



# FIFTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT

## ASEAN JUDICIAL COOPERATION ON THE ENVIRONMENT

The Proceedings

Siem Reap, Cambodia | 4-5 December 2015

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# FOREWORD

The Fifth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment (the Fifth Roundtable), held in Siem Reap, Cambodia, provided a platform for leaders of ASEAN judiciaries to discuss, share experiences, and decide on how to further strengthen collective action in addressing transboundary environmental challenges.

The theme and the timing of the Fifth Roundtable, which is “ASEAN Judicial Cooperation on the Environment,” was particularly relevant. As leaders of ASEAN judiciaries gathered to discuss transboundary environmental issues, world leaders were gathering at the same time in Paris for the 21st Conference of the Parties (COP21) of the United Nations Framework Convention on Climate Change (UNFCCC).

COP21 provided a forum for national governments to address the most challenging transboundary environmental threat of our time—climate change. Simultaneously, Justice Antonio Herman Benjamin, justice of the National High Court of Brazil and chair of the International Union for Conservation of Nature World Commission on Environmental Law, opened the first session of the Fifth Roundtable with a call to action: asking judges to view their role as one that is “planetary,” and to work collectively in navigating transboundary and, in particular, climate change challenges. Climate change, like all other transboundary environmental challenges, knows no limits—geographical, judicial, or administrative. The Fifth Roundtable began with a clear focus on the importance of cooperation and collaboration between judiciaries and the benefit of judicial networks, such as those facilitated by the Asian Judges' Network on Environment (AJNE), in supporting this work.

Each session of the Fifth Roundtable addressed this objective with specific discussions looking at mutual legal assistance between jurisdictions, the role of soft and hard environmental laws in the ASEAN region, and the potential for harmonized legal frameworks to deal with transboundary environmental concerns.

The Asian Development Bank (ADB) recognizes the crucial role played by the judiciary in strengthening environmental law enforcement, building specialization in environmental adjudication through the creation of environmental courts and benches and the institutionalization of a judicial certification program on environment, and setting up credible rule of law systems that advance integrity and environmental justice.

Since the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, held in 2010, the ADB Office of the General Counsel (through its Law and Policy Reform Program) has continuously supported the efforts of the Asia and Pacific region's judiciaries in enhancing the capacity of judges as key environmental decision makers and champions of environmental justice. ADB has assisted host judiciaries in convening annual roundtables for both the ASEAN and South Asian Association for Regional Cooperation regions as well as symposiums. ADB is also acting as the temporary secretariat for AJNE until the end of 2016.

Before the Fifth Roundtable, and under the leadership of the Supreme Court of Cambodia, the ASEAN judiciaries held the Second ASEAN Judicial Working Group on Environment on 25–26 June 2015. It was at this meeting that the ASEAN judiciaries designed the agenda for the Fifth Roundtable. They also drafted and discussed the Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment which evidences ASEAN judiciaries' dedication to jointly tackle the region's transboundary environmental issues, continue to implement A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision) and the Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan), and share information and promote environmental law education and training in law schools and judicial training institutes.

This volume puts on record the presentations, remarks, and discussions during the Fifth Roundtable. It seeks to function as a baseline for expanding the collection of environmental law and jurisprudence within and beyond the ASEAN region, enhancing mutual assistance through the exchange of legal knowledge, environmental jurisprudence, and experiences in adjudicating environmental issues.

**Christopher H. Stephens**

General Counsel

Office of the General Counsel



# ACKNOWLEDGMENTS

**A**sian Development Bank (ADB) staff, consultants, and members of the Supreme Court of Cambodia have worked tirelessly to ensure the success of the Fifth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment (the Fifth Roundtable).

The Supreme Court of Cambodia, headed by the esteemed Chief Justice Dith Munty, and the Organizing Committee of the Fifth Roundtable led by Deputy Chief Judge Chiv Keng, graciously received chief justices, justices, judges, and senior judicial officers from each ASEAN judiciary. Chief Justice Dith gave the welcome and closing remarks, chaired each of the roundtable sessions, presented the heads of delegations with tokens of appreciation, and hosted the farewell dinner. Deputy Chief Judge Keng spoke on Cambodia's domestic and transboundary environmental challenges. Moreover, Deputy Chief Judge Keng, Mr. Ben Visnow, secretary general of the Supreme Court Administration of Cambodia, Mr. Somarith Keng, prosecutor at the Ministry of Justice of Cambodia, and the entire Supreme Court of Cambodia's protocol team worked tirelessly to ensure that the roundtable ran smoothly.

ADB extends its utmost gratitude to the renowned experts, justices, and judges who cochaired or facilitated roundtable sessions, and stimulated the discussions. In the order they cochaired or facilitated the sessions, they are Justice Takdir Rahmadi of the Civil Chamber of the Supreme Court of Indonesia and the chair of the Indonesia Judicial Working Group on Environment; Prof. Ben Boer, deputy chair of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law, distinguished professor at the Research Institute of Environmental Law of Wuhan University, and emeritus professor at University of Sydney; Deputy Chief Justice Khampha Sengdara of the People's Supreme Court of the Lao People's Democratic Republic (Lao PDR); Mr. John Pendergrass, acting vice-president of Research and Policy, Environmental Law Institute; Chief Justice Tun Arifin bin Zakaria of the Federal Court of Malaysia; Judge Merideth Wright, distinguished judicial scholar of the Environmental Law Institute, and former judge of the Vermont Environmental Court; Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge at the High Court of Brunei Darussalam; Justice Chirawan Khotcharit, judge of the Environmental Division of the Supreme Court of Thailand; Justice Chalis Sawasditat of the Environmental Division of the Supreme Court of Thailand; Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines; and Permanent Deputy Chief Justice Bui Ngoc Hoa of the Supreme People's Court of Viet Nam.

Mr. Christopher Stephens, general counsel of ADB, gave the opening and concluding remarks, as well as cochaired the ninth session on the review and endorsement of the Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment. Ms. Atsuko Hirose, advisor at the Office of the General Counsel of ADB, presented an overview of the Asian Judges' Network on Environment (AJNE), and led the team under the ADB's Law, Policy and Reform (LPR) Program in convening the roundtable. The team comprised Ms. Ma. Celeste Grace A. Saniel-Gois, legal operations officer; Ms. Stephanie Venuti, consultant environmental lawyer and project coordinator; Atty. Francesse Joy J. Cordon, legal consultant; and Ms. Ma. Imelda T. Alcala, consultant project coordinator and operations analyst.

Atty. Cordon prepared and edited this record of proceedings.



# ABBREVIATIONS

ADB	– Asian Development Bank
ADR	– alternative dispute resolution
AJNE	– Asian Judges’ Network on Environment
ASEAN	– Association of Southeast Asian Nations
CBD	– Convention on Biological Diversity
CITES	– Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNG	– compressed natural gas
DENR	– Department of Environment and Natural Resources
EIA	– environmental impact assessment
IUCN	– International Union for Conservation of Nature
INTERPOL	– International Criminal Police Organization
IPCC	– Intergovernmental Panel on Climate Change
Lao PDR	– Lao People’s Democratic Republic
LOSC	– United Nations Convention on the Law of the Sea
LPR	– Law and Policy Reform Program
NGO	– nongovernment organization
NGT	– National Green Tribunal
NIPAS	– National Integrated Protected Areas System
PIL	– public interest litigation
SDG	– Sustainable Development Goal
SLAPP	– strategic lawsuit against public participation
UN	– United Nations
UNESCO	– United Nations Educational, Scientific and Cultural Organization
UNFCCC	– United Nations Framework Convention on Climate Change
US	– United States

# EXECUTIVE SUMMARY

The Asian Development Bank (ADB) and the Supreme Court of Cambodia cohosted the Fifth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment (the Fifth Roundtable), on 4–5 December 2015 at Hotel Sofitel Angkor Phokeethra, Siem Reap, Cambodia. The roundtable demonstrates ADB's commitment to “strengthen... the legal, regulatory and enforcement capacities of public institutions on environmental considerations...” and support judicial capacity in enforcing environmental laws, expanding environmental jurisprudence, and leading environmental decision makers in the development of regulatory systems founded on credible rule of law, possessing integrity, and promoting environmental justice.

Chief Justice Dith Munty of the Supreme Court of Cambodia chaired each roundtable session. Distinguished speakers, representing judiciaries in and beyond the ASEAN region and institutions renowned for their environmental expertise, served as honorary chairs, facilitators, and presenters in generously sharing their knowledge and experience.

The roundtable, with the theme “ASEAN Judicial Cooperation on the Environment,” comprised nine sessions. Session 1 provided the Introduction and Progress Report on the Jakarta Common Vision, the Hanoi Action Plan, and the Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment. Justice Takdir Rahmadi of the Supreme Court of Indonesia facilitated the session and talked about the history and achievements of the annual ASEAN Chief Justices' Roundtable on Environment. The ASEAN delegations then shared their judiciaries' accomplishments, ongoing projects, and plans for realizing A Common Vision on Environment for ASEAN Judiciaries<sup>1</sup> (the Jakarta Common Vision) and the Hanoi Action Plan to Implement the Jakarta Common Vision<sup>2</sup> (the Hanoi Action Plan).

The following sessions of the roundtable addressed the environmental challenges facing the ASEAN countries, as identified by the ASEAN judiciaries at the Second ASEAN Judicial Working Group on Environment Meeting.

Session 2 addressed Balancing Economic Development and Environmental Protection. Prof. Ben Boer of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law, Research Institute of Environmental Law of Wuhan University, and University of Sydney served as facilitator. Justice Antonio Herman Benjamin of the National High Court of Brazil and the IUCN World Commission on Environmental Law highlighted that nature knows no geographical, judicial,

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

<sup>2</sup> ADB, Supreme People's Court of Viet Nam. 2014. *Hanoi Action Plan to Implement the Jakarta Common Vision*. Outcome document agreed upon at the Fourth ASEAN Chief Justices' Roundtable on Environment. Ha Noi, Viet Nam. 12–14 December.

or administrative boundaries. Thus, judges adjudicating environmental cases are faced with multi-jurisdictional considerations and must therefore recognize themselves as “planetary judges.” Judge Kong Taracchath of the Supreme Court of Cambodia discussed Cambodia’s environmental impact assessment (EIA) regime and the pending EIA bill. Justice Magdangal M. de Leon of the Court of Appeals of the Philippines discussed the Philippine judiciary’s concept of environmental justice and refusal to sacrifice environmental protection, conservation of natural resources, and maintenance of ecological balance in the interests of economic development. Justice Vijith K. Malalgoda of the Court of Appeal of Sri Lanka talked about Sri Lanka’s constitutional provisions on environmental protection and how the Supreme Court and Court of Appeal of Sri Lanka have expanded the scope of constitutional rights to include environmental protection. Lastly, Prof. Boer emphasized the important role of judges in implementing sustainable development and striking a balance between economic development and environmental protection. He also talked about the Sustainable Development Goals (SDGs), highlighting that more than half of the SDGs concern issues of environmental justice. Drawing on this, Prof. Boer raised important questions regarding the role of ASEAN judiciaries in implementing the SDGs and the environmental justice outcomes for the region.

Session 3 addressed Environmental Damage Assessment, with Mr. John Pendergrass of the Environmental Law Institute acting as session facilitator. Justice Mariano C. del Castillo of the Supreme Court of the Philippines highlighted two scenarios requiring environmental damage assessment by the courts in connection with the Philippine Rules of Procedure for Environmental Cases. The first scenario concerned the court’s assessment of potential environmental threats and the issuing of court decisions to avert or mitigate environmental harm. The second scenario concerned court decisions to require rehabilitation in the aftermath of environmental damage. Justice Chirawan Khotcharit of the Supreme Court of Thailand detailed the hardship faced by the Thailand judiciary in environmental valuation and environmental damage assessment. Mr. Pendergrass highlighted the United States (US) case of the Deepwater Horizon oil spill and canvassed the US legal regime for ascribing liability for damage caused to natural resources, as well as the various methods for assessing environmental damage. Finally, Dr. Carol Adaire Jones of the Environmental Law Institute explained the various economic valuation methods in natural resource damage claims. She emphasized that US laws on damage assessment aim to make the public whole again by including the cost of primary restoration projects (to restore injured resources) and the cost of compensatory restoration projects (to compensate for interim losses pending recovery) in the damage assessment.

Session 4 focused on Statutory Penalties for Environmental Violations. Judge Merideth Wright of the Environmental Law Institute served as facilitator and stressed the need for statutory penalties to achieve actual environmental compliance and that penalties are most effective when they incentivize compliance with environmental laws. Chief Justice Tun Arifin bin Zakaria of the Federal Court of Malaysia discussed Malaysia’s environmental laws and the Malaysian judiciary’s role in environmental protection and preservation. Permanent Deputy Chief Justice Bui Ngoc Hoa of the Supreme People’s Court of Viet Nam discussed the environmental laws and the statutory penalties for environmental violations in Viet Nam. He highlighted that these penalties depend on the nature of the violation and the seriousness of danger caused to society. Judge Atsanay Somsanith of the People’s Supreme Court of the Lao People’s Democratic Republic (Lao PDR) shared that under Article 19 of the Lao PDR Constitution, citizens and organizations must protect the environment and natural resources. He also referred to the five modes, provided under the Environmental Protection Law, for resolving environmental disputes in

the country depending on the nature of the dispute. These are consultation, negotiation, or mediation of simple disputes; administrative dispute resolution by the appropriate district or provincial environmental protection organization; economic dispute resolution at the central Office of Economic Dispute Resolution or the provincial Unit of Economic Dispute Resolution; adjudication by courts of law; and international dispute resolution. Lastly, Judge Wright talked about environmental law enforcement in Vermont, and highlighted the eight factors considered by the Vermont Environmental Court in imposing penalties: the gravity of the actual or potential impact of the offense on public health, safety, welfare and the environment; the respondent's knowledge or reason to know of the violation; the respondent's compliance record; the length of time the violation had been existing; the state's costs in enforcing environmental laws including the expenses it incurred in investigating the case and bringing it to court; the economic benefit gained from the violation; the need to increase or decrease the penalty; and the presence of mitigating factors.

Session 5 addressed Cleanup and Restoration. Justice Khotcharit served as facilitator and pointed out that Sections 96 and 97 of the Enhancement and Conservation of National Environmental Quality Act of Thailand permits judges to award compensatory damages, require the defendant to cleanup the pollution caused, and require the defendant to pay the plaintiff's restoration costs. The five speakers in this session each talked about the different challenges judges, and the experts assisting them, face in calculating damages, issuing cleanup and restoration orders, and enforcing those orders. Justice YA Tan Sri Ahmad Bin Haji Maarop of the Federal Court of Malaysia stressed the fact that certain types of environmental damage are irreparable, and in such cases monetary fines alone will never be able to cover the cleanup and restoration costs. He then pointed out several provisions of the Environmental Quality Act 1974 that empower the director general of environmental quality and the head of the Ministry of Science to take action against a polluter to remediate the damage done. Justice de Leon referred to several landmark cases in the Philippines that illustrate the use of available remedies for implementing effective cleanup and environmental restoration. Dr. Jones elaborated on the cleanup of the Deepwater Horizon oil spill. Judge Wright provided a more localized example of environmental damage cleanup and rehabilitation in the US: the cleanup of the toxic paint sludge improperly disposed of by Ford Motor Company in New Jersey. Lastly, Justice Hima Kohli of the High Court of Delhi, India gave a video presentation on the role played by the Supreme Court of India and the National Green Tribunal in cleanup and environmental restoration in India.

Session 6 provided an Overview of Domestic and Transboundary Environmental Issues. Mr. Pendergrass facilitated the session. The five speakers identified the main domestic and transboundary environmental challenges confronting their country. Deputy Chief Judge Chiv Keng of the Supreme Court of Cambodia discussed the following five functions of the Cambodian judiciary in addressing these problems: building judicial capacity, quality of environmental jurisprudence, and judicial ethics; helping the judicial police enhance their knowledge of the challenges and procedures for preventing and suppressing environmental crimes and filing cases in court; resolving environmental disputes; preventing, suppressing, and punishing transboundary environmental crimes; and working with the anticorruption unit in investigating, prosecuting and sentencing corrupt judicial police officers that abet the commission of environmental offenses. Justice Aung Zaw Thein of the Supreme Court of the Union of Myanmar emphasized the need for all human beings to take part in environmental conservation and for cooperation between the Myanmar government, and nongovernment organizations (NGOs) and neighboring countries on the other hand in this endeavor. Justice Rahmadi noted the factors that

weaken law enforcement in Indonesia: the economy's heavy reliance on natural resources extraction; the local governments' lack of environmental vision or good environmental governance; and the view taken by local communities that environmental crimes are merely *mala prohibita*, or wrong because they are prohibited by law, as against being *mala in se*, or wrong because they are inherently wrong or evil. Prof. Boer highlighted the hard and soft laws governing the ASEAN region, particularly the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, the 1985 ASEAN Agreement on Conservation of Nature and Natural Resources and the 2012 ASEAN Declaration on Human Rights. Lastly, Mr. Pendergrass talked about deforestation, haze pollution, illegal wildlife trade, water security and riparian cooperation, destructive fishing practices, and coral reef degradation as serious environmental challenges in Southeast Asia.

Session 7 addressed Public Interest Litigation in Environmental Cases. Justice de Leon facilitated the session. The first speaker, Justice Maarop, discussed the history of public interest litigation (PIL) and its use in Malaysian courts. Justice Rahmadi talked about the three types of PIL in Indonesia: legal actions brought by NGOs, class actions, and citizen lawsuits. Judge Wright discussed PIL in the US and the two forms of legal standing to challenge administrative action—standing to challenge an administrative decision on regulatory or development permits, and standing to challenge administrative or civil enforcement actions. Justice Mariano C. del Castillo elaborated on four landmark Philippine Supreme Court decisions that resulted from environmental PIL and the challenges posed by any strategic lawsuit against public participation (SLAPP). Justice Kohli, by video, talked about the emergence and development of PIL in relation to the environment in India, particularly in the course of relaxing the locus standi rule. She then highlighted six landmark environmental PIL in India.

Session 8 concerned Mutual Assistance in Responding to Transnational Environmental Challenges. Prof. Boer, as session facilitator, highlighted how ASEAN judiciaries can learn from one another's experiences in adjudicating environmental cases and how different the environmental laws of ASEAN countries are. He also pointed out the need for some countries to revisit outdated regional environmental laws, and consider harmonizing laws and standards across the region. Justice Maarop spoke about the Mutual Assistance in Criminal Matters Act 2002 and its application in cases handled by Malaysian courts and administrative agencies. He also discussed Malaysia's cooperation with other ASEAN countries in dealing with transboundary haze pollution and strengthening their judicial capacity to decide environmental cases. Justice Dang Xuan Dao of the Supreme People's Court of Viet Nam highlighted the importance of mutual assistance in resolving environmental disputes and the need for a mechanism to efficiently implement requests for legal assistance in settling environmental cases, ensuring that situations of delay or no response to requests are avoided. He also referenced Viet Nam's Law on Mutual Legal Assistance, which applies in civil and criminal cases, extradition, and the transfer of persons serving prison sentences. Justice de Leon discussed the ASEAN Agreement on Transboundary Haze Pollution, which emanated from the 1997 regional haze crisis, and Republic Act No. 8749, or the Philippine Clean Air Act of 1990. Lastly, Justice Malalgoda stressed the role of jurisprudence and precedents in advancing environmental justice and increasing judges' awareness of the urgency to strengthen their role in law enforcement and harmonizing judicial reasoning. He also said that the transnational threats posed by climate change mean that there is a great need for Southeast Asian and South Asian judiciaries to determine how they can best learn from each other's experiences in dealing with transboundary environmental challenges. During question and answer time, the participants discussed Singapore's Transboundary Haze Pollution Act 2014 and its extraterritorial application. They also considered the

possibility of establishing a special tribunal that will exercise jurisdiction over many countries in the region to resolve problems with sovereignty and questions regarding the admissibility of evidence such as remote sensing and satellite images.

In Session 9, on Review and Endorsement of the “Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment,” the participants discussed the Proposed Angkor Statement. This statement manifests the parties’ reaffirmation of their commitment to do three things: continuously cooperate in achieving the Hanoi Action Plan; share information on ways and means to combat environmental challenges in the region, such as relevant jurisprudence, environmental legislation, and penalties; and promote environmental law education and training in law schools and judicial training institutes. As Mr. Christopher Stephens, general counsel of ADB, said, the agreement is not a legally binding document but rather it operates as a confirmation of each of the ASEAN judiciaries’ commitment to environmental jurisprudence and justice.

The participants unanimously endorsed the statement. Brunei Darussalam and Singapore stated their support for efforts to protect the environment and recognized the relevance of the work of the ASEAN Chief Justices’ Roundtable on Environment to many ASEAN countries. They further noted that the Jakarta Common Vision, the Hanoi Action Plan, and the Angkor Statement are aspirational in nature and do not require a binding commitment.



# HIGHLIGHTS

## DAY 1: 4 DECEMBER 2015



▲ Supreme Court of Cambodia President Dith Munty with the participants, ADB representatives, and eminent speakers

## OPENING CEREMONY

### Welcome Remarks

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, delivered the welcome remarks. He acknowledged the presence of Chief Justice Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia; the Association of Southeast Asian Nations (ASEAN) judicial delegations; Mr. Christopher Stephens, general counsel of the Asian Development Bank (ADB); and all attending judges, prosecutors, and guests. On behalf of the Supreme Court of Cambodia, he expressed great pleasure and honor in hosting the Fifth ASEAN Chief Justices' Roundtable on Environment (the Fifth Roundtable) in collaboration with ADB. He welcomed everyone and thanked them for taking the time to attend the Fifth Roundtable.

Chief Justice Dith pointed out the rich natural resources and biodiversity that the Asian region has been blessed with, and the crimes threatening both these resources and human lives. These threats require the countries in the region, especially their respective judiciaries, to be proactive in implementing



A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision) and the Hanoi Action Plan to Implement the Jakarta Common Vision (the Hanoi Action Plan). Both documents signify the ASEAN judiciaries' commitment to ensuring sustainable development within the region and aim to deal with common environmental challenges.

