

PROCEEDINGS OF THE FOURTH SOUTH ASIA JUDICIAL ROUNDTABLE ON ENVIRONMENTAL JUSTICE

Kathmandu, Nepal | 28-29 November 2015

Prepared by Irum Ahsan and Gregorio Rafael P. Bueta

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FOREWORD

The Asian Development Bank (ADB), through the Office of the General Counsel, was honored to partner with the Supreme Court of Nepal for the Fourth South Asia Judicial Roundtable on Environmental Justice, held in Kathmandu on 28–29 November 2015. ADB supported this important meeting of chief justices, senior judges, and other members of the legal profession, as well as experts and partners, because it represented a movement forward in the agenda for improved environmental adjudication, enforcement, and governance in the region.

This annual South Asia Judicial Roundtable is the result of a vision of regional environmental cooperation. ADB has taken the lead, working with senior judiciaries in South Asian countries, in starting the dialogue and fostering regional cooperation and collaboration with regard to environmental justice. Previous South Asia judicial roundtables had been held in Pakistan, Bhutan, and Sri Lanka, all with the support of their respective supreme courts. ADB recognizes the critical role judges have played in protecting the environment. Their leadership of the legal profession and their precedent-setting jurisprudence have contributed to strengthening environmental justice across South Asia.

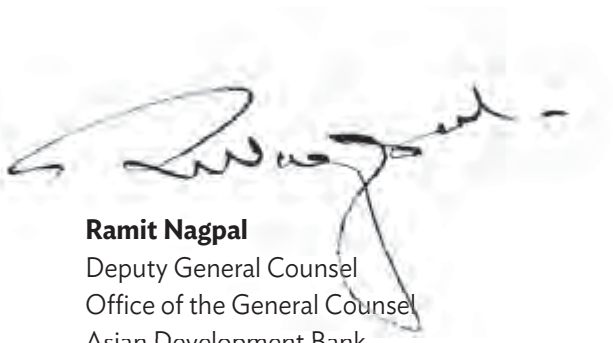
The importance of the judiciary is highlighted by the fact that nearly one-third of the 1.5 billion people in South Asia are still living in poverty, in a region that is one of the most vulnerable to the increasing risks and impacts of climate change. This presents the major challenge of achieving rapid economic growth to reduce poverty and improve living conditions, but through development that is environmentally sustainable. Judges are called upon to make pronouncements on (i) the balance between economic development and the environment, (ii) environmental justice, (iii) natural rights, and (iv) government policies that could end up either protecting or harming the environment.

In support of this crucial task for the senior judiciaries in South Asia, ADB has made a strategic commitment to environmental sustainability and the amelioration of climate change. In its Midterm Review of Strategy 2020, ADB reiterated its focus on the environment and climate change by scaling up its support for climate change adaptation, while maintaining its assistance to projects focused on clean energy, energy efficiency, and sustainable transport. The ADB publication *Environment Operational Directions 2013–2020* noted that many developing member countries of ADB recognize the unique leadership role played by the judiciary in the environmental enforcement chain. ADB will continue to support national, subregional, and regional efforts to help ensure greater environmental justice throughout Asia.

The Fourth South Asia Judicial Roundtable is an important step in concretizing the work and dialogue engaged in during the previous roundtables. It is a testament to the South Asian judiciaries' commitment to a shared vision of sustainable development and environmental justice. Maintaining the momentum to build on what we have achieved thus far will be an important challenge. This will include cascading the learning and ideas discussed at the roundtables to the participating countries. In the post-2015 world, with the new Sustainable Development Goals (SDGs) agreed upon at the United Nations Sustainable Development Summit (held in New York on 25–27 September 2015), and in an era of undeniable climate change, judges can indeed play their part in promoting the SDGs. The people of the region can see the courts as their partner and champion in promoting and upholding these goals, particularly with regard to environmental protection and sustainable development.

The Fourth South Asia Judicial Roundtable took place during very trying times for the people of Nepal, who had suffered two major earthquakes in the spring of 2015 that resulted in the loss of many lives, and in damage to infrastructure and property. Despite these tragedies, the warm hospitality of our hosts reflected the resilience of the people of Nepal, and bodes well for the future of the country. Nepal has bounced back and rebuilt in a sustainable and disaster-resilient manner. The recent adoption of a new constitution—with several provisions on environmental rights and on the balance between environmentalism and economic development—was an admirable step.

We hope that readers will find this publication helpful in understanding the continuing efforts to achieve environmental justice in South Asia.

A handwritten signature in black ink, appearing to read 'Ramit Nagpal', is positioned above the printed name and title.

Ramit Nagpal

Deputy General Counsel
Office of the General Counsel
Asian Development Bank
October 2016

ACKNOWLEDGMENTS

The Fourth South Asia Judicial Roundtable on Environmental Justice was held during very challenging times for Nepal. Two devastating earthquakes and a fuel crisis had almost forced the cancellation of the event. But through the hard work, dedication, and perseverance of our co-organizers in Nepal, the roundtable was a success. We particularly thank the people of Nepal for the warmth and hospitality they extended to the participants, and for being examples of resiliency and hope amid tragedy.

Gratitude is extended to all of the participants from the various judiciaries of South Asia, as they made the roundtable a worthwhile and thought-provoking event. The exchange of ideas and perspectives, and the engaging discussions involving the panelists and the audience, bode well for the prospects of concrete actions on environmental justice. The continued success of this project, and the realization of the declarations and plans of action, relies on the dedication of the region's senior judiciaries to the protection of the environment and the achievement of the Sustainable Development Goals.

The event would also not have been possible without the support of the Supreme Court of Nepal, led by Hon. Chief Justice Kalyan Shrestha, whose leadership and commitment helped move the roundtable forward. Thanks are also extended to the Preparatory Committee, led by Hon. Justices Baidya Nath Upadhyay and Ananda Mohan Bhattarai, who helped organize the event and make it a success.

We also want to express our appreciation for the resource speakers and panelists from South Asia and beyond, whose insights ensured a stimulating, interesting event.

From the Asian Development Bank, Ramit Nagpal, deputy general counsel; and Kenichi Yokoyama, country director, Nepal Resident Mission, are recognized for their support. The event would also not have been possible without the dedication of the team from the Office of the General Counsel of the Asian Development Bank, led by Irum Ahsan, and including Gregorio Rafael P. Bueta, Ma. Imelda T. Alcala, and Mahallah L. Adalia.

Irum Ahsan and Gregorio Rafael P. Bueta prepared and edited the record of these proceedings, with assistance from Joanne E. Gerber, Kimberly Fullerton, Alvin Tubio, and Cleone Baradas.

You may view and download the materials of the Roundtable in the Asian Judges Network on Environment website, www.ajne.org

EXECUTIVE SUMMARY

This report is a record of the proceedings of the **Fourth South Asia Judicial Roundtable on Environmental Justice**, held on 28–29 November 2015 in Kathmandu, Nepal. The event was cohosted by the Asian Development Bank (ADB) and the Supreme Court of Nepal, with support from the World Wildlife Fund Nepal. The roundtable focused on the following themes: (i) the concept of environmental justice; (ii) the post-2015 development agenda and the Sustainable Development Goals (SDGs); (iii) urbanization, industrialization, and the environment; (iv) biodiversity and natural resource conservation; and (v) current trends and developments regarding environmental protection. Environmental justice, community forest management, climate justice, and climate change and the rule of law were among the many topics presented and discussed.

Hon. Justice Baidya Nath Upadhyay, Supreme Court of Nepal, opened the Inaugural Session with a quote from Mahatma Gandhi: “The earth can provide enough to satisfy every man’s needs, but not every man’s greed.” He emphasized that true cooperation and active efforts are needed to solve the region’s environmental problems. **Mr. Ramit Nagpal**, deputy general counsel, ADB, provided a background on ADB’s ongoing work with judges and environmental justice, noting ADB’s strategic commitment to environmental sustainability and to combating climate change. Talking about the SDGs, he noted that they present both challenges and opportunities for the people of South Asia, and added that ADB sees the judiciaries as partners in achieving the SDGs, through their promotion of the rule of law and access to justice. In his remarks, **Hon. Chief Justice Lyonpo Tshering Wangchuk**, Supreme Court of Bhutan, said that despite the current idyllic state of the environment in Bhutan, the country faces challenges due to environmental degradation and climate change. Current efforts to preserve and protect the country’s environment include the establishment of a green bench for environmental cases and a trust fund for conservation projects called the “Bhutan for Life Initiative.”

In his keynote address, the **Rt. Hon. Chief Justice Kalyan Shrestha**, Supreme Court of Nepal, discussed his country’s new constitution, noting the provisions on environmental rights and environmental protection. He then spoke extensively about three factors that are of immense importance to environmental justice: (i) the concept of environmental justice, (ii) the environment as a management objective, and (iii) environmental governance. The chief justice emphasized that the environment does not respect artificial political boundaries created by people and governments, that judges are protectors of the environment, and that the environment is a fundamental component of the concept of justice. In his remarks and expressions of thanks, **Hon. Justice Girish Chandra Lal**, Supreme Court of Nepal, noted that environmental justice has emerged as one of the newest fields in the justice system. He then highlighted the significant landmark decisions on the environment that the Supreme Court of Nepal had promulgated—including decisions directing the government to protect the environment and human rights, and upholding the duty of private entities to use natural resources properly and in a sustainable manner.

Technical Session 1 was titled “Environmental Justice: Existing and Emerging Practices.” **Hon. Justice Dr. Ananda Mohan Bhattarai**, chief judge of the Court of Appeal, Nepal, talked about the concept of earth justice in the context of the earthquakes that had taken place in Nepal in April and May 2015. He presented a holistic approach that acknowledged the natural process of change, but also stressed the importance of being prepared to respond quickly during natural disasters, to minimize damage, and to bolster human resilience. Tracing the development of the environmental justice movement, and how South Asian courts have responded to its concerns, he noted that environmental justice measures can promote disaster-resilient environmental development if policies, plans, and coping and adaptation strategies are honestly implemented.

One of best practices has been the establishment of green courts, said **Hon. Justice Swatanter Kumar**, chair of the National Green Tribunal (NGT), India. He noted that these specialized courts came about due to the recognition that general courts were inadequate for dealing with the increasing specialization of environmental law, and that there was a need to move beyond traditional approaches. He then spoke about how the NGT was created, and mentioned the establishment of similar tribunals in Australia and New Zealand. **Judge Merideth Wright**, Distinguished Judicial Scholar, Environmental Law Institute, and a former judge of the Vermont Environmental Court, recommended a few practical ways for judges to facilitate access to judicial environmental proceedings, and then gave examples of the successful use of these techniques in several countries outside of South Asia.

“The Post-2015 Development Agenda and the Sustainable Development Goals” was the title of Technical Session 2. The session began with a presentation on environmental rule of law and sustainable development by **Hon. Justice Baidya Nath Upadhyay**, Supreme Court of Nepal. He noted the need for environmental rule of law, saying that traditional jurisprudence is seen as insufficient for delivering complete justice to the large numbers of people affected by environmental issues, and he added that the judges’ role is to be bold in their decisions for the sake of biodiversity. In his presentation, **Mr. Keyvan Izadi**, manager of the Multi-Country Climate Smart Agriculture Programme, SNV Netherlands Development Organisation, asked if SDGs can be actionable rights. He compared the Millennium Development Goals and the SDGs, and used a case study to provide points for consideration in ensuring the fulfillment of SDGs. **Mr. Mansoor Usman Awan**, founder and advocate, AJURIS Advocates and Corporate Counsel, Pakistan, discussed climate change in Pakistan, noting that it is climate justice that should now be discussed, as a move beyond environmental justice. He suggested that there is a need for a holistic legislative framework and for an expansive social awareness campaign on climate change. Also arguing for a move beyond environmental justice to a focus on climate justice, **Hon. Justice Syed Mansoor Ali Shah**, Lahore High Court, Pakistan, said that the new SDGs reflect the global focus on climate change and new priorities for that area. Judges need to wake up, he said, now that climate change has been thrust onto developing countries, bringing greater challenges to adjudication and decision making.

Wrapping up day 1 was the final session, “Pursuing Environmental Justice Further.” **Ms. Irum Ahsan**, project leader and senior counsel, ADB, discussed why ADB works for environmental sustainability, and pointed out that the senior judiciary in Asia plays a key role in environmental enforcement. She then spoke about ADB initiatives, such as the Asian Judges Network on Environment, which have successfully helped judges strengthen environmental rule of law and governance in their respective countries. In his presentation on ecosystem services (i.e., the benefits of ecosystems), green accounting, and natural capital, **Mr. Leo F. Saldanha**, coordinator, Environmental Support Group, India, talked about case studies that demonstrated these concepts. He noted that the way forward is to develop a process that upholds the principle of intergenerational equity and the precautionary principle of the “pair of eyes” with which decisions are made. Offering a special video presentation, **Hon. Justice Antonio Herman Benjamin**, Superior Tribunal de Justiça, Brazil, talked about environmental governance and the role of key stakeholders. He emphasized that the most important stakeholder is the general public, and that the public interest should always be taken into consideration when making decisions. **Hon. Justice Qazi Faez Isa**, Supreme Court of Pakistan, provided the perspective of the South Asian Association for Regional Cooperation (SAARC) on environmental justice, using recent court decisions to highlight such concepts as the public trust doctrine, sacred trust doctrine, and right to a healthy environment.

Day 2 of the roundtable began with Technical Session 3, “Urbanization, Industrialization, and the Environment.” **Ms. Saima Amin Khawaja**, managing partner, Progressive Advocates and Legal Consultants, Pakistan, opened the session with a talk on the hazards of urbanization in South Asia, presenting statistics

and elucidating the challenges urbanization has brought about. She urged a reconsideration of what “development” actually means, and at what cost it should be achieved, and she spoke about the use of tools to ensure that an activity does not harm the environment. Discussing the management of urban solid waste, **Dr. Somlal Subedi**, chief secretary, Government of Nepal, noted that there are both opportunities and challenges regarding this issue. He added that proper waste management begins with good policies and legislative frameworks, as well as the proper implementation and enforcement of laws. Judicial approaches to the issue of air pollution was extensively discussed by **Mr. Jay Pendergrass**, acting vice president, research and policy, Environmental Law Institute, United States. He presented recent landmark decisions of South Asian courts, noting that judiciaries have been active in combating urban air pollution in the region. **Mr. Sanith de Silva Wijeyeratne**, chief executive officer, Carbon Consulting Company, Sri Lanka, then gave the business sector’s perspective on industrialization and the environment. After presenting examples of how corporations have gone “green,” he said that the private sector is a significant part of the problem, but is in a position to make a significant contribution toward preserving the environment.

“Biodiversity and Natural Resource Conservation” was the theme of Technical Session 4. The session started with a showing of *The Ripple Effect*, a film by **Ms. Sarah Jahaan Khan**, a Pakistani filmmaker and activist. It showed how women have taken the initiative on rainwater harvesting to deal with the water scarcity caused by climate change. Community forest management in Nepal was then discussed by **Hon. Justice Til Prasad Shrestha**, Court of Appeal, Nepal. He noted that the judiciary in Nepal has approached the issues concerning forest management from a reasonable perspective—balancing the right to use and benefit from forest resources against the need to protect and preserve them. **Mr. Bruce Dunn**, senior environment specialist at ADB, subsequently talked about the legal protection of wildlife through national and international commitments. After discussing the state of biodiversity and various international treaties on the same, he emphasized the point that strengthening enforcement is key to addressing the biodiversity crisis, and that legal frameworks can be improved to encompass the most serious crimes. Sustainable rural development was discussed by **Dr. Nakul Chettri**, International Centre for Integrated Mountain Development (ICIMOD), Nepal. He noted that sustainable development and the protection of the countryside represent two paradigm shifts that have taken place recently. He said that political will is necessary for regional cooperation and for the long-term sustainability of any initiative on rural development.

“Protection of the Environment: Current Trends and Developments” was the theme of Technical Session 5. Talking about climate change and the law, **Mr. Robert John Anderson Carnwath, the Rt. Hon. Lord Carnwath of Notting Hill, CVO, United Kingdom**, said that there are grounds for cautious optimism after the Paris Agreement because of the widespread consensus on the reality of climate change and the need for urgent action. After presenting some key climate change cases, he noted that there is no single formula for climate change adjudication, and that national courts must develop their own responses within their countries’ constitutional and legal frameworks. The role of the judiciary in hydropower development was then discussed by **Mr. Rajendra K. Kshatri**, secretary, Ministry of Energy, Nepal. After speaking about Nepal’s hydropower industry, he noted that the recent pronouncement by the Supreme Court recognizing that hydropower electricity is a tradeable commodity bodes well for the development of the industry. **Mr. Santosh Mani Nepal**, senior director, policy and outreach, World Wildlife Fund Nepal, then described the impacts of earthquakes on ecosystems and biodiversity. He emphasized that all stakeholders should pursue more environment-friendly reconstruction by building back better, safer, and greener. Highlighting the need for regional cooperation for the protection of biodiversity, **Mr. Ritwick Dutta**, an environment lawyer from India, said that nature crosses political frontiers, so activities that impact the environment can be felt beyond any country’s borders. He posed some questions for judges, and recommended several tools and principles to consider to ensure an effective regional approach to conservation.

The **Kathmandu Resolution 2015 for Judicial Cooperation in Ensuring Sustainable Development and Protection of Environment in South Asia** was discussed and adopted by the participants of the roundtable. It includes measures that the judiciaries in the region are encouraged to undertake, particularly with regard to information sharing, capacity building, regional collaboration, promotion of environmental justice and climate justice, and a memorandum of understanding on judicial cooperation.

The roundtable culminated with the final session: “Towards Judicial Leadership on Environmental Justice.” Some senior judges gave brief remarks at the start of the session. **Hon. Justice Baha-u-din Baha**, Supreme Court of Afghanistan, said that he felt honored to participate in the roundtable and that it is the prime duty of humankind and all governments to adopt the necessary measures to protect and improve forests and the living environment. **Hon. Justice Dost Muhammad Khan**, Supreme Court of Pakistan, said that the participants of the roundtable were addressing not just an issue for the present generation, but one for future generations. **Hon. Justice Priyasath Dep, PC**, Supreme Court of Sri Lanka, noted that natural disasters are acts of God that one cannot anticipate, but that one can adequately prepare for. He talked about Sri Lanka’s experience during and after the 2004 tsunami.

Speaking on behalf of ADB, **Mr. Kenichi Yokoyama**, country director, Nepal Resident Mission, noted the success of this event after months of preparation and despite the challenging situation in Nepal. He added that the recent adoption of the new constitution in Nepal, with several provisions on environmental rights, including the stated objective of ensuring an appropriate balance between the environment and the need for development, is a positive development as well. He also reiterated ADB’s commitment to be Nepal’s partner in building back better and in pursuing inclusive and sustainable development in the years to come. **Chief Justice Shrestha**, in his closing remarks, noted a sense of accomplishment toward the close of the roundtable, after the successful presentations, discussions, and deliberations. He emphasized that environmental laws should be people-centric, giving them the space they need to express their grievances.



Local and international participants during the Inaugural Session

INAUGURAL SESSION



WITH SUPPORT FROM



FOURTH SOUTH ASIA JUDICIAL ROUNDTABLE ON ENVIRONMENTAL JUSTICE

28-29 November 2015 • Hotel Yak and Yeti
Kathmandu, Nepal



INTRODUCTION

Environmental law and environmental justice are new concepts that judiciaries, lawyers, academia, and civil society are trying to incorporate into traditional justice systems. Different legal jurisdictions have started to debate issues like climate change, the right to a healthy and clean environment, and access to environmental justice. There is now a strong recognition of the role of the justice system in conserving the environment and the public's right to this support. As one international jurist stated, the increased sophistication in appreciating risks to the environment, and the irreversible damage that may be caused by human activity, has resulted in a conscious effort, both by governments and nongovernment organizations (NGOs), to invoke legal protection for the environment.¹

The Asian Development Bank (ADB) has taken the lead in fostering dialogue and regional cooperation on the environment in Asia and the Pacific. In pursuit of this goal, the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice was held in Manila, Philippines, in July 2010. Around 120 senior judges, environment ministry officials, members of civil society, and experts in environmental law discussed ways to promote the protection of the environment through effective environmental adjudication and law enforcement. During this event, the participants called for an Asian judges' network specifically for the environment, as a permanent framework for judicial cooperation. From this idea grew various ongoing and evolving partnerships.²

As a result of the judges' initiative, South Asia Judicial Roundtables on Environmental Justice were held in Bhurban, Pakistan (2012); Thimphu, Bhutan (2013); and Colombo, Sri Lanka (2014). In addition, judiciaries from the member states of the Association of Southeast Asian Nations (ASEAN) have been holding annual roundtables for chief justices since 2011—in Indonesia, Malaysia, Thailand, Viet Nam, and Cambodia.

These events led to the creation of the Asian Judges Network on Environment (AJNE), which was formally launched at the Second Asian Judges Symposium on Environment: Natural Capital and the Rule of Law, held at ADB, in Manila, in December 2013. The AJNE is an information- and experience-sharing arrangement among senior judges in the member countries of ASEAN and the South Asian Association for Regional Cooperation (SAARC). This informal, trans-government network is committed to providing a dynamic forum for judicial capacity building and multilateral exchanges on environmental adjudication.³ The AJNE helps build the capacity of judges through collaboration with a like-minded support group, the introduction of innovative ideas, and technical education. It has also brought stakeholders together and provided a neutral platform for frank discussions without any pressures or biases. The AJNE has established a website that contains laws, legislation, regulations, decrees, and other documents from several Asian countries.⁴

¹ I. Brownlie. 2003. *Principles of Public International Law*. Oxford: Oxford University Press. p. 273.

² Asian Judges Network on Environment (AJNE). Environmental Justice Program 2011–2013. <http://www.asianjudges.org/environmental-justice-program-2011-2013/>

³ AJNE. Overview. <http://www.asianjudges.org/about-ajne/>

⁴ AJNE. <http://www.asianjudges.org>

WELCOME REMARKS

HON. JUSTICE BAIDYA NATH UPADHYAY, Supreme Court of Nepal

Justice Upadhyay welcomed all the guests and thanked them for attending the roundtable. He noted that, despite the challenges faced by Nepal—the earthquakes in April and May 2015 and the fuel crisis in the southern parts of the country—the Supreme Court, with the help of partners such as ADB, was able to organize and host this event.

He continued with a quotation from Mahatma Gandhi: “The earth can provide enough to satisfy every man’s needs, but not every man’s greed.” He added that the unlimited greed of man, overdevelopment resulting from economic competition, and unnecessary destruction of the environment are making the earth sick—and the symptoms of this sickness include acid rain, desertification, landslides, floods, global warming, and outbursts of glacial lakes, among others. In short, the earth is in trouble, and so are we. He also noted that there is a need to discuss how to balance the right of countries such as Nepal to develop economically against the need to protect the environment, all the more so given the recent adoption of the Sustainable Development Goals (SDGs).

Justice Upadhyay ended by saying that genuine cooperation and action will be needed to solve the region’s environmental problems.



WELCOME REMARKS

MR. RAMIT NAGPAL, Deputy General Counsel, Office of the General Counsel, ADB

Mr. Nagpal began by thanking the Supreme Court of Nepal, the Preparatory Committee, and the team from ADB for their support and hard work to make the event possible. He then gave a brief background on ADB’s judicial roundtables on environmental justice, noting the call from judges for a judicial support network for the environment. In response, the AJNE was created in December 2013, the result of regional roundtables held in Pakistan, Bhutan, and Sri Lanka in South Asia; and Indonesia, Malaysia, Thailand, Viet Nam, and Cambodia in Southeast Asia. Mr. Nagpal also spoke about some of the environmental challenges faced by South Asia, noting, for instance, that the risk of climate change poses a formidable threat to the sustainable social and economic development of the region, which is home to 1.5 billion people, one-third of them living in poverty.

Moving on to discuss ADB’s work, Mr. Nagpal said that ADB has made a strategic commitment to promoting environmental sustainability and combating climate change, and to supporting good environmental governance, including environmental enforcement. ADB has identified key approaches for transitioning



to a “green growth” model, one of which is to support regional, subregional, and national work to help ensure greater environmental justice throughout Asia. He added that ADB has been supporting various environmental programs in Asia to complement the judicial roundtables.

Mr. Nagpal then turned to the SDGs, remarking that, with their focus on the environment and climate change, the SDGs present both challenges and opportunities for the people of South Asia. According to Mr. Nagpal, the main challenge will be to surpass the achievements of the Millennium Development Goals, where much was left to be done. Opportunity lies in the fact that there are areas of society on which the SDGs could have a concrete impact through such means as the law and the judiciary. In South Asia, the judiciaries should assure the people that they are their champions when it comes to promoting and upholding the SDGs. In conclusion, Mr. Nagpal said that ADB is committed to working with the global community and with other development partners in making the SDGs a reality. ADB sees the judiciaries of Asia as partners in this endeavor through their promotion of the rule of law and access to justice.

REMARKS

HON. CHIEF JUSTICE LYONPO TSHERING WANGCHUK, Supreme Court of Bhutan

Chief Justice Wangchuk began by offering prayers for the lives lost and for those who continued to suffer due to the devastating earthquakes that hit Nepal. He also thanked the chief justice of Nepal, the Supreme Court of Nepal, and ADB for the wonderful opportunity to learn and for the warm and gracious hospitality extended to the Bhutan delegation.

He next spoke about Bhutan, saying that his country has a pristine environment, but that no one knows how long this will last. He noted that people live in a world of interconnected ecosystems and that environmental issues transcend borders. Despite the international institutions related to the environment, the overall state of the global environment does not seem to have improved; as a consequence, ecosystems have declined, and global warming continues. What is needed to address these problems is the complete implementation of environmental laws, political will, environmental education, and the support of the people.

Providing a glimpse of Bhutan’s environmental framework and policies, the chief justice noted that his country has always accorded high priority to environmental protection and conservation through the leadership of its monarchs. He added that the Constitution of Bhutan makes every Bhutanese a trustee of the environment and of the country’s natural resources for the benefit of the present and future generations. The Constitution also mandates that 60% of Bhutan’s land area remain under perpetual forest cover; as of today, 72.8% of the country is covered by natural and plantation forests, out of which 51% constitute national parks, wildlife reserves, protected forests, and biological corridors.



Chief Justice Wangchuk then mentioned that Bhutan established a green bench in the High Court in June 2015. The country's judiciary has also relaxed its rule on locus standi,⁵ allowing public interest litigation on all environmental matters. He added that it is hoped that the green bench will ensure the creation of a fair and just society, one that will be conscious of its duties concerning the environment and that will uphold the environmental rule of law.

In line with the country's paradigm of gross national happiness and its middle path strategy, Bhutan has also created a trust fund called the "Bhutan for Life Initiative" to support conservation projects. In conclusion, the chief justice said that the roundtable reaffirmed one's faith in nature and in the unyielding human endeavor to preserve and protect our sacred environment.

REMARKS

HON. AGNI PRASAD KHAREL, Minister for Law, Justice and Parliamentary Affairs, Nepal

Due to unforeseen circumstances, Minister Kharel was unable to give his remarks.

KEYNOTE ADDRESS

THE RT. HON. CHIEF JUSTICE KALYAN SHRESTHA, Supreme Court of Nepal

Chief Justice Shrestha began by thanking the participants for traveling to Kathmandu to share their ideas and experiences relating to environmental justice. He noted that, since the first roundtable, in Bhurban, Pakistan, the South Asian judicial community has expressed a shared concern for the environmental challenges facing the region. As long as environmental problems are not mitigated, and as long as the challenges remain, judges will keep vigil and continue to build up jurisprudence regarding environmental justice. The chief justice then discussed the new Constitution of Nepal, noting its provisions on environmental protection and on environmental rights, such as the right to a clean and healthy environment, and the appropriate balance between environmental and development goals.



The chief justice then discussed three factors that are of immense importance for environmental justice: (i) the idea of environmental justice, (ii) environmentalism as a management objective, and (iii) environmental governance. According to the speaker, environmental justice is all about fairness and equity. While a few enjoyed a luxurious use of the environment, many people suffered the brunt of that luxury. Moreover, the environment cannot be sacrificed for development. The chief justice noted that South Asian jurisprudence on environmental justice is based on the concepts of environmental equity, fairness, and rights; moreover, sovereignty over natural resources has now become a recognized principle of international law.

⁵ Also called "standing," the term "locus standi" refers to the right of a party to bring a case to court.

Regarding environmentalism as a management objective, the chief justice pointed to the harsh reality that the exploitation of natural resources on which our economy depends has its limits. This exploitation has resulted in an irreversible decline of biodiversity and the increased threat of climate change. He said that the time has come for judges to delve more deeply into the principle of intergenerational equity, to ensure justice for the present as well as for succeeding generations, when it comes to addressing the issues of hunger and poverty. For the sake of long-term sustainability, the courts should stand on the side of nature, and assist in the harmonization of developmental aspirations with the requirements of environmental sustainability.

Moving on to environmental governance, and recalling discussions in previous judicial roundtables, Chief Justice Shrestha said that the effectiveness of the entire environmental chain of responsibility can only be achieved when we ensure the effectiveness of environmental governance. All the countries of South Asia have enacted laws, created institutions, and acceded to international agreements on the environment, but the question is whether these have worked. Unless the compliance of all institutions with environmental laws and decisions can be ensured, it will be difficult to address the environmental challenges facing us. Good governance can also mitigate the impacts of unanticipated natural disasters such as earthquakes and tsunamis.

In conclusion, the chief justice emphasized that the environment does not respect artificial political boundaries created by people and governments. The principle of regional environmental cooperation should dictate the avoidance of parochial political decisions. Judges are protectors of environment, and all of the participants of the roundtable should understand environmental equity as foundational to the concept of justice.

REMARKS AND VOTE OF THANKS

HON. JUSTICE GIRISH CHANDRA LAL, Supreme Court of Nepal

Justice Lal thanked the organizing committee for the opportunity to chair the inaugural session, and the dignitaries for their attendance. Discussing the agenda of the roundtable, he noted that environmental justice has emerged as one of the newest fields in the justice system, and discussed the definition of “environmental justice,” identifying areas that are covered by the concept, such as the right to a clean and healthy workplace, the polluter-pays principle, the right to information on environmental issues, and intergenerational equity. Justice Lal added that discussions on human rights also involve the environment, given the state’s duty to protect and promote environmental rights.



He then highlighted the significant landmark decisions on the environment that the Supreme Court of Nepal has promulgated, among them decisions directing the government to protect the environment and human rights and confirming the duty of private entities to use natural resources properly and in a sustainable manner. Justice Lal also mentioned some environmental challenges faced by South Asia, including melting glaciers and droughts. In conclusion, he said that environmental justice means access to justice for the poor, who suffer most from environmental degradation and who do not have a direct say in policy development.

ON ENVIRONMENTAL JUSTICE

28–29 November 2015 • Hotel Yak and Yeti
Kathmandu, Nepal



■ The speakers during Technical Session 1 from L–R: Hon. Justice Ananda Mohan Bhattarai, Hon. Justice Swatanter Kumar, Hon. Judge Merideth Wright (ret), and Session Chair Hon. Justice Qazi Faez Isa.

TECHNICAL SESSION 1

ENVIRONMENTAL JUSTICE: EXISTING AND EMERGING PRACTICES

EARTHQUAKES AND EARTH JUSTICE: THE EMERGENCE OF THE ENVIRONMENTAL JUSTICE MOVEMENT AND ITS RELEVANCE IN ADDRESSING UNANTICIPATED EVENTS

HON. JUSTICE DR. ANANDA MOHAN BHATTARAI, Chief Judge, Court of Appeal, Nepal

Justice Bhattacharai described how the environmental justice movement is understood and how it has developed. He noted that it was an offshoot of the social justice movement in the 1980s, which raised issues of social justice, equal protection, equity, and the need to end institutional discrimination. He noted that different countries faced different sets of environmental justice issues, including exposure to pesticides, discrimination against minorities, the impacts of climate change, and the dumping of hazardous waste in poor communities. In response, various concepts and principles of the environmental justice system have evolved, both locally and at the international level. These include distributive and procedural justice; human rights at the center of environmental discourse; and the right to clean air, water, land, and food.



Justice Bhattacharai then talked about how environmental justice has been addressed in South Asian courts. The judiciaries in the region have generally adopted an expansive interpretation of environmental rights, liberalized the principle of standing, and taken a proactive approach to environmental adjudication. Various principles and strategic tools have been applied, with some newly developed principles now being tested in the courts.

He turned next to earth justice in South Asia, which he described as a holistic approach that acknowledges the natural process of change, but also the need to be able to respond quickly during natural disasters, to minimize damage, and to bolster human resilience. When it comes to the rescue and resettlement process, earth justice is about providing safe habitats, safe land sites, open spaces, emergency services, and health and environmental safety. He noted that natural disasters, such as earthquakes and tsunamis, cannot be prevented, but their impacts can be minimized. On the other hand, human-made disasters, such as chemical leaks and spills, can be totally prevented if everyone works together. In conclusion, Justice Bhattacharai said that environmental-justice measures can promote disaster-resilient environmental development if policies, plans, and coping and adaptation strategies are honestly implemented.

THE ESTABLISHMENT OF GREEN COURTS: RATIONALE, LEGAL AND INSTITUTIONAL ARRANGEMENTS, AND BEST PRACTICES—THE EXPERIENCE OF INDIA

HON. JUSTICE SWATANTER KUMAR, Chair, National Green Tribunal, India

Justice Kumar said that the roundtable was the right forum for the exchange of ideas, and will serve as a guiding light for the participants as they seek to address the pressing environmental issues of the day. He added that the environment knows no boundaries. He then noted that development and environmental protection need to be seen in complementary, not antagonistic, terms. The development of any country is crucial, yet it should not be achieved at the expense of nature, as the damage incurred may be irreversible. Thus, the challenge is to create conditions in which economic development and the environment can both thrive. A sustainable economy means paying more attention to the environment.



Discussing India, Justice Kumar described the provisions of his country's constitution that call for the protection and safeguarding of the environment. To complement these provisions, there are now green courts in India. The establishment of these courts resulted from the recognition that the general courts are inadequate for dealing with the increasing specialization of environmental law, and are unable to move beyond traditional approaches. He then discussed the establishment and organization of two pioneering specialized environmental courts: the Land and Environment Court of New South Wales, Australia; and the Environment Court of New Zealand.

During a more detailed discussion of India's National Green Tribunal (NGT), Justice Kumar stressed that the tribunal was established, not merely to decide disputes relating to the environment, but with a more holistic objective of achieving better environmental standards and reducing pollution in the country. He then discussed landmark jurisprudence of the Supreme Court of India and of the NGT. He highlighted the merit review power of the NGT, wherein the tribunal becomes the primary decision maker, and can therefore conduct an in-depth analysis of the legal and technical bases of a particular decision. In conclusion, Justice Kumar said that he hopes and believes that the roundtable will go a long way toward disseminating knowledge and awareness of the environmental issues concerning all South Asians.

“The environment knows no boundaries—development and environmental protection need to be seen in complementary, not antagonistic, terms.”

— Justice Swatanter Kumar

METHODOLOGIES FOR ACCESS TO ENVIRONMENTAL JUSTICE

HON. JUDGE MERIDETH WRIGHT, Distinguished Judicial Scholar, Environmental Law Institute, and former judge of the Vermont Environmental Court (1990–2011), United States

Judge Wright started off by citing Principle 10 of the Rio Declaration, which calls for “concerned citizens” to have “effective access to judicial and administrative proceedings, including redress and remedy.” She then discussed standing in environmental cases, comparing provisions in several countries outside of the region and noting the advantages and disadvantages of broad versus restrictive standing provisions. Judge Wright also discussed the standards of review in different types of environmental cases.



She then presented practical ways in which judges can facilitate effective access to judicial environmental proceedings, including dealing with the issues of costs and self-representation; improving access to information about court procedure; the use of telephone or video hearings in appropriate proceedings; holding evidentiary hearings near the location of the dispute; using site visits; and using case management to control the costs and delays involved in proceedings, including alternative dispute resolution when appropriate. She also gave examples of the successful use of these techniques in several countries outside of South Asia.

Judge Wright concluded by saying that she hoped to prompt discussions among the participants about ways to incorporate many low-cost and low-tech methods into existing court procedure to facilitate effective access in environmental cases. This should then result in a culture of self-representation among parties and litigants.

ENFORCEMENT OF AND COMPLIANCE WITH DECISIONS ON THE ENVIRONMENT: A CIVIL SOCIETY PERSPECTIVE

MR. PRAKASH MANI SHARMA, Pro Public, Nepal

Due to unforeseen circumstances, Mr. Sharma was unable to give his remarks.

REMARKS BY THE SESSION CHAIR

HON. JUSTICE QAZI FAEZ ISA, Supreme Court of Pakistan

Justice Isa quoted from Justice Kumar's presentation by saying that the environment recognizes no boundaries. He then said that environmental speakers and judges also know no boundaries, as they work with different laws but have the same experiences when trying to address environmental problems. He noted Judge Wright's emphasis on the respect for all when handling a case, and emphasized that we must always have respect for each other, as well as respect for the environment.



■ From L-R: The Rt. Hon. Lord Robert Carnwath, Hon. Chief Justice Lyonpo Tshering Wangchuk, and Hon. Justice Shushila Karki at the start of Technical Session 2.



TECHNICAL SESSION 2

THE POST-2015 DEVELOPMENT
AGENDA AND THE SUSTAINABLE
DEVELOPMENT GOALS

ENVIRONMENTAL RULE OF LAW AND SUSTAINABLE DEVELOPMENT

HON. JUSTICE BAIDYA NATH UPADHYAY, Supreme Court of Nepal

Justice Upadhyay noted that the earth is full of resources that supply the many needs of individuals and societies. This premise, he said, laid the basis for the concept of sustainable development: meeting the needs of the current generation without compromising the ability of future generations to meet their own needs. He then discussed the Millennium Development Goals (MDGs) and the more recently introduced Sustainable Development Goals (SDGs). Many of the 17 SDGs deal with environmental protection, addressing the issues of climate change and natural disasters, public health, and access to justice.



On the need for rule of law regarding the environment, he said that traditional jurisprudence is seen as incapable of delivering complete justice to the large mass of people and of ensuring protection of the environment. The idea of environmental rule of law addresses the issues of intergenerational justice and responsibility, and draws from such concepts as the precautionary principle,⁶ the polluter-pays principle,⁷ payment for ecosystem services, and the principle of common but differentiated responsibility, among others. He then spoke about significant environmental decisions by the Supreme Court of Nepal.

In conclusion, Justice Upadhyay said that the challenge for judges is making sure that decisions are rendered before it is too late, given the threat of imminent extinction of certain species that need legal and judicial protection. Judges' role is to be bold in their decisions, rendering necessary judgments even when the law is silent, for the sake of biodiversity.

“Judges need to be bold in their decisions even when the law is silent.”

— Justice Baidya Nath Upadhyay

⁶ The precautionary principle entails the use of precautionary measures for activities that might harm people or the environment, even if the effects are still disputed.

⁷ The “polluter-pays” principle simply says that the cost of pollution should be borne by those who cause it.

LOOKING INTO SUSTAINABLE DEVELOPMENT GOALS FROM THE RIGHT PERSPECTIVE: CAN THEY BE ACTIONABLE RIGHTS?

MR. KEYVAN IZADI, Multi-Country Climate Smart Agriculture Programme Manager, SNV Netherlands Development Organisation

Mr. Izadi opened his presentation with a comparison between the MDGs and SDGs. The 8 goals and 60 indicators of the MDGs, he noted, were increased by the global community to 17 goals and 169 indicators of the SDGs. Aside from its inclusive and bottom-up approach, the SDGs focus on environmental and climate change concerns, as well as on peace and justice issues. Some examples include Goal 11, Sustainable Cities and Communities; Goal 13, Climate Action; Goal 14, Life below Water; Goal 15, Life on Land; and Goal 16, Peace and Justice.



He then analyzed the relevant SDGs based on a case study of a sustainable, inclusive, and participatory hydropower development project in Bhutan. In the conceptualization, development, and operation of the hydropower project, different SDGs informed the decisions made and the actions taken.

To address any effects that a project or other activity may have on the environment, and to ensure the fulfillment of the SDGs, Mr. Izadi suggested some options that governments, and even judiciaries, could consider. First, there must be a harmonization of past, present, and future goals, as well as coordination between national and local plans. Second, there should be a clear enabling authority, with an alignment of policies, legislation, regulation, and incentives, including a clear understanding of land tenure and resource rights. Third, participatory benefit-sharing mechanisms could be developed, as well as dispute-resolution mechanisms. Robust social and environmental safeguards must be put in place. And, fourth, the technical and enforcement capacities of the relevant authorities must be improved.





CLIMATE CHANGE: THE NEED FOR LEGISLATIVE COVER AND SOCIAL AWARENESS IN PAKISTAN IN LIGHT OF THE POST-2015 DEVELOPMENT AGENDA

MR. MANSOOR USMAN AWAN, Founder and Advocate, AJURIS Advocates and Corporate Counsel, Pakistan

Mr. Awan stated that it is climate justice that should be discussed now, rather than environmental justice, given the global impact of climate change. He then described the ways in which climate change affects Pakistan—an increased frequency and intensity of extreme weather events; water and food scarcity; health risks; and climate-induced migration, among others. Although Pakistan has low carbon emissions, it bears the brunt of the effects of climate change. In response, the Government of Pakistan has developed frameworks, enacted policies, and established provincial environmental protection agencies and environmental tribunals. More recently, the Lahore High Court set up the national Climate Change Commission. Mr. Awan then spoke about the commission's priority measures, which include water security; food security; and agriculture, forestry, and energy security.



Despite these bodies and initiatives, shortcomings do exist. The policies do not have the force of law; provincial agencies have limited jurisdiction; and the commission is ad hoc, with limited scope. To compensate for these problems, he suggested enacting a holistic legislative framework and engaging in an expansive social awareness campaign on climate change. Parliament needs to acquire the explicit and unqualified authority to deal with climate change issues, perhaps through a constitutional amendment. The term “climate change” also needs to be defined under Pakistani laws. With regard to social awareness, public outreach programs, with the help of nongovernment organizations, could be conducted, including programs to provide the public with access to information. Climate change could be included as a mandatory subject in school curricula, and there should be programs to sensitize lawmakers, judges, and policy makers to the importance of climate change.

THE CONCEPT OF CLIMATE JUSTICE IN THE CONTEXT OF THE SUSTAINABLE DEVELOPMENT GOALS

HON. JUSTICE SYED MANSOOR ALI SHAH, Lahore High Court, Pakistan

Justice Shah commented on the resilience of the Nepali people after the earthquake—which made him feel proud for the Nepalese, and glad that Nepal was hosting this roundtable. He then began his presentation by arguing that there is a need to move beyond environmental justice, toward climate justice (although environmental jurisprudence should be taken into account when deciding climate justice cases). The reason for this is found in the recent SDGs, which call for addressing climate change immediately. The SDGs were derived from a global consensus that reflected the changes in the priorities of the world. He added that constitutional rights and international principles should be the judge’s “kit” for resolving environmental disputes.



As a judge, Justice Shah noted that this new global view affects his adjudication of environmental cases, which are very local and domestic, without any considerations for climate change or for the global impacts of local environmental decisions. He emphasized that judges need to wake up now that climate change has been thrust onto developing countries. There is now a totally different paradigm through which local and domestic environmental cases and issues must be viewed. Climate change should thus be considered a human rights and a social justice issue, not merely an environmental issue. Justice Shah also recounted his first climate change case, when the court ordered the establishment of Pakistan’s Climate Change Commission to address the inaction and poor implementation of laws related to the issue.

“Climate change should be considered as a human rights and social justice issue and not merely an environmental issue.”

— Justice Syed Mansoor Ali Shah



REMARKS BY THE SESSION CHAIR

HON. JUSTICE SWATANTER KUMAR, Chair, National Green Tribunal, India

Justice Kumar said that the question of sustainable development is the most intensively debated one at this time, and that it is an issue of critical concern. It is an area in the field of environmentalism that incorporates the precautionary principle, intergenerational equity, and, implicitly, environmental cautiousness. The term needs to be better understood and explained, however. Otherwise, there will be a gap in the understanding of environmental jurisprudence and its implications. The speakers at the roundtable have thus far presented the views of the bench and the bar, all of them supportive of the same goals of sustainable development and a viable response to climate change.



Sharing his thoughts about Technical Session 2, Justice Kumar said that one question is the extent to which the courts should push the executive authorities, and what would be the limits and consequences of this kind of judicial action. Another question is the effects of radical changes in jurisprudence and if they will be truly progressive. Finally, he suggested that, although the doctrine of separation of powers was not discussed during this session, it should be considered.



■ Speakers and the Chair of the Session (L-R): Hon. Justice Qazi Faez Isa, Ms. Irum Ahsan, The Rt. Hon. Lord Robert Carnwath, and Mr. Leo F. Saldanha.

DAY 1 STOCKTAKING AND FINAL SESSION

PURSUING ENVIRONMENTAL JUSTICE
FURTHER

ADB'S ROLE IN STRENGTHENING ENVIRONMENTAL GOVERNANCE AND THE ASIAN JUDGES NETWORK ON ENVIRONMENT

MS. IRUM AHSAN, Project Leader and Senior Counsel, ADB

Ms. Ahsan began by explaining why ADB works for environmental sustainability. In its strategic framework, ADB identifies good governance and capacity development as a driver of change, and environmental issues (including climate change) as a core operational area. In its operations, ADB will not fund projects that do not comply with its requirements on safeguards and with the host country's environmental laws and regulations. To enforce this rule, the Office of the General Counsel at ADB runs the Law and Policy Reform Program, which focuses on development through strengthened policy, legal, judicial, and regulatory systems. The central premise is that a functioning legal system is essential for sustainable development.



One of the key players in the environmental enforcement chain that ADB works with are judges. ADB recognizes that the senior judiciary in Asia plays a major role in environmental enforcement because judges influence the entire legal system, especially how legal and regulatory frameworks are interpreted and enforced, thus affecting private sector investments in related sectors. The impact of judges can be seen in the annual judicial roundtables on the environment held in Southeast Asia and South Asia. Knowledge products and numerous country activities have been supported by ADB throughout the two regions, such as benchbooks, workshops, capacity-building programs, and the identification of champion green judges, among others. Of particular importance is the Asian Judges Network on Environment (AJNE). Formally launched by ADB in December 2013, it is an information- and experience-sharing arrangement among senior judges from the member countries of the Association of Southeast Asian Nations and the South Asia Association for Regional Cooperation. The AJNE strengthens judges' capacity, provides them with a like-minded support group, introduces innovative ideas, provides economic and technical information, and brings together all stakeholders (i.e., prosecutors, lawyers, judges, regulators, and representatives of civil society). "Champion-judges" were identified to draw support for ongoing efforts and initiatives on environmental law. Ms. Ahsan also referred to the AJNE website, which serves as an information-sharing platform for judges.

In conclusion, she said that tremendous results have been achieved because of these partnerships. Judges have had many successes in strengthening the environmental rule of law and improving environmental governance in their respective countries. Specific climate change issues have also been made "real" for the judges. In addition, regional judicial networks have been established for cross-border consultations and knowledge sharing.

QUANTIFYING ENVIRONMENTAL DAMAGE, ECOSYSTEM SERVICES, GREEN ACCOUNTING, AND NATURAL CAPITAL IN DECISION MAKING

MR. LEO F. SALDANHA, Environmental Support Group, India

Mr. Saldanha spoke about the concept of environmental justice. He noted that a shared understanding of this concept is needed to resolve the relevant issues. Given the many definitions of environmental justice, he offered his own interpretation: a collective endeavor to peacefully secure equity and justice for all peoples by actively addressing gender inequality, special roles and rights for natural resource-dependent communities, the needs of depressed communities, and the necessity for a low-entropy lifestyle based on the deepest respect for all life forms and a naturally evolving planet. Quoting the late Hon. Justice V.R. Krishna Iyer, of India, Mr. Saldanha said that the survival of life needs an environment that can sustain it, and so it is that human rights make sense only where human life can flourish. This requirement mandates the preservation of a healthy environment.



He then embarked on an extensive discussion about the ongoing struggles of the people of Challakere taluk (subdistrict), in the semi-arid Chitradurga district, Karnataka, India. Here, biodiversity-rich grassland ecosystems are being diverted to a variety of military, industrial, nuclear, and infrastructure purposes, affecting the amrit mahal, a breed of indigenous cattle. The NGT and the Planning Commission have issued orders to protect these ecosystems. One issue that still needs to be considered is the role of government, both national and local, in deciding whether a certain activity is beneficial to the people or harmful to the environment.

In conclusion, Mr. Saldanha said that if we are to rationally address the cost of environmental damage, assess the value of ecosystem services, and have our normative decision making guided by a profound appreciation for nature, then making such decisions “verifiable and measurable” and submitting them to a larger democratic framework are two necessary safeguards. The way forward is to develop a process that will comprehensively utilize our collective traditional and modern knowledge to ensure that the principle of intergenerational equity and the precautionary principle serve as the “pair of eyes” through which decisions are formulated.

ENSURING ENVIRONMENTAL GOVERNANCE: THE ROLES OF KEY STAKEHOLDERS AND THE JUDICIARY—A VIDEO PRESENTATION

HON. JUSTICE ANTONIO HERMAN BENJAMIN, Superior Tribunal de Justiça, Brazil

Justice Benjamin first discussed “environmental governance”—a term, he noted, that has been in use for decades. He asked if judges are really part of environmental governance. Until recently, people thought that the courts were not, but today, everyone acknowledges that it is impossible to have true environmental governance without judiciaries. At the end of the day, it is a judge who will decide on the most relevant issues covered by environmental policy making and legislation. Several aspects of environmental governance have direct links to the judiciary, creating a mosaic. For example, a judge can order that information on the environmental effects of projects be provided to the public. Here judges are not only important, but absolutely necessary.



Turning his attention to the key stakeholders, Justice Benjamin noted that these actors—prosecutors, police, and nongovernment organizations engaged in litigation—directly influence the work of judges. However, there are other important stakeholders as well, including government environmental agencies (the primary counterpart to judges on environmental issues); legislators (who make laws and receive feedback from judges on environmental legislation); the private sector (those who are affected by, and who should comply with, environmental laws and policies, and to whom judges should convey how to comply with the same); the media (which often publicize important judicial decisions on the environment, and with whom judges must work, albeit cautiously); and, if the country’s political system allows it, international institutions (which can assist or work with judges on environmental law and governance).

In conclusion, the most important stakeholder is the general public. Everything a judge does is done according to the constitution and legislation. Yet the public interest should always be taken into consideration in making decisions—when in doubt, the public interest should take precedence. More importantly, Justice Benjamin said, judges are really making decisions not just for their respective countries, but for the planet as a whole, as they must consider the implications of current decisions for future generations.

THE SAARC PERSPECTIVE ON THE RECENT DEVELOPMENT OF ENVIRONMENTAL JUSTICE

HON. JUSTICE QAZI FAEZ ISA, Supreme Court of Pakistan

Justice Isa began by asking what criminal law has to do with the environment. He then recounted the time when, as a judge in the High Court, he sentenced a defendant to community service, planting 100 trees and taking care of them for a year. It was not an environmental case, but this was an instance when criminal law was used to take care of the environment. He noted that Pakistan's Constitution does not mention the environment. However, in environmental cases, he can resort to other provisions, such as the public trust doctrine. The right of everyone to life and dignity has also been extensively used to protect environmental rights. In fact, these provisions have been used to address environmental damage caused by government projects.



Justice Isa next discussed a recent case in the city of Quetta regarding stone-crushing plants. Public health and the environment were being affected, despite the fact that the plants were operating legally and with government sanction. The court held that the private right to do business would have to give way to the right to life. Justice Isa also noted that, in a recent judgement concerning the houbara bustard bird, the concept that every citizen is a trustee of the environment was used, and was referred to by the court as the “sacred trust doctrine.”

REMARKS BY THE SESSION CHAIR

MR. ROBERT JOHN ANDERSON CARNWATH, the Rt. Hon. Lord Robert Carnwath of Notting Hill, CVO, United Kingdom

Lord Carnwath took note of ADB's work on environmental justice, which he said could be emulated in other regions of the world, such as South America. He cited Mr. Saldanha's exposition on environmental justice and how the perspective should shift to an eco-centric one, acknowledging man's place in the environment. Regarding Justice Isa's presentation, Lord Carnwath said that the concept of stewardship, recently cited in an Islamic conference, is a worthwhile one.





TECHNICAL SESSION 3

URBANIZATION, INDUSTRIALIZATION,
AND THE ENVIRONMENT

THE HAZARDS OF URBANIZATION IN SOUTH ASIA: PRESERVING OPEN SPACES, SUSTAINABLE URBAN TRANSPORT, AND MOBILITY AMID RISING URBANIZATION

MS. SAIMA AMIN KHAWAJA, Managing Partner, Progressive Advocates and Legal Consultants, Pakistan

Ms. Khawaja said that her presentation would cover a topic that is closer to home—urbanization, which encompasses many aspects of life that directly affect individuals—land-use planning, employment opportunities, better housing; proper sanitation; health care systems, and better educational opportunities. She presented some statistics. According to the United Nations, by 2030, 65% of the world’s population will be living in urban areas—compared with just over 50% in 2010, and a mere 5% during the 1800s. Developing countries are expected to account for 90% of the process of urbanization going on in the world, and this process has been a rapid one, with 17 megacities already in Asia. Despite these figures, environmental degradation continues in many South Asian countries, and major urban centers are characterized by contrasting scenes of progress and poverty.



She then moved on to several other problems that urban centers must cope with, noting relevant cases of jurisprudence in air pollution, traffic management, water, sanitation and sewage, green areas and conservation, master plans, waste management, and natural calamities. She also explained why people move to cities such as for better health care, job opportunities, and education.

In conclusion, Ms. Khawaja said that there should be a reevaluation of what “development” actually means, and at what cost it should be achieved. There is a need to use available tools to determine whether an activity that could be harmful to the environment is worth pursuing. These tools include environmental impact assessments, strategic environmental assessments, the precautionary principle, the polluter-pays principle, the involvement of commissions and experts, and public participation and mediation.

MANAGING URBAN SOLID WASTE: THE DISTRIBUTION OF OPPORTUNITIES AND HAZARDS

DR. SOMLAL SUBEDI, Chief Secretary, Government of Nepal

Dr. Subedi started his presentation by describing the common characteristics of urban governance, and he cited statistics on urbanization trends both in Nepal and globally. Populations are moving from rural to urban areas, he said, but this trend is having a negative effect on land-use planning, good governance, and the quality of urban infrastructure. For instance, in Nepal, waste management cannot keep up with the pace of growth of urban centers; in 2013, per capita municipal waste generation in Nepal was 317 grams per day, and it is still rising. Dr. Subedi did note that political culture and the administrative competency of governments also impact urban governance.



He then presented statistics on the various kinds of waste generated in Nepal, and noted that the general waste management practice there was to throw garbage into the streets, where it is later collected and sent to dump sites. Low priority is given to waste processing and recycling, and this has led to various hazards affecting the environment, health and safety, and socioeconomic conditions. Improper waste management has damaged water sources and soil quality, led to the spread of disease, and polluted tourism sites across the country. Despite these problems, however, the situation of waste management in Nepal has created opportunities for growth in the following areas: the energy industry, employment, organic fertilizer production, tourism development, and the application of clean development mechanisms.

In conclusion, Dr. Subedi said that proper waste management begins with good policies and legislative frameworks, and with the proper implementation and enforcement of laws. A holistic and integrated approach is necessary, as well as an improvement of the institutional, financial, and technical capacity of local governments. Land-use planning and public-private partnerships are also key.

JUDICIAL APPROACHES TO THE ISSUE OF AIR POLLUTION IN SOUTH ASIAN CITIES

MR. JAY PENDERGRASS, Acting Vice President, Research and Policy,
Environmental Law Institute, United States

Mr. Pendergrass began by stating frankly that cities in South Asia have some of the most polluted air in the world. This is mainly due to rapid development and growing urban populations. He then explained that some of the major cities in the region have dangerous levels of particulate matter, which are commonly measured to gauge air pollution, and that their levels are well beyond the guidelines issued by the World Health Organization. He added that 60% of urban pollution is due to vehicle emissions, mainly from three-wheeled vehicles and vehicles with two-stroke engines; stationary sources, such as factories and coal- and gas-fired power plants, account for approximately 30%.



He then spoke about how the courts have been used to secure the right to a clean and healthy environment. With the expansion of public interest litigation in the 1990s and the relaxation of the rules on standing, courts have often utilized the precautionary principle when dealing with air pollution, and have responded to environmental inaction by using an expansive interpretation of the constitutional right to life. Mr. Pendergrass next discussed landmark constitutional cases, as well as alternative legal approaches to environment cases that entail what some would call “judicial activism.” He also gave examples of how judiciaries have recently tackled the issue of air pollution.

The presentation concluded with a statement that judiciaries have been active in combating urban air pollution in the region, often guaranteeing the right to a clean environment through a broad interpretation of constitutional rights. The courts have been very supportive of these implied rights, particularly in cases requiring a balance between economic development and protection of the environment. However, the judiciary’s authority may be undercut by the continued failure of governments to implement mandates.



INDUSTRIALIZATION AND THE ENVIRONMENT: A PERSPECTIVE FROM THE PRIVATE SECTOR

MR. SANITH DE SILVA WIJEYERATNE, Chief Executive Officer, Carbon Consulting Company, Sri Lanka

Mr. Wijeyeratne presented statistics on the effects of climate change, such as global surface temperatures, the melting of Arctic sea ice, and rising ocean levels. He noted that several countries in South Asia are reported to be at extreme risk due to climate change. One reason for this, in his opinion, is that industry “fuels” climate change, polluting the earth and depleting the environment’s natural resources in the pursuit of profits. Despite this discouraging picture, there are numerous emerging market solutions, as well as companies making a difference with regard to the environment. He discussed how more industry leaders are going green, citing specific initiatives by Google and Apple. Consumers are also getting greener, demanding eco-friendly products and production methods that do not harm the environment.



He then spoke about carbon emissions and carbon offsetting, the latter a way to negate one’s carbon footprint by engaging in carbon sequestering or in carbon-neutral activities. Carbon market mechanisms are also being used in some regions of the world. Through these mechanisms, carbon credits that have been earned from activities that reduce or sequester carbon emissions can then be traded or sold. However, he emphasized that a carbon credit should not be seen as a license to pollute.

Mr. Wijeyeratne presented examples of how businesses have “greened” their supply chains and engaged in initiatives to mitigate climate change. He also pointed out that companies do have a role to play in the achievement of SDGs. In conclusion, he said that corporations are a significant part of the problem, but they are also in a position to make a measurable contribution toward preserving the environment; however, this will only occur if the consumers demand it.

REMARKS BY THE SESSION CHAIR

HON. JUSTICE SHANTHI EVA WANSUNDERA, PC, Supreme Court of Sri Lanka

Justice Wansundera noted the participants’ keen interest in the presentations, based on the number of questions and comments raised. A lot of important issues were addressed. She thanked the panelists for their presentations, which explained to the participants what had been happening in the world—especially the new ideas on climate change and sustainable development. Justice Wansundera then summarized the key points of the presentations given in Session 3.





■ Dr. Nakul Chhetri answering questions from the audience.

TECHNICAL SESSION 4

BIODIVERSITY AND NATURAL RESOURCE CONSERVATION

A RURAL CASE STUDY ON THE MAXIMIZATION OF WATER RESOURCES: PAKISTAN'S COMMUNITY WATER MANAGEMENT INITIATIVE

SARAH JAHAN KHAN, activist and filmmaker, Pakistan

Ms. Khan presented her film, *The Ripple Effect*. During her talk after the film, she noted that climate change affects everyone, but that women suffer disproportionately. One of the reasons for this is that in most developing countries more women work in the agriculture sector, and are thus more exposed to environmental harm, including the effects of climate change. Women also have to handle most of the household chores, in addition to working. Ms. Khan noted that there has been a feminization of poverty—70% of people living below the poverty line in Pakistan are women. Moreover, women have the responsibility of collecting water for their households. With increasing climate change leading to water scarcity, they have to spend more time and effort doing this task.



Discussing her film, which was shot in Pakistan, Ms. Khan mentioned that climate change has reduced water supplies, thereby forcing women to buy water, as collecting it from faraway sources has become too tedious. This leads to more poverty for the family. However, she noted that because women have to deal with water in many parts of the world, they also have a lot of knowledge of and experience in dealing with problems such as water scarcity. She cited examples of how women have been effective agents of environmental protection and change.

Ms. Khan said that, due to the rainwater harvesting initiated and implemented by the women in her film, school attendance of young children has increased, there were more opportunities to earn an income, and women were able to support themselves and their families by selling crops to hotels. There were also improvements in health and well-being, increased safety and security, and more dignity due to better access to sanitation facilities.

DISPUTES RELATING TO COMMUNITY FOREST CONSERVATION: EVOLVING JUDICIAL APPROACHES

HON. JUSTICE TIL PRASAD SHRESTHA, Court of Appeal, Nepal

Justice Shrestha opened with a discussion on forest management. He said that, under the old, but still dominant, model, the state claims ownership of all forest lands. However, a new, emerging model gives ownership of forests to local communities, along with the responsibility for preserving them. Since 1976, the Government of Nepal has recognized and accepted the need for the people's participation in forest management, according to Justice Shrestha. He then discussed the legal regime governing forests in Nepal, including the relevant legislation, rules, and community forestry guidelines.



He then addressed the current status of community forest management in Nepal. As of 2015, 18,326 user groups were managing 29% of Nepal's forests. This growth in community management has resulted in capital formation, governance reforms, community empowerment, and social change. It has not only helped protect the environment, but has also provided livelihoods, and more importantly, has empowered rural women to play key roles in the management of forest resources. Despite these positive developments, however, Justice Shrestha observed that there are still forest-related disputes, such as those arising from noncompliance with regulations by community groups and from environmental harm caused by nonusers.

He noted that the judiciary has approached these issues from a balanced perspective—taking into account the benefits to be derived from forest resources, but also the need to protect and preserve forest land. The requirements of sustainable development were also considered in adjudicating disputes. In conclusion, Justice Shrestha recommended that judges develop an approach that will promote the viability, continuity, and sustainability of the government's policy of promoting the local management of Nepal's forests.

LEGAL PROTECTION FOR WILDLIFE: IMPLEMENTING INTERNATIONAL AND NATIONAL COMMITMENTS FOR THE PROTECTION AND SUSTAINABLE USE OF BIODIVERSITY

MR. BRUCE DUNN, Senior Environment Specialist, ADB

Mr. Dunn started off by saying that, with his many years of experience, he had come to understand that environmental management has many legal aspects to be considered. He then defined “biodiversity” according to the terms laid out in the Convention on Biological Diversity: “the variability among living organisms from all sources...this includes diversity within species, between species and of ecosystems.”⁸ He also described biodiversity hot spots—large regions containing exceptional concentrations of endemic plants, but experiencing high rates of habitat loss—and pointed out that several such areas in Bhutan, India, Nepal, and Sri Lanka are threatened. The world has already lost 50% of its wetlands, 40% of its forests, and 35% of its mangroves. Some of the main reasons for these losses are exploitation, habitat degradation, and habitat loss. This is occurring despite the economic value of those ecosystems, especially for rural communities.



He went on to describe the international response to these threats to biodiversity. The global community has entered into several treaties, among them: the Convention on Biological Diversity, mentioned above; the Convention on the Conservation of Migratory Species of Wild Animals (1979); and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973). Mr. Dunn explained how these agreements have caused the establishment of networks of protected areas across regions, including South Asia. Talking about the CITES agreement, he noted that the global losses due to wildlife-related crime amount to more than \$70 billion a year. These losses end up increasing poverty, impacting nature-based tourism, and fueling corruption and insecurity. He said that the key challenges to countering wildlife-related crime include poor enforcement, weak capacity, and low conviction and punishment rates.

In conclusion, Mr. Dunn stressed that strengthening enforcement was key to addressing the biodiversity crisis. Legal frameworks can be expanded to include the most serious wildlife crimes. An integrated criminal justice strategy for wildlife trafficking, as well as the use of modern tools for evidence gathering, are two approaches that could be pursued. Technology can also play a key role in improving enforcement capacity and protecting fragile ecosystems.

⁸ This convention was signed by 150 countries at the Rio Earth Summit, in 1992. See: <https://www.cbd.int/convention/>

REINVENTING SUSTAINABLE RURAL DEVELOPMENT: UTILIZATION OF RESOURCES AND GEOGRAPHICAL NICHES

DR. NAKUL CHETTRI, International Centre for Integrated Mountain Development, Nepal

Dr. Chettri briefly discussed the work of the International Centre for Integrated Mountain Development (ICIMOD) before moving on to the biodiversity significance of the Hindu-Kush Himalayas, and pointing out that one-third of humanity depends on that region. It houses four biodiversity hot spots and provides significant ecosystem services. The region is also culturally rich, with 1,000 living languages.

He then spoke about two paradigm shifts that have taken place in recent decades. First, there is now an emphasis on sustainable development, ensuring that the current generation meets its own needs, but also those of future generations. Second, conservation efforts have moved from protecting particular species to protecting and preserving landscapes (i.e., the ecosystem approach). These new paradigms can be seen in current initiatives linking conservation and development. Dr. Chettri also spoke about the policy implications of two ICIMOD programs: the Kailash Sacred Landscape Conservation and Development Initiative and the Kangchenjunga Landscape Conservation and Development Initiative.

In conclusion, Dr. Chhetri noted that the integrative approach to conservation is complex and slow. However, local people are positive about conservation, provided that they see real benefits from it. He added that political will is necessary for regional cooperation and the long-term sustainability of these programs. Scaling conservation and development approaches, he said, requires synergy and interdisciplinary teamwork.



REMARKS BY THE SESSION CHAIR

HON. CHIEF JUSTICE LYONPO TSHERING WANGCHUK, Supreme Court of Bhutan

Chief Justice Wangchuk stated that the earth's bounty and all its species create one interdependent system. Biodiversity, which makes this planet a unique and beautiful place, cannot be taken for granted. In fact, the world is now losing its biodiversity at an alarming rate, due to environmental degradation and climate change, both of which pose a grave threat. The core problem is that ecosystems are being destroyed by the heedless pursuit of economic activities. He emphasized that such economic development is not a sustainable model for Mother Earth or for humankind. Changes in the climate system do have social and economic consequences, so stronger institutions and enforcement are needed, along with efforts to make communities economically sustainable.



In closing Technical Session 4, Chief Justice Wangchuk noted that the people of South Asia have always had the ability to innovate and adapt. Yet it is evident that we cannot wait until the degradation of ecosystems reaches the point of no return. Natural resource conservation is the key to future survival, and a business-as-usual approach has no chance of achieving our goals of sustainable development.



■ Speakers during the Technical Session
answering questions from the audience



TECHNICAL SESSION 5

PROTECTION OF THE ENVIRONMENT—
CURRENT TRENDS AND DEVELOPMENTS

CLIMATE CHANGE AND THE LAW: A JUDICIAL VIEWPOINT

MR. ROBERT JOHN ANDERSON CARNWATH, the Rt. Hon. Lord Robert Carnwath
of Notting Hill, CVO, United Kingdom

Lord Carnwath began this presentation by talking about the Islamic Declaration on Global Climate Change, signed in August 2015, which said that the current rate of climate change could not be sustained, and that the earth's fine equilibrium might soon be lost. He then recounted what happened after the Kyoto Protocol, adopted in December 1997, noting its limited success and the attempt to update it at the Copenhagen climate summit, in December 2009. The Copenhagen effort was described as "the most successful failure." He described the United Kingdom's Climate Change Act of 2008, which passed with only five votes against it. This legislation committed the Government of the United Kingdom to carbon-emission reduction targets and to caps on greenhouse gas emissions; it also established the Committee on Climate Change, which advises the government and reports to Parliament on these efforts. In September 2015, a conference on climate change and the rule of law was hosted in London, and was attended by specialist judges from around the world, as well as by legal practitioners and academics.



He then went on to discuss the Paris Agreement, adopted in December 2015, and its implications. Lord Carnwath noted that the agreement's approach was bottom-up, based on nationally determined contributions, instead of imposed targets. He said that there are grounds for cautious optimism because of the widespread consensus on the reality of climate change and the need for urgent action; the greater understanding in the business community of the economic potential of investing in climate-friendly energy; powerful scientific evidence from the Intergovernmental Panel on Climate Change; and the strong leadership from the two largest emitters, the United States and the People's Republic of China. However, details have to be ironed out, including the amount of financial assistance to be given developing countries.

Lord Carnwath also referred to several recent important climate change cases: the State of Massachusetts vs. the Environmental Protection Agency, in the United States; Urgenda Foundation vs. State of the Netherlands, heard in The Hague District Court; and Ashgar Leghari vs. Federation of Pakistan, heard in the Lahore High Court. He cautioned his listeners about the risks of judicial activism in light of the courts' actions in the above-cited cases. In conclusion, he said that courts have a central role in democratic societies governed by the rule of law. There is no single formula for climate change adjudication. National courts have to develop their own responses to legitimate demands for action, within their own constitutional and legal frameworks. Lastly, Lord Carnwath said that, where politicians fail, the public will look to the courts to fill the gap.

HYDROPOWER DEVELOPMENT AND CHALLENGES: THE ROLE OF THE JUDICIARY

MR. RAJENDRA K. KSHATRI, Secretary, Ministry of Energy, Nepal

Mr. Kshatri observed that rivers are perennial sources of energy, especially important for a landlocked and mountainous country like Nepal, located in the Himalayas. In terms of hydropower, the country has a potential capacity of 83,000 megawatts (MW). However, only 689 MW have been installed so far, with the country experiencing a 514 MW deficit during peak hours. The present per capita consumption of electricity is only 106 kilowatt hours, the lowest in South Asia. Nepal's hydropower potential could be used to increase energy access, as only 40% of the population currently has electricity. In terms of responding to climate change, the Government of Nepal is prioritizing micro and small hydro projects, in line with the mandates of sustainable development.



Some of the challenges for hydropower development in Nepal include the need for institutional reforms, including improvements in the legal and regulatory regime; the need for huge investments; technical and nontechnical barriers; transmission bottlenecks; and the lack of political commitment. Opportunities for the sector include India's increasing energy demand; current government policy initiatives and reforms, among them the establishment of a public power trading company; bilateral trading agreements; and SAARC Framework Agreement for Energy Cooperation (Electricity).

As for the judiciaries' role, Mr. Kshatri noted that previous jurisprudence did not recognize hydropower electricity as a tradeable commodity, regarding it merely as a public service. However, this was recently reversed in a decision by the Supreme Court. That decision bodes well for other reforms and initiatives being pursued, and has the potential to lessen legal quarrels involving the energy industry.

THE IMPACT OF EARTHQUAKES ON ECOSYSTEMS AND BIODIVERSITY

MR. SANTOSH MANI NEPAL, Senior Director, Policy and Outreach, World Wildlife Fund (WWF) Nepal

Mr. Nepal started off with some statistics on the impact of the earthquakes that struck Nepal in April and May 2015. A total of 8 million people were affected, with almost 9,000 dead; nearly 7,000 schools were damaged or destroyed, in addition to the numerous historical and cultural



monuments that were damaged or ruined. Poorer rural communities were the hardest hit, with more women and girls affected by the disaster. Biodiversity and the environment were also badly hit, with \$340 million in estimated damages to forests, crops, and other natural resources. Immediate environmental impacts of the earthquake included landslides, avalanches, damaged forests and water resources, wildlife killed, and wildlife habitats destroyed. In particular, 2,780 post-quake landslides were reported; 23,000 hectares of forest area were lost or damaged; and springs dried up, while new ones appeared in other places.

He then spoke about a post-disaster needs assessment that was conducted with the goal of boosting the resilience of earthquake recovery and reconstruction by identifying and integrating sound environmental practices. The focus was the estimated \$7 billion in losses and damages due to the catastrophe. Mr. Nepal also discussed some issues to be considered during reconstruction, such as the impacts of logging for rebuilding houses, the management of solid and hazardous wastes, and reconstruction of sand and gravel mining sites. Additional risks during reconstruction include resettlement in environmentally sensitive areas, increased pollution, contamination of water sources, loss of capacity for forest management due to the diversion of human resources to reconstruction, and conflicts over limited resources, among others.

In conclusion, Mr. Nepal urged all stakeholders to pursue green recovery and reconstruction. This would have benefits for both the community and for conservation efforts, with direct positive effects on water and sanitation, livelihoods, shelter, and disaster risk reduction. He said that the policy document resulting from the post-disaster needs assessment outlined specific principles for green and resilient recovery and reconstruction. Finally, he emphasized the need to build back better, safer, and greener.

DEFENDING SOUTH ASIAN INTEREST IN BIODIVERSITY CONSERVATION: THE NEED FOR EVOLVING REGIONALISM

MR. RITWICK DUTTA, environmental lawyer, India

Mr. Dutta started off by saying why there is a need for a regional approach to biodiversity conservation. Nature does not confine itself within the borders of any one country; the impacts of activities on the environment are felt beyond national frontiers. This fact could help reduce conflicts over natural resources. With a nation-centered approach, the long-term conservation of many species becomes more challenging, and national efforts can prove insufficient. For example, the cross-border trade of certain species can impact biodiversity by distorting the migration and movement of these animals. Mr. Dutta cited specific problems affecting species such as the amur falcon and the black-necked crane. He then discussed the planned dam in the Indian state of Arunachal Pradesh, which is a biodiversity hot spot. Finally, he noted that biopiracy threatens many endangered species in the region.⁹



⁹ “Biopiracy” is defined as the theft, misappropriation, or commercial exploitation of biological materials or knowledge without compensation or official permission.

After stressing that regional approaches should replace national ones, Mr. Dutta cited some challenges for regional environmental action in South Asia. These include heightened subnational chauvinism (i.e., in the various states of India), continued water disputes, and the subnational focus of conservation efforts. Other factors that would hinder a regional approach include the massive dam construction in the Himalayas by Bhutan, India, Nepal, and Pakistan; a proposed river-linking project in India; the lack of uniformity in environmental impact assessment processes; and the treatment of water and rivers as a national security issue by some countries.

Mr. Dutta then posed some questions to participants. He asked if a regional commission or tribunal on the environment would be possible, citing as a model the NGT of India. He added that the concept of locus standi could be expanded upon and applied more liberally. Mr. Dutta also asked if transboundary environmental impact assessments could be done, taking a cue from the European experience under the Espoo Convention.¹⁰ Cumulative impacts across borders should be monitored, and public hearings should also be considered. Finally, he suggested that transboundary water agreements focus on ecology and the “right of the rivers” rather than on the equitable sharing of water.

REMARKS BY THE SESSION CHAIR

HON. JUSTICE SYED REFAAT AHMED, Supreme Court of Bangladesh

Justice Ahmed noted the deeply rooted connection between Bangladesh and Nepal, and offered his sympathy for the victims of the recent earthquakes. He then went on to say that he represented a frontline state in the “war” on climate change, and in the fight to restore biodiversity and the equilibrium of the environment. He said that Bangladesh has much in common with the other South Asian countries, and that it supports the concept of a common effort but with differentiated responsibilities based on the respective capabilities of each country. He mentioned that the Intergovernmental Panel on Climate Change discovered that Bangladesh’s coastal areas are vulnerable and that the country suffered from food constraints, among other problems.

This will make achieving the SDGs more challenging for Bangladesh. Thus, the question is how should the judiciary in Bangladesh address these problems, and how should it step out of its “straightjacket” and develop the capacity of its judges to protect the environment. Judge Ahmed added that Bangladesh remains committed to the cause of those developing states that bear the wrath of climate change.



¹⁰ The Espoo Convention, which was developed under the auspices of the United Nations Economic Commission for Europe, was adopted in 1991 and entered into force in 1997. See: <http://www.unece.org/env/eia/eia.html>



A DECLARATION, ACTION PLAN, AND THE WAY FORWARD FOR THE ASIAN JUDGES NETWORK ON ENVIRONMENT

The participants of the roundtable discussed and adopted the draft of the Kathmandu Resolution 2015 for Judicial Cooperation in Ensuring Sustainable Development, Climate Change Resiliency, and Protection of Environment in South Asia. It includes steps and measures that the judiciaries should undertake, particularly with regard to information sharing, capacity building, regional collaboration, promotion of environmental and climate justice, and the memorandum of understanding on judicial cooperation drawn up by the roundtable participants. Significantly, the Nepalese judiciary made the following commitments regarding environmental and climate justice:

- to engage in regional knowledge sharing, including the preparation and dissemination of English versions of the decisions and judgments of the Supreme Court of Nepal relating to environmental justice and environmental development;
- to develop an environmental law curriculum at the National Judicial Academy in Nepal; and
- to have the chief justice of the Supreme Court designate to serve as a focal point to ensure effective communication and liaising with other judiciaries; promote mutual cooperation activities; and hold periodic consultations, as appropriate and required for the implementation of the vision and guidelines envisaged in this resolution.

A copy of the Kathmandu Resolution 2015, as adopted by the participants of the roundtable, is attached as Annex 2.



FINAL SESSION

TOWARDS JUDICIAL LEADERSHIP
ON ENVIRONMENTAL JUSTICE

REMARKS

CHIEF JUSTICES AND SENIOR JUDGES

Hon. Justice Baha-u-din Baha, Supreme Court of Afghanistan

Justice Baha said that he was honored to take part in this roundtable, and that it is very important to exchange views on the causes of environmental degradation and on measures to minimize the adverse effects on people and the environment. He noted that the Almighty has created a suitable environment for human beings. It is thus the prime duty of all governments to adopt the necessary measures to protect and improve forests and the living environment. He also informed the participants about the formation of the National Department of Environment in Afghanistan, which works to improve the enforcement of environmental laws and to address pollution in the country.

Hon. Justice Dost Muhammad Khan, Supreme Court of Pakistan

Justice Khan said that the participants of the roundtable were addressing not only an issue for the present generation, but also for future generations. As a consequence of the current patterns of production and consumption, global warming has rendered environmental justice a compelling subject that demands attention. He cited various activities that cause environmental harm and destruction, resulting in the disruption of peoples' lives and of the ecosystem.

Hon. Justice Priyasath Dep, PC, Supreme Court of Sri Lanka

Justice Dep commended the successful organization of the roundtable. With reference to natural disasters, he said that these are acts of God that one cannot anticipate, but that one can adequately prepare for. He talked about Sri Lanka's experience during and after the 2004 Indian Ocean tsunami, noting that adequate preparations had been made to reduce the impacts of natural disasters. On the judiciaries' role, Justice Dep remarked that there are many similarities among South Asian judiciaries. He cited the provisions in the Sri Lankan Constitution that provide for the protection and preservation of the environment.

VOTE OF THANKS

MR. KENICHI YOKOYAMA, Country Director, Nepal Resident Mission, ADB

Mr. Yokoyama began by thanking Chief Justice Shrestha and the Supreme Court of Nepal for cohosting the roundtable. He noted that the success of this event, after months of preparation, and despite the challenging situation in Nepal brought about by the April and May earthquakes, would not have been possible without the leadership and dedication shown by the hosts and organizers. He thanked the management and staff of the World Wildlife Fund (WWF) Nepal for its support, as well as the judges and experts present, saying that their active participation and the commitment they expressed bodes well for the protection of the environment. Sustainable development truly has its champions in the judiciary, he said, especially in South Asia. Mr. Yokoyama then thanked the ADB team from the Office of the General Counsel and the Nepal Resident Mission for its efforts in organizing the event.



He then noted that the past year had been a particularly challenging and difficult time for the people of Nepal because of the earthquakes, which took many lives and destroyed property and infrastructure, and exerted a heavy toll on the environment. Yet one bright spot that did emerge was the resilience and perseverance of the Nepalese people, who bounced back from the ruins, determined to rebuild in a sustainable and disaster-resilient manner. Another bright spot was Nepal's adoption of a new Constitution, which has several provisions on environmental rights and stipulates that there be an appropriate balance between environmental protection and economic growth. These are welcomed developments, as Nepal begins the difficult, but significant, task of giving life and meaning to its new Constitution. Mr. Yokoyama added that ADB, including its Nepal Resident Mission, will continue to be Nepal's partner in building back better and in pursuing inclusive and sustainable development during the years to come.

CLOSING REMARKS AND VOTE OF THANKS

THE RT. HON. CHIEF JUSTICE KALYAN SHRESTHA, Supreme Court of Nepal

Chief Justice Shrestha noted a sense of accomplishment toward the close of the roundtable. Despite the challenges faced during the preparation, a successful and fruitful event was held. If the roundtable had not taken place, a great opportunity would have been missed, as the Nepalese judges there benefited greatly from the discussions and presentations. He appreciated the efforts of ADB to engage the judiciaries of South Asia in discussions about environmental justice. Regarding the focus on environmental justice, the chief justice said that focusing on the environment alone may not be enough to resolve the issues and problems affecting the environment. Instead, environmental laws should also be made people-centric, giving citizens the space to express themselves and express their grievances.



The chief justice congratulated the participants for a successful event. He added that the dialogic method used in Nepal should be continued with regard to environmental issues. On whether judges can be impartial when hearing environmental cases, he said that judiciaries have a vested interest in protecting the environment. Therefore, judges cannot be neutral if environmental concerns are presented, but the goal should be to balance the rights and interests of both parties. The chief justice added that the Nepal judiciary should consider establishing an environmental bench in the Supreme Court.

SIGNING OF THE MEMORANDUM OF UNDERSTANDING FOR CO-OPERATION AMONGST THE SOUTH ASIA JUDICIARIES ON ENVIRONMENTAL LAW ENFORCEMENT

The signing of the Memorandum of Understanding (MOU) was deferred because not all of the South Asian judges attending had the authority to sign the document at the Roundtable. It was, however, noted that the respective Supreme Courts of Bangladesh, Bhutan, Nepal, Pakistan, and Sri Lanka had approved the MOU. There was an agreement by consensus to take the MOU forward to the next Roundtable.

ANNEX 1

AGENDA OF THE ROUNDTABLE

THE FOURTH SOUTH ASIA JUDICIAL ROUNDTABLE ON ENVIRONMENTAL JUSTICE

28–29 November 2015

HOTEL YAK & YETI • KATHMANDU, NEPAL

AGENDA

PRE-ROUNDTABLE DAY FRIDAY, 27 NOVEMBER 2015

- | | |
|----------------|--|
| 8 a.m. onwards | Guest Check-in at the Hotel Yak & Yeti |
| 7 p.m.–9 p.m. | Welcome Reception and Dinner hosted by ADB at Hotel Yak & Yeti |

DAY 1 SATURDAY, 28 NOVEMBER 2015

- | | |
|------------------|--|
| 8:30 a.m.–9 a.m. | Registration – Regal Hall, Hotel Yak & Yeti, Kathmandu |
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INAUGURAL SESSION Chair: Hon. Justice Girish Chandra Lal, Supreme Court of Nepal Chief Guest: The Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal

- | | |
|-----------------------|--|
| 9 a.m.–9:10 a.m. | Arrival of VIPs and Participants |
| 9:10 a.m.–9:15 a.m. | Arrival of the Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal, and Other Dignitaries to the Dias |
| 9:15 a.m.–9:20 a.m. | National Anthem and Traditional Ceremony |
| 9:20 a.m.–9:30 a.m. | Welcome Remarks by Hon. Justice Baidya Nath Upadhyay, Supreme Court of Nepal |
| 9:30 a.m.–9:35 a.m. | Inauguration of the Program by the Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal, by lighting the Auspicious Lamp |
| 9:35 a.m.–9:45 a.m. | Welcome Remarks by Mr. Ramit Nagpal, Deputy General Counsel, Office of the General Counsel, Asian Development Bank (ADB) |
| 9:45 a.m.–9:55 a.m. | Remarks by Hon. Chief Justice Lyonpo Tshering Wangchuk, Supreme Court of Bhutan |
| 9:55 a.m.–10:05 a.m. | Remarks by Hon. Agni Prasad Kharel, Minister for Law, Justice and Parliamentary Affairs, Nepal |
| 10:05 a.m.–10:25 a.m. | Keynote Address, by the Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal |
| 10:25 a.m.–10:35 a.m. | Remarks and Vote of Thanks by Hon. Justice Girish Chandra Lal, Supreme Court of Nepal |
| 10:35 a.m.–10:50 a.m. | Photo Session |
| 10:50 a.m.–11:10 a.m. | Tea Break |

TECHNICAL SESSION 1 ENVIRONMENTAL JUSTICE: EXISTING AND EMERGING PRACTICES

Session Chair: Hon. Justice Qazi Faez Isa, Supreme Court of Pakistan (TBC)

Facilitator: Mr. Gregorio Rafael P. Bueta, ADB

This session will begin with a look at the impact of the recent earthquakes in Nepal on the people and the environment there. It will then feature a discussion on the understanding and evolution of the concept of environmental jurisprudence, and on the existing best practices, methodologies, and techniques adopted by the courts of South Asia. The perspectives of both the judiciaries and civil society will be presented.

11:10 a.m.–1 p.m.

Video Footage on the Nepal Earthquake – 15 minutes: NTV

Presentation 1: Earthquakes and Earth Justice: The Emergence of the Environmental Justice Movement and Its Relevance in Addressing Unanticipated Events, by **Hon. Dr. Ananda Mohan Bhattarai, Chief Judge, Court of Appeal, Nepal** (20 minutes)

Presentation 2: The Establishment of Green Courts: Rationale, Legal and Institutional Arrangements, and Best Practices—Experience of India, by **Hon. Justice Swatanter Kumar, Chair, National Green Tribunal, India** (20 minutes)

Presentation 3: Methodologies for Access to Environmental Justice, by **Hon. Judge Merideth Wright, Distinguished Judicial Scholar, Environmental Law Institute, and former judge of the Vermont Environmental Court (1990–2011)** (20 minutes)

Presentation 4: Enforcement of and Compliance with Decisions on the Environment: A Civil Society Perspective, by **Mr. Prakash Mani Sharma, Pro Public, Nepal** (20 minutes)

Q&A – 30 minutes

1 p.m.–2:20 p.m.

Lunch

TECHNICAL SESSION 2 THE POST-2015 DEVELOPMENT AGENDA AND THE SUSTAINABLE DEVELOPMENT GOALS

Session Chair: Hon. Justice Swatanter Kumar, National Green Tribunal, India

Facilitator: Mr. Gregorio Rafael P. Bueta, ADB

This session will introduce current and evolving issues regarding the Sustainable Development Goals (SDGs). The aim will be to acquire an understanding of international development goals, moving from the previous MDGs to the SDGs, as they pertain to climate justice, including today's most pressing challenges. The discussion will thus examine the SDGs in the context of environmental protection, with a focus on how judges and the rule of law can play a key role in the achievement of the SDGs in South Asia.

2:20 p.m.–4:10 p.m.

Presentation 1: Environmental Rule of Law and Sustainable Development, by **Hon. Justice Baidya Nath Upadhyay, Supreme Court of Nepal** (20 minutes)

Presentation 2: Looking into Sustainable Development Goals from the Right Perspective: Can They Be Actionable Rights? by **Mr. Keyvan Izadi, Multi-Country Climate Smart Agriculture Programme Manager, SNV Netherlands Development Organisation** (20 minutes)

Presentation 3: Climate Change: The Need for Legislative Cover and Social Awareness in Pakistan in Light of the Post-2015 Development Agenda, by **Mr. Mansoor Usman Awan, Founder and Advocate, AJURIS Advocates and Corporate Counsel, Pakistan** (20 minutes)

Presentation 4: The Concept of Climate Justice in the Context of Sustainable Development Goals, by **Hon. Justice Syed Mansoor Ali Shah, Lahore High Court, Pakistan** (20 minutes)

Q&A – 30 minutes

4:10 p.m.–4:20 p.m. Tea Break

**DAY 1 STOCKTAKING AND FINAL SESSION:
PURSUING ENVIRONMENTAL JUSTICE FURTHER**

Session Chair: Mr. Robert John Anderson Carnwath, the Rt. Hon. Lord Robert Carnwath of Notting Hill CVO, Supreme Court of UK (TBC)

Facilitator: Ms. Irum Ahsan, ADB

At the end of Day 1, the participants will be invited to look at two important overarching topics. The first will be access to environmental justice. This is an evolving concept that has been made more effective through tools, ideas, and methodologies that are now available to judges. The second topic will be the role of stakeholders, particularly the judiciary, in providing a better understanding of how the issues and challenges related to environmental justice can be addressed.

4:20 p.m.–6 p.m. **Presentation 1:** ADB's Role in Strengthening Environmental Governance and the Asian Judges Network on Environment, by **Ms. Irum Ahsan, Project Leader and Senior Counsel, ADB** (20 minutes)

Presentation 2: Quantifying Environmental Damage, Ecosystem Services, Green Accounting, and Natural Capital in Decision Making, by **Mr. Leo F. Saldanha, Coordinator, Environmental Support Group, India** (20 minutes)

Presentation 3: Ensuring Environmental Governance: The Roles of Key Stakeholders and the Judiciary—A Video Presentation, by **Hon. Justice Antonio Herman Benjamin, Superior Tribunal de Justiça, Brazil (TBC)** (15 minutes)

Presentation 4: The SAARC Perspective on the Recent Development of Environmental Justice, by **Hon. Justice Qazi Faez Isa, Supreme Court of Pakistan (TBC)** (15 minutes)

Q&A – 30 minutes

7 p.m. **Dinner hosted by the Rt. Hon. Justice Kalyan Shrestha, Chief Justice of Nepal**

DAY 2
SUNDAY, 29 NOVEMBER 2015

TECHNICAL SESSION 3
URBANIZATION, INDUSTRIALIZATION, AND THE ENVIRONMENT

Session Chair: Hon. Justice Shanthi Eva Wansundera, PC,
Supreme Court of Sri Lanka (TBC)

Facilitator: Mr. Gregorio Rafael P. Bueta, ADB

This session will present an overview of migration and urbanization in South Asian countries, and the environmental challenges they have caused. The issues related to urbanization include waste management, transport and mobility, air pollution, and the preservation of open spaces. The ongoing rapid urbanization without adequate urban governance and services means that urban population is at a risk for environmental hazards, such as increased poverty, homelessness, ill health, pollution, and crime. The business sector's perspective will also be presented, with an emphasis on what industry can do to help address these issues.

9 a.m.–10:50 a.m. **Presentation 1:** The Hazards of Urbanization in South Asia: Preserving Open Spaces, Sustainable Urban Transport, and Mobility amid Rising Urbanization, by **Ms. Saima Amin Khawaja, Managing Partner, Progressive Advocates and Legal Consultants, Pakistan** (20 minutes)

Presentation 2: Managing Urban Solid Waste: The Distribution of Opportunities and Hazards, by **Dr. Somlal Subedi, Chief Secretary, Government of Nepal** (20 minutes)

Presentation 3: Judicial Approaches to the Issue of Air Pollution in South Asian Cities, by **Mr. Jay Pendergrass, Acting Vice President, Research and Policy, Environmental Law Institute** (20 minutes)

Presentation 4: Industrialization and the Environment: A Perspective from the Private Sector, by **Mr. Sanith de Silva Wijeyeratne, Chief Executive Officer, Carbon Consulting Company, Sri Lanka** (20 minutes)

Q&A – 30 minutes

10:50 a.m.–11:10 a.m. Tea Break

TECHNICAL SESSION 4
BIODIVERSITY AND NATURAL RESOURCE CONSERVATION

Session Chair: Hon. Chief Justice Lyonpo Tshering Wangchuk,
Supreme Court of Bhutan (TBC)

Facilitator: Mr. Gregorio Rafael P. Bueta, ADB

This session will look at challenges to South Asia's biodiversity and natural resources, and at the region's conservation and protection efforts. The livelihoods of many people depend on ecosystems that have become degraded, so ecological restoration must be done as fast as possible. This session will also explore regional approaches to finding common solutions, and how local communities play their part through local grassroots initiatives.

11:10 a.m.–1 p.m. **Presentation 1:** A Rural Case Study on the Maximization of Water Resources: Pakistan's Community Water Management Initiative, by **Ms. Sarah Jahaan Khan, activist and filmmaker, Pakistan** (20 minutes)

Presentation 2: Disputes Relating to Community Forest Conservation: Evolving Judicial Approaches, by **Hon. Justice Til Prasad Shrestha, Court of Appeal, Nepal** (20 minutes)

Presentation 3: Legal Protection for Wildlife: Implementing International and National Commitments for the Protection and Sustainable Use of Biodiversity, by **Mr. Bruce Dunn, Senior Environment Specialist, ADB** (20 minutes)

Presentation 4: Reinventing Sustainable Rural Development: Utilization of Resources and Geographical Niches, by **Dr. Nakul Chettri, International Centre for Integrated Mountain Development, Nepal** (20 minutes)

Q&A – 30 minutes

1 p.m.–2 p.m. Lunch

TECHNICAL SESSION 5 PROTECTION OF THE ENVIRONMENT: CURRENT TRENDS AND DEVELOPMENTS

Session Chair: Hon. Justice Syed Refaat Ahmed,
Supreme Court of Bangladesh (TBC)

Facilitator: Mr. Gregorio Rafael P. Bueta, ADB

This session will discuss emerging trends and developments in the regional and international spheres, particularly with regard to the negotiations for a new and binding international agreement on climate change and the impacts of natural disasters on wildlife and biodiversity. These issues and their potential legal and regulatory implications are made more relevant for judges when competing rights and interests are brought before their courts. The role of judges and the evolution of regionalism will also be discussed.

2 p.m.–3:50 p.m.

Presentation 1: Climate Change and the Law: A Judicial Viewpoint, by **Mr. Robert John Anderson Carnwath, the Rt. Hon. Lord Carnwath of Notting Hill, CVO, United Kingdom** (20 minutes)

Presentation 2: Hydropower Development and Challenges: The Role of the Judiciary, by **Mr. Rajendra K. Kshatri, Secretary, Ministry of Energy, Nepal** (20 minutes)

Presentation 3: The Impact of Earthquakes on Ecosystems and Biodiversity, by **Mr. Santosh Mani Nepal, Senior Director, Policy and Outreach, World Wildlife Fund (WWF) Nepal** (20 minutes)

Presentation 4: Defending South Asian Interests in Biodiversity Conservation: The Need for Evolving Regionalism, by **Mr. Ritwick Dutta, environmental lawyer, India** (20 minutes)

Q&A – 30 minutes

A DECLARATION, ACTION PLAN, AND THE WAY FORWARD FOR THE ASIAN JUDGES NETWORK ON ENVIRONMENT

Session Chair: The Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal, or His Nominee (TBC)

Facilitator: Ms. Irum Ahsan, ADB

As the Fourth South Asia Judicial Roundtable on Environment comes to its conclusion, the participants will be invited to look back at past declarations, resolutions, and action plans to help in the drafting of the Nepal Declaration and Action Plan. Using those prior commitments and statements as a foundation, the participants will be able draw up a new declaration and plan that could pave the way to environmental justice in the region. In addition, there will be a discussion about continuing and sustaining the Asian Judges Network on Environment in South Asia.

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| 3:50 p.m.–4:35 p.m. | <p>Presentation 1: Review of Past Action Plans, Resolutions, and Declarations; and Discussions on the Nepal Declaration and Action Plan, Nepal Team/ADB (15 minutes)</p> <p>Presentation 2: The Way Forward for the Asian Judges Network on Environment (AJNE), by Ms. Irum Ahsan, Project Leader and Senior Counsel, ADB (15 minutes)</p> <p>Discussion and Finalization of Nepal Action Plan/Declaration (15 Minutes)</p> |
| 4:35 p.m.–4:45 p.m. | Tea Break |

FINAL SESSION: TOWARDS JUDICIAL LEADERSHIP ON ENVIRONMENTAL JUSTICE

Session Chair: The Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal

Facilitator: Ms. Irum Ahsan, ADB

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| 4:45 p.m.–4:50 p.m. | Arrival of Dignitaries to the Dias (TBC) |
| 4:50 p.m.–5:10 p.m. | Welcome and Analysis of the Roundtable Proceedings and Presentation of the Nepal Declaration and Action Plan, by Hon. Justice Dr. Ananda Mohan Bhattarai, Court of Appeal, Nepal |
| 5:10 p.m.–5:20 p.m. | Vote of Thanks by Mr. Kenichi Yokoyama, Country Director, Nepal Resident Mission, ADB |
| 5:20 p.m.–5:40 p.m. | Remarks by Chief Justices and Senior Judges
Hon. Justice Baha-u-din Baha, Supreme Court of Afghanistan
Hon. Justice Priyasath Dep, PC, Supreme Court of Sri Lanka |
| 5:40 p.m.–5:50 p.m. | Closing Remarks and Vote of Thanks by the Rt. Hon. Chief Justice Kalyan Shrestha, Supreme Court of Nepal |
| 5:55 p.m.–6 p.m. | Signing of the Memorandum of Understanding for Co-operation Amongst the South Asia Judiciaries on Environmental Law Enforcement (TBC) |
| 7 p.m. | Dinner to be hosted by WWF Nepal (TBC) |

END OF THE ROUNDTABLE

MONDAY, 30 NOVEMBER 2015

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| 8 a.m.–12 noon | Delegates Depart |
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ANNEX 2

KATHMANDU RESOLUTION 2015 FOR JUDICIAL COOPERATION IN ENSURING SUSTAINABLE DEVELOPMENT, CLIMATE CHANGE RESILIENCY, AND PROTECTION OF ENVIRONMENT IN SOUTH ASIA

KATHMANDU RESOLUTION 2015 FOR JUDICIAL COOPERATION IN ENSURING SUSTAINABLE DEVELOPMENT, CLIMATE CHANGE RESILIENCY, AND PROTECTION OF ENVIRONMENT IN SOUTH ASIA

The Fourth South Asia Judicial Roundtable on Environmental Justice held in Kathmandu, Nepal on the 28th and 29th of November 2015, and attended by chief justices, judges, court officials, and environmental experts from Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka:

Reiterating the need for an enhanced framework for regional judicial cooperation to support sustainable development, combating negative effect of climate change and developing resilience to its effects, protection of the environment, and promotion of environmental governance in South Asia;

Taking note of the post-2015 development agenda and the Sustainable Development Goals in the context of environmental protection and the urgent concerns of climate change, and resolving that judges can make significant contribution to the success and achievement of these goals;

Being concerned with the impacts of the recent earthquakes in some South Asian countries—Afghanistan, Nepal, Pakistan—on the people and environment, and noting the role of judicial cooperation in addressing future such events and promoting disaster-resilient sustainable development;

Realizing environmental problems as a cross-border issue with trans-boundary effects and being further committed to a shared vision of sustainable development and effective collaboration on continuing and sustaining the Asian Judges Network on Environment (AJNE) in South Asia;

Expressing appreciation for the commitments made by the Judiciary of Nepal at this Fourth Roundtable to enhance and promote environmental and climate justice, and the further commitments of the Judiciary of Nepal:

- For regional knowledge sharing, to prepare and disseminate English versions of the decisions and judgments of the Supreme Court of Nepal relating to environmental justice and development;
- To develop an environmental law curriculum for judicial training at the National Judicial Academy; and
- To designate by the chief justice of the Supreme Court a focal person for the purposes of effective communication and liaison with other judiciaries, promoting mutual cooperation activities, and holding periodic consultations, as appropriate and required for the implementation of the vision and guidelines envisaged in this Resolution.

Further reaffirming the commitment to enhance mutual cooperation founded on the common vision and commitments made during the previous South Asia Judicial Roundtables on Environmental Justice;

Acknowledging the individual contribution of judges and experts from Brazil, the United Kingdom, and the United States; and

Having extensively deliberated on the agenda items of this Roundtable, have, by consensus, adopted the Resolution as follows:

Information sharing

1. Jointly take further initiatives for open, comprehensive, and regular exchange of information, through an information-technology (IT)-based real-time information sharing system, as appropriate and as available through AJNE, among the South Asian judiciaries, on South Asia's common environmental concerns, challenges, legal issues, and best practices in environmental adjudication.
2. Contribute to the development of ways in which judges may make effective contribution to the achievement of the Sustainable Development Goals.
3. Strengthen measures to ensure that judicial decisions on environmental cases are shared within AJNE, and are made easily and conveniently available to the public.

Capacity building

4. Provide environmental and climate justice training for the judiciary as an integral part of judicial planning and programs, and encourage such training for other members of the legal community, including enforcement and prosecution agencies and lawyers' professional associations.
5. Develop an effective mechanism for the South Asian judiciaries to share their respective experiences and participate in training programs for judges in South Asia.
6. Sensitize judges about the issues of climate change, migration and urbanization, and resulting environmental challenges, particularly about ongoing rapid urbanization without adequate urban governance and provision of services.

Regional collaboration

7. Subject to the local laws and customs of each country, collaborate to further promote regional approaches to environmental and climate problems, developing common panels of experts, and working with organizations with similar objectives, including mass media organizations when appropriate.
8. Designate, as a matter of priority, judicial focal persons by the South Asian judiciaries for effective communication and liaison with their counterparts and facilitation of environmental judicial cooperation.
9. Organize and collaborate through working groups on specific environmental issues.
10. Work towards and fully support the establishment of a South Asia Regional Secretariat on Environmental Justice to complement and to work with AJNE, and to host the Secretariat permanently or on a rotational basis.

Promotion of environmental justice and climate justice

11. Encourage law schools and universities to impart education on environmental and climate law and justice so that environmental and climate justice can be recognized and internalized in South Asia.
12. Urge the South Asian judiciaries to develop and implement, as appropriate, rules of procedure for environmental cases, with a view to ensuring effective access to environmental and climate justice, which may include, among others: flexibility in legal standing; special rules of evidence; expeditious disposal of cases; alternative dispute resolution methods, particularly at the community level; special remedies including injunctive relief for environmental cases; and other innovative environmental methods and processes.
13. Review and revise, as appropriate, the existing tools and methodologies available at the disposal of judges to ensure effective access to environmental and climate justice.
14. Consider recommending specialized environmental tribunals or green benches, as appropriate, for dispensation of environmental justice promptly and effectively, and collaborate on devising appropriate mechanisms to ensure environmental and climate justice in South Asia.
15. Further collaborate with civil society with a view to ensuring that environment-related decisions and judgments are enforced and complied with, so that the results of such decisions and judgments reach the people.
16. Encourage the conduct of research on environmental laws from the perspective of environmental and climate justice in order to foster better compliance and protection of the environment.
17. Recognize exceptional contribution rendered by judges and environmentalists for the cause of environment in South Asia.
18. Encourage the national governments to design appropriate precautionary measures to prepare the country against unanticipated events including natural disasters.

Memorandum of Understanding

19. The Roundtable reiterated the commitment to the finalization and adoption of the Memorandum of Understanding for Cooperation amongst the South Asian Judiciaries (MOU) upon completion of necessary formalities required for signing the said MOU. The Roundtable notes that Judiciaries of Bangladesh, Bhutan, Nepal, Sri Lanka, and Pakistan have completed the formalities and are ready to sign the said MOU.

This Resolution has been approved and adopted by the participants of the Fourth South Asia Judicial Roundtable on Environmental Justice this 29th day of November 2015, in Kathmandu, Nepal.

ANNEX 3

MEMORANDUM OF UNDERSTANDING FOR CO-OPERATION AMONGST THE SOUTH ASIA JUDICIARIES ON ENVIRONMENTAL LAW ENFORCEMENT

MEMORANDUM OF UNDERSTANDING FOR CO-OPERATION AMONGST THE SOUTH ASIA JUDICIARIES

I. THE COOPERATION PARTNERS

- 1 The judiciaries of the Islamic Republic of Afghanistan, the People's Republic of Bangladesh, the Kingdom of Bhutan, India, the Republic of the Maldives, Nepal, the Islamic Republic of Pakistan, and the Democratic Socialist Republic of Sri Lanka (hereafter "the Judiciaries"), being equally desirous of establishing a framework for cooperation to support their role in ensuring sustainable development and protection of the environment in their countries and in the South Asia region, enter into this Memorandum of Understanding in order to significantly improve the development, implementation, and enforcement of, and compliance with, environmental law.

II. THE AIMS AND GUIDING PRINCIPLES

- 2 The Judiciaries acknowledge that the great political, economic, and social changes that have taken place in their countries in the recent past necessitate a common effort to assess, define, and establish a framework for cooperation to improve the development, implementation and enforcement of, and compliance with, environmental law. They appreciate that the cooperation that they seek to foster will facilitate the realization of their Governments' common aim of poverty reduction and environmentally sustainable development. They recognize that, given the scale and complexity of the challenges that confront them, collaboration is essential to achieve their common aim.

- 3 The Judiciaries will work together to:
 - (a) Share information among South Asian judiciaries on South Asia's common environmental concerns and challenges;
 - (b) Highlight the critical role of South Asian senior judiciaries as leaders in national legal communities and champions of the rule of law and environmental justice, with the ability to develop environmental jurisprudence; and
 - (c) Develop a process for continuing and expanding the cooperation and engagement on environmental issues of the senior judiciaries in the Member States of the South Asian Association for Regional Cooperation (SAARC).

- 4 The cooperation among the Judiciaries will be guided by the following principles:
 - (a) Recognition that natural resources are of immense value to all South Asian countries, contributing to their economic and social well-being and the livelihoods of their peoples, and that the challenge of sustainable development and addressing the scarcity of natural resources is common to all South Asian countries and requires urgent attention by all Governments, their judiciaries, and their citizens;

- (b) Determination to promote in a constructive and mutually beneficial manner the development, implementation, and enforcement of, and compliance with, environmental law, to support sustainable development and the conservation and sustainable use and management of the natural resources in all South Asian countries;
- (c) Recognition that while the role of the Judiciaries is pivotal in resolving environmental issues, they cannot work alone and that it is equally important that they engage Attorneys General, Advocates General, prosecutors, Directors of Judicial Academies, national and sub-national environmental authorities, all government institutions, private sector entities and environmental law academicians, practicing attorneys, and environmentalists and members of civil society in environmental enforcement processes, particularly from the point of view of complying with orders and directions issued by the Judiciaries;
- (d) Willingness to promote interdependent regional cooperation on environmental enforcement issues, taking into account the benefits that could be derived and the detriments that could be avoided or mitigated from such cooperation; and
- (e) Acknowledgement of the necessity to provide an appropriate, efficient, and functional framework for coordinating their individual and joint efforts to support natural resource conservation and sustainable development in South Asia and for sharing their efforts with the international community.

III. ASPECTS OF THE PROPOSED COOPERATION

5

Cooperation among the Judiciaries will focus on their shared priorities for the development, implementation, and enforcement of, and compliance with, environmental law. In particular, cooperation among the Judiciaries may include initiatives to:

- (a) Disseminate information on environmental challenges and legal issues, and best practices in environmental adjudication among themselves, whilst acknowledging the differences among their respective legal systems, on the website of the Asian Judges Network on Environment (AJNE);
- (b) Strengthen specialised environmental tribunals and provide environmental training for the judiciary and other members of the legal fraternity;
- (c) Invite members of the South Asian Judiciaries to share their respective experiences and participate in training programs for judges from the South Asia region;
- (d) Implement existing rules of procedure for environmental cases and develop the same where they do not exist, which may include a flexible approach to legal standing, special rules of evidence for environmental cases, expeditious disposal of cases, special remedies, injunctive relief, and other innovative environmental processes;
- (e) Ensure that judicial decisions on environmental cases are shared within the AJNE and made available to the public;
- (f) Encourage law schools to include environmental law in their curriculum;

- (g) Provide environmental law training to judges through judicial academies, including making such training available for members of lawyers' professional associations;
- (h) Develop a system to recognise whenever exceptional contribution is made by judges and environmentalists for the cause of environment;
- (i) Promote the idea of a South Asia Convention on Environmental Justice;
- (j) Establish green benches in courts for dispensation of environmental justice; and
- (k) Recommend that the right to clean and healthy environment be incorporated as a fundamental right in the Constitutions of their respective countries.

IV. CONSULTATIONS

- 6** The Judiciaries recognize that it is important to arrange periodic consultations to review the progress in planning and implementing the aspects of the cooperation, nationally and regionally.

They agree to hold a South Asia Judicial Conference on Environment annually on a rotational basis to foster cooperation on environment, as a sub-regional group of the AJNE, and to share the vision of this Memorandum of Understanding and the annual Conferences with members of the judiciary in their respective countries.

- 7** Technical staff of the Judiciaries will meet formally and informally, as required and as mutually agreed, to prepare an Action Plan to implement the cooperation described in paragraph 5 and make arrangements for its implementation.

V. EXCHANGE OF INFORMATION

- 8** The Judiciaries recognize that effective cooperation depends on open, comprehensive, and regular exchange of information. They agree to make appropriate arrangements to share with each other and, as appropriate, among legal professionals, law schools, and the general public, information on South Asian countries' common challenges in enforcing, and complying with, environmental law through the AJNE.

- 9** The Judiciaries will, within a mutually acceptable period following the signing of this Memorandum of Understanding, prepare and share information on:

- (a) Decisions of their respective courts on issues of environmental law;
- (b) Elements of curricula for orientation for judges and training for prosecutors and law enforcement officers on environmental law;
- (c) Elements of curricula for teaching environmental law in universities; and
- (d) Rules of procedure for specialised environmental courts.

- 10** Consultation and exchange of information and documents pursuant to paragraphs 6–9 will be without prejudice to arrangements that may be required to safeguard the confidential and restricted character of certain information and documents. If any Judiciary regards any such information to be confidential or restricted, it will give written notice to that effect and the other Judiciaries will ensure the observance of such confidentiality and/or restricted circulation of such information.

VI. FOCAL POINTS

- 11** The respective Chief Justices of each Judiciary shall designate their respective focal points for all purposes associated with this Memorandum of Understanding.
- 12** The respective focal points will be responsible for:
- (a) Establishing effective communication and liaison with the other focal points;
 - (b) Facilitating the implementation of all aspects of this Memorandum of Understanding;
 - (c) Promoting this Memorandum of Understanding and the cooperation activities undertaken under it, within their respective Judiciaries and, as appropriate, with external partners;
 - (d) Convening the periodic consultations that are agreed to be held in accordance with this Memorandum of Understanding; and
 - (e) Monitoring the implementation of this Memorandum of Understanding and jointly evaluating the cooperation activities that are undertaken among the Judiciaries.

VII. TERM, AMENDMENT, AND TERMINATION

- 13** This Memorandum of Understanding shall take effect from the date it has been signed by the authorized representatives of all the Judiciaries.
- 14** This Memorandum of Understanding may be amended by mutual written consent of the Judiciaries.
- 15** This Memorandum of Understanding may be terminated by mutual agreement of the Judiciaries, following six months' prior notification in writing by one or more focal point(s) to all of the other focal points.

VIII. DEALING WITH PROBLEMS

- 16** This Memorandum of Understanding has been developed and finalized in a spirit of mutual cooperation and assistance. It will be interpreted in light of its primary purpose, which is to enable the Judiciaries to ensure the achievement of their common aim of establishing a framework for cooperation to significantly improve the development, implementation, and enforcement of, and compliance with, environmental law. Any difference of opinion concerning this Memorandum of Understanding or any of the cooperation activities required to implement it will be resolved through amicable dialogue.

IX. GENERAL PROVISIONS

- 17** This Memorandum of Understanding is not intended to create legal relations between the Judiciaries or to impose formal obligations on them.
- 18** No provision of this Memorandum of Understanding shall be construed so as to interfere in any way with the sovereignty and independent decision-making autonomy of the Judiciaries with regard to their respective affairs.

This Memorandum of Understanding is signed by the duly authorized representatives of the Judiciaries this _____ in Colombo, Sri Lanka.

For the Judiciary of the
Islamic Republic of Afghanistan

For the Judiciary of the Kingdom of Bhutan

For the Judiciary of the
People's Republic of Bangladesh

For the Judiciary of the Republic of the Maldives

For the Judiciary of India

For the Judiciary of the Islamic Republic of Pakistan

For the Judiciary of Nepal

For the Democratic Socialist Republic of Sri Lanka



ANNEX 4

THE ROUNDTABLE IN PHOTOS



INAUGURAL SESSION





SESSIONS







WITH SUPPORT FROM



FOURTH SOUTH ASIA JUDICIAL ROUNDTABLE ON ENVIRONMENTAL JUSTICE

28-29 November 2015 • Hotel Yak and Yeti
Kathmandu, Nepal



NETWORKING







Proceedings of the Fourth South Asia Judicial Roundtable on Environmental Justice

Kathmandu, Nepal | 28–29 November 2015

This publication documents the proceedings of the Fourth South Asia Judicial Roundtable on Environmental Justice, held on 28–29 November 2015 in Kathmandu, Nepal. The event continued the dialogue on regional environmental issues and discussed topics such as environmental justice, the Sustainable Development Goals, the emerging concept of climate justice, urbanization and industrialization, biodiversity, and community initiatives on environmental protection. The participants adopted the Kathmandu Resolution 2015 for Judicial Cooperation in Ensuring Sustainable Development, Climate Change Resiliency, and Protection of Environment in South Asia, identifying measures for information sharing, capacity building, regional collaboration, and the promotion of environmental and climate justice.

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 half of the world's extreme 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.



SUPREME COURT OF NEPAL



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