Justice, Supreme Court of the Union of Myanmar (5 minutes)
- **Justice Somsack Taybounlack**, Vice President, People's Court of the Middle Region of the Lao People's Democratic Republic (5 minutes)
- **Justice Tan Sri Richard Malanjum**, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (5 minutes)

Question and Answer (35 minutes)

*The facilitator will frame the session by discussing the issues of biodiversity loss and wildlife crimes, especially the illegal wildlife trade. The speakers shall present overviews of their countries' relevant legal provisions, enforcement agencies, and recent achievements related to the settlement of cases involving the wildlife crimes. The facilitator will then invite the participants to share their countries' experiences with these issues. The presentations and discussions shall focus on achievements since the Third Roundtable in terms of legislation, enforcement, and adjudication. The panelists will be given time to briefly comment on the speakers' presentations, or to share updates from their own jurisdictions. The participants will then be invited to share their countries' experiences with these issues.*

10:00 a.m.–10:15 a.m.	Coffee Break
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10:15 a.m.–11:30 a.m.

**Session 5: Updates on Judicial Environmental Institutions: Courts, Rules, and Access to Environmental Justice**

Session Facilitator: **Justice Rachel Pepper**, Judge, New South Wales Land and Environment Court, Australia

**Speakers:**

- **Justice Ubonrath Luivikkai**, President, Environmental Division, Supreme Court of Thailand (10 minutes)
- **Justice Presbitero J. Velasco Jr.**, Associate Justice, Supreme Court of the Philippines (10 minutes)

**Panel Remarks:**

- **Justice Takdir Rahmadi**, Justice, Civil Chamber, Supreme Court of Indonesia (5 minutes)
- **Permanent Deputy Chief Justice Bui Ngoc Hoa**, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam (5 minutes)
- **Justice Tan Sri Richard Malanjum**, Chief Judge, High Court of Sabah and Sarawak, and Judge, Federal Court of Malaysia (5 minutes)

Question and Answer (30 minutes)

*The speakers shall update the roundtable on the processes of decision making in their environmental courts since the last roundtable. As the judiciaries are generally familiar with these courts and institutions, speakers and panelists will focus on specific institutional, case, and rule updates that have affected the ability of the public to access environmental rights since the last roundtable. The facilitator will share her experiences from an Australian perspective and then frame the legal provisions and practical experiences of the judiciary that could improve the access of the public, media, and judges to information related to the cases. The panelists will be given time to briefly comment on the speakers' presentations, or to share updates from their own jurisdictions. The participants will then be invited to share their country's experiences with these issues.*

11:30 a.m.–1:00 p.m.

Lunch

1:00 p.m.–2:00 p.m.	<p><b>Session 6: The Judiciary, the Executive, and Environmental Protection</b></p> <p>Session Facilitator: <b>Justice Presbitero J. Velasco Jr.</b>, Associate Justice, Supreme Court of the Philippines</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Dr. Duong Thanh An</b>, Director, Department of Policy and Legal Affairs, and Chief, Vietnam Green Label Office, Viet Nam Environment Administration (VEA), Ministry of Natural Resources and Environment, Viet Nam (10 minutes)</li> <li>• <b>Justice Syed Mansoor Ali Shah</b>, Judge, Lahore High Court, Pakistan (10 minutes)</li> </ul> <p><b>Panel Remarks:</b></p> <ul style="list-style-type: none"> <li>• <b>Mr. Aedit bin Abdullah</b>, Judicial Commissioner, Supreme Court of Singapore (5 minutes)</li> <li>• <b>Justice U Tha Htay</b>, Justice, Supreme Court of the Union of Myanmar (5 minutes)</li> <li>• <b>Justice Somsack Taybounlack</b>, Vice President, People’s Court of the Middle Region of the Lao People’s Democratic Republic (5 minutes)</li> <li>• <b>Justice Chiv Keng</b>, Vice President, Supreme Court of Cambodia (5 minutes)</li> </ul> <p>Question and Answer (10 minutes)</p> <p><i>The speakers will give general presentations on the coordination among the legislative, executive, and judicial agencies in protecting the environment overall, and in deciding environmental disputes in particular. The coordination among these agencies is mostly in drafting laws and deciding environmental cases. In contrast, in Singapore and some other common law countries, judicial independence requires a complete separation between the executive and the judiciary. The panelists will be given time to briefly comment on the speakers’ presentations, or to share updates from their own jurisdictions. The participants will then share their experiences with other state agencies in protecting the environment, particularly in deciding environmental cases.</i></p>
2:00 p.m.–3:00 p.m.	<p><b>Session 7: Assessment of Damages in Environmental Cases</b></p> <p>Session Facilitator: <b>Justice Rachel Pepper</b>, Judge, New South Wales Land and Environment Court, Australia</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Justice Merideth Wright</b>, Distinguished Judicial Scholar, Environmental Law Institute, and former Judge, Vermont Environmental Court (10 minutes)</li> <li>• <b>Justice Suntariya Muanpawong</b>, Secretary, Environmental Division, Supreme Court of Thailand (10 minutes)</li> <li>• <b>Justice Jose P. Perez</b>, Associate Justice, Supreme Court of the Philippines, chair, various court committees, and former court administrator (10 minutes)</li> </ul> <p>Question and Answer (20 minutes)</p> <p><i>The facilitator will frame the issues. The speakers will then present their judiciaries’ method(s) of assessing damages in environmental cases in accordance with their legal systems, the advantages of their chosen method(s), and the challenges they face in assessing such damages. The facilitator will then invite the participants to share their countries’ experiences with these issues.</i></p>
3:00 p.m.–3:15 p.m.	Coffee Break

3:15 p.m.–4:15 p.m.

**Session 8: Environmental Institutional Reforms and Training Institutes**

Session Facilitator: **Justice Adolfo S. Azcuna**, Chancellor, Philippine Judicial Academy, retired Associate Justice, Supreme Court of the Philippines, former Constitutional Commissioner who helped draft the 1987 Constitution, and former Executive Secretary under President Corazon Aquino

**Speakers:**

- **Justice Chu Xuan Minh**, Rector, Judge Training School, Viet Nam (10 minutes)
- **Justice I Gusti Agung Sumanatha**, Justice, Civil Chamber, Supreme Court of Indonesia (10 minutes)
- **Mr. Sarawut Benjakul**, Deputy Secretary-General, Office of the Judiciary and Secretary-General of the Institute of Legal Education of the Thai Bar Association (10 minutes)

**Panel Remarks:**

- **Judge Phongurn Chanthanakhone**, Judge and Deputy Director, Research and Training Institute for Judges, Lao People's Democratic Republic (5 minutes)

Question and Answer (15 minutes)

*The facilitator will frame the issues. Then, the speakers will present their judicial training institutes' method(s) of incorporating environmental law and issues into their curriculums, at the candidate judge and senior judge levels. They will also propose improvements as needed. The panelists will be given time to briefly comment on the speakers' presentations or to share updates from their own jurisdictions. The participants will then be invited to share their countries' experiences with these issues.*

4:15 p.m.–5:15 p.m.

**Session 9: Cooperation among ASEAN Judiciaries on Environmental Protection**

Session Facilitators: **Dr. Kala K. Mulqueeny**, Principal Counsel, Office of the General Counsel, Asian Development Bank, and **Permanent Deputy Chief Justice Bui Ngoc Hoa**, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam

Hanoi Action Plan to Implement the Jakarta Common Vision  
 ASEAN Chief Justices' Conference on Environment (Coordination)  
 ASEAN Secretariat (Coordination)  
 Fifth ASEAN Chief Justices' Roundtable on Environment

The participants will be invited to share their opinions on these issues.

## CLOSING SESSION

Chair: Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice,  
Supreme People's Court of Viet Nam

5:15 p.m.–5:30 p.m.

### Closing Remarks

- **Dr. Kala K. Mulqueeny**, Principal Counsel, Office of the General Counsel, Asian Development Bank
- **Permanent Deputy Chief Justice Bui Ngoc Hoa**, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam

### Souvenir Presentation

- **Chief Justice Truong Hoa Binh**, Chief Justice, Supreme People's Court of Viet Nam

**Monday, 15 December 2014**

Checkout and Departure

# APPENDIX 2

## List of Resource Persons

Resource Person	Designation, Agency
<b>Abdullah, Aedit bin</b>	Judicial Commissioner, Supreme Court of Singapore
<b>Azcuna, Adolfo S.</b>	Chancellor, Philippine Judicial Academy; retired Associate Justice, Supreme Court of the Philippines; former Constitutional Commissioner who helped draft the 1987 Constitution; and former Executive Secretary under President Corazon Aquino
<b>Benjakul, Sarawut</b>	Deputy Secretary-General, Office of the Judiciary; and Secretary-General, Institute of Legal Education of the Thai Bar Association
<b>Bui, Ngoc Hoa</b>	Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam
<b>Bukhari, Rizal</b>	National Forestry Policy Senior Manager, The Nature Conservancy – Indonesia Program
<b>Chanthanakhone, Phongurn</b>	Judge and Deputy Director, Research and Training Institute for Judges, Lao People's Democratic Republic
<b>Chu, Xuan Minh</b>	Rector, Judge Training School, Viet Nam
<b>Dam, Van Dao</b>	Deputy Chief Judge, Administrative Court, Supreme People's Court of Viet Nam
<b>Duong, Thanh An</b>	Director, Department of Policy and Legal Affairs; and Chief, Vietnam Green Label Office, Viet Nam Environment Administration (VEA), Ministry of Natural Resources and Environment, Viet Nam
<b>Dyson, Michael</b>	Law Enforcement and Governance Consultant, Asian Development Bank
<b>Fernando, Harsha</b>	Legal and Governance Consultant, Asian Development Bank
<b>Htay, U Tha</b>	Justice, Supreme Court of the Union of Myanmar
<b>Keng, Chiv</b>	Vice President, Supreme Court of Cambodia
<b>Le, Van Minh</b>	Director, Institute for Judicial Science, Supreme People's Court of Viet Nam
<b>Luivikkai, Ubonrath</b>	President, Environmental Division, Supreme Court of Thailand
<b>Malanjum, Richard</b>	Chief Judge, High Court of Sabah and Sarawak; and Judge, Federal Court of Malaysia
<b>Malilong-Isberto, Lucille Karen E.</b>	Head, National Committee on Monuments and Sites, Philippine National Commission for Culture and the Arts
<b>Muanpawong, Suntariya</b>	Secretary, Environmental Division, Supreme Court of Thailand
<b>Mulqueeny, Kala K.</b>	Principal Counsel, Office of the General Counsel, Asian Development Bank
<b>Ngo, Cuong</b>	Director General, International Cooperation Department, Supreme People's Court of Viet Nam
<b>Pepper, Rachel</b>	Judge, New South Wales Land and Environment Court, Australia
<b>Perez, Jose P.</b>	Associate Justice, Supreme Court of the Philippines; Chair, various court committees; and former Court Administrator
<b>Rahmadi, Takdir</b>	Justice, Civil Chamber, Supreme Court of Indonesia

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Resource Person	Designation, Agency
<b>Robertson, Scott</b>	Regional Coordinator, Wildlife Conservation Society (WCS) and WCS Wildlife Trafficking Program; and Country Director, WCS Viet Nam Program
<b>Shah, Syed Mansoor Ali</b>	Judge, Lahore High Court, Pakistan
<b>Sitthidampha, Khamphanh</b>	President, People's Supreme Court of the Lao People's Democratic Republic
<b>Stephens, Christopher</b>	General Counsel, Office of the General Counsel, Asian Development Bank
<b>Sumanatha, I Gusti Agung</b>	Justice, Civil Chamber, Supreme Court of Indonesia
<b>Taybounlack, Somsack</b>	Vice President, People's Court of the Middle Region of the Lao People's Democratic Republic
<b>Truong, Hoa Binh</b>	Chief Justice, Supreme People's Court of Viet Nam
<b>Velasco, Presbitero J. Jr.</b>	Associate Justice, Supreme Court of the Philippines
<b>Wright, Merideth</b>	Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court

# APPENDIX 3

## List of Participants

Country/Organization	Participant
Asian Development Bank (ADB)	<b>Christopher Stephens</b> General Counsel Office of the General Counsel cstephens@adb.org
	<b>Kala K. Mulqueeny</b> Principal Counsel Office of the General Counsel kmulqueeny@adb.org
	<b>Aysha Qadir</b> Senior Counsel Office of the General Counsel aqadir@adb.org
	<b>Kristine Melanie M. Rada</b> Legal Operations Assistant Office of the General Counsel kmrada@adb.org
	<b>Ma. Imelda T. Alcala</b> Law, Justice and Development Operations Analyst (Consultant) mialcala.consultant@adb.org
	<b>Francesse Joy J. Cordon</b> Legal Consultant fcordon.consultant@adb.org
	<b>Michael Dyson</b> Law Enforcement and Governance Consultant mdyson.consultant@adb.org
Brunei Darussalam	<b>Harsha Fernando</b> Legal and Governance Consultant hfernando.consultant@adb.org
	<b>Pengiran Hajah Rostaina Pengiran Haji Duraman</b> Judicial Commissioner and Chief Registrar Supreme Court
	<b>Hajah Ervy Sufitriana Hj Abdul Rahman</b> Magistrate Bandar Magistrate's Court

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Country/Organization	Participant
<b>Cambodia</b>	<p><b>Chiv Keng</b> Vice President Supreme Court</p> <p><b>Tarachhath Kong</b> Justice Supreme Court</p> <p><b>Somarith Keng</b> Prosecutor Ministry of Justice</p>
<b>Indonesia</b>	<p><b>Muhammad Hatta Ali</b> Chief Justice Supreme Court</p> <p><b>Takdir Rahmadi</b> Justice Civil Chamber, Supreme Court</p> <p><b>I Gusti Agung Sumanatha</b> Justice Civil Chamber, Supreme Court</p> <p><b>Prim Haryadi</b> Vice Chief Judge Court of First Instance of West Jakarta</p>
<b>Lao People's Democratic Republic</b>	<p><b>Khamphanh Sitthidampha</b> President People's Supreme Court of the Lao People's Democratic Republic</p> <p><b>Somsack Taybounlack</b> Vice President, People's Court of the Middle Region of the Lao People's Democratic Republic</p> <p><b>Phongurn Chanthanakhone</b> Judge and Deputy Director Research and Training Institute for Judges</p>
<b>Malaysia</b>	<p><b>Tan Sri Richard Malanjum</b> Chief Judge, High Court of Sabah and Sarawak; and Judge, Federal Court of Malaysia</p> <p><b>Ahmad Sazali Bin Omar</b> Sessions Court Judge</p>
<b>Myanmar</b>	<p><b>U Tha Htay</b> Justice Supreme Court</p> <p><b>Aye Aye Hlaing</b> Deputy Director International Relations Unit, Research Department, Office of the Supreme Court</p>

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Continued from previous page

Country/Organization	Participant
<b>Philippines</b>	<p><b>Presbitero J. Velasco Jr.</b> Associate Justice Supreme Court</p> <p><b>Jose P. Perez</b> Associate Justice, Supreme Court; Chair of various court committees; and former Court Administrator</p> <p><b>Adolfo S. Azcuna</b> Chancellor, Philippine Judicial Academy; retired Associate Justice, Supreme Court of the Philippines; former Constitutional Commissioner who helped draft the 1987 Constitution; and former Executive Secretary under President Corazon Aquino</p>
<b>Singapore</b>	<p><b>Aedit bin Abdullah</b> Judicial Commissioner Supreme Court</p> <p><b>Lee Mei Teng</b> Organizational Development Specialist Supreme Court</p> <p><b>Ho Lian-Yi</b> Justices' Law Clerk Supreme Court</p>
<b>Thailand</b>	<p><b>Ubonrath Luivikkai</b> President Environmental Division, Supreme Court of Thailand</p> <p><b>Suntariya Muanpawong</b> Secretary Environmental Division, Supreme Court of Thailand</p> <p><b>Surasak Keereevichien</b> Senior Justice Supreme Court of Thailand</p> <p><b>Sorasak Wachasiddhisilpa</b> Justice Supreme Court of Thailand</p> <p><b>Sarawut Benjakul</b> Deputy Secretary-General, Office of the Judiciary; and Secretary-General, Institute of Legal Education of the Thai Bar Association</p>

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Country/Organization	Participant
<b>Viet Nam</b>	<p><b>Truong Hoa Binh</b> Chief Justice Supreme People's Court</p> <p><b>Bui Ngoc Hoa</b> Permanent Deputy Chief Justice Supreme People's Court</p> <p><b>Dam Van Dao</b> Deputy Chief Judge Administrative Court, Supreme People's Court</p> <p><b>Ngo Cuong</b> Director General International Cooperation Department, Supreme People's Court</p> <p><b>Le Van Minh</b> Director Institute for Judicial Science, Supreme People's Court</p> <p><b>Duong Thanh An</b> Director, Department of Policy and Legal Affairs; and Chief, Vietnam Green Label Office, Viet Nam Environment Administration (VEA), Ministry of Natural Resources and Environment</p> <p><b>Chu Xuan Minh</b> Rector Judge Training School</p>
<b>Other Partner Agencies and Institutions</b>	<p><b>Khawaja Imtiaz Ahmad</b> Chief Justice Lahore High Court, Pakistan</p> <p><b>Rizal Bukhari</b> National Forestry Policy Senior Manager The Nature Conservancy – Indonesia Program</p> <p><b>Lucille Karen E. Malilong-Isberto</b> Head, National Committee on Monuments and Sites, Philippine National Commission for Culture and the Arts</p> <p><b>Rachel Pepper</b> Judge New South Wales Land and Environment Court, Australia</p> <p><b>Scott Robertson</b> Regional Coordinator, Wildlife Conservation Society (WCS) and WCS Wildlife Trafficking Program; Country Director, WCS Viet Nam Program</p> <p><b>Syed Mansoor Ali Shah</b> Judge Lahore High Court, Pakistan</p> <p><b>Merideth Wright</b> Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court</p>

# APPENDIX 4



## HANOI ACTION PLAN TO IMPLEMENT THE JAKARTA COMMON VISION

The Fourth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment, held in Ha Noi, Viet Nam from 12 to 14 December 2014, brought together chief justices and their designees from the highest courts of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam, supported by the Supreme People's Court of Viet Nam and the Asian Development Bank.

The ASEAN Chief Justices' Roundtable on Environment commenced in 2011, and has achieved progress, as follows:

- (i) The ASEAN chief justices and senior judiciaries have since met annually on the occasion of each roundtable the first in Jakarta, Indonesia in 2011, the second in Melaka, Malaysia in 2012, the third in Bangkok, Thailand in 2013, and the fourth in Ha Noi, Viet Nam in 2014.
- (ii) At the First Roundtable, the ASEAN judiciaries agreed on *A Common Vision on Environment for ASEAN Judiciaries* (or the *Jakarta Common Vision*), and since then, they have worked toward achieving this vision.
- (iii) At the Second Roundtable, the ASEAN judiciaries agreed to form a technical working group to draft a memorandum of understanding for implementing the Jakarta Common Vision.
- (iv) At the Third Roundtable, the ASEAN judiciaries affirmed the importance of the Jakarta Common Vision, and the need to accelerate the implementation of the vision by proposing the creation of National Judicial Working Groups on Environment and of the ASEAN Judicial Working Group on Environment, among others;
- (v) At the first meeting of the ASEAN Judicial Working Group on Environment, the group: (i) agreed that the Jakarta Common Vision had been consistently affirmed as relevant as a guiding vision, at least until 2020; (ii) called for an Action Plan to implement the Jakarta Common Vision, which Action Plan is required by the Jakarta Common Vision but had not yet been prepared; and (iii) requested consolidation of the proposals made during the Third ASEAN Chief Justices' Roundtable on Environment and the First ASEAN Judicial Working Group on Environment Meeting, and also that the proposals should be integrated in order to facilitate the development of the Hanoi Action Plan to Implement the Jakarta Common Vision.

In furtherance of these proposals and agreements, the ASEAN Chief Justices and senior judiciaries set out the following plan of action:

- (i) **National Judicial Working Groups on Environment.** ASEAN judiciaries agree on the importance of establishing National Judicial Working Groups on Environment within their respective jurisdictions and on the need to create and manage these working groups as follows:
  - (a) National Judicial Working Groups on Environment should (i) be established prior to the Fourth Roundtable and (ii) take account of national differences.
  - (b) Provincial committees for islands/provinces under the National Judicial Working Groups may be established in large ASEAN countries to establish real national working networks of judges.
  - (c) A chair of any National Judicial Working Group should be appointed.
  - (d) Each chair of an ASEAN country's National Judicial Working Group will usually be the focal point in the ASEAN Judicial Working Group on Environment.
  - (e) The National Judicial Working Group will work to implement the Jakarta Common Vision as its primary purpose and the main content of its work program.
  - (f) National Judicial Working Groups should list the national environmental expertise of (i) judges and (ii) scientific and expert witnesses.
  - (g) National Judicial Working Groups should list and collect (i) landmark environmental cases and (ii) national environmental legislation, and share each with the Asian Judges' Network on Environment (AJNE) for inclusion on the website.
  - (h) National Judicial Working Groups should identify legal issues arising for the judiciary from cross-border and transnational environmental challenges.
  - (i) National Judicial Working Groups should identify issues arising for the judiciary working on national environmental challenges (executive/judge conflict).
  - (j) ADB will support National Judicial Working Groups by conducting national judicial and/or enforcement needs assessments when agreed with the national judiciary to determine the environmental institutional needs of national judiciaries.
- (ii) **ASEAN Judicial Working Group on Environment.** The ASEAN judiciaries recognize and acknowledge the establishment of the ASEAN Judicial Working Group on Environment, which first met on 15 to 16 September 2014, and agree that the working group be managed as follows:
  - (a) The chair of each National Judicial Working Group on Environment be designated as representative National Advisor to the ASEAN Judicial Working Group on Environment.
  - (b) If there is no National Judicial Working Group in a given ASEAN judiciary, the respective chief justice should appoint a National Advisor to the Working Group.
  - (c) The ASEAN Judicial Working Group on Environment will work to implement the Jakarta Common Vision as its primary purpose, which will form the content of its work program.
  - (d) Each ASEAN judiciary shall seek to send two representatives to ASEAN Judicial Working Group on Environment meetings, one with institutional knowledge (i.e., who has a background or participated in the pan-Asia Asian Judges Symposium and the ASEAN Chief Justices' Roundtable on Environment) to ensure continuity and one who has not been to meetings previously.



- (e) Each representative will (i) commit in advance to brief and share knowledge with colleagues upon their return and (ii) submit a report to their chief justice.
  - (f) The ASEAN Judicial Working Group on Environment already met in person once in 2014, and starting in 2015, the ASEAN Judicial Working Group expects to meet twice, the first meeting before the annual ASEAN Chief Justices' Roundtable on Environment to enhance cooperation and propose an agenda for the Fifth Roundtable and the second meeting the day before the annual roundtable.
  - (g) The ASEAN Judicial Working Group will form an e-mail list and communicate by email and set interim conference call meetings as the need arises, to be facilitated with ADB's assistance.
  - (h) The ASEAN Judicial Working Group on Environment is currently comprised of the focal points listed in **Attachment 1**.
- (iii) **Progress Reports on the Implementation of the Jakarta Common Vision.** The ASEAN judiciaries agree to report on progress against the Jakarta Common Vision at each ASEAN Judicial Working Group on Environment meeting, and each ASEAN Chief Justices' Roundtable on Environment.
  - (iv) **Environmental Twinning Programs.** The ASEAN judiciaries agree to consider environmental twinning programs to share their experience.
  - (v) **Sample Content for Rules of Procedure for Environmental Cases.** The ASEAN judiciaries agree to provide sample frameworks and content for environmental rules of procedure, so as to illustrate content for judiciaries considering such rules.
  - (vi) **Translated Record of Proceedings.** The ASEAN judiciaries agree that they will translate proceedings into ASEAN languages.
  - (vii) **Experts in Judicial Training and Conferences.** The ASEAN judiciaries agree to include experts, scientists, and other resource persons where relevant to the topics under discussion.
  - (viii) **Head of the Roundtable Every Year.** The ASEAN judiciaries agree to rotate the roundtable chair annually.
  - (ix) **Notes on Organizing the Roundtable.** The ASEAN judiciaries agree on the desirability of continuity between roundtables; and that the current host judiciary chair should share experiences with the next host judiciary.
  - (x) **Content of the AJNE Website.** The ASEAN judiciaries agree for each judiciary to share environmental laws and significant environmental jurisprudence on the AJNE Website in English and in their own national language, and that the National Judicial Working Groups on Environment to coordinate this.
  - (xi) **Asian Judges' Network on Environment.** The ASEAN judiciaries further agree on the following matters regarding the administrative setup and functions of the network:
    - (a) **Steering Committee/Advisory Board.** To ensure efficient and streamlined work between the AJNE (regional level) and the ASEAN Chief Justices' Roundtable on Environment (subregional level), the ASEAN judiciaries agree (i) that the National Judicial Working Groups, referred to in paragraph (i), will consider the AJNE; and (ii) the ASEAN region will provide at least two representatives to the AJNE Steering Committee/Advisory Board – a representative from the host-country chair of the roundtable in a given year, and the host-country chair from the immediately preceding year.
    - (b) **Steering Committee/Advisory Board: Role.** The ASEAN judiciaries propose that representatives should be responsible for: (i) contributing to the design of the agenda for the next Symposium; (ii) the judiciary's contributions to the AJNE website; (iii) ensuring timely submission of contributions; (iv) reporting back to the ASEAN Judiciaries Working Group on Environment focal points the committee discussions; and (v) ensuring that the AJNE's development of environmental curriculum and other resources are appropriate for the context and culture of the jurisdiction concerned.

- (c) **Secretariat.** The ASEAN Judiciaries agree to establish a position of Secretary General and permanent secretariat. ADB agrees to temporarily perform the function for 2015–2016.
- (d) **Vision Statement.** The ASEAN judiciaries agree to propose that the AJNE vision statement should be the same as the Jakarta Common Vision, taking into account that the South Asian Bhurban Declaration very closely corresponds to the Jakarta Common Vision and that the environmental and legal issues of the Asian region tend to be common issues.
- (e) **Website and Translations.** The ASEAN judiciaries acknowledge that not all judges within ASEAN have access to the internet or are able to review English. Hence, the ASEAN judiciaries affirm the need for translations, and appropriate resources on environmental law to be made available in a form, manner and language that can be locally understood.
- (f) **Benchbook.** The ASEAN judiciaries agree that national benchbooks for use in court should be based on national laws and procedures, and determined based on a judicial country needs assessment. They agree to publish a reference book of international materials.
- (g) **Judicial Training and Needs Assessments.** The ASEAN judiciaries affirm the general proposal regarding training and that training would be determined based on national needs assessments in each jurisdiction.

## ATTACHMENT 1

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## ATTACHMENT 2

### Comments

Singapore supports efforts to protect the environment and sees the relevance of the work of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. As a small city-state, Singapore's situation is different. Singapore notes that the Jakarta Common Vision and the Hanoi Action Plan are aspirational in nature and do not require binding commitments from Singapore.

Brunei Darussalam is a small state and supports the efforts to protect the environment and sees the relevance of the work of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. Brunei Darussalam adopts Singapore's position and notes that the Hanoi Action Plan is a nonbinding document. As such, the Hanoi Action Plan does not require a binding commitment from Brunei Darussalam.

## Fourth ASEAN Chief Justices' Roundtable on Environment

### *Role of the Judiciary in Environmental Protection: The Proceedings*

From 12 to 14 December 2014, the Association of Southeast Asian Nations (ASEAN) chief justices and their designees convened in Ha Noi, Viet Nam, for their fourth roundtable on environment, with the theme “Role of the Judiciary in Environmental Protection.” Eminent speakers and participants shared their insights on the judiciary’s role in protecting the environment, particularly in addressing the region’s environmental challenges. The ASEAN judiciaries reviewed their progress made in implementing A Common Vision on Environment for ASEAN Judiciaries (or the “Jakarta Common Vision”) and further deliberated on the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision. Toward the end of the roundtable, the participants agreed in principle on the plan. The plan officially took effect on 10 February 2015. Brunei Darussalam and Singapore support efforts to protect the environment and recognize the relevance of the work of the ASEAN Chief Justices’ Roundtable on Environment, and noted that the plan does not require a binding commitment.

### 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 the majority of the world’s poor. 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.



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