The Fifth Roundtable aims to provide a forum for the participants and invited experts to share their knowledge and experiences on the following issues: balancing economic development and environmental protection, assessing environmental damage, imposing statutory penalties for environmental violations, deciding on cleanup and restoration of environmental damages, managing domestic and transboundary environmental matters, dealing with public interest litigation (PIL) in environmental cases, and seeking and rendering mutual assistance in responding to transboundary environmental challenges.

Environmental challenges—both domestic and cross-border—require all countries, not only in Southeast Asia but all over the world, to work together and promote sustainable development. As such, the Fifth Roundtable focuses on strengthening cooperation among ASEAN judiciaries in addressing regional environmental challenges, and in enforcing the law with regard to environmental justice outcomes.

Chief Justice Dith encouraged the participants and ADB to share information on common environmental threats and challenges in environmental adjudication. He noted the significant role of experienced judiciaries in building the capacity of their neighboring jurisdictions to hear and decide environmental cases and urged those experienced judiciaries to continue to assist others in working toward this goal. He also highlighted the importance of the participants' experience, expertise, and commitment in achieving the roundtable's objectives of contributing to environmental protection and ensuring sustainable economic development of each country and the region. He ended by wishing the participants an enjoyable stay in Siem Reap, a center of culture and ancient heritage in the Kingdom of Cambodia, and declaring the Fifth Roundtable open.



▲ Supreme Court of Cambodia President Dith Muntty welcomes the ASEAN Heads of Delegation



▲ Supreme Court of Cambodia President Dith Muntty and the ASEAN Heads of Delegation

## Opening Remarks

Mr. Christopher Stephens, general counsel of ADB, acknowledged Chief Justice Dith, Deputy Chief Judge Chiv Keng, vice-president of the Supreme Court of Cambodia, and distinguished participants and welcomed them to the Fifth Roundtable. On behalf of ADB, he expressed honor in partnering with the Supreme Court of Cambodia in hosting this roundtable as well as appreciation for the efforts made by the Cambodian judiciary in organizing this event. He also expressed support for the tremendous progress made by ASEAN judiciaries in implementing the Jakarta Common Vision and the Hanoi Action Plan, as well as anticipation to hear the specific challenges the region is facing in the course of protecting the environment and strengthening the environmental rule of law and governance in the region.

Mr. Stephens highlighted three topics in his opening remarks: environmental challenges faced by ASEAN nations; the manner and extent to which ADB's work on environment seeks to support ASEAN nations in addressing these challenges; and the way forward for ASEAN judiciaries in the era of the post-2015 development agenda, and in pursuit of the Sustainable Development Goals (SDGs).

Firstly, ASEAN countries must urgently respond to the environmental threats that come hand-in-hand with rapid economic development. Between 1980 and 2009, about 45% of the world's natural disasters occurred in Asia and the Pacific. Climate change exposed and amplified the vulnerability of many countries, particularly coastal and major urban areas, to natural calamities and often unpredictable weather changes. Moreover, Asia's energy demand is projected to almost double by 2030. Current trends predict that fossil fuels will be the energy source that meets this demand. This means that Asia is expected to generate nearly half of the world's carbon emissions by 2030.

Southeast Asia is especially vulnerable to the impacts of climate change, including mass migration and increasing incidents of extreme weather events. About 563 million people living in Southeast Asia are susceptible to rising sea levels, and 21 million people may need to be resettled by 2080 because of estimated sea level rises. Climate change is also expected to affect agricultural output in Asia, most significantly through changes to seasonal rainfall, which in turn will significantly impact the gross domestic product of some countries. Therefore, adaptive capacity of the ASEAN region to climate change is a particularly serious concern. This in turn also highlights the importance for ASEAN nations to consider climate change mitigation measures.

Secondly, ADB has made a strategic commitment to promote environmental sustainability, combat climate change, support good environmental governance, enforce environmental laws, and implement environmental regulations. These commitments are set out in ADB's Strategy 2020,<sup>3</sup> which includes environmentally sustainable growth, along with inclusive growth and regional integration, as part of ADB's long-term strategic framework. Moreover, in its 2014 Midterm Review of Strategy 2020,<sup>4</sup> ADB reaffirmed its focus on environment and climate change by scaling up its support for climate change adaptation, while maintaining its assistance for mitigation through clean energy, energy efficiency projects, and sustainable transportation.

<sup>3</sup> ADB. 2008. *Strategy 2020. The Long-Term Strategic Framework of the Asian Development Bank*. Manila.

<sup>4</sup> ADB. 2014. *Midterm Review of Strategy 2020 Action Plan*. Manila.

In particular, the ADB *Environmental Operational Directions 2013–2020*<sup>5</sup> defines ADB's priorities for the environment, and sets out ADB's strategy for operational work on the environment from 2013 until 2020. It identifies environmental governance and natural capital as two of ADB's four mutually supportive operational directions needed to promote the transition to green growth. More specifically, it recognizes that natural capital supports Asia and the Pacific's economies by delivering a range of ecosystem goods and services that sustain livelihoods, support food production, and provide water and energy security. Biodiversity loss in the region, which is occurring at twice the global rate, threatens the long-term sustainability of these goods and services.

In line with this, ADB has been working with many ASEAN countries in implementing a range of specific environmental and governance projects. One of the most prominent is ADB's technical assistance project in support of the Asian Judges' Network on Environment (AJNE), the ASEAN Chief Justices' Roundtable on Environment, and the South Asia Judicial Roundtable on Environmental Justice: Regional Technical Assistance (RETA) 7735 REG: Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia (the Environmental Justice TA).

Thirdly, 2015 has also seen landmark, global action in addressing environmental threats. First, in September 2015, the United Nations (UN) General Assembly resolved to adopt the SDGs—a new international sustainable development agenda to apply until 2030.<sup>6</sup> The SDGs are a set of 17 goals and 169 targets to end poverty, fight inequality and injustice, and tackle climate change. The SDGs include the shaping of economic development on a sustainable and shared basis through 2030. Specifically, SDG 17 entails the provision of equal access to justice for all and the promotion of the rule of law at the national and international levels. Second, in December 2015, world leaders convened at the 21st Conference of the Parties (COP21) of the UN Framework Convention on Climate Change (UNFCCC) in Paris,<sup>7</sup> where Mr. Takehiko Nakao, the President of ADB, committed to doubling ADB's annual climate change financing to \$6 billion by 2020. Of this amount, \$4 billion will be allotted to mitigation and \$2 billion to adaptation.

Like climate change, the goal of environmental protection at large is not an easy one. It requires, by its very nature, a coordinated and cooperative approach. The issues include the allocation of responsibilities and recognition of the practical realities of a continuing need for economic growth and development and the continuing use of natural capital, including fossil fuels, to support that growth.

The roundtable aims to advance this coordination by offering a platform for sharing knowledge, experiences, challenges, and successes in environmental protection. Each ASEAN country has signed relevant environmental treaties and has most of the necessary national laws and implementing regulations required to protect the environment. Gaps remain in the application and enforcement of these laws, many of which arise from lack of capacity and resources among judiciaries.

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<sup>5</sup> ADB. 2013. *Environmental Operational Directions 2013–2020. Promoting Transitions to Green Growth in Asia and the Pacific*. Manila.

<sup>6</sup> UN General Assembly. Resolution adopted by the General Assembly on 25 September 2015 re *Transforming our World: The 2030 Agenda for Sustainable Development*. UN Doc. A/RES/70/1.

<sup>7</sup> On 22 April 2016, the Paris Agreement was opened for signature at the UN headquarters in New York. A total of 175 parties (174 countries and the European Union) signed the agreement, while 15 states deposited their instruments of ratification.

Mr. Stephens reminded the roundtable participants that as judiciary leaders and environmental decision makers within each of the respective jurisdictions, the judiciaries of the ASEAN region hold a powerful leadership role in steering domestic and regional action toward sustainable development.

Through progressing the region's environmental jurisprudence, each judiciary has the capacity to contribute to the regions' successes as champions of environmental justice, and ensuring that the people view the courts as their partner in the pursuit of many of the SDGs—particularly in promoting the rule of law and equal access to justice for all.

On behalf of ADB, Mr. Stephens ended by urging the participants to actively participate in the roundtable discussions and expressed his desire to continue working with the ASEAN judiciaries in implementing the Hanoi Action Plan and safekeeping the environment. He then welcomed everyone to the roundtable.

## Overview: Asian Judges' Network on Environment (AJNE)

Ms. Atsuko Hirose, advisor at the Office of the General Counsel of ADB, greeted the participants and expressed her delight in cohosting the Fifth Roundtable with the Supreme Court of Cambodia. She highlighted the role of ADB in promoting environmental governance, and provided an overview of ADB and its vision and commitment to promoting environmental sustainability, the Law and Policy Reform (LPR) Program, and ADB's Environmental Justice TA.

First, Ms. Hirose described ADB as a financial institution established in 1966, during the post-World War II rehabilitation and reconstruction era. ADB's purpose is to reduce poverty by promoting economic growth and cooperation in the Asia and Pacific region. Its headquarters is in Manila, Philippines. ADB was established at about the same time as other regional development banks. It was modeled after the World Bank. Initially having 31 member countries, its membership has grown to 67 countries, of which 48 are in Asia and the Pacific. As a bank, ADB operates by granting loans, guarantees, investing in equities, and providing technical assistance to developing member countries. With regard to environment, technical assistance is the most relevant form of assistance rendered by the ADB legal department.



▲ Ms. Atsuko Hirose, Advisor at the Office of the General Counsel of ADB, presents an overview of ADB, the Law and Policy Reform Program, and ADB's Environmental Justice TA

ADB's Strategy 2020 identifies good governance and capacity development as drivers for change and highlights environment as a core operational area. ADB has a Safeguard Policy Statement that ensures the sustainability of ADB-funded project outcomes by protecting people and the environment from possible



unfavorable consequences of these projects.<sup>8</sup> In addition, and as Mr. Stephens also mentioned, Ms. Hirose said that ADB's *Environmental Operational Directions 2013–2020* identifies environmental governance and natural capital as two of ADB's four operational directions to promote green growth transition.

Second, Ms. Hirose talked about the LPR Program, previously known as the Law, Justice, and Development Program. The LPR Program advances the rule of law characterized by a functional and comprehensive legal system, coupled with effective judicial, regulatory, and administrative institutions that enforce laws and regulations fairly, consistently, predictably, and ethically. These components are essential for inclusive and sustainable development. Between 1995 and 2015, the ADB Board of Directors has approved a total of 77 LPR projects, including projects on infrastructure, financial law, private sector development, and inclusive growth. The most effective and successful LPR technical assistance projects have been in the area of environmental justice.

Third, Ms. Hirose emphasized ADB's recognition of the important role played by Asia and Pacific judiciaries in the enforcement of environmental laws and regulations. Directly, these judiciaries make environmental decisions, issue rules and directions to lower courts, and establish green benches or courts, where required. Indirectly, they lead the legal profession toward credible rule of law systems that foster environmental sustainability. Judicial decisions also influence private sector investments as they determine how legal and regulatory frameworks should be interpreted and enforced. In particular, the Environmental Justice TA aims to enhance the knowledge, judicial capacity, and cooperation amongst Asia and Pacific judiciaries. This project operates on three levels: at the pan-Asia level, through the AJNE, which was formally launched in 2013; at the regional level, through the annual ASEAN Chief Justices' Roundtable on Environment and the South Asia Judicial Roundtable on Environmental Justice; and through national activities, including judicial training on environmental laws, publications such as bench books, and the creation of green benches.

AJNE provides judges with a platform to share knowledge and experiences on environmental adjudication, to introduce innovative ideas, to exchange economic and technical information, and to connect stakeholders, including prosecutors, lawyers, judges, regulators, and civil societies. The AJNE website presents invaluable information on environmental laws and jurisprudence in South Asia and Southeast Asia.

ADB assists AJNE by providing technical expertise, institutional and financial assistance, support for the annual ASEAN Chief Justices' Roundtable on Environment and South Asia Judicial Roundtable on Environmental Justice, and backing for development and implementation of national projects in member countries. In collaboration with host judiciaries, ADB, under the Environmental Justice TA, has facilitated two Asian Judges Symposiums—one in 2010 and another in 2013; five ASEAN Chief Justices' Roundtables on Environment conferences—held in Indonesia, Malaysia, Thailand, Viet Nam, and Cambodia; and four South Asia Judicial Roundtables on Environment events—held in Pakistan, Bhutan, Sri Lanka, and Nepal. In addition, ADB has helped judiciaries create green benches or courts, institutionalize judicial certification programs on environment, publish proceedings of the regional roundtables, develop bench books and environmental law curricula, and convene judicial working group meetings.

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<sup>8</sup> The ADB Safeguard Policy Statement integrates ADB's previous safeguards on the environment, involuntary resettlement, and indigenous peoples. It requires borrowers or clients to comply with certain requirements when addressing social and environmental impacts and risks. See ADB. 2009. *Safeguard Policy Statement*. Manila.

Ms. Hirose also discussed RETA 8616 REG: Strengthening Capacity for Environmental Law in the Asia-Pacific: Developing Environmental Law Champions (or Train-the-Trainers TA). This project involves a “Train-the-Trainers” program, which seeks to introduce environmental law professors and lecturers to new teaching methods and international best practices, as well as involve young lawyers in the field of environmental law. In 2015, more than 80 participants attended the seminar held at the ADB headquarters. ADB plans to customize and streamline the program into each interested country’s environmental law curriculum to incorporate their national environmental laws and regulations and to publish teaching materials and other knowledge products.

In conclusion, Ms. Hirose stressed that the ADB LPR Program has strengthened the environmental rule of law and governance in many jurisdictions and helped to establish regional judges’ networks for knowledge sharing. She then urged the participants to actively share in the discussions.

## ■ Introduction of Delegates of Each ASEAN Judiciary

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Chief Justice Dith Munty, president of the Supreme Court of Cambodia, invited each delegation to introduce their members.

### *Asian Development Bank*

Mr. Christopher Stephens, general counsel of ADB, introduced Ms. Atsuko Hirose, advisor at the Office of the General Counsel of ADB, and Ms. Stephanie Venuti, consultant environmental lawyer and project coordinator. He also thanked the rest of his staff for their assistance in organizing the roundtable.

### *Brunei Darussalam*

Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge at the High Court of Brunei Darussalam, introduced Justice Muhammed Faisal bin Pehin Dato Kefli, chief magistrate and acting intermediate court judge of the Magistrates’ Court of Brunei Darussalam. He apologized for the chief justice’s absence due to other equally pressing commitments.

### *Indonesia*

Deputy Chief Justice Mohammad Saleh, deputy chief justice for judicial matters of the Supreme Court of Indonesia, acknowledged Chief Justice Dith, Mr. Stephens, and the roundtable participants. He then introduced his colleague Justice Takdir Rahmadi, justice of the Civil Chamber of the Supreme Court of Indonesia and the chair of the Indonesia Judicial Working Group on Environment.

### *Lao People’s Democratic Republic*

Deputy Chief Justice Khampha Sengdara, deputy chief justice of the People’s Supreme Court of the Lao People’s Democratic Republic (Lao PDR), greeted the participants before introducing Judge Atsanay Somsanith, judge at the People’s Supreme Court of the Lao PDR.

## Malaysia

Chief Justice Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia, addressed Chief Justice Dith, Deputy Chief Judge Keng, Mr. Stephens, and the other participants. He then introduced his fellow delegates, Judge YA Tan Sri Ahmad Bin Haji Maarop, judge of the Federal Court of Malaysia, and Judge Zulqarnain bin Hassan, a sessions court judge.

## Myanmar

Justice Aung Zaw Thein, justice of the Supreme Court of the Union of Myanmar, introduced himself and his colleagues, Judge Hla Hla Yee, judge of the High Court of the Mandalay Region, and Mr. Myo Kyaw Aung, a staff officer at the International Relations and Research Department of the Supreme Court of the Union of Myanmar. He then apologized for Chief Justice U Htun Htun Oo's inability to attend the roundtable due to his busy schedule, and extended Chief Justice Oo's warm congratulations for the successful convening of this roundtable.

## Philippines

Justice Mariano C. del Castillo, associate justice of the Supreme Court of the Philippines, introduced his colleagues, Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines, and Ms. Monica Kamille B. Limpo, third secretary and vice-consul of the Embassy of the Philippines in Cambodia.

## Singapore

District Judge Edwin San Ong Kyar, district judge and assistant registrar of the Supreme Court of Singapore, greeted Chief Justice Dith and his fellow participants before introducing his colleague, Ms. Lee Mei Teng, assistant director of the Strategic Planning and Policy Directorate of the Supreme Court of Singapore. He thanked the organizers for their warm hospitality and for convening the roundtable.

## Thailand

Justice Chalis Sawasditat, justice of the Environmental Division of the Supreme Court of Thailand, likewise greeted Chief Justice Dith and his fellow participants and thanked ADB and the Supreme Court of Cambodia for inviting the Supreme Court of Thailand to attend this roundtable. He especially thanked Chief Justice Dith for warmly welcoming him and Justice Chirawan Khotcharit to Cambodia. He then wished everyone a productive meeting ahead and the Southeast Asian region prosperity and success.



▲ Justice Chalis Sawasditat of the Environmental Division of the Supreme Court of Thailand wishing the ASEAN region prosperity and success



# PART I

## PROGRESS OF THE ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT



▲ Roundtable participants giving their progress reports on the Jakarta Common Vision and Hanoi Action Plan

### ■ SESSION 1 Introduction and Progress Report on the Jakarta Common Vision, the Hanoi Action Plan, and the Proposed Angkor Statement of Judicial Cooperation on Environment

Justice Takdir Rahmadi of the Civil Chamber of the Supreme Court of Indonesia gave the background and progress to date of the ASEAN Chief Justices' Roundtable on Environment. From 28 to 29 July 2010, ADB hosted the Asian Judges Symposium on Environmental Decision Making, the Rule of Law and Environmental Justice at the ADB headquarters in Manila. The ASEAN chief justices or their nominees, environmental ministers, and public prosecutors discussed their roles and responsibilities in ensuring sustainable development in their respective countries.

During the closing session of this Asian Judges Symposium, then Chief Justice Harifin A. Tumpa of the Supreme Court of Indonesia pointed out the need for chief justices of ASEAN judiciaries to have a forum for sharing their experiences in environmental law enforcement. Other ASEAN judiciaries supported Chief Justice Tumpa's suggestion. The following year, the Supreme Court of Indonesia, with ADB's support, hosted the Inaugural ASEAN Chief Justices' Roundtable on Environment in Jakarta, Indonesia from 5 to 7 December 2011, after which the participants signed the Jakarta Common Vision.

Justice Takdir Rahmadi commented that ADB has been instrumental in convening the succeeding roundtables together with the host judiciaries. From 7 to 10 December 2012, the Federal Court of Malaysia hosted the Second ASEAN Chief Justices' Roundtable on Environment (the Second Roundtable) in Melaka, Malaysia. The participants considered the Draft Melaka Memorandum of Understanding for Cooperation among ASEAN Judiciaries and agreed to form the working group for developing the draft. Then, from 15 to 18 November 2013, the Supreme Administrative Court of Thailand cohosted the Third ASEAN Chief Justices' Roundtable on Environment in Bangkok, Thailand. The participants decided to create a national judicial working group on environment for each ASEAN judiciary and call for the first meeting of the ASEAN Judicial Working Group on Environment before the Fourth ASEAN Chief Justices' Roundtable on Environment.

The First ASEAN Judicial Working Group on Environment Meeting transpired on 15–16 September 2014 in Ha Noi, Viet Nam. The group discussed the Proposed Hanoi Action Plan to Implement the Jakarta Common Vision, which was then presented and revised during the Fourth ASEAN Chief Justices' Roundtable on Environment. In February 2015, 8 of the 10 ASEAN judiciaries approved the revised Hanoi Action Plan. Brunei Darussalam and Singapore stated their support for efforts to protect the environment and recognized the relevance of the work of the ASEAN Chief Justices' Roundtable on Environment to many ASEAN countries. They further noted that the Jakarta Common Vision and the Hanoi Action Plan are aspirational in nature and do not require a binding commitment.

Presently, the participants have gathered at the Fifth Roundtable in Siem Reap, Cambodia to review the progress they have made, as well as the next steps, in achieving the Jakarta Common Vision and implementing the Hanoi Action Plan.

Justice Rahmadi then shared what the Indonesian judiciary had done pursuant to the Jakarta Common Vision and the Hanoi Action Plan. Chief Justice Tumpa promulgated Decree No. 134/KMA/SK/IX/2011 or the Indonesia Chief Justice's Decree on Environmental Certification of Judges as a means for building expertise in environmental adjudication. He explained that the Indonesia Constitution governs the judicial system and prevents the Supreme Court of Indonesia from creating specialized environmental courts or divisions without a constitutional amendment. The decree promulgated by Chief Justice Tumpa establishes a judicial certification program on environment for judges presiding over courts of first instance and courts of appeal, and requires a panel of three judges to adjudicate environmental cases. One of these panelists must be a certified environmental judge—that is, he or she must have attended the environmental law training program provided by the Judicial Training Center and passed the qualification exam. The decree also provides that if a court does not have a certified judge to decide an environmental case, the chief judge of that court may request the chief judge of another court within the same circuit to appoint a certified judge to hear the case on an ad hoc basis. The appointed judge in this case is referred to as a “mobile certified judge.”

Chief Justice Muhammad Hatta Ali, who succeeded Chief Justice Tumpa, then issued Decree No. 36/KMA/SK/XI/2013 on the guidelines for environmental cases. This decree directs judges to interpret environmental or environmentally related legislation, taking into account the interests of environmental protection. The decree also explains how judges should consider expert testimonies with respect to issues of causation and scientific uncertainty, and damage assessment.

Chief Justice Ali also decreed the formation of a judicial working group on environment. Justice Rahmadi currently chairs this working group with Justice I Gusti Agung Sumanatha, also a justice of the Civil Chamber of the Supreme Court of Indonesia, serving as vice-chair. The other group members include judges of the courts of first instance and courts of appeal, officials of the Judicial Training Center, and a representative from the Indonesia Center for Environmental Law.

The working group performs three functions: preparing drafts of environment-related policies and programs that the chief justice should consider, representing the Supreme Court of Indonesia in environment-related conferences with other ASEAN judiciaries or ADB, and collaborating with other units under the Supreme Court of Indonesia in monitoring and evaluating the judicial certification program on environment. The working group also proposed a system for monitoring and evaluating the judicial certification program on environment. This proposal was approved by Justice Ali and incorporated into Decree No. 37 of 2015 concerning the Monitoring and Evaluation System of Environmental Certification Training. The system also outlines the criteria for deciding which landmark environmental jurisprudence should be included in the training materials.

After having implemented their judicial certification program on environment for the past 3 years, Justice Rahmadi identified two problems. First, the number of certified judges are still too few to adjudicate all pending environmental cases. The Judicial Training Center can only train 315 of about 800 judges at a time, given its limited resources. Thus, the Indonesian judiciary is unable to fully comply with Chief Justice's Decree No. 134/KMA/SK/IX/2011 requiring that all environmental cases should be heard and decided by a panel of certified judges. Second, many courts of first instance that hear environmental cases do not yet have certified judges and are not able to bring in a mobile certified judge to hear these cases due to costs of transportation and accommodation. These difficulties led to the amendment of Chief Justice's Decree No. 134/KMA/SK/IX/2011 by Decree No. 37 of 2015, which allows for the chief judge or deputy chief judge of a court hearing an environmental case to chair the panel in the absence of a certified environmental judge.

Beginning December 2015, the working group on environment shall work with the clerks of all general and administrative courts in Indonesia to advance a special registration mechanism for environmental cases. The group will also promote the judicial transparency program where all court decisions must be published on the Supreme Court website. Once both registration and publication systems are in place, the Supreme Court of Indonesia, the working group, researchers, and the public can easily search decisions and details of environment-related cases, such as the parties involved and the panel of judges who adjudicated these cases.

In conclusion, Justice Rahmadi urged the participants to share their national judicial programs on environment in furtherance of the Jakarta Common Vision and the Hanoi Action Plan.

## Brunei Darussalam

Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge at the High Court of Brunei Darussalam, stated that as of 10 November 2015, the Brunei Legislative Council was still in the final stages of enacting the Environmental Protection and Management Order 2015. The Brunei judiciary has been involved in pushing for the enactment of this law. In the meantime, the Brunei Sultan and Yang Di-Pertuan enacted the Hazardous Waste (Control of Export, Import and Transit) Order, 2013 in compliance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) and the Amendment to the Basel Convention.

The Brunei judiciary has not yet been able to set up its national judicial working group on environment given the small number of judicial officers. Nonetheless, Justice Majid expressed hope that in the event that they have formed the said working group, their chief justice will serve as its chair.

Lastly, Justice Majid talked about environmental judicial training in Brunei Darussalam. In January 2015, judges and junior magistrates from Brunei Darussalam attended the judicial training seminar sponsored by the Supreme Court of Indonesia on the role of the judiciary in addressing transboundary environmental issues in ASEAN countries.

## Cambodia

Judge Khiev Sokha, judge of the Supreme Court of Cambodia, reported on the Cambodian judiciary's activities in furthering the Jakarta Common Vision and Hanoi Action Plan. First, they formed their National Judicial Working Group on Environment by Decision No. 78/15 dated 16 February 2015, Local Judicial Working Group Network on Environment by Decision No. 111/15 SC.D dated 16 February 2015, and environmental groups to help realize the Jakarta Common Vision and carry out the Hanoi Action Plan.

Second, the Supreme Court of Cambodia set up its environment-related web page.

Third, they collated data on environmental cases. As of April 2015, 4,266 environmental cases had been filed. Final decisions had been handed down for 1,614 of these cases, while 2,632 cases were still pending. Notably, most of these cases dealt with forestry offenses.

Fourth, on 23 September 2015, the judiciary organized a workshop to share challenges and experiences on environmental issues as well as principles of environmental law with members (judges and prosecutors) of both the National Judicial Working Group on Environment and the Local Judicial Working Group Network on Environment. The Supreme Court convened this workshop with Cambodia's Royal Academy for Judicial Professions in collaboration with USAID.

Fifth, the judiciary has collated the national and international legal instruments concerning the environment and uploaded copies to the website of the Supreme Court of Cambodia. Some of these laws have also been translated into English.

Sixth, the Royal Government of Cambodia has prioritized environmental and natural resource protection and has encouraged the Ministry of Environment to promptly draft a bill on conducting environmental impact assessments (EIAs) to replace the 1999 Sub-Decree on Environmental Impact



Assessment Process. The government has also encouraged the Ministry of Environment to draft a new environmental code to replace the 1996 Law on Environmental Protection and Natural Resource Management, as well as other regulations relating to the environment. These two new laws seek to provide a more efficient mechanism for protecting the environment and managing natural resources, make EIAs compulsory, strengthen environmental law enforcement, resolve overlaps in the jurisdiction of line ministries, and harmonize and codify the relevant laws and regulations.

Seventh, environmental law and science are now part of the curriculum of private and public universities including the National University of Management and Pannasastra University of Cambodia. The Ministry of Justice also intends to incorporate environmental law into the curriculum of the Royal Academy for Judicial Professions.

Finally, Judge Sokha related that the Supreme Court of Cambodia seeks to continue its projects aimed at realizing the Jakarta Common Vision and Hanoi Action Plan. These include developing the short-term and medium-term environmental protection program; creating a national environmental and scientific expert list; building judicial capacity in the field of environmental law; making and expanding a comprehensive database on environmental cases, laws, and regulations; sharing best practices on environmental law enforcement with judges and relevant institutions; and strengthening the collaboration between the judiciary and other law enforcement agencies.

### *Lao People's Democratic Republic*

Deputy Chief Justice Khampha Sengdara, deputy chief justice of the People's Supreme Court of the Lao PDR, stated that the Lao PDR judiciary had not yet established an environmental court, although it has plans to do so. As such, they would like to learn more from the experiences of other ASEAN judiciaries. He also stated that the People's Supreme Court of the Lao PDR is cooperating with government agencies in establishing a new environmental court; the judiciary is also cooperating with both the Ministry of Agriculture and Forestry and the Ministry of Natural Resources and Environment in crafting the new environmental laws that they will soon enact and enforce. Foremost of the courts' priorities are illegal logging, biodiversity loss, and deforestation.

### *Malaysia*

Chief Justice Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia, detailed the steps they have taken to realize the Jakarta Common Vision. First, on collaborating with enforcement agencies in improving environmental law enforcement, the Federal Court of Malaysia organized the National Seminar on Environmental Justice on 15–18 October 2015 as a platform for engaging with all environmental enforcement agencies, academics, nongovernment organizations (NGOs), and judges. The participants agreed on the Belum Statement of Action in Environmental Justice, which embodies the commitment of all stakeholders to address environmental challenges together. The seminar will be convened every 2 years and will serve as a forum for reviewing the action plan.

The judiciary is also collaborating with the Ministry of Natural Resources and Environment and the Department of Wildlife and National Parks in developing programs for capacity building. The ministry held the Course on the Implementation of International Trade in Endangered Species Act 2008 on

3–5 November 2015. The seminar aimed to improve judges' understanding of how the law should be enforced and to raise the awareness of judges hearing wildlife cases to ensure that they can impose appropriate sentences in these cases.

Second, on sharing information on common environmental challenges, Chief Justice Zakaria reported that the Sarawak Court organized a workshop to create awareness among members of the legal profession and the public on environmental protection. A total of 120 participants, including judges, prosecutors, and representatives from government agencies and NGOs, attended the 2-day workshop held on 13–14 October 2015. Meanwhile, the Perak Court held a friendly debate between two boarding schools within Perak State on the topic of ASEAN's attempts to curb the haze problem. A total of 500 students from both schools attended, while a panel of seven magistrates judged the debate. Chief Justice Zakaria also related that he gave a lecture entitled "Environmental Law: An Overview" at the Faculty of Law of MARA University of Technology in Shah Alam on 19 December 2012. Both the debate and the lecture allowed the students to better understand certain environmental issues and the role of the judiciary and other government agencies in protecting the environment.

Third, on sharing information on various environmental challenges and legal issues, as well as best practices in environmental adjudication, the Supreme Court of Indonesia, together with the ASEAN Law Association, conducted the Regional Training for Judges on Environmental Issues: The Roles of Judiciary in Addressing Transboundary Environmental Issues in ASEAN Countries on 14–17 January 2015.

Fourth, on imposing sanctions and penalties according to law and considering innovative remedies, the Malaysian judiciary prioritizes environmental cases among other types of cases. The Chief Registrar Practice Direction No. 3 of 2012 requires environmental courts to hear and dispose of environmental cases within 6 months from the date the accused was charged. Thus far, about 90% of all environmental cases filed since the direction was issued were decided within this time frame. The Federal Court of Malaysia had reminded judges to impose appropriate sentences. So far, the Malaysian courts could not impose innovative sentences because they are required to strictly follow the sentences prescribed under the law.

Fifth, on strengthening specialized environmental courts, tribunals, or benches, and specialization programs, in 2012, the Malaysian judiciary has established environmental courts. As of December 2015, a total of 42 sessions courts and 53 magistrates' courts nationwide had been designated as environmental courts, which exercise jurisdiction only over criminal cases; ordinary courts continue to adjudicate civil cases. Specifically, these courts hear and decide questions of law involving 38 environmental acts and ordinances, as well as 17 regulations, rules, and orders. They might soon establish civil environmental courts and issue the necessary practice direction and sentencing guidelines. They also envision having more capacity building programs for judges and appointing judges with environmental law backgrounds to the Supreme Court or Environmental Court.

Sixth, on developing and implementing special rules of procedure for environmental cases, Chief Justice Zakaria said that Malaysia does not yet have such special rules. The regular rules of procedure, under the Rules of Court 2012, Criminal Procedure Code, and Evidence Act 1950, govern environmental cases. On *locus standi*, only persons who can demonstrate sufficient connection with or interest in the subject matter in dispute can seek a judicial remedy as explained in *Kajing Tubek v. Ekras Berhad* (1996) 2 M.L.J. 388 and *Ketua Pengarah Jabatan Alam Sekitar & Anor. v. Kajing Tubek* (1997) 3 M.L.J. 23.

Seventh, on implementing special rules and procedures for environmental alternative dispute resolution (ADR), Malaysia's environmental courts only allow plea bargaining; no other ADR is permitted in environmental cases.

Eighth, on ensuring that judicial decisions on environmental cases are made available to the public and shared with AJNE, the Malaysian judiciary had published all court judgments on their courts' respective website and shared landmark environmental jurisprudence through the AJNE website. It would also continue updating AJNE regarding other important cases and amendments to environmental statutes. The Department of Environment likewise publishes a monthly summary of court decisions on its website.

Ninth, on ensuring that timely and appropriate training on environmental legal issues is available to judges deciding environmental cases, the Malaysian judiciary developed its own environmental courses for judges and encouraged judges to attend environmental courses held in Malaysia and abroad. Judges also attend environmental courses and conferences organized by national and international bodies. It is worth emphasizing that the Malaysian judiciary also has an annual judicial outreach program, which involves bringing judges to nature.

Tenth, on encouraging law schools to include environmental law in their curriculum and legal professional associations to provide continuing legal education, Chief Justice Zakaria recounted that four out of seven public law schools in Malaysia already made environmental law an elective subject in their curriculum. The Malaysia Bar, on the other hand, formed its own Environment and Climate Change Committee under its Main Committee since 2011, and organized continuing legal education programs for its members and the public.

Lastly, on convening the ASEAN Chief Justices' Roundtable on Environment yearly, Chief Justice Zakaria reaffirmed the Federal Court of Malaysia's commitment to holding the annual roundtable. Since the roundtable started, Malaysia had been sending delegates to attend both the roundtable and the ASEAN Judicial Working Group on Environment meetings. Malaysia also hosted the Second Roundtable and looks forward to hosting future conferences. According to Chief Justice Zakaria, the ASEAN Chief Justices' Roundtable on Environment serves as the best platform for knowledge sharing amongst ASEAN judiciaries and legal communities.

As regards the Hanoi Action Plan, Chief Justice Zakaria stated the Federal Court of Malaysia's belief that the action plan guides ASEAN judiciaries in advancing environmental protection and environmental law enforcement. Representatives from ASEAN judiciaries also discussed their next steps during the first two meetings of the ASEAN Judicial Working Group on Environment.

Chief Justice Zakaria ended by discussing Malaysia's activities pursuant to the Hanoi Action Plan. Malaysia already formed its own National Judicial Working Group on Environment in 2015 with Chief Justice Zakaria as chair. The membership includes judges from the superior courts and subordinate courts, court administrators, officers from the executive branch such as from the Ministry of Natural Resources and Environment, and the Attorney General's Chambers.

Moreover, the Federal Court of Malaysia directed the state courts to establish their respective state judicial working groups on environment, and thus far, 5 out of 14 states have already set up their own



working groups and organized environment-related activities. For instance, the Kuala Lumpur working group published a book titled *Principles and Practice for Submissions in Sentencing of Environmental Cases: A Brief Guide for the Prosecution*. The Johor working group met with environmental enforcement agencies to tackle environmental law issues. The Selangor conducted environmental awareness campaigns in the office. The Negeri Sembilan working group held talks regarding pollution, wildlife, and recycling issues, while the Sarawak Court organized the Workshop on Environmental Protection in Sarawak: The Way Forward to create awareness among members of the legal fraternity and the public.

### Myanmar

Judge Hla Hla Yee, judge of the High Court of the Mandalay Region, said that Myanmar has actively participated in each annual ASEAN Chief Justices' Roundtable on Environment and formed its national judicial working group on environment. The Myanmar judiciary has also been collaborating with the Ministry of Environmental Conservation and Forestry (the ministry in charge of environmental conservation in Myanmar) and other relevant agencies.

At present, there is no law authorizing the Supreme Court of the Union of Myanmar to establish specialized environmental courts, tribunals, or benches, nor to implement a judicial certification program on environment. Nonetheless, the Supreme Court had been building the capacity of judges and judicial officers to adjudicate all kinds of cases in general by providing regular training courses and sending them to seminars organized by environmental agencies.

### Philippines

Justice Mariano C. del Castillo, associate justice of the Supreme Court of the Philippines, recalled the Third ASEAN Chief Justices' Meeting, which the Philippine Supreme Court hosted in Boracay, Philippines. The participants discussed environmental issues and signed the Boracay Accord. This accord outlines what ASEAN judiciaries envision on judicial cooperation in the region. Justice del Castillo pointed out that judiciaries, in promoting and protecting environmental rights, must ensure that courts are both independent and perceived to be independent. This obligation causes courts to exhibit an institutional aloofness, a detachment from policy matters, and a predisposition toward passivity. Nevertheless, the Philippine judiciary has become increasingly comfortable with a rights-based approach in adjudicating environmental cases, and even rendering decisions quickly given the time-sensitive nature of environmental issues.

In 2010, the Supreme Court issued the Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC. The rules liberalize access to courts in environmental cases, protect litigants against any strategic lawsuit against public participation (SLAPP), and institute several interim relief measures available only in environmental cases. These measures include the writ of *kalikasan* (or writ of nature)<sup>9</sup> and the temporary environmental protection order.

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<sup>9</sup> A writ of *kalikasan*, or writ of nature, is issued by the court in favor of a person or entity whose constitutional right to a balanced and healthful ecology has been violated or threatened, and when the environmental damage caused is of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.

Justice del Castillo then talked about their landmark environmental jurisprudence. In *Oposa v. Factoran*, G.R. No. 10108, 30 July 1993, the Supreme Court considered the doctrine of intergenerational responsibility in recognizing the legal standing of minors and future generations, including unborn children, to file environmental lawsuits.

In *Tano v. Socrates*, G.R. No. 110249, 21 August 1997, the Supreme Court balanced the right of subsistence fishermen to use natural resources against the authority of the local government unit to protect marine resources. The court upheld the constitutionality of an ordinance that imposes a 5-year ban on shipping all live fish and lobster outside the city.

In *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.*, G.R. Nos. 171947–48, 18 December 2008, the Supreme Court issued its first writ of continuing mandamus even before promulgating the Rules of Procedure for Environmental Cases. The writ ordered government agencies belonging to the executive branch to continuously maintain the prescribed water quality standards of Manila Bay, even in the absence of a pollution accident.

In *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, G.R. No. 194239, 22 November 2011, condominium owners and residents were forced to evacuate the area because of an oil leak from a 47-year-old, 117-kilometer oil pipeline. The Supreme Court ensured compliance with the environmental requirements to rehabilitate the affected communities and reopen the pipeline. The court also took into account the technical competence and expertise of relevant executive agencies, such as the Department of Energy and the Department of Environment and Natural Resources (DENR) and directed the pipeline owner to submit compliance reports to these agencies.

In *Paje v. Casiño*, G.R. No. 207257, 3 February 2015, the Supreme Court upheld the validity of an agreement between the local government and a private corporation to build a coal-fired power plant within the city. The court was persuaded by expert testimonies that the project's adverse environmental impact would be minimal, and that safety measures would be undertaken. The court also considered that the project passed the mandatory EIA process. The project proponent obtained the requisite environmental compliance certificate from DENR, the ministry with technical competence on environmental matters.

Lastly, in *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*, G.R. No. 180771/181527, 21 April 2015, the Supreme Court invalidated a service contract for the exploration, development, and exploitation of petroleum resources in the Tañon Strait, a narrow watercourse between the islands of Negros and Cebu. The court found that these activities violated several laws, including the National Integrated Protected Area System (NIPAS) Act of 1992, which prohibit oil exploration in the strait in the absence of a law granting an exception.

Justice Del Castillo reminded the participants of the maxim *ubi jus ibi remedium*, that is “where there is a right, there is a remedy.” The Philippine judiciary has become an activist judiciary in protecting the environment, whether by rendering decisions or by promulgating rules and regulations on environmental protection, and it will remain steadfast in advancing the constitutional right of the present and future generations to a balanced and healthful ecology.

## Singapore

District Judge Edwin San Ong Kyar, district judge and assistant registrar of the Supreme Court of Singapore, said that Singapore supports the efforts of ASEAN judiciaries in protecting the environment. As a small city-state, Singapore faces unique challenges that are not common to other ASEAN countries. District Judge San noted that the Jakarta Common Vision and the Hanoi Action Plan are aspirational and nonbinding documents. Nevertheless, Singapore has taken several steps to raise judicial awareness on environmental issues. The Singapore Judicial College, which was established in January 2015, is dedicated to the training and development of judges and judicial officers. In this connection, the college has organized a talk on environmental law in August 2015, which was well attended by many members of the Singapore judiciary.

## Thailand

Justice Chirawan Khotcharit, judge of the Environmental Division of the Supreme Court of Thailand, shared that the Thailand courts of justice acknowledge the importance of environmental adjudication. Accordingly, the Supreme Court of Thailand set up environmental divisions at all court levels. To build capacity in deciding environmental cases, the courts of justice recruit many young judges with environmental law degrees and provide financial support to enable judges to study environmental law abroad and earn their doctorate. The Judicial Training Institute in Thailand formalized the training of judges and justices on environmental law and environmental adjudication.

Justice Khotcharit also said that Justice Winai Ruangsri and Justice Suntariya Muanpawong of the Supreme Court of Thailand helped draft the proposed Act on Establishment of Environmental Law, Environmental Court and Environmental Court Procedure. Once enacted, environmental courts can exercise jurisdiction over criminal, civil, and administrative environmental cases.

## Viet Nam

Permanent Deputy Chief Justice Bui Ngoc Hoa, permanent deputy chief justice of the Supreme People's Court of Viet Nam, related that the Supreme People's Court of Viet Nam had already established its National Judicial Working Group on Environment. The group comprises judges of the Supreme People's Court of Viet Nam that possess experience in deciding criminal, civil, commercial, and administrative cases.

He also shared that the Supreme People's Court of Viet Nam was working with ADB to finalize the needs assessment report for enhancing the capacity of their courts in hearing and deciding environmental cases. Thereafter, they would organize seminars and training courses for judges and court clerks to improve their capacity to adjudicate environmental cases.

Lastly, Permanent Deputy Chief Justice Bui said that environmental cases are assigned ideally to a hearing panel comprising judges with experience in deciding these cases.

Chief Justice Dith then closed the session.

# PART II

## NATIONAL AND TRANSBOUNDARY ENVIRONMENTAL CHALLENGES



▲ Justice Antonio Herman Benjamin of the National High Court of Brazil and IUCN World Commission on Environmental Law sending a video message on transboundary environmental challenges and the crucial role of planetary judges

### ■ SESSION 2 Balancing Economic Development and Environmental Protection

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, opened the second session and introduced Prof. Ben Boer, deputy chair of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law, distinguished professor at the Research Institute of Environmental Law of Wuhan University, and emeritus professor at University of Sydney, as session facilitator. Prof. Boer then introduced the first speaker, Justice Antonio Herman Benjamin.

#### ■ Presentations

##### *Brazil (Video Presentation)*

Justice Antonio Herman Benjamin, justice of the National High Court of Brazil and chair of the IUCN World Commission on Environmental Law, via video, apologized for not being able to physically attend the Fifth Roundtable. He praised ADB for the project's widespread impact on judges not only in Asia, but also around the world. He then congratulated the organizers, particularly Chief Justice Dith, Mr. Stephens, and Ms. Hirose, and the whole ADB team involved in this technical assistance project.

In his presentation, Justice Benjamin emphasized that nature knows no geographical, judicial, or administrative boundaries. The participants, on the other hand, are national judges whose capacity to decide cases is limited by their jurisdiction. They, like judges in large countries such as Brazil, the People's Republic of China (PRC), India, or the United States (US), must deal with issues involving more than just their own jurisdiction. These issues include causes of environmental problems that arise outside national borders—for instance air, which freely moves from one place to another; a river, which can originate in one country and traverse others; and wildlife species that migrate across international borders, particularly shared biomes like the Amazon, as well as flora that exist in shared biomes.

Justice Benjamin then commented that ADB has been working to inform its member countries, and judges in particular, of environmental governing legal frameworks at the national and international levels, and judicial responsibilities within each jurisdiction. ADB is extending this work by exposing judges to regional and planetary environmental challenges and enabling judges to consider issues beyond their national boundaries. This project is especially important because judges must view nature as a whole, integrated biome.

Justice Benjamin also outlined the problems that national judges confront when addressing transboundary issues. First, national judges are confined by their jurisdiction, which is necessarily tied to their national borders. Second, national judges are not used to referencing international environmental law; rarely do judges cite multilateral environmental agreements such as the Convention on Biological Diversity (CBD). Worse, whenever national judges do consider international environmental law to strengthen their judicial reasoning, they cite nonbinding documents, including the Rio Declaration on Environment and Development, the Declaration of the United Nations Conference on the Human Environment (or Stockholm Declaration), or the Preamble of the CBD. Third, national judges often lack the financial and human resources to adjudicate beyond their national boundaries. Linguistic barriers also pose a problem.

Justice Benjamin urged the participants to regard themselves as planetary judges, and not just national judges. Being confined to their jurisdiction or having to use mainly domestic laws should not deter them from contemplating issues beyond their country. To solve the problems he mentioned earlier, he suggested that judges integrate or harmonize their legal frameworks at the regional level. Doing so can equalize environmental law enforcement across different areas and thus avoid any gaps in compliance in these areas. In addition, judges must strengthen their capacity to adjudicate environmental cases beyond national boundaries—ADB can assist the participants in this regard. Finally, judges must share their legal scholarship and case law. To illustrate, Justice Benjamin commented that Indonesia and Brazil are in the process of developing judicial cooperation and that he had been discussing the principle of *in dubio pro natura* or “in doubt, favor nature” with his judicial colleagues in Indonesia. During these discussions, he learned that the Supreme Court of Indonesia passed a decision adopting that same principle. Justice Benjamin then asked participants to imagine what can be achieved in a single region if they help one another collect and publish the jurisprudence of different countries and prepare translations in a language that is commonly understood in the region or at least publish summaries that are understood by most of the judges. He ended his presentation by encouraging the participants to bravely take on the challenges of dealing with multi-jurisdictional environmental issues.

At this juncture, Prof. Ben Boer repeated Justice Benjamin's remark that the participants were in fact planetary judges. He also said that all environmental decision makers, including judges that hear and decide environmental cases, must strike a balance between economic development and environmental protection. In line with this balancing task, judges must address two questions: whom are they securing environmental justice for, particularly given the problems of climate change, biodiversity loss, and the degradation of ecosystem services; and do people have a right to a clean and healthy environment—a right that has already been enshrined in some constitutions in the ASEAN region.

### Cambodia

Judge Kong Tarachhath, judge of the Supreme Court of Cambodia, presented on Cambodia's EIA regime. He began by outlining the relevant laws and regulations, including the 1996 Law on Environmental Protection and Natural Resource Management. He also discussed the EIA bill that the Ministry of Environment has been pushing to supersede the 1999 Sub-Decree on Environmental Impact Assessment Process. The bill seeks to encourage private sector participation in environmental protection, biodiversity conservation, green development, and greenhouse gas mitigation.

Judge Kong then referred to an instance of noncompliance with the current EIA legal framework whereby MH Bio-Energy used cassava and tapioca to produce ethanol for export to European markets. Despite submitting its EIA report, the company faced a complaint from the local community concerning the death of about 54 tons of farmed fish arising from alleged discharge by MH Bio-Energy of its wastewater into the Tonlé Sap Lake. The factory was closed for 5 weeks. However, an investigation later showed that the fish deaths were allegedly not related to any wastewater discharge, but rather to the heating up of the lake water due to climate change.

He also pointed out that the 1999 Sub-Decree on Environmental Impact Assessment Process has several loopholes, one of which is the absence of any criminal penalty for noncompliance with the EIA requirements; only an administrative sanction is available. This limits the number of EIA cases filed before the courts.

### Philippines

Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines, presented on the Philippine judiciary's notion of environmental justice. According to Justice de Leon, it is simply the right of everyone to a clean, safe, and healthy environment. Under the Constitution of the Philippines, the people have the right to a balanced and healthful ecology and the correlative duty to refrain from destroying the environment. Accordingly, environmental justice is the merger between environment law and social justice.

Justice de Leon then narrated three Supreme Court decisions that favored environmental protection over economic interests. The first case, *SDR Metals, Inc. v. Reyes*, G.R. No. 179669, 4 June 2014, involved a challenge made by small-scale mining companies to the DENR's authority to interpret what is counted as part of the 50,000-metric-ton production limit for small-scale mining operations. Specifically, the DENR construed the limit as including mined ore in its unprocessed form, inclusive of soil and dirt, and issued a cease and desist order against these companies mainly because of their alleged overproduction and



raised ecological and health concerns.<sup>10</sup> The mining companies filed a petition questioning the DENR's jurisdiction in issuing said order before the Court of Appeals, which sustained the validity of the order. The mining companies then filed a petition before the Supreme Court. The Supreme Court affirmed DENR's authority, being the agency charged with managing and conserving the natural resources of the Philippines, to promulgate rules and regulations to implement mining laws. The Supreme Court also recognized that DENR made its interpretation "bearing in mind the more intense impact of such kind of mining to the environment."

*Social Justice Society (SJS) Officers v. Lim*, G.R. No. 187836, 25 November 2014, involved the storage and distribution of petroleum. The Pandacan oil terminals stored fuel and petroleum products for three major oil companies in the Philippines and supplied 95% of the fuel requirements of Metro Manila, 50% of Luzon's consumption, and 35% nationwide. In May 2009, Manila issued Ordinance No. 8187, a new zoning ordinance that allowed the continued stay of the oil depots in a very crowded area and near the residence of the president. Petitioners thus filed a petition for prohibition against the enforcement of this ordinance, arguing that a terrorist attack, or any explosion in the depot, could allow for an immediate spread of fire throughout the crowded community. The oil companies, on the other hand, asserted their right to property. The Supreme Court held that the ordinance was unconstitutional and ordered the oil companies to relocate their oil terminals outside Pandacan. The hierarchy of constitutionally protected rights prevailed with the people's right to life taking precedence over the right to property.

The last case, *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*, G.R. No. 180771/181527, 21 April 2015, involved petroleum exploration in an area protected under Republic Act No. 7586, or the NIPAS Act of 1992. A group of activists, acting as stewards of the environment, filed a petition to invalidate a service contract allowing Japan Petroleum Exploration to explore, develop, and exploit the petroleum resources in the marine protected area. The fishermen cited the drastic reduction of up to 70% in fish catch as an adverse consequence of the oil exploration activities. The Supreme Court held that since the Tañon Strait is a NIPAS area, the exploitation and utilization of energy resources in the strait would only be allowed through a law passed by Congress. In the absence of such law allowing for oil exploration or extraction in the strait, there could be no energy resource exploitation and utilization in the area. Thus, the Supreme Court declared the service contract null and void.

Justice de Leon concluded that the aforementioned cases illustrate the Supreme Court's refusal to sacrifice environmental protection, conservation of natural resources, and the maintenance of ecological balance for the sake of economic development.

Prof. Boer noted the legal standing accorded by the Philippine Supreme Court to marine animals and recounted the book written by Christopher D. Stone titled *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*.<sup>11</sup> He suggested that environmental justice is not for humans alone, but also for other species on Earth.

<sup>10</sup> Small-scale mining, as defined under Presidential Decree No. 1899 Establishing Small-Scale Mining as a New Dimension in Mineral Development, refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore.

<sup>11</sup> Christopher D. Stone. 1972. *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*. Los Angeles: University of Southern California.



## Sri Lanka

Justice Vijith K. Malalgoda, president's counsel, and justice and president of the Court of Appeal of Sri Lanka, presented on the constitutional provisions relating to environmental protection and the manner by which the Supreme Court and the Court of Appeal of Sri Lanka had expanded the scope of constitutional rights to include environment protection. Significantly, Article 27(14) of Chapter VI on the Directive Principles of State Policy and Fundamental Duties of the Sri Lankan Constitution mandates the state to "protect, preserve and improve the environment for the benefit of the community." Article 28(f) enjoins citizens "to protect nature and conserve its riches." However, as Article 29 also states, these provisions "do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal."

Notwithstanding this apparent limitation, Justice Malalgoda pointed out that the Constitution grants jurisdiction to the Supreme Court to declare a particular executive or administrative action as an infringement of fundamental rights and to the Court of Appeals the power to exercise judicial review by issuing prerogative writs such as certiorari, prohibition, and mandamus. Courts are aware of their duty to preserve and enhance the natural environment by making full use of the operative legal regimes, and the duty of judges to prompt the relevant governmental authorities to act in cases of pollution or environmental degradation within their jurisdiction. In addition, PIL allows litigants claiming either "representative standing" or "citizen standing" to rely on the rules on locus standi to file cases in courts.

Justice Malalgoda then discussed important environmental jurisprudence in Sri Lanka. In *Hettiarachchige Don Chrishan Priyadarshana v. Geological Survey and Mines Bureau* (S.C.F.R. 81/04), a mechanized sand miner filed a case against Geological Survey and Mines Bureau, alleging that the bureau acted discriminatorily in refusing to issue him a sand mining license, where others had been granted licenses. After hearing all the parties, the court issued interim orders prohibiting the bureau from issuing new sand mining licenses or extending those already issued, as well as interim orders directing police officers to prevent unlicensed sand mining. These orders restricted mechanized sand mining, which heavily damages river banks without preserving the traditional methods of sand mining that do not use any heavy machinery.

*Bulankulama v. Secretary, Ministry of Industrial Development* (2000 [3] Sri LR 243), popularly known as *Eppawala Phosphate Mining Case*, involved a draft mineral investment agreement between the government and Freeport-McMoRan and its affiliate IMCO Agrico in relation to a deposit of phosphate in Eppawala. Petitioners maintained that they were denied their right to participate in an EIA process prescribed by the National Environmental Law. The court quoted H. E. Judge C. G. Weeramantry, former vice-president of the International Court of Justice, in the *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, where Judge Weeramantry in turn quoted the sermon preached by Arahat Mahinda to King Devanampiya Tissa:

O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only guardian of it.

The court, in the Eppawala Phosphate Mining Case, ruled that in addition to deciding that there was an imminent infringement of the petitioners' equal protection rights under Articles 12(1), 14(1)(g), 14(1)(h) and 12(1) of the Sri Lanka Constitution, the court held that human beings are at the center of sustainable development concerns and are entitled to a healthy and productive life in harmony with nature.

Moreover, the court held that even though the directive principles and fundamental duties enshrined in the Constitution do not confer or impose legal rights or obligations, the Supreme Court has found (in the case of *Sugathapala Mendis and Another v. Chandrika Bandaranaike Kumarathunga and Others* [S.C.F.R. 352/2007]) that these directive principles are linked to the "public trust" principle and should guide state functionaries in exercising their powers.

In *Environment Foundation Limited v. Land Commissioner* (1993 [2] Sri LR 41), the land commissioner and the minister of lands decided to allocate 50 acres of state land adjacent to the Kandalama Lake for the construction of a 150-room 4-star hotel. Petitioners challenged the administrative decision before the Court of Appeal given the environmental sensitivity of the area. Although the court found that the third respondent (a private party) was not under its jurisdiction, the action filed by the petitioners influenced the parties to adopt environmentally friendly methods in the construction of the hotel.

In *Marbok MDF Lanka (Pvt) Ltd. v. Central Environmental Authority and Others* (CA/Writ/421/2014), petitioner Marbok MDF Lanka, a foreign investor, complained before the Court of Appeal that it was facing hardship in continuing its operations. This difficulty was allegedly due to the Central Environmental Authority's refusal to issue an environment protection license during the pendency of a public nuisance case filed by the local police with the magistrate's court. The petitioner applied for an interim relief measure for an uninterrupted supply of urea, the organic compound it was using as a bonding agent. The Court of Appeal determined that the action pending before the magistrate's court was based on complaints lodged by the local residents including the chief priest of a temple regarding sawdust particles emanating from the petitioner's factory. After carefully considering all the arguments and evidence submitted before it, the Court of Appeal issued an interim relief order, allowing the petitioner to import urea subject to two conditions: the order's validity is limited to 3 months, subject to renewal; and the public respondents should work with the petitioner in ensuring that the air, water, and sound pollution levels produced by the petitioner are within the Central Environmental Authority's prescribed standards. After several months of complying with the court's orders, the Central Environmental Authority eventually granted the petitioner an environmental protection license.

Justice Malalgoda ended by reminding the participants that everyone is only leasing his or her place from Mother Nature. Thus, all developments should consider the known and likely impacts on the earth and its natural resources; no amount of money can undo irreversible environmental destruction.

Prof. Boer observed that in many countries in South Asia, such as India, Nepal, Pakistan, and Sri Lanka, litigants use constitutional rights, including the right to life, as basis for filing public interest actions. He also remarked that H. E. Judge C. G. Weeramantry himself viewed the right to life as belonging not just to humans, but also to all species.

## International

Prof. Ben Boer, deputy chair of the IUCN World Commission on Environmental Law, distinguished professor at the Research Institute of Environmental Law of Wuhan University, and emeritus professor at University of Sydney, began by highlighting the concept of sustainable development as striking a balance between economic development and environmental protection. However, he noted that he considers the term sustainable development to be limited and prefers the term environmental or ecological sustainability.

Prof. Boer stated that sustainable development integrates three development dimensions: social, economic, and environmental. Many countries worldwide have adopted this concept in their legislation, so judges, lawyers, and politicians must understand this concept in confronting certain issues and analyze not just the legal aspects, but also the scientific, political, economic, social, and cultural aspects. Humans are at the center of these debates, and their needs may differ between individuals and between countries. Therefore we should examine the economic factors, or the satisfaction of the economic needs of individuals, communities, enterprises, and governments, while also examining the environmental factors or the determination of environmental needs and environmental valuation.

Next, Prof. Boer commented on the SDGs, which set a 15-year framework to 2030 for guaranteeing sustainable development. The SDG action plan pledges that no one will be left behind—this reflects the concept of environmental justice. Interestingly, about half of the SDGs relate to environmental law, namely ending poverty and hunger; ensuring quality education (including environmental education); achieving gender equality; ensuring access to clean water, sanitation, and affordable and clean energy; promoting sustainable economic growth; building resilient infrastructure; taking urgent action to combat climate change; conserving oceans; protecting terrestrial ecosystems; promoting peaceful and inclusive societies; and providing access to justice for all.

He then commented that the SDGs now serve as the basis for defining the environmental rule of law—a concept that has been developed by the United Nations Environmental Programme and which looks at how the rule of law should apply from an environmental point of view and from a sustainable development perspective.

Prof. Boer shared his thoughts that the ASEAN region will soon have an ASEAN declaration on the Sustainable Development Goals. However, before this happens the region must consider how to incorporate the SDGs into ASEAN legislation. Following this, judges will be asked to resolve the question of how to incorporate the SDGs and the targets under the SDGs in deciding practical cases before the courts. He noted that while environmental law in the ASEAN region has developed in a rather fragmented manner, there is also excitement in region—for example, the recent legal developments in Cambodia and its progress in developing and finalizing its EIA bill.

He ended by raising several questions for the participants to ponder with respect to environmental justice: Will the implementation of SDGs sufficiently strike a balance between economic and environmental demands? Will judges be able to help achieve environmental justice through the adoption of the SDGs? Will nobody be left behind? What new legal principles do ASEAN countries need? And what new court rules and procedures might be required to address these issues in the modern era?

## Discussion

Justice de Leon asked if there is such a thing as clean mining or mining without causing land or water pollution. Prof. Boer answered that clean mining is possible, although most mining activities inevitably result in some form of environmental degradation.

Ms. Hirose asked Justice de Leon if *Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.* could have been decided differently had there been a law allowing for energy resource exploration in the Tañon Strait, and if there was an environment NGO that filed the case on behalf of the mammals. Justice de Leon replied that environmental stewards charged with protecting the area filed the case, and the Supreme Court recognized their standing to file the case on behalf of the marine mammals. He also elaborated that the decision was mostly grounded on the serious harm posed to the marine biodiversity in the area, such as the 70% reduction in fish catch due to oil rigging.

Prof. Boer asked Justice Malalgoda if litigators in Sri Lanka are compelled to argue based on constitutional provisions because of the inadequate enforcement of environmental statutes. Justice Malalgoda responded that yes, this was the case.

Chief Justice Zakaria asked Justice de Leon if the Philippine judiciary has entertained any lawsuits filed on behalf of trees or forests. Justice de Leon said that no such cases have been filed as yet. Prof. Boer then commented that whether mammals and trees should have similar rights to life as people can depend on spiritual beliefs. Many indigenous peoples consider a tree as their brother or sister and as having a spirit.

Prof. Boer asked Judge Kong about his opinion on when the EIA bill will take effect and what difference it will make. Judge Kong responded that he does not know when the bill will come into force; it will depend on political will. As regards the likely contribution of the EIA bill, Judge Kong opined that this would most likely be with respect to the penalty provided for noncompliance with the EIA requirements, which is 1 to 5 years' imprisonment under the draft bill. Prof. Boer highlighted the significance of an EIA procedure particularly in the development of hydropower in the Mekong region.

Prof. Boer then asked the participants about the possibility of harmonizing the EIA law in Southeast Asia. Ms. Hirose shared that the ADB Regional Sustainable Development Department has initiated a project in the Mekong region and the ADB Office of the General Counsel itself is helping the Myanmar government develop its EIA procedure.<sup>12</sup> She further stated that harmonizing the EIA process in Southeast Asia is a possibility, if the ASEAN countries will it.

Before the roundtable stopped for lunch, Prof. Boer proposed that the participants revisit the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources. As only three countries have signed and ratified the agreement, perhaps it is time for the ASEAN countries to consider whether it should come into force, and whether countries should start harmonizing their environmental laws with the principles espoused in that agreement. Thereafter, Chief Justice Dith closed the session.

<sup>12</sup> In 2014, the ADB Southeast Asia Department initiated RETA 8785 REG: Mekong Business Initiative (ADB. 2014. *Technical Assistance for the Mekong Business Initiative*. Manila). The project seeks to facilitate private sector development in the Greater Mekong Subregion with a focus on Cambodia, the Lao PDR, Myanmar, and Viet Nam.





▲ Distinguished speakers Dr. Carol Adaire Jones, Mr. John Pendergrass, and Judge Merideth Wright of the Environmental Law Institute, Prof. Ben Boer of the IUCN World Commission on Environmental Law, and Justice Vijith K. Malalgoda of the Court of Appeal of Sri Lanka

### ■ SESSION 3 Environmental Damage Assessment

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, invited Deputy Chief Justice Khampha Sengdara, deputy chief justice of the People's Supreme Court of the Lao PDR, and Mr. John Pendergrass, acting vice-president of Research and Policy, Environmental Law Institute, to come forward and serve as honorary chair and session facilitator respectively. Mr. Pendergrass framed the session by referring to the case of the Deepwater Horizon oil spill, the largest oil spill in US history, and the different methods the courts have at their disposal for measuring environmental damage. He then asked the first speaker to come to the podium.



## ■ Presentations

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### Philippines

Justice Mariano C. del Castillo, associate justice of the Supreme Court of the Philippines, discussed two essential scenarios courts consider in assessing environmental damage: the court's assessment of environmental threats and the means of averting or mitigating environmental harm, and the court's decision on rehabilitation in the aftermath of environmental damage. He then framed both court actions in relation to the Philippine Rules of Procedure for Environmental Cases.

Under the first scenario, the rules provide for the application of the prevention principle and the precautionary principle. The prevention principle is based on the premise that it is better to prevent damage rather than adopt measures after the harm has occurred. On the other hand, the precautionary principle, enshrined in Principle 15 of the Rio Declaration on Environment and Development, requires the court to decide in favor of the right to a balanced and healthful ecology, when there is a lack of full scientific certainty in establishing a causal link between human activity and the impact on the environment.

To prevent potential or further harm, the rules provide for three remedies: an environmental protection order directing a person or government agency to perform or refrain from performing an act in order to protect, preserve, or rehabilitate the environment; a writ of *kalikasan*, or writ of nature, protecting a person's or entity's constitutional right to a balanced and healthful ecology, which has been violated or threatened with environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces; and a writ of continuing mandamus ordering a government agency, instrumentality, or officer to perform an act or series of acts decreed by final judgment, which order shall remain effective until such judgment has been fully satisfied.

Justice del Castillo then mentioned the two cases he previously discussed—*Paje v. Casiño and Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*—to elaborate on the prevention and precautionary principles as incorporated in the rules. In the first case, the Supreme Court ruled in favor of the private corporations seeking to build a coal-fired power plant based on expert witnesses' testimony that these corporations indeed complied with the required safety measures and that the environmental impact was within the statutory limits. In the second case, the Supreme Court held that the project proponents' conduct of seismic surveys without securing an environmental compliance certificate was in violation of both Presidential Decree No. 1586 Establishing an Environmental Impact Statement System and the NIPAS Act.

Under the second scenario (or the postenvironmental harm scenario), the rules allow persons who suffer environmental damage to file a separate civil action for damages. To establish their case, they must present evidence of the extent of the damage they personally suffered and the actual monetary value of their losses as a result of the environmental harm. In awarding compensation for the damage incurred or the expenses incurred in rehabilitating the environment, courts must apply the polluter pays principle. Thus, public authorities must refrain from subsidizing the pollution control costs of private enterprises, which should solely bear the costs of abating the pollution they caused. In citizen suits, the court, in applying the polluter pays principle, can order the polluter to clean up and remedy the environmental damage caused or to contribute to a special fund especially constituted for rehabilitating environmental damage. Both the writ of *kalikasan* and the writ of continuing mandamus may require the polluter to restore the environment to its predamaged state.

To illustrate, Justice del Castillo cited *Metro Manila Development Authority v. Concerned Residents of Manila Bay, et al.*, G.R. Nos. 171947–48, 18 December 2008, in which the Supreme Court issued a writ of continuing mandamus ordering several government agencies to clean up Manila Bay given their ministerial responsibilities under relevant statutes. He also mentioned again *West Tower Condominium Corporation v. First Philippine Industrial Corporation*. In this case, the condominium residents affected by an oil leak filed a petition for the issuance of a writ of *kalikasan* and sought the creation of a special trust fund for similar future contingencies. The Supreme Court issued the writ and, in applying the polluter pays principle, mandated the pipeline owner to continue rehabilitating the area until it has been fully restored to its condition prior to the leak.

He also discussed *Arigo v. Swift*, G.R. No. 206510, 16 September 2014, which concerned a marine accident in Tubbataha Reef, a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. In this case, the USS Guardian, a US military ship, damaged 2,345 square meters of reef. Dismantling the ship piece-by-piece to prevent further damage to the reef took about 10 weeks. Concerned citizens filed a petition for the issuance of a writ of *kalikasan* seeking compensation for damages caused to the reef. The Supreme Court recognized the petitioners' right to relief but found no cause to issue the writ as the US was willing to settle and pay for the rehabilitation costs. These costs totalled \$1.9 million in administrative fines and estimated restoration costs.

Justice del Castillo pointed out the difficulty in computing the environmental damages had this issue been litigated in court. There were no environmental laws, precedents, or specific methods that the Supreme Court could invoke. This same difficulty surfaced when a Philippine monkey-eating eagle was shot dead in a UNESCO World Heritage Site. Justice del Castillo ended his presentation by quoting a statement in *Hernandez v. National Power Corporation*, G.R. No. 145328, 23 March 2006, which urges people to think twice before sacrificing the environment in exchange for progress:

For what use will modernization serve if it proves to be a scourge on an individual's fundamental right, not just to health and safety, but, ostensibly, to life preservation itself, in all of its desired quality?

### Thailand

Justice Chirawan Khotcharit, judge of the Environmental Division of the Supreme Court of Thailand, began by describing the difficulties faced by the Thailand judiciary in environmental valuation and environmental damage assessment. Section 97 of the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 states:

Any person who commits an unlawful act or omission by whatever means resulting in the destruction, loss or damage to natural resources owned by the State or belonging to the public domain shall be liable to make compensation to the State representing the total value of natural resources so destroyed, lost or damaged by such an unlawful act or omission.

This provision charges the state, as the public trustee, with the task of protecting the environment. Thus, the state has the legal standing to sue an environmental offender or criminal for monetary compensation. It also incorporates the polluter pays principle into the Thailand environmental legal regime.

Justice Khotcharit observed that most of Thailand's environmental cases are on public land and concern encroachment and deforestation. In these cases, the Royal Forest Department prosecutes offenders and demands monetary compensation for the damage caused to natural resources including topsoil loss, water loss, nutrient loss, temperature increase, and loss of carbon sequestration benefit. Moreover, the plaintiff has the burden of proof to establish the causation between the violation and the environmental damage. The Royal Forest Department uses a computer program to assess the environmental damage but without assessing the actual economic value of the environment at the encroached site. As such, this method can make the plaintiff's request for compensation unreliable because of the lack of adequate and accurate scientific proof of environmental harm. The court therefore struggles to award appropriate environmental compensatory damages.

Justice Khotcharit also pointed out that the economic value of the environment is not only based on market price. The value of natural resources comprises not only their direct use, but also their indirect, optional, and passive use. Plaintiffs, however, face difficulty in establishing such value due to the lack of expert witnesses in the field of environmental economics. In addition, the public prosecutor is not authorized to mediate civil cases, so the court cannot resort to environmental alternative dispute resolution to resolve disputes concerning environmental compensation. Any monetary damages awarded by the court goes to the general government budget, and not to any special environmental rehabilitation or restoration fund.

Lastly, Justice Khotcharit shared the Thailand judiciary's capacity building program. Justices and judges belonging to the Environmental Division of the Supreme Court attended the ASEAN Judiciary Workshop on Natural Resource Damages Assessment held in Bali in 2014. This workshop focused on environmental valuation. Most of the participants were justices and judges from Asian countries. Then in 2015, the Environmental Division of the Supreme Court held a similar workshop in Khao Yai National Park. The attendees comprised justices, judges, and judicial officers from the Supreme Court, the Court of Appeals, and administrative courts, as well as officers from the Royal Forestry Department and local NGOs.

### United States

Mr. Pendergrass and Dr. Carol Adaire Jones, visiting scholar of the Environmental Law Institute, delivered a joint presentation on the key features of the US law relating to liability for natural resource damage, economic damage assessment in the US, and the specific approaches for valuing a damage claim.

Mr. Pendergrass first enumerated the relevant US laws covering liability for damage caused to natural resources: the Oil Pollution Act and the Clean Water Act on spills of oil and other substances into water bodies; and the Comprehensive Environmental Response, Compensation, and Liability Act (or Superfund) on the discharge of hazardous substances into the environment. He also identified the laws on protected areas, namely the National Marine Sanctuaries Act, the Park System Resource Protection Act, and the various state laws under the US federal system. US environmental laws penalize acts or omissions causing environmental damage under the polluter pays principle.

As regards legal standing, only the federal, state, and tribal resource agencies can file environmental damage suits. US environmental statutes do not provide for "citizen suits," although citizens may

separately sue for damages if they personally suffered as a result of an environmental violation (personal injury). Public resource trusteeship is shared among the federal trustees (which manage resources), the state authorities, and indigenous peoples' governments—all of which can bring claims for harm to natural resources. This shared mandate requires coordination among the concerned agencies. Mr. Pendergrass noted that the law prohibits double recovery for the same injury.

Remedial agencies, such as the US Environmental Protection Agency, state environmental protection agencies, or the US Coast Guard, oversee the polluter's cleanup operations. Meanwhile, the natural resource trustee agencies assess the damage, plan the restoration, and litigate with the defendant over the restoration works and costs. This means that the trustee agencies, together with the US Department of Justice, identify the responsible parties and demand payment by lodging a complaint in court or before the administrative agency concerned. Most disputes, however, are settled out of court with the settlement agreement registered as a court order. In the event that the plaintiffs discover unexpected injuries or additional damage that was not originally taken into account, they can also reopen the case.

To illustrate, Mr. Pendergrass discussed that in the Deepwater Horizon oil spill, the relevant government agencies filed natural resource damage claims under the Oil Pollution Act and the Clean Water Act in addition to other enforcement action. British Petroleum had to pay the cleanup cost, civil penalties, and the criminal case settlement, as well as restore the Gulf of Mexico. Although civil penalties usually go to the US Treasury, the extent of damage to the gulf prompted the Congress to enact a special law requiring that most of the money to satisfy the civil penalties be spent on further restoration of the gulf. The criminal penalties were split between settlement, cleanup, and financial support for NGOs doing work related to the harms caused.

Dr. Jones explained the economic valuation methods in natural resources damage claims. Like Mr. Pendergrass, she observed that the US laws on liability for causing environmental damage, compared with similar laws in Indonesia and other tropical countries, are less inclusive in terms of provisions for citizen suits and the extent of harm covered. However, the US statutes are more advanced in terms of valuation. These statutes aim to make the public whole again and in doing so, courts must compute the cost of restoring injured resources to baseline or "primary restoration" in addition to the cost of compensation for interim losses, or those losses incurred from the time the injury occurred until the resources recover to their baseline. Valuing interim losses can be challenging and controversial. Following the Exxon Valdez oil spill, the US reframed its measure for environmental liability based on the cost of compensatory restoration projects with the damage claim becoming a restoration plan. Hence, environmental damages now entail the cost of primary restoration plus the cost of compensatory restoration projects.

She then briefed the participants about the components of a restoration plan. The first is evaluating and quantifying the injuries. The second is identifying the appropriate restoration alternatives and prioritizing between various compensatory restoration projects. The focus is on in-kind resources as well as projects that produce the same type and quality of services as the damaged resource, the metric being the value of ecosystem services damaged or lost. The third component involves preparing a monitoring plan and defining the criteria for success. The fourth is seeking public comment on the restoration process.

She also explained that a primary restoration project expedites the recovery of natural resources. A compensatory restoration project, on the other hand, increases the level of services beyond what the injured resources would be providing. Environmental economists scale the damages, meaning they discount the gains from the compensatory restoration project with the losses sustained.

Dr. Jones elaborated on the different environmental valuation methods or means of eliciting people's preferences for environmental goods. There are two kinds of valuation methods—revealed preference methods and stated preference methods. The first studies people's behavior, while the second uses surveys. She then illustrated these methods in relation to the Exxon Valdez oil spill. The stated preference method surveyed people's willingness to pay for an oil spill prevention program that would prevent an oil spill of the same size and magnitude as the Exxon Valdez oil spill.

She then discussed three approaches for scaling under the Oil Pollution Act. The predominant approach, known as “service-to-service,” requires equating the amount of ecosystem service flows lost due to the injury with the amount of service flows gained from the restoration project. The “value-to-value” approach may include a site-specific survey or benefits transfer, which means simply applying a valuation for services lost in another comparable study to the present study. Lastly, “value-to-cost” entails collecting the money equivalent to the interim loss value and spending it on restoration. This third approach is used particularly in large oil spill cases and in instances where trustees are unable to value the restoration projects pending their approval.

In conclusion, Dr. Jones emphasized five points to the participants. First, they must count the interim loss-value portion of the claim in order to make complete restitution for the damage caused, unless the damaged natural resources can recover extremely quickly. Second, as the US experience has shown, the focus on restoration planning has been very effective in resolving cases because parties are more concerned with the cost of the restoration projects than the specific value of damage. Third, evidence based on economic valuation methods is admissible in US courts. Fourth, the success of the National Oceanic and Atmospheric Administration, where Dr. Jones worked, is the result of the teamwork of natural scientists, economists, and attorneys, who have worked together for an extended period of time. The time they spent together contributed to their tremendous learning experience, especially in building the resources needed to work effectively on cases. Lastly, participants must establish a long-term monitoring and funding mechanism for unknown contingencies. Monitoring helps in holding the agencies accountable for the success of the projects and for identifying the status of recovery of the resources.

## ■ Discussion

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Mr. Pendergrass opened the floor for discussion. Justice Khotcharit asked if the US uses any method for assessing the increase in electricity bill due to climate change. Mr. Pendergrass admitted that he was not aware of any US case where government agencies assessed the damage caused to individuals or government agencies by climate change. He expressed his belief that it should be possible to do so. He opined that under the Oil Pollution Act, government agencies can recover any additional costs incurred due to an oil spill, although he doubted if these agencies measured the extra heating or cooling cost due to climate change. Dr. Jones added that Thailand government agencies might be able to recover for such increased electricity bill on account of a possibly broader scope for environmental harm under Thailand law.



Another participant asked how the US evaluates damage for a cut tree. Dr. Jones responded that first, the plaintiff must quantify the injury—that is, determine what the tree was and what the tree would have been. Within the US restoration plan framework, the court would ask if any restoration project could be done to restore or replace the cut tree and consider losses sustained between the time the damage was caused and the time the restoration was fully effected. She mentioned having read about restoration strategies for dealing with destroyed peat forests, even though restoration takes a long period of time. Mr. Pendergrass added that in the case of wetlands in the US, the person who caused the environmental damage must replace every acre of wetland destroyed with a new acre plus a factor of 10%–50% or even 2 acres. The huge replacement ratio takes into account the long period of time needed for wetlands to recover.

Justice del Castillo shared that the Philippines Supreme Court promulgated the Efficient Use of Paper Rule to lessen the amount of paper wasted in filing court pleadings. In the course of drafting this rule, the Supreme Court learned that paper producers must cut down 20 trees and use 100,000 liters of fresh water to produce 500 reams of bond paper.

Mr. Pendergrass thanked the speakers for their presentations. Thereafter, Chief Justice Dith thanked Mr. Pendergrass for facilitating the session before closing it.



▲ Chief Justice Tun Arifin bin Zakaria of the Federal Court of Malaysia serving as Session 4 honorary chair, Chief Justice Dith Munty of the Supreme Court of Cambodia as chair, and Judge Merideth Wright of the Environmental Law Institute and formerly of the Vermont Environmental Court as facilitator

## ■ SESSION 4 Statutory Penalties for Environmental Violations

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, introduced Chief Justice Tun Arifin bin Zakaria of the Federal Court of Malaysia as the session honorary chair. Chief Justice Zakaria then requested the session facilitator, Judge Merideth Wright, distinguished judicial scholar of the Environmental Law Institute and former judge of the Vermont Environmental Court, to come forward. Judge Wright discussed the history and jurisdiction of the Vermont Environmental Court. She said that the court was created in 1990 as a civil trial court with jurisdiction over environmental law enforcement cases, appeals against local zoning and planning decisions, and state environmental and permit decisions within the US state of Vermont.

Judge Wright framed the session by stressing the challenge in enforcing statutory environmental penalties—that is, ensuring compliance not only by imposing penalties after due process but also by influencing a positive change in behavior. She suggested that penalties should not be too small as compared with the profit from violating the law and that weak law enforcement weakens the entire penalty system.

## Presentations

### Malaysia

Chief Justice Tun Arifin bin Zakaria, chief justice of the Federal Court of Malaysia, began by defining environmental violations as illegal actions that directly harm the environment. In Malaysia, the most frequently committed environmental violations include illegal logging, emitting excessive toxic wastes, smoke belching by motor vehicles and industrial activities, and discharging industrial waste into seas or rivers. These transgressions have caused massive soil and coastal erosion, deforestation, air pollution, and inland and marine water pollution.

Chief Justice Zakaria informed the participants about the geographical and ecological features of Malaysia. Tropical rainforests cover 59%–70% of the country's total land area. Of this, 11.6% is still pristine. The country also has the world's fifth-largest mangrove swamp, which spreads over 500,000 hectares. At the same time, Malaysia is also one of the countries with the highest deforestation rate. Between 2000 and 2012, it had the world's highest rate of forest loss, amounting to 14.4% of its year 2000 forest cover and adversely impacting its biodiversity. He then traced environmental degradation to irresponsible development.

Malaysia's environmental legal framework includes at least 40 laws and many rules, regulations, and orders. The Environmental Quality Act, 1974, the country's first comprehensive law on environmental protection, deals with pollution prevention, control, and abatement, as well as environmental enhancement. Through the years, this law has undergone several amendments. The most significant change—the introduction of a more comprehensive and integrated approach to environmental protection and pollution control—was made in 1996. The other relevant laws include the following: (i) Waters Act, 1920; (ii) Merchant Shipping Ordinance, 1952; (iii) Aboriginal Peoples Act, 1954; (iv) Drainage Works Act, 1954; (v) Local Government Act, 1976; (vi) Food Act, 1983; (vii) National Forestry Act, 1984; (viii) Atomic Energy Licensing Act, 1984; (ix) Exclusive Economic Zone Act, 1984; (x) Fisheries Act, 1985; (xi) Water Services Industry Act, 2006; (xii) Biosafety Act, 2007; (xiii) International Trade in Endangered Species Act, 2008; (xiv) Wildlife Conservation Act, 2010; and (xv) the Penal Code, as last amended in 2014.

The penalties provided under these environmental laws range from RM2,000 (about \$497) to RM1 million (about \$248,630), depending on the nature of the offense. Causing air pollution, for instance, merits a fine not exceeding RM100,000 (about \$24,863) and 5 years' imprisonment. Open burning merits a fine of at least RM500,000 (about \$124,315) and a prison term of at most 5 years. A harsher penalty for deforestation consists of a fine not exceeding RM500,000 (about \$124,315) and a mandatory prison sentence of at least 1 year.

Wildlife offenses depend on the kind of species involved. For instance, offenses involving completely protected wildlife merit a fine of at most RM200,000 (about \$49,714) and/or 10 years' imprisonment. Meanwhile, operating a zoo or circus and captive breeding without a permit merits a fine of RM70,000 (about \$17,400).

The Malaysian government prioritizes environmental sustainability programs and commits itself to different United Nations and ASEAN agreements on the environment. In 2016, it allocated RM3.8 billion (about \$944,558,210) for environmental protection projects. It also introduced the National Policy on Environment, which requires the country to conduct environmentally sound and sustainable development for the continuous economic, social, and cultural progress and the enhancement of quality of life in Malaysia. The establishment of the first Environmental Court in Malaysia in September 2012 signifies that the judiciary recognizes its role in environmental protection and preservation. Between September 2012 and September 2015, a total of 1,140 cases were registered in the sessions court, and as of 30 September 2015, only 135 cases were pending.

Chief Justice Zakaria said that Malaysia's current environmental legal framework enables judges to impose strict penalties to deter environmental offenses. The decreasing number of cases registered in court signifies the increasing public awareness on the importance of the environment and the corresponding penalties for breaching environmental laws. He stressed that Malaysia is a small country belonging to ASEAN and that it is relying on cooperation with the other countries in the region to create a safe and healthy environment for everyone in the region.

He ended by congratulating the Supreme Court of Indonesia for having decided the case against the palm oil company PT Kallista Alam and ordering the company to pay Rp366 billion (about \$26 million) in fines and reparation costs for using fire to clear the forest in the Tripa Peat Swamp region. He then expressed his hopes of seeing similar decisions and less haze in the future. He also thanked the Indonesian judiciary for their effort in addressing haze in the region.

## Viet Nam

Permanent Deputy Chief Justice Bui Ngoc Hoa of the Supreme People's Court of Viet Nam acknowledged Chief Justice Dith and the participants and expressed gratitude, on behalf of the Supreme People's Court of Viet Nam, to the Supreme Court of Cambodia and ADB for convening the Fifth Roundtable. He noted the worldwide environmental degradation.

To arrest environmental destruction in Viet Nam, the Government of Viet Nam has strengthened its environmental legal framework and adopted various policies and action plans to raise public awareness on the status of the environment. These laws include the following: (i) Law on Environmental Protection, which was enacted in 1993 and amended in 2005 and 2014; (ii) Petroleum Law, which was enacted in 1993 and amended in 2000; (iii) Law on Forest Protection and Development, 2006; (iv) Biodiversity Law, 2008; (v) Law on Water Resources, 2012; (vi) Land Law, 2013; and (vii) Penal Code, last amended in 2014, which has a separate chapter on environmental crimes. In addition, the government promulgated the Law on Handling of Administrative Violations, 2012 and Decree No. 121/2004/ND-CP on sanctioning of administrative violations in the field of environmental protection.

The penalties for committing environmental offenses—whether administrative sanction or criminal prosecution—depend on the nature of the violation and the seriousness of danger caused to society. Under the Law on Environmental Protection, anyone who causes pollution, environmental degradation, or environmental damage must reduce the pollution, remediate the environmental damage, compensate for

losses, and take other measures of recovery. Heads of agencies, government officials, and public servants who abuse their position, harass individuals or organizations, protect environmental criminals, or neglect their responsibilities, and thereby cause environmental pollution, must be disciplined or prosecuted for criminal liability depending on the nature and severity of the violation. Either way, they must compensate for any damage they have caused.

The Law on Handling of Administrative Violations, Decree No. 121/2004/ND-CP, and other relevant decrees prescribe the principal and additional administrative penalties for environmental violations. The principal penalties range from a mere warning to a fine of D1,000,000,000 (about \$44,820) for individuals or D2,000,000,000 (about \$89,640) for organizations. The additional penalties entail deprivation for a specific term of the right to use certificates or practicing licenses, suspension of operations, or confiscation of the means used to commit the violation. The said law and decrees also provide for remedial measures.

The chair of the people's committee, people's police, specialized inspectors, and designated officers of the Viet Nam Border Guard, Coast Guard, General Department of Viet Nam Customs, Forest Protection Force, Market Management Force, General Department of Taxation, Viet Nam Port Authority, and Inland Waterways Administration are competent to impose administrative sanctions and remedial measures for breaches of the laws they are respectively charged with enforcing.

Permanent Deputy Chief Justice Bui next discussed the 10 environmental crimes punished under the Penal Code: (i) air pollution; (ii) water resource pollution; (iii) land pollution; (iv) importing technologies, machinery, equipment, discarded materials, or materials which fail to satisfy environmental protection criteria; (v) spreading dangerous epidemics to plants or animals; (vi) destroying aquatic resources; (vii) spreading dangerous epidemics to human beings; (viii) destroying forests; (ix) breaching regulations on protection of animals on the list of endangered, precious, and rare species prioritized for protection; and (x) breaching regulations on special protection of nature reserves. Similar to the penalties prescribed for other environmental violations, the penalties for committing any of the foregoing violations depend on the nature of the offense and the danger posed to the environment and others. The principal penalties consist of a fine equivalent to \$250–\$10,000, noncustodial rehabilitation for up to 3 years, and a prison sentence of 6 months to 15 years. Additional penalties include a fine equivalent to \$250–\$2,500 (where the principal penalty imposed is not a fine) and a ban on holding certain posts, practicing certain occupations, or performing certain jobs for a maximum of 5 years.

Lastly, he updated the participants on the latest developments to the Penal Code of Viet Nam. Currently, only individuals may face criminal liability for committing any of the aforementioned 10 crimes. The latest draft penal code, which had been submitted to the National Assembly of Viet Nam for its approval, imposes criminal liability on legal entities committing the same offenses. This draft also provides for stricter penalties for certain environmental crimes.<sup>13</sup>

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<sup>13</sup> On 27 November 2015, Viet Nam's National Assembly adopted Law No. 100/2015/QH13, or the New Penal Code, which took effect on 1 July 2016.



### *Lao People's Democratic Republic*

On behalf of Deputy Chief Justice Khampha Sengdara of the People's Supreme Court of the Lao PDR, Judge Atsanay Somsanith of the People's Supreme Court of the Lao PDR presented on the statutory penalties for environmental violations in the Lao PDR. Judge Somsanith shared that the Lao PDR Constitution pays special attention to the environment. Article 19 of the Constitution enjoins all citizens and organizations to protect the environment and natural resources.

The Government of the Lao PDR has developed a broad policy, strategic, and legal framework on environmental protection and natural resource conservation. The country's main environmental law, the Environmental Protection Law, specifies five modes for resolving environmental disputes in the country depending on the nature of the dispute: (i) consultation, negotiation, or mediation of simple disputes; (ii) administrative dispute resolution by the appropriate environmental protection organization at the district or provincial level; (iii) economic dispute resolution in the Office of Economic Dispute Resolution at the central level or in the Unit of Economic Dispute Resolution at the provincial level; (iv) adjudication by courts of law; and (v) international dispute resolution.

Judge Somsanith also mentioned that the penalties for committing environmental violations in the Lao PDR depend on the seriousness of the violation. For instance, destroying the forest merits 3–5 years' imprisonment, while illegal mining merits 2–5 years' imprisonment.

At present, there are no specialized environmental courts yet in the Lao PDR. Most lawyers lack experience in the field of environmental law, and no single expert can give definitive advice in an environmental lawsuit. Nonetheless, the Government of the Lao PDR constantly strives to further environmental protection. It cooperates with international organizations in adopting protective measures and ensuring the sustainability of the natural environment and society, punishes environmental criminals to prevent further environmental damage, and builds more public awareness on environmental issues to encourage everyone to work together on sustainable environment protection.

To end, Judge Somsanith thanked the Supreme Court of Cambodia for inviting the People's Supreme Court of the Lao PDR to join this conference and ADB for supporting and facilitating the roundtable.

### *United States*

Judge Merideth Wright, distinguished judicial scholar of the Environmental Law Institute and former judge of the Vermont Environmental Court, began by describing Vermont as a small rural state in the northeast of the US. Its economy is dependent on agriculture and tourism. It has a reputation for very strong environmental laws. Environmental law enforcement in Vermont used to be weak until 1989, when the state legislature enacted the Uniform Environmental Enforcement Act. This law strengthened and unified the enforcement system, setting out new enforcement principles and creating a specialized environmental court, with Judge Wright being its first judge.

She outlined the salient provisions of the Uniform Environmental Enforcement Act. The law was enacted to enhance the protection of environmental and human health given by existing laws. It focused on amending the environmental law enforcement regime to provide for more even-handed enforcement—

so that everyone is subject to the same possibility of enforcement. Specifically, the Uniform Environmental Enforcement Act aimed to achieve five things: prevent the unfair economic advantage obtained by violators; level law enforcement such that everyone faces equal possibility of punishment in case of violation; promote greater compliance with environmental laws; deter repeated violations; and establish a fair and consistent system for assessing administrative penalties. Interestingly, the state environmental agency can issue administrative orders, and anyone who refuses to follow such order may appeal the order before the environmental court. The appellant may request a fresh hearing of the case—as if the case had been first brought in court.

Judge Wright then explained the eight factors considered by the environmental court in imposing a penalty and the procedure for dealing with the potential profits made by committing certain environmental violations. The court first examines the gravity of the actual or potential impact of the offense on public health, safety, welfare, and the environment; the court does not need to wait for actual damage to occur in order to assess a penalty. For example, the improper handling of hazardous waste, even without causing an actual spill, can already merit a penalty because it endangers public health and the environment. Also, the court looks into whether the respondent knew or had reason to know of the violation, the respondent's compliance record, the length of time the violation had been existing, the state's costs in enforcing environmental laws (including the expenses it incurred in investigating the case and bringing it to court), the economic benefit gained from the violation, the need to increase or decrease the penalty, and the presence of mitigating factors.

She emphasized that the penalty imposed should be serious enough to deter negative behavior. The court computes the offender's economic gain and removes it by applying a commensurate penalty. One mitigating circumstance specifically provided for in the statute is the enforcement agency's unreasonable delay in enforcing the law. This means that if enforcement officers had known the violation for some time and did not do anything about it, then the court cannot put the blame solely on the offender. The investigating agency may be faulted for failing to take immediate action. Assessing the appropriate penalty is not a precise process. The statute does not specify the amount of monetary penalties, but it does provide guidance in determining the penalties to be imposed in each case.

## Discussion

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Judge Wright invited the participants to share the penalties prescribed in their environmental statutes, any problems they might be having with their environmental law enforcement system, and any movements to change their system.

A participant asked Judge Wright how the Vermont Environmental Court would assess the appropriate pecuniary damages. Judge Wright answered that it is the state agency's responsibility to present evidence on the amount of such damages bearing in mind the factors she discussed earlier. Not all the eight factors are always considered. But the court must address the economic gain from the violation, which consists of the amount of money saved by the offender by committing the offense. She opined that fixing the value of this economic gain in the statute, especially for crimes that involve huge profits, encourages the violator to simply pay the fine. Conversely, the Vermont system removes the incentive by including the gain in the penalty imposed.

Prof. Boer inquired about the consistency of sentencing and penalties imposed in Malaysia and in the US. Some countries appear to be consistent in the nature and amount of penalties imposed, while some are not. He then raised two more questions: first, does the US maintain a record across all 50 states of the penalties imposed that is available to judges and second, in Malaysia, do the judges know the sentences rendered by other judges for the same or similar kinds of offenses?

In response, Chief Justice Zakaria said that all sentences imposed by all environmental courts in Malaysia are recorded and made available to any other court in Malaysia. As a federal government, each state has its own environmental statutes that mandate the penalties to be imposed, and such penalties may differ from state-to-state. The government should correct this situation by harmonizing all penalties. Judge Zulqarnain bin Hassan, a sessions court judge, added that in hearing environmental cases, he would insist that the prosecutor help him analyze the case and any judgment precedents.

Judge Wright then answered that not only does the US not maintain a registry of judgments across the 50 states, but the environmental enforcement systems also differ. Vermont was the first state to have environmental courts, but these courts can only adjudicate civil and administrative cases. They cannot hear and decide criminal cases, which require trial with a jury. Hawaii has recently established its own environmental courts, which do handle criminal cases. In some states, and at the federal level, the penalty systems involve administrative instead of judicial processes. But within each state enforcement system, and in the federal system, the courts or administrative tribunal can ensure that all decisions are published.

Justice de Leon confirmed with Chief Justice Zakaria what Justice Tan Sri Richard Malanjum, chief judge of the High Court of Sabah and Sarawak and judge of the Federal Court of Malaysia, mentioned regarding the penalties impossible for wildlife offenses during the Second ASEAN Judicial Working Group Meeting on Environment held in June 2015—that is, that these penalties were too weak to deter violators. He also asked if there were any motions made to amend these laws to strengthen the penalties.

Chief Justice Zakaria responded that the penalties for wildlife offenses, particularly in Sabah, are quite low. Poaching and selling orangutans, tigers, or pangolins are serious offenses, but they bring in huge profits for the traders. Each tiger can fetch RM200,000 (about \$49,579), while each pangolin can cost RM2,000 (about \$496). The demand for pangolins is huge given the widespread belief that pangolins can serve as medicines and aphrodisiacs. The Malaysian government is now seeking to amend the wildlife laws to make the penalties stricter, including making imprisonment for at least 6 months mandatory. Judges, meanwhile, are imposing prison sentences more frequently to deter violations. Judge Wright added that this is why the economic gain from committing an environmental violation cannot be the only factor considered in assessing the appropriate penalty; judges should impose stricter penalties considering the economic gains, whether the offender is an individual or a company, and other factors for the punishment to be an effective deterrent.

Chief Justice Dith thanked Chief Justice Zakaria for chairing the fourth session and Judge Merideth Wright for facilitating it. He also thanked the speakers for their presentations.



▲ Chief Justice Dith Munty of the Supreme Court of Cambodia serving as Session 5 chair and Justice Chirawan Khotcharit of the Environmental Division of the Supreme Court of Thailand as facilitator

## ■ SESSION 5 Cleanup and Restoration

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, opened the next session on cleanup and restoration. He then invited the honorary chair, Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge of the High Court of Brunei Darussalam, to come forward. Justice Majid then called on Justice Chirawan Khotcharit, judge of the Environmental Division of the Supreme Court of Thailand, to facilitate the session.

Justice Khotcharit introduced the speakers for this session before explaining how judges in Thailand render judgments on cleanup and environmental restoration. Sections 96 and 97 of the Enhancement and Conservation of National Environmental Quality Act allows judges to award compensatory damages and require the defendant to cleanup the pollution he or she caused and pay the plaintiff's restoration cost.

She also talked about a case pending before the Environmental Division of the Supreme Court. In this case, the Pollution Control Department, the Department of Fisheries, and two local government units filed a complaint against a sunken sugar barge owner for monetary compensation. The sugar from the sunken barge dissolved into the water, polluted part of the Chao Phraya river, and killed a substantial number of marine species. The appellate court awarded to the plaintiffs the cost of laboratory fees, the expenses for disposing the dead fish, and B3 million (about \$84,846) as restoration cost. She stated that the Thailand judiciary still faces difficulties in awarding compensatory damages to the state and wanted to hear about how other ASEAN judiciaries address these problems.

## ■ Presentations

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### Malaysia

Justice YA Tan Sri Ahmad Bin Haji Maarop, judge of the Federal Court of Malaysia, began his presentation by highlighting the long period of time needed to restore the environment to its predamaged state and the fact that some environmental damage is irreparable. It could take millennia to rehabilitate certain types of environmental degradation, and monetary fines alone can never fully cover the cleanup and restoration costs.

He then outlined the legal provisions on cleanup and restoration in Malaysia. The main law on this topic, the Environment Quality Act 1974, provides for criminal penalties and civil remedies. First, under Section 31A, the director general of environment may issue a prohibition order against the owner of any industrial plant to prevent the continuous operation or emission, discharge, or deposit of environmentally hazardous substances, pollutants, or waste. Moreover, the minister of natural resources and environment is also authorized to direct the director general to issue an order requiring the person causing a serious threat to the environment or public health and safety to cease all acts resulting in the release of environmentally hazardous substances, pollutants, or waste. He can also direct the director general to render any machinery, procurement plan, or process of that person inoperable. Failure to comply with the director general's order merits a maximum fine of RM50,000 (about \$12,389), a maximum prison sentence of 2 years, or both.

Second, the same provision also empowers the director general to issue a written notice requiring the owner or occupier of any vehicle, ship or premises, or aircraft where environmentally hazardous substances, pollutants, or wastes are being or are likely to be emitted, discharged, or deposited to

- (i) install and operate any control equipment;
- (ii) repair, alter, or replace any equipment;
- (iii) erect or increase the height of any chimney;
- (iv) measure, take a sample of, analyze, record, and report any environmentally hazardous substances, pollutants, wastes, effluents, or emissions containing pollutants;
- (v) conduct a study on any environmental risk;
- (vi) install, maintain, and operate a monitoring programme at the owner or occupier's expense; or
- (vii) adopt any measure to reduce, mitigate, disperse, remove, eliminate, destroy, or dispose of pollution.



Third, Section 47 of the Environmental Quality Act grants the director general the power of recovery of costs and expenses. In particular, this provision authorizes the director general to remove, disperse, destroy, or mitigate any pollution caused by any person in violation of this law or any regulation issued, and to recover from that person all expenses incurred by the government in the cleanup. Normally, the exercise of this power entails filing a lawsuit and seeking damages. This section also provides that the director general's certificate, which identifies the person responsible for the pollution, constitutes prima facie evidence for filing the lawsuit. Meanwhile, the director general's certificate, which states the sum incurred in the cleanup, shall constitute conclusive proof of the sum due from the person responsible for causing the pollution.

Justice Maarop then narrated the facts of *Government of Malaysia v. Synenviro Sendirian Berhad*, Johor Bharu High Court Suit No. MTJB.21NCVC-8-04/2014. Here, the director general charged Synenviro Sendirian Berhad with accepting scheduled waste without the requisite written approval—an offense under Section 34B of the Environmental Quality Act. The director general engaged a contractor to clean up the premises and filed a petition to recover the costs incurred in the cleanup. During the pendency of the case before the Johor Bharu High Court, Synenviro settled the amount claimed, so there was no need to litigate the amount due. Justice Maarop then remarked that had Synenviro disputed the director general's basis for certifying the amount it was required to pay, then the valuation methods discussed by Dr. Jones would have been useful.

### Philippines

Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines, presented on behalf of Justice Estela M. Perlas-Bernabe, associate justice of the Supreme Court of the Philippines. He related the jurisprudence demonstrating the use of available remedies for implementing effective cleanup and environmental restoration in the Philippines.

First, in *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.*, G.R. Nos. 171947–48, 18 December 2008, the concerned residents of Manila Bay filed a complaint before the Regional Trial Court of Imus, seeking to compel several government agencies, including the petitioners, to clean up, rehabilitate, and protect Manila Bay. The trial court ordered said agencies to clean up and rehabilitate Manila Bay. The government agencies then appealed to the Court of Appeals, which sustained the trial court's decision, hence, this petition before the Supreme Court.

The crux of the case was whether the court can compel the government agencies by way of a writ of continuing mandamus to conduct cleanup in general, or must the cleanup be limited to specific pollution incidents. The Supreme Court distinguished between the agencies' obligation to perform their duties as prescribed by law—which are ministerial in nature—and the manner by which they should carry out their duties—which is discretionary in nature. The responsibility to clean up pollution under the Environmental Code does not distinguish between general cleanups and cleanup of specific pollution incidents. Furthermore, in this case, the cleanup was only in relation to the initial stage of a long-term solution to restoring Manila Bay to its former pristine condition. The Supreme Court therefore issued a writ of continuing mandamus against the petitioners, enabling the court to continuously monitor the cleanup through the Manila Bay Advisory Committee, even after the court's decision became final and executory.

Second, *Arigo v. Swift*, G.R. No. 206510, 16 September 2014, involved the grounding of the USS Guardian, a US military ship, against the south shore of Tubbataha Reef, a national marine park and UNESCO World Heritage Site. The grounding of the ship and its salvage damaged the reef. Petitioner Rev. Pedro D. Arigo filed a petition before the Supreme Court seeking the issuance of a writ of *kalikasan* and the issuance of a temporary environmental protection order. The petitioner also sought an order requiring the US government to pay just and reasonable compensation in settlement of all meritorious claims relating to damage caused to the reef.

The main issue in the case was whether the US government was liable to pay the Philippine government damages on account of the grounding of the warship on the reef. The Supreme Court considered the US government to bear international responsibility under Article 31 of the UN Convention on the Law of the Sea (LOSC). Although the US did not ratify the convention, the Supreme Court considered the US to be bound to comply with the convention not by ratification, but by customary international rules on the “traditional uses of the oceans” as codified. While the case was pending, the Philippine government negotiated the matter of compensation and rehabilitation of the reef with the US government. On 20 January 2015, the US government paid the government of the Philippines P87 million (about \$1.97 million).

Lastly, in *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, G.R. No. 194239, 22 November 2011, the residents of West Tower Condominium were forced to evacuate due to an oil pipeline leak. The Supreme Court issued a writ of *kalikasan* directing the pipeline owner to cease and desist from using that damaged pipeline until further orders and take measures to prevent any catastrophe arising from the leaking pipelines. The Supreme Court balanced economic interests with environmental considerations. It recognized the commercial value of the pipeline and the adverse consequences of its prolonged closure and ordered the pipeline owner to coordinate with relevant government agencies in addressing the damage caused by the leak to the pipeline. The court also warned the pipeline owner that should it fail to repair the pipeline, it would no longer be allowed to operate the pipeline.

## United States

Dr. Carol Adaire Jones, visiting scholar of the Environmental Law Institute, gave a detailed report on the cleanup of the Deepwater Horizon oil spill, the largest oil spill in the US. In 2010, the Deepwater Horizon mobile drilling unit, located about 41 miles offshore from Louisiana, exploded and eventually sank. It took 87 days for the response effort to determine how to close the well. By that time, the well had already spouted 3.19 million barrels of oil and natural gas into the Gulf of Mexico. The gulf housed a vast ecosystem with some of the most diverse and productive natural resources in the US. But it has also been facing multiple stressors from oil and gas development, rechanneling of the Mississippi River away from its natural banks, coastal subsidence, wetland losses, and nutrient runoff from farms. The incident resulted in the death of 11 workers; injury to 17 employees on the platform; and deaths, injuries, or impairments to hundreds of thousands of birds, turtles, and marine species, and trillions of larval fish and shellfish, as proven by extensive toxicity testing.

The response and cleanup costs, totaling \$14 billion, formed the largest component of the claims against British Petroleum. The other damages and penalties assessed included (i) \$8.1 billion in damage to natural resources, (ii) \$0.7 billion to settle presently unknown injuries or any subsequent claims that

would be filed, (iii) \$5.5 billion in civil penalties, (iv) \$4 billion in criminal penalties, and (v) \$19.8 billion aggregate economic losses as of July 2015. Part of the penalties would fund the environmental restoration, research, and monitoring. The rest would be used to settle economic damages, and help affected states recover from some of the economic losses they incurred. Notably, some individuals and firms also filed private claims.

Damage assessment focused on key resources that were relevant to restoration plans. The damage caused by the oil spill was so pervasive in terms of resources, regions, and habitats impacted that the trustees declared that the total damage constituted an injury to the entire northern Gulf of Mexico ecosystem.

British Petroleum agreed to settle the damages with the US federal government and five state governments and negotiated the trustee government agencies' proposed programmatic restoration plan. This means that the plan gave an overarching direction for future restoration, fund allocation with flexibility to accommodate scientific advances and changes in the gulf, and the manner by which the trustees must work together to develop and implement restoration projects. Dr. Jones presented the matrix of the distribution of \$8.8 billion across the five affected states to attain five restoration goals, reflecting an ecosystem-wide approach to restoration. These are the five goals: restoring and conserving habitat; restoring water quality; replenishing and protecting living coastal and marine resources that will take decades to recover; providing and enhancing recreational opportunities; and monitoring, adaptive management, and administrative oversight.<sup>14</sup> Monitoring data are publicly available and are useful for evaluating the performance of individual projects and tracking the recovery status of the resources and of the region.

Dr. Jones expressed optimism that the money paid by British Petroleum will provide an opportunity for rehabilitating the injuries caused by the oil spill, and contribute to some of the other issues impairing the natural resources in the gulf. But the incident also offers a significant challenge in terms of continuous coordination among the trustees and the other groups and allowing for adjustments to the restoration plans as new information comes in. She ended by imparting two important items needed to advance the most efficient use of resources: first, a long-term monitoring plan and support for nongovernment entities to access available data and to conduct research; and second, public participation processes and civil society participation in damage assessment, restoration, and monitoring processes.

Judge Merideth Wright, distinguished judicial scholar of the Environmental Law Institute and former judge of the Vermont Environmental Court, discussed the history and jurisdiction of the Vermont Environmental Court and offered a more localized example of environmental damage cleanup and rehabilitation in the US. She discussed a case study of an environmental restoration project that is resulting in the cleanup and cultural restoration of native trees and other vegetation in a small secluded

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<sup>14</sup> The consent decree resolving civil claims against British Petroleum was entered on 4 April 2016. The aggregate settlement of claims is worth \$20 billion and represents the biggest settlement with a single entity in federal law enforcement history. On 19 February 2016, a Trustee Council comprising four federal agencies and trustees from all five gulf states issued a Final Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement detailing the plan to fund and implement restoration projects in the gulf. On 22 March 2016, the trustees registered a Record of Decision in connection with this plan. US Department of Justice. *Deepwater Horizon*. <https://www.justice.gov/enrd/deepwater-horizon>

valley close to the border of New York and New Jersey. Members of the Ramapo Tribe of Native Americans and other communities live in the area.

From the 1950s to the 1980s, Ford Motor Company operated a big automobile assembly plant in New Jersey, then the largest automobile plant in the US. During the time it was operating, it produced over 6 million cars and had dumped millions of gallons of toxic paint sludge in the nearby forest traversing both New York and New Jersey. The local communities remember playing with the colorful sludge as children. They also hunted and fished in the area and consumed the animals that lived in the woods and the fish that lived in the streams. The paint sludge, however, contained lead, plastic, and volatile toxic chemicals, such as toluene and benzene. It contaminated the land and the groundwater. So the locals, with the help of the state environmental agency, sued Ford Motor Company. After years of negotiations, Ford agreed to perform a complete cleanup, removing the sludge and properly disposing of it, replacing the contaminated ground with clean topsoil, continuing to monitor the groundwater, and replanting the area with native trees and vegetation. The excavation of the paint sludge and ecological restoration of the area happened in 2013–2014. Over 42,000 tons of sludge and wastes were removed from the area with the removal costs totaling more than \$15 million.

At the same time as it was cleaning up the forest and streams, Ford also financed a project that aimed to heal the local communities' culture, clean the land, and teach future generations about traditional ecological stewardship. Ford fenced 4 acres of the site, where the land had been most contaminated, and made the area into a traditional medicine garden, placing signs in the garden to explain the project's concept to passersby. In June 2014, the local community organized a dedication-healing ceremony; community members, tribal members, and local college students attended and planted the first plugs of native sweet grass in memory of the elders who passed on.

Judge Wright ended by sharing some of the memorable quotes during the ceremony: "It is important that we are here because we are a people of place," as one speaker said; and "I would never move from here, the earth is ill and so I am ill and why would I leave my sick relative?" as a tribal elder once said. In the autumn of 2015, the local communities harvested sweet grass from the site for the first time and used the same for making baskets. These communities also stored some grass for future healing ceremonies.

### India (Video Presentation)

Justice Hima Kohli, judge of the High Court of Delhi, India, gave a video presentation on the role played by the Supreme Court of India and the National Green Tribunal (NGT) in cleanup and environmental restoration in India, narrating four case studies to illustrate this.

The first case, *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, is about the Doon Valley, which runs parallel to and traverses the Lower Himalayan Range and the Shivalik Range and which sits between the Ganges and Yamuna river systems. The valley used to have pristine natural beauty, which attracts tourists and nature lovers all over the world; crystal clear water emanated from the limestone aquifers while lush bushes held the soil intact. But unsustainable limestone mining operations from 1955 to 1965, coupled with unbridled tree cutting, caused damage to the area, resulting in frequent landslides and blocking the underground water channels. By the 1980s, the valley lost its natural beauty and became vulnerable to landslides, flash floods, water shortages, increasing temperatures, and failed crop production.

In 1983, Rural Litigation and Entitlement Kendra (RLEK) wrote a letter to the Supreme Court complaining about environmental degradation in Doon Valley. The Supreme Court regarded the letter as a writ petition or PIL. Fierce litigation took place between 1983 and 1988 which was complicated by several factors: the intervention of lessees of over 100 mines, absence of judicial precedent, and the significance of the issues that involved both the local community and the public. In 1988, the Supreme Court rendered its judgment ordering the closure of 101 mines in the valley.

According to Justice Kohli, this case demonstrates the clash between conservation, represented by the affected citizens on the one hand, and development, represented by the wealthy limestone contractors on the other, as well as the powerful industries and even government agencies that showed interest in the case. To better understand the technical issues, the Supreme Court formed two expert committees. The Bhargava Committee analyzed the mines, while the Bandyopadhyay Committee evaluated the plans submitted by the miners to ensure environmental protection and the due consideration of the claims of the affected communities.

After reviewing the experts' reports, the Supreme Court concluded that the mining operations were seriously endangering the environment and so ordered the partial closure of the quarries. The order came in the form of a writ of continuing mandamus, which was enforced until 1991 and which permitted selective quarrying in the valley based on the advice of the committees. The Supreme Court also directed the state, where the quarry was located, to prioritize the claims of displaced lessees of the Mussoorie Hill Range and of miners who lost their jobs. These individuals were then engaged in the environmental rehabilitation programs, such as afforestation and soil conservation. Thus, the Supreme Court successfully balanced the need for development, environmental protection and conservation, livelihood, and the protection of substantial business investments. The restoration of the Mussoorie Hill Range is now nearing completion.

The second case involved the cleanup of the Ganges River, which features in the spiritual, mythological, and cultural psyche of the citizens of India and provides livelihood for the millions of people living on both sides of its embankment. The river spans over 2,500 kilometers, originates in the Western Himalaya, flows through south and east into India and Bangladesh, and empties into the Bay of Bengal. In 1985, Mr. M. C. Mehta, an environmental lawyer, filed a writ petition in the Supreme Court to draw light on the environmental damage of the river. Between 1985 and 2014, the Supreme Court issued several orders to ensure immediate action to rejuvenate and restore the river to its old glory. The orders included the identification by the respective State Pollution Control Board of Uttar Pradesh, Bihar, and West Bengal of industries that were polluting the river and their closure, and the central government's submission of affidavits stating the work done in this regard. Meanwhile, the Central Pollution Control Board directed 68 grossly polluting industries to submit a time-bound action to adopt antipollution measures.

In 2010, the government established the NGT to effectively and expeditiously dispose of environmental cases. In 2014, the Supreme Court charged the tribunal with the duty of cleaning up the river. The tribunal then began hearings on the matter and identified seven categories of industries that were polluting the river: paper and pulp, sugar, distilleries, tanneries, dying, printing, and slaughterhouses. The tribunal also directed the creation of a principal committee, an implementation committee, and a state committee to develop policies and action plans to prevent and control the discharge of industrial effluents into the river and to implement the orders passed by the tribunal.



On 15 October 2015, the NGT issued an order directing state governments to ensure that no effluents were subsequently discharged into the Ganges River. On 15 November 2015, the tribunal ordered state agencies to stop granting permits to construct within 200 meters from the river banks without obtaining the tribunal's approval.

Meanwhile, the central government launched the National Mission for Clean Ganga and placed it under the Ministry of Water Resources, River Development and Ganga Rejuvenation. The ministry is tasked to conserve, develop, manage, and abate pollution in River Ganga and its tributaries.

Third, Justice Kohli shared how the Government of India has been cleaning the air in Delhi, the capital of India,<sup>15</sup> and the case of *M. C. Mehta v. Union of India and Vardhaman Kaushik v. Union of India*. Based on a study conducted by the World Health Organization in 2014, Delhi had the worst air quality out of 1,600 cities surveyed worldwide and had six times the safe level of airborne particulate matter. Over time, traffic in the city became chaotic and vehicular pollution started threatening human health.

In 1985, Mr. M. C. Mehta filed another writ petition before the Supreme Court invoking Article 21 of the Indian Constitution on the right to life and requesting the Supreme Court to regulate air pollution caused by automobiles running in Delhi. Through a writ of continuing mandamus issued in 1998, the Supreme Court issued several directions. Significantly, the Environment Pollution (Prevention and Control) Authority for the National Capital Region was tasked to monitor the pollution levels in Delhi and adopt remedies to regulate air pollution. The Ministry of Petroleum and Natural Gas was also directed to convert all government vehicles registered before 1 April 1995 to compressed natural gas (CNG). In October 2015, the Supreme Court directed trucks and smaller commercial vehicles entering Delhi to pay an environment compensation charge starting 1 November 2015. The court also ordered the states adjoining Delhi to display large billboards at exit points to divert commercial traffic to alternative highways without entering Delhi. The NGT also issued several directions to address air pollution. Despite these orders, the traffic and air pollution situation had worsened in Delhi. As of December 2015, there were 9 million vehicles registered in Delhi and 1,400 vehicles more registered daily.

While the air pollution control directions promoted CNG as fuel and banned the overloading of trucks and commercial vehicles, the government also identified other sources of air pollution in Delhi, such as construction dust, coal and fly ash, biomass, and garbage and leaf burning. In fact, Delhi generated about 40,000 tons of construction debris and 10,000 tons of garbage on a daily basis. In April 2015, the NGT banned the open burning of garbage and garden waste and directed government authorities to impose a fine of Rs5,000 (about \$75) on violators. In November 2015, the central government, the Delhi government, and municipal authorities joined hands in constructing flyovers, underpasses, railways, and bridges to unclog the arterial roads. The Government of Delhi also had car-free days on a monthly basis. Justice Kohli expressed hopes that the collective effort of government authorities, particularly the judiciary and the executive, can ultimately clean the air in Delhi.

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<sup>15</sup> As of 2014, Delhi has a population of 25 million people. Tariq Khokhar. *By 2030, Delhi's Population Will Approach Tokyo's*. World Bank. <http://blogs.worldbank.org/opendata/chart-2030-delhi-s-population-will-approach-tokyo-s>

The fourth case, *M. C. Mehta v. Union of India and Others* (or “The Taj Trapezium Case”), relates to the preservation of the Taj Mahal, one of the Seven Wonders of the World and a UNESCO World Heritage Site. Mughal Emperor Shah Jahan commissioned the construction of the mausoleum in 1632 to house the tomb of his deceased wife, Empress Mumtaz Mahal. The Taj Mahal attracts about 3 million visitors worldwide each year. To control pollution, the Government of India established the Taj Trapezium Zone, a 10,400-square-kilometer area around the mausoleum, where strict emission standards were imposed.

In 1984, Mr. M. C. Mehta instituted PIL, highlighting the threats to the beauty of the Taj Mahal. He argued that the sulphur dioxide emitted by the nearby Mathura Oil Refinery and other industries in the region caused acid rain, which corroded the mausoleum’s white marble and turned it yellow. The Supreme Court appointed an expert committee to report on the status of air pollution around the Taj Mahal. The committee noted that as many as 510 industries were causing the air pollution around the tomb. These industries were thus barred from using coke and coal as industrial fuel. The Supreme Court also required 292 industries to use natural gas and those industries that lacked the capacity to comply to relocate their operations. In 1996, the Supreme Court created another expert committee to develop a green belt around the Taj Mahal. The Agra Mission Management Board, set up in 1997, and the Taj Trapezium Zone Pollution (Prevention and Control) Authority, established in 1999, monitored the implementation of schemes designed to protect the Taj Mahal. In 1998, the Supreme Court ordered further antipollution measures, closed down more factories, and completely banned vehicular traffic within the immediate vicinity of the mausoleum. In 2000, the court ordered four ambient air quality monitoring stations to be set up in the Agra region to run continuously all day, every day.

Another cause for concern over the Taj Mahal’s structural integrity was the receding water levels in the Yamuna River. In 2010, cracks were noticed on some parts of the tomb and the four minarets surrounding the monument began showing signs of tilting. In 2011, the government embarked on major restoration work of the mausoleum and monitored air pollution. In addition, the Supreme Court monitored the industries in the region, managed the traffic, removed the encroachments, managed the use of the Agra Heritage Fund, opened the Taj Mahal to visitors at night time, oversaw the supply of natural gas to industries located in Ferozabad, controlled the brick kilns in the area, advanced the use of nonconventional energy sources, and heightened the security in the mausoleum.

Justice Kohli mentioned the letter which Justice Kurian Joseph of the Supreme Court of India wrote to then Chief Justice H. L. Dattu in October 2015. The letter highlighted the danger posed by the smoke emitted by the wooden funeral pyres burning merely 500 yards away from the tomb. She expects that the court would soon issue directions on what to do with the 200-year-old crematorium.

## Discussion

Justice de Leon asked Judge Wright where the people who cleaned the 47 kilos of toxic materials in the forest disposed of the waste. Judge Wright said that as far as she knows, the waste must have been transferred to an approved hazardous waste disposal site and the fill that was used to replant trees was clean topsoil.

Justice del Castillo informed the participants that the Supreme Court of the Philippines first learned of the concept of a writ of continuing mandamus from the Indian judiciary. In the same way that the Indian judiciary used the writ to clean up the Ganges River, the Philippine judiciary used the writ to clean up Manila Bay.

Chief Justice Zakaria asked the Philippines delegation about remedies the Philippine judiciary can take in case the ordered government agency refuses to comply with a writ of continuing mandamus. Justice de Leon replied that a Philippine court can, by itself, cite the agency in contempt; nobody needs to file a motion to cite the agency in contempt. The Supreme Court itself can order the agencies to show cause why they should not be cited in contempt for violating the court's orders and issue the appropriate fine or penalty.

Justice Khotcharit thanked the speakers for their presentations and the participants for their attention. Justice Majid thanked Justice Khotcharit for facilitating the session. Likewise, Chief Justice Dith thanked Justice Majid for cochairing the session and Justice Khotcharit for facilitating it. He closed the session and the first day of the roundtable. Mr. Ben Visnow, secretary general of the Supreme Court Administration of Cambodia, extended Chief Justice Dith's invitation to the participants to have an early dinner and to watch a historical cultural show at the Smile Angkor Grand Theater.



▲ Justice Mariano C. del Castillo, associate justice of the Supreme Court of the Philippines, and Monika Kamilie B. Limpo, Third Secretary and Vice-Consul of the Embassy of the Philippines in Cambodia

# HIGHLIGHTS

## DAY 2: 5 DECEMBER 2015



▲ ADB General Counsel Christopher Stephens and Deputy Chief Justice Mohammad Saleh of the Supreme Court of Indonesia

### ■ SESSION 6 Overview of Domestic and Transboundary Environmental Issues

Chief Justice Dith Muntty, president of the Supreme Court of Cambodia, welcomed the participants to the second day of the roundtable. He then invited Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge of the High Court of Brunei Darussalam, to serve as honorary chair. Justice Majid then introduced Mr. John Pendergrass, acting vice-president of Research and Policy, Environmental Law Institute, as session facilitator. Mr. Pendergrass then requested the first speaker to begin with his presentation.



## ■ Presentations

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### *Cambodia*

Deputy Chief Judge Chiv Keng, vice-president of the Supreme Court of Cambodia, addressed the participants before sharing the experiences of the Cambodian judiciary in addressing domestic and transboundary environmental issues. At the domestic level, Cambodia is confronting the adverse effects of climate change, illegal timber trafficking and transportation, biodiversity loss, wildlife trafficking, illegal fishing, air pollution, and illegal mining. At the international level, Cambodia is saddled with illegal timber trafficking and transportation, wildlife trafficking, marine and fresh water contamination, and illegal mining.

To deal with these challenges, Cambodia has enacted environmental laws that govern judicial processes in environmental cases. The judiciary is awaiting the enactment of two more laws—a new Environmental Code and the Law on Environmental Impact Assessment—to enhance the effectiveness of government response to domestic and transnational environmental issues.

The Cambodian judiciary assists in tackling environmental challenges in five ways. First, they help build judicial capacity, quality of environmental jurisprudence, and judicial ethics. Second, they help the judicial police enhance their knowledge of the challenges and procedure for preventing and suppressing environmental crimes and filing cases in court through collective meetings and dissemination workshops. Many environmental crimes require highly qualified judicial police officers and strong cooperation between the judicial police and the prosecutors to assist the courts in fulfilling their duty in deciding environmental cases.

Third, Cambodian courts play a significant role in resolving environmental disputes. Under Article 128 of the Cambodia Constitution, the judiciary can hear and decide all cases, including administrative cases. It bears emphasis that environmental civil and administrative cases are first resolved outside the court. Complainants initiate court proceedings only if they are not satisfied with the results of an extrajudicial dispute resolution. Between January 2014 and September 2015, the Cambodian judiciary received 4,397 environmental cases involving illegal logging, illegal timber trafficking and transportation, wildlife trafficking, and illegal fishing. Of these cases, the courts had already decided 1,646, leaving 2,751 cases pending.

On 13 February 2013, the Supreme Court of Cambodia decided important environmental cases involving offenses committed in an environmental preservation zone in Rattanakiri Province of Cambodia in 2003 to 2004. The Supreme Court affirmed the lower court's decision convicting 15 accused, including the provincial governor, provincial police commissioner, provincial military commander, environment rangers, and their respective subordinates. The Supreme Court also maintained the lower court's judgment ordering the accused to suffer imprisonment and pay compensation in the amount of \$15 million based on the computations made by 10 experts assigned by the investigating judge. This amount, however, was not enough to cover all damages and restoration costs due to the limited capacity of the experts. Aside from this controversial case, the Cambodian judiciary also handled several cases involving illegal ivory brought in from Angola through the Siem Reap International Airport, Phnom Penh International Airport, and Preah Sihanouk Port.



Fourth, the Cambodian judiciary also helps prevent, suppress, and punish transboundary environmental crimes, such as illegal logging and timber trafficking in the borders, through mutual assistance. Specifically, the Supreme Court of Cambodia endorsed the joint statements on cooperation in fighting criminal offenses and exchanging trial experiences arising out of the court conferences between the border provinces of Cambodia, the Lao PDR, and Viet Nam. Three court conferences have been held so far—in Nha Trang, Viet Nam (2010), in Siem Reap, Cambodia (2012), and in Vientiane, Lao PDR (2014). Cambodia also signed extradition treaties with the Lao PDR, Thailand, and Viet Nam.

Lastly, the Cambodian judiciary has worked with the anticorruption unit in investigating, prosecuting, and sentencing corrupt judicial police officers that abet environmental offenses.

Deputy Chief Judge Keng concluded by urging the chief justices of ASEAN judiciaries to continue advancing regional cooperation in addressing their common environmental challenges by sharing their knowledge and experiences in environmental adjudication, providing technical assistance, and training judges and prosecutors in environmental law and suppression of transnational environmental crimes.

## Myanmar

Justice Aung Zaw Thein, justice of the Supreme Court of the Union of Myanmar, first described Myanmar as almost half-covered with forest. But rapid globalization, population increase, and economic development, coupled with deforestation, air and water pollution, soil erosion, river contamination, flooding, and landslides threaten the country's natural environment.

To address environmental degradation and better preserve the environment, the Government of Myanmar has been participating in numerous international environmental conventions including the LOSC, UNFCCC, CBD, and enacted laws and issued rules on environmental conservation. Furthermore, in 2011, the Ministry of Forestry was reorganized as the Ministry of Environmental Conservation and Forestry.

In 1994, the Government of Myanmar announced its National Environmental Policy, which aims to establish sound environmental policies in the use of water, forest, mineral, marine, and other natural resources to conserve the environment and prevent its degradation; and to achieve harmony and balance between socioeconomic factors, natural resources, and the environment by integrating environmental considerations into the development process and thereby enhance the quality of life of all citizens.

Justice Thein then discussed the main role of the Myanmar judiciary in environmental protection, which is to enforce existing environmental laws. Differences concerning the environment are resolved either through administrative action or through judicial action. The Ministry of Environmental Conservation and Forestry and relevant government agencies decide administrative cases, while regular courts hear mostly criminal cases. At present, there are no special environmental courts in Myanmar.

Most environmental offenses in Myanmar relate to illegal logging and wildlife crimes provided for under the Forest Law, 1992 and the Protection of Wildlife and Conservation of Protected Areas Law, 1994, respectively. The maximum penalty for these crimes is 7 years' imprisonment. Large-scale illegal timber trading is prosecuted under the Law of Protection of the Property Relating to the Public, 1963 in order to impose the stricter punishment of more than 10 years' imprisonment or life imprisonment.

The Myanmar judiciary and relevant government agencies face difficulty in suppressing environmental crimes, especially given excessive cutting of wood, the demand for wildlife and their products in border areas, and the enforcement system's limited financial and staff resources. Justice Thein suggested the need for specialized rules and procedures for environmental cases, and stronger environmental law enforcement to guarantee effective environmental law enforcement.

In conclusion, Justice Thein highlighted that it is not only the state that bears the burden of conserving the environment; all human beings must conserve the environment. The judiciary, for its part, must enforce laws and strengthen the capacity of judicial personnel. The Supreme Court of the Union of Myanmar supervises the lower courts in conducting trials and imposing penalties on environmental cases filed before them. Moreover, cooperation between the Government of Myanmar and national and international organizations is crucial to the success of environmental conservation in Myanmar. This need for cooperation extends to neighboring countries as some environmental criminals operate outside Myanmar's national borders.

## Indonesia

Justice Takdir Rahmadi, justice of the Civil Chamber of the Supreme Court of Indonesia, stated that Indonesia faces many environmental challenges including deforestation; illegal mining and mining without land rehabilitation; land, air, and water pollution; wildlife crimes; and illegal import and dumping of hazardous wastes. Deforestation is mostly due to legal and illegal logging and slash-and-burn, which in turn causes transboundary haze pollution and threatens wildlife.

Indonesia has a number of environmental statutes, such as the Environmental Management Act of 1982, as amended in 1997 and 2009; the Conservation Act (Act No. 5 of 1990); the Forestry Act (Act No. 41 of 1999); the Act Concerning Prevention and Combating Forest Degradation (Act No. 18 of 2013); and the Act Concerning Garbage Management (Act No. 18 of 2008). The government has also issued several national and provincial regulations. Indonesia also prescribes standards on spatial planning, EIA, and environmental quality; issues environmental and business licenses; conducts environmental audits and administrative surveillance; and imposes criminal, civil, and administrative sanctions.

In Justice Rahmadi's opinion, law enforcement in Indonesia is weak due to several factors. First, the country's economy relies heavily on natural resources extraction. These industries comprise coal mining, mainly in Kalimantan and Sumatra; gold mining in Papua; silver mining in Bangka Belitung; and logging. Second, the local governments lack environmental vision or environmental good governance. Following the decentralization of governance in Indonesia, the provincial, municipal, and district governments are empowered to grant licenses for industrial activities such as mining and logging, but they fail in effectively regulating and surveying these activities. Third, some local communities, particularly those living near forests, view environmental crimes as *mala prohibita*, or wrong because they are prohibited by law, rather than *mala in se*, or wrong because they are inherently wrong or evil. This is because these people find it unfair that the current environmental policies allow corporations to engage in mining and logging, but forbid those living adjacent to forest areas or natural resource deposits to make a living out of these resources. Nonetheless, the Supreme Court of Indonesia constantly reminds judges, during their judicial training seminars, that they must hand out harsh punishment upon convicting violators.

Justice Rahmadi concluded that it would be better to strengthen the administrative law enforcement process, which falls in the hands of local governments, rather than rely on the judicial process when environmental damage has already been done.

Mr. John Pendergrass emphasized the capacity issues, especially of local governments in enforcing environmental laws, as mentioned by Justice Rahmadi, and the difference in the laws affecting local citizens and those impacting corporations. He then introduced the next speaker, Prof. Ben Boer.

### *International*

Prof. Ben Boer, deputy chair of the International Union for Conservation of Nature (IUCN) World Commission on Environmental Law, distinguished professor at the Research Institute of Environmental Law of Wuhan University, and emeritus professor at University of Sydney, focused on the transboundary environmental issues in the Mekong region.

First, Prof. Boer distinguished between the hard and soft law at both the regional level and national level. Since 1981, environmental ministers or presidents of ASEAN countries have signed over 20 declarations and accords relating to the environment. But these documents are considered soft law; they are not enforceable in the region partly because of the doctrines of sovereignty and noninterference between countries. Notwithstanding, these declarations and accords have influenced the crafting of national laws and policies.

Only a few hard laws govern the ASEAN region. These include the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources, the 1995 Southeast Asian Nuclear-Weapon-Free Zone Treaty, and the 2002 ASEAN Agreement on Transboundary Haze Pollution. Prof. Boer commented that only three out of the six original signatories to the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources have ratified this agreement. As such, it is not in force. Prof. Boer again recommended revisiting this agreement. He also stressed what Justice Benjamin stated during the first day of the Fifth Roundtable—that the environment knows no political boundaries—but also reminded participants of the ASEAN way, whereby countries are hesitant to put themselves or their neighbors in a difficult position with respect to issues of sovereignty.

Four countries in the Mekong region—Cambodia, the Lao PDR, Thailand, and Viet Nam—have signed the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (the 1995 Mekong Agreement). The agreement is in theory a legally enforceable instrument. But in practice, it is not enforced in any particular way because the rules relating to reasonable and equitable use of the region's resources serve only as guidelines.

Prof. Boer then went on to refer to a number of examples in the Mekong region to demonstrate transboundary environmental issues. Along the Mekong River, a “cascade of dams,” including 11 in the PRC section of the Mekong River (or on the upstream), raise questions regarding the standardization of EIA guidelines, the displacement of millions of people, and therefore the issue of their human rights, access to information, participation in decision making, and access to justice.

The Xayaburi dam, for instance, illustrates the contentious issues concerning hydropower development in the region as a result of the projected increase in electricity demand in the region, especially in Thailand. The Xayaburi dam is under construction in the Lower Mekong River, east of Xayaburi in the Lao PDR. About 95% of the electricity generation would be exported to Thailand. The other countries protested against the dam construction.

Prof. Boer noted that dams on the tributaries pose less conflict among the Mekong River countries than those on the main stream. But these tributary dams still have adverse consequences especially to the Tonlé Sap lake and river in Cambodia. The Mekong River is the most unique river in the world because it flows both north and south, depending on whether it is the dry season or the wet season. Less water in the river means less fish and water for rice irrigation for the people living around the river. Climate change can also impact not just the hydrography of the river, but also the sea level and saltwater intrusion in Viet Nam and the Mekong Delta. Governments in the region should therefore study carefully involuntary displacement, food security, and other human rights issues.

Prof. Boer referred to his book titled *The Mekong: A Socio-legal Approach to River Basin Development*,<sup>16</sup> which examines the rule of law, including the various soft law and hard law instruments, governing developments in the Mekong River, and human rights issues including food security, fish production, loss of cultural heritage due to flooding of cultural heritage sites, loss of traditional livelihood, and the involuntary displacement of millions of Mekong River inhabitants.

A myriad of competing interests affect the region. The PRC, which controls the upstream, is not a signatory to the 1995 Mekong Agreement. Thailand wants more water and electricity. The Lao PDR wants more capital and expertise to develop hydropower for export to Thailand and Viet Nam. Cambodia wants more capital and infrastructure, as well as fish security and more water in Tonlé Sap. Viet Nam does not want any more developments on the river, especially upstream, to exacerbate saltwater intrusion in the Mekong Delta during the dry season. But at the same time, Viet Nam plans to build a dam in its section of the river, on the main stream. He suggested that these issues have already started confronting the courts in the Mekong region. The first of these cases dealing with dams, *Niwat v. Electricity Generating Authority of Thailand*, involves a challenge to the Xayaburi dam power purchase agreement.

On the right to a safe, clean, and sustainable environment, the 2012 ASEAN Human Rights Declaration is relevant and has strong moral force. But it is not yet legally binding. Prof. Boer then asked the audience to ponder the following questions: Can a lawsuit be brought on the basis of Article 28(f) concerning the right to a safe, clean and sustainable environment? How will judges respond to human rights issues involving environmental rights, such as the Mekong River dams? Can the mechanisms under this ASEAN declaration be used in the same way that the European Court of Human Rights has adjudicated cases concerning the European Convention on Human Rights?

To end, Prof. Boer shared his opinion that from what has happened in the Mekong region, human rights issues are unlikely to be adequately addressed at the national level in the short term. He also commented that EIA procedures is something that needs to be taken more into account and a broader

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<sup>16</sup> Ben Boer, et al. 2016. *The Mekong: A Socio-legal Approach to River Basin Development*. Oxford: Routledge.

approach adopted across the region. Similarly, Prof. Boer suggested that the Mekong River Commission's *Framework for Transboundary Environmental Impact Assessment* guidelines take into account the broader issues of human rights impacts in order to adequately address transboundary challenges in the Mekong.

### United States

Mr. Pendergrass, acting vice-president of Research and Policy, Environmental Law Institute, identified deforestation and haze pollution, illegal wildlife trade, water security and riparian cooperation, overfishing and destructive fishing practices, and coral reef degradation as huge environmental challenges in Southeast Asia. These problems ravage the region's rich ecosystems upon which millions of its inhabitants depend for their livelihood.

First, he noted that the deforestation rate in ASEAN countries is much higher than in the rest of world. Slash-and-burn practices have contributed largely to this deforestation and to the significant air pollution in many countries in the region, especially Brunei, Indonesia, Malaysia, Singapore, Thailand, and the Philippines. Second, he observed that illegal wildlife trade has proliferated in the region. Many ASEAN countries serve as vendors, consumers, and transit points. Third, water security and riparian cooperation, especially in the Mekong region, are also major problems as Prof. Boer earlier discussed in detail. Fourth, overfishing and destructive fishing practices affect all countries especially because of fishing migration patterns. Six of the top 20 fishing nations are in Southeast Asia. From highest to lowest, these countries are Indonesia (3rd), Myanmar (8th), the Philippines (11th), Viet Nam (12th), Thailand (13th), and Malaysia (17th). Finally, he stressed the importance of coral reefs in the region, particularly in Indonesia and the Philippines, and the threats to their existence, namely coastal development, sedimentation, overfishing and the use of destructive fishing methods, and pollution caused by ships as well as land-based sources.

Lastly, Mr. Pendergrass also discussed climate change as a global problem that aggravates the region's common environmental challenges. It increases unpredictable precipitation patterns, making haze harder to manage and exacerbating water insecurity. Species that are highly vulnerable to climate change become even more valuable, and therefore even more targeted by illegal wildlife traders. Climate change also raises sea temperatures and sea levels, causing ocean acidification and, in turn, endangering fisheries and coral reefs.

### Discussion

One of the participants asked Prof. Boer if there were legal instruments governing transboundary rivers similar to LOSC, and his suggestion for bringing environmental violators to court. Prof. Boer responded that the 1995 Mekong Agreement itself is a regional convention, which in theory is enforceable but in practice is not completely enforced. Another such instrument is the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (the Watercourses Convention), which entered into force on 17 August 2014. Viet Nam, however, is the only ASEAN country to have signed it.

Prof. Boer described the Watercourses Convention as a stronger instrument than the 1995 Mekong Agreement and surmised that more countries in the Mekong region would be signing the Watercourses Convention—although he was not sure when exactly that would happen. Prof. Boer stressed that in



sharing transboundary rivers, it is essential that the riparian states agree on the reasonable and equitable use of the river, and the consequences of such use on their economy and the human rights of their people. Although most ASEAN declarations and instruments are merely soft law, litigants can apply the principles enshrined in these instruments to argue in connection with any national or regional policy.

Another participant questioned Prof. Boer regarding the dispute settlement mechanism under the 1995 Mekong Agreement. Prof. Boer explained that the Mekong River Commission should ideally perform consultative, scientific, and dispute resolution functions. But in reality, the commission is not empowered to hear complaints nor do anything more than make recommendations. The signatories to the 1995 Mekong Agreement can revisit and strengthen it, but such a move is again a political question. Based on his examination of how the agreement was implemented over the last decade, he opined that it is unlikely that the four countries will agree to strengthen the agreement.

Despite these obstacles, NGOs can still file lawsuits in domestic courts to challenge, for example, a hydropower purchase agreement as demonstrated in *Niwat v. Electricity Generating Authority of Thailand*. If ASEAN governments reinforce the 2012 ASEAN Human Rights Declaration and give the ASEAN Intergovernmental Commission on Human Rights enforcement powers, then the region can have a dispute resolution mechanism based on human rights aspects. However, currently there is no such dispute resolution mechanism in place.

Ms. Hirose asked the Philippines delegation how they would decide a case invoking Article 28(f) of the 2012 ASEAN Human Rights Declaration and the Thailand delegation to elaborate on the court's ruling in *Niwat v. Electricity Generating Authority of Thailand*. Justice Khotcharit said that to her understanding, the case was filed in the administrative court, and not the Supreme Court of Thailand. As such, she could not discuss the case.

Mr. Phann Vanrath, chief prosecutor of the First Instance Court of Banteay Meanchey Province, shared that Cambodia prosecutors now use certain ASEAN treaties to institute legal proceedings against perpetrators of transnational environmental crimes. Each country's central authority helps to prosecute these offenders by facilitating intercountry investigation and prosecution. He identified budget constraint as a bigger obstacle than the absence of any enforceable legal instrument, especially in responding to requests for joint investigation or for collecting evidence from another country.

Finally, Justice de Leon asked Prof. Boer why the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources has not yet entered into force. Prof. Boer answered that there is no specific reason behind the nonenforcement of this ASEAN agreement and cited Barbara J. Lausche, who wrote in her book titled *Weaving a Web of Environmental Law*<sup>17</sup> that resorting to hard laws is simply not the ASEAN way. Having an enforceable agreement and enforcing that instrument are two separate issues, especially when no regional court nor regional dispute resolution mechanism exists to rule on its enforcement. But if and when the other ASEAN countries sign this agreement—or a stronger version of it—they should look into whether they should adopt the provisions of that agreement in harmonizing the approaches to nature conservation and fighting against transboundary pollution.

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<sup>17</sup> Barbara J. Lausche. 2008. *Weaving a Web of Environmental Law*. Berlin: Schmidt Erich Verlag.



▲ Justice Chalis Sawasditat of the Environmental Division of the Supreme Court of Thailand serving as Session 7 honorary chair, Chief Justice Dith Munty of the Supreme Court of Cambodia as chair, Justice Magdangal M. de Leon of the Court of Appeals of the Philippines as facilitator, and Judge Merideth Wright of the Environmental Law Institute and formerly of the Vermont Environmental Court as speaker

## ■ SESSION 7 Public Interest Litigation in Environmental Cases

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, invited Justice Chalis Sawasditat of the Supreme Court of Thailand to cochair the session with him. Justice Sawasditat gave the floor to Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines, to facilitate.

### ■ Presentations

#### *Malaysia*

Judge YA Tan Sri Ahmad Bin Haji Maarop, judge of the Federal Court of Malaysia, recalled the video presentation of Justice Hima Kohli, judge of the High Court of Delhi, India, regarding the orders issued by the Indian judiciary in public interest cases, and discussed the history of PIL and its use in Malaysian courts.

Justice Maarop highlighted the case of *Fertilizer Corporation Kamgar Union (Regd.), Sindri v. Union of India*, 1981 AIR 344, a PIL case heard by the Supreme Court of India. In their concurring opinion, former Chief Justice Prafullachandra Natwarlal Bhagwati and Justice V.R. Krishna Iyer wrote:

Law as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi.<sup>18</sup>

In 1982, the concept of PIL gained a firmer acceptance in *People's Union for Democratic Rights and Others v. Union of India and Others*, 1982 AIR 1473. People's Union for Democratic Rights, an NGO formed for protecting democratic rights in India, filed the case by means of a letter addressed to Justice Bhagwati of the Supreme Court complaining of violations of various labor laws by the respondents in relation to construction works for the Asian Games. In treating the letter as instituting a PIL, rather than an ordinary traditional litigation, the Supreme Court held:

We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government.<sup>19</sup>

This kind of lawsuit is based on Article 32 of the India Constitution. Said provision confers upon every citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of his or her constitutional rights and empowers the Supreme Court to issue directions, orders, or writs to enforce said rights.

The Supreme Court acknowledges the availability of this remedy in relation to the environment. In *M. C. Mehta and Anr. v. Union of India and Others*, 1987 AIR 1086, the Supreme Court regarded a letter requesting compensation and closure of a factory leaking oleum gas as a petition for the enforcement of

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<sup>18</sup> *Fertilizer Corporation Kamgar Union (Regd.), Sindri v. Union of India*, 1981 AIR 344.

<sup>19</sup> *People's Union for Democratic Rights and Others v. Union of India and Others*, 1982 AIR 1473.

the fundamental right to life enshrined in Article 21 of the Constitution. The court further observed that it cannot adopt a hyper-technical approach, which would defeat the ends of justice, and stated:

...where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court... It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.<sup>20</sup>

Justice Maarop identified that one of the writs that the Supreme Court can issue under Article 32 of the Constitution is a writ of continuing mandamus to compel government agencies to perform their ministerial duties. Such duties include the responsibility of the Central Bureau of Investigation and other relevant government agencies to investigate corruption and other offenses, take them to their logical conclusion, and prosecute offenders, as discussed in *Vineet Narain and Others v. Union of India and Another*, AIR 1998 SC 889. In this case, considering the alleged involvement of high-ranking politicians and bureaucrats in the funding of the terrorists, the Supreme Court found the bureau and government agencies reluctant to commence a proper investigation. Hence, it issued directions from time to time, kept the case pending, and required the agencies to report on the progress of their investigation so that the court could guarantee the continuance of the investigation.

He stated that Malaysian jurisprudence on PIL, in general, and its application in environmental cases, in particular, has not developed at the speed and to the extent as the India jurisprudence. Malaysian courts have not yet seen class actions, complaints for gross violation of fundamental rights of a group, or “complaints of such acts as shock the judicial conscience that the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.”<sup>21</sup>

Likewise, no such complaint about the pollution of a river so grave and serious that any further pollution would likely lead to a catastrophe and the government’s failure to exercise its powers to address the problem, as in the case of the Ganges River pollution in *M. C. Mehta v. Union of India and Others*, 1988 AIR 1115, has confronted the Malaysian judiciary.

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<sup>20</sup> *M. C. Mehta and Anr. v. Union of India and Others*, 1987 AIR 1086.

<sup>21</sup> *Malik Brothers v. Narendra Dadhich and Others*, AIR 1999 SC 3211.



Lastly, Justice Maarop shared that Malaysian courts have Order 53 of the Rules of the High Court governing applications for judicial review. This remedy was tested in *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor* [2014] 2 CLJ 525, which ruled on the issue of which locus standi test governs applications for judicial review under Order 53. The Federal Court ruled that any person adversely affected by the decision of any public authority, and thus passing the “adversely affected” test, can make the application. What matters is that the applicant must at least have a real and genuine interest in the subject matter; he or she does not need to establish the infringement of a private right or the suffering of special damage. But for Justice Maarop, the extent to which litigants may apply this “adversely affected” test remains to be seen.

Justice de Leon commented that the locus standi test applicable in Order 53 applications in Malaysia is similar to the locus standi test for environmental cases under the Philippine Rules of Procedure for Environmental Cases; both judiciaries do not require the petitioner to have suffered actual damages in order to have standing to file an environmental case.

## Indonesia

Justice Takdir Rahmadi, justice of the Civil Chamber of the Supreme Court of Indonesia, talked about the three types of PIL in Indonesia: NGO legal actions, class actions, and citizen lawsuits. NGO legal actions and citizen lawsuits were first developed by judicial practices. Over time, a number of environmental statutes, such as the Environmental Management Act of 1982 and its amendments, explicitly recognized NGO legal action, while the Supreme Court of Indonesia issued rules on the handling of citizen lawsuits relating to the environment.

Class actions, on the other hand, were first allowed under the Environmental Management Act of 1997 and subsequently elaborated on under the Supreme Court Rules of 2001. Article 37 of the 1997 statute recognizes the right of the local community members who have been adversely affected by environmental problems and of environmental organizations to bring legal action. This kind of lawsuit is based on environmental law developments in Australia and in the US. The Supreme Court rules provide guidance on who exactly can bring such cases in court; require public notification, that is, the class representative must place a notice in the newspaper or on the radio informing the public typically included as plaintiff; and establish an opt-out mechanism, where individuals included in the definition of the plaintiff must apply to “opt out” of the litigation or send a letter to the registrar of the relevant court stating that they are not participating in the case, otherwise they are barred from filing a separate action if the class action is lost.

The aforementioned three categories of PIL differ in terms of allowed causes of action. An NGO legal action entails an application to the court to issue an order to stop or cease the performance of activities that damage the environment and to require the defendant to carry out environmental rehabilitation, remediation, or cleanup. A class action seeks both compensation and an order requiring the defendant to conduct environmental rehabilitation or adopt remedial measures. A citizen lawsuit aims to secure a court order awarding compensation and requiring the defendant to stop performing environmentally damaging activities and conduct environmental remediation or adopt remedial measures.



Justice Rahmadi then spoke of the developments in the Indonesian judiciary's recognition of environmental NGOs' legal standing. At first, environmental NGOs could file PIL, as seen in the 1988 Supreme Court decision in a case filed by the Indonesian Forum for the Environment, an environmental NGO, against the then Ministry of Forestry, the Ministry of Industry, and PT Indi Indorayon Utama (IIU) Corporation, a paper milling company founded in Sumatra, Indonesia. In this case, the NGO argued that IIU cleared the nearby forest and polluted the river, while both ministries did not do anything to prevent the environmental degradation from happening. The defendants contended that the NGO had no standing to sue because it had no property interest in the case and moved for dismissal. The NGO reasoned that as an environmental NGO, it was concerned with the environmental problems caused by the defendants and had an interest in protecting the environment. The presiding judges of the court of first instance recognized the legal standing of the NGO based on the Environmental Management Act of 1982 on the public's right to participate in environmental management. The judges interpreted this right to include the right to bring a case in court. Notwithstanding, the NGO lost the case on merit grounds as it failed to prove the causal link between IIU's activities and the damage to the environment.

Then, in 2012, the Aceh chapter of the Indonesian Forum for the Environment filed a case against the governor of Aceh, seeking the revocation of PT Kallista Alam's license to develop palm oil plantations in a protected peat swamp forest. The NGO asserted that no exploitation of natural resources should be allowed in a swamp because the area is ecologically vulnerable. The administrative court of first instance dismissed the case. The plaintiff appealed to the administrative court of appeal, which reversed the lower court's decision and ruled that the license was void. The governor complied with the appellate court's order by canceling the license.

Justice Rahmadi surmised that only a few class actions have been won. One of these cases is *Mandalawangi Landslide Case No. 49/PDT.G./2003/PN*, 4 September 2003, filed by the local community against the state forestry companies, whom they alleged to be engaged in illegal logging that led to the death of 21 people and injuries and loss of livelihood to many others. The Indonesian judiciary allowed the filing of the class action in this case.<sup>22</sup>

On citizen lawsuits, Justice Rahmadi explained that these cases started with an action filed by the people of Jakarta who were refused by the General Elections Commission to vote as they had no personal identification card. The presiding judges, bound by their duty to adjudicate a case despite the absence of a law governing the action, recognized the right of the plaintiffs to file the citizen lawsuit.

Then, in 2013, Komari, a 70-year-old farmer, and his 18 fellow inhabitants of Samarinda brought citizen lawsuits against the Ministry of Energy and Mineral Resources, the then Ministry of Environment, the provincial government of West Kalimantan, and the city of Samarinda. The plaintiffs argued that the Government of West Kalimantan Province and state ministries concerned failed to perform their responsibilities in ensuring sustainable development within the affected area; the defendants simply issued coal mining licenses without proper surveillance, which allowed mining activities to contaminate their water sources. The court of first instance ruled in favor of the plaintiffs and ordered the defendant ministries to evaluate all issued mining licenses, supervise the mining companies strictly, and reclaim the area.

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<sup>22</sup> The Supreme Court awarded compensation to the plaintiffs and ordered the defendants to reclaim the areas affected by the landslide through forest and land rehabilitation programs.

He ended by commenting on Chief Justice Zakaria's question to the Philippines delegation about what happens if the government authorities refuse to comply with the court's decision. Apparently, this is a problem also in Indonesia. Several Parliament members had proposed bills providing the remedy of contempt of court. Chief Justice Ali already ordered the Indonesian judiciary to give their inputs to Parliament.

### United States

Judge Merideth Wright, distinguished judicial scholar of the Environmental Law Institute and former judge of the Vermont Environmental Court, first commented that in the US there are different types of proceedings that citizens or citizen groups seeking access to justice might institute. But not all of these types of proceedings are considered to be PIL. For example, criminal proceedings instituted by the state, by a government agency, or by a prosecutor that do not involve the standing of citizens to file the case are not considered PIL, although the victims may be called to testify. Moreover, proceedings involving personal injury or injury to personal property are not necessarily considered PIL. A "class action" in the US denotes a kind of proceeding filed by a representative of a large group of people who have been similarly injured that is different from a PIL or citizen action in the US.

She focused her discussion on the remaining categories of legal standing, namely standing to challenge administrative decisions on regulatory or development permits and standing to challenge administrative or civil enforcement actions. The first kind of standing may be broadly or narrowly defined by a constitutional or statutory provision. In general, in the US, the plaintiff, or in the case of an NGO, at least one member, must be within the scope of protection of the relevant statute. To illustrate, Judge Wright said that an organization seeking to challenge the grant of a permit to discharge wastewater into a river must have at least one member that is potentially affected by the decision in some way. It is enough for such member to be fishing, boating, or enjoying the river in some way; his or her livelihood or health need not be affected. In addition, Vermont and some states have laws recognizing that citizens or groups have a legitimate interest in ensuring the proper interpretation of statutes or regulations by the local authorities.

The second type of legal standing, on the other hand, involves the "citizen suit provision." This provision allows individuals and organizations to file a case against the government authority concerned to enforce governmental regulations provided that they first file a notice of their intent to bring such a case 60 days in advance of filing it. This preliminary step allows prosecutors to file the case on behalf of the government, and at the same time, enables citizens to file cases that either the government declined to bring or the prosecutors were not interested in instituting. At the same time, the provision authorizes citizens to sue the polluter.

Judge Wright then discussed new developments in the PRC. On 1 January 2015, the new Environmental Protection Law took effect. Significantly, the law changed the provisions on environmental public interest litigation in the PRC. Even before the amendment, NGOs had already been filing environmental tort claims to help individuals recover damages for their own injuries or property damage. The new Article 58 recognizes the standing of organizations that are registered at the municipal government level and which have already engaged in environmental activities for at least 5 years, to bring cases involving pollution, ecological damage, and public interest harm. The requirement that the

organization be registered and engaged in environmental activities for 5 years before filing the action is to make sure that the organizations are not being created for the mere purpose of filing the case and eliminates the need to determine whether the organization is authorized to file environmental public interest cases. She expressed interest in seeing whether the courts in the PRC will accept more PIL given the specific statutory authority for their institution.

### Philippines

Justice Mariano C. del Castillo, associate justice of the Supreme Court of the Philippines, elaborated on four landmark Supreme Court decisions both he and Justice de Leon already discussed earlier, but this time in the context of public interest litigation in environmental cases. He stressed the critical role of PIL in the conservation, development, and use of the Philippines' natural resources. The Philippine judicial process accommodates more common citizens. This openness, in turn, strengthens the people's advocacy and empowers minorities or disadvantaged individuals or groups to draw the courts' attention to issues of broad public concern and thereby achieve positive social change.

*Oposa v. Factoran*, G.R. No. 10108, 30 July 1993, is the Philippines' first environmental PIL. This was a class suit instituted by minors duly represented and joined by their respective parents seeking the cancellation of numerous timber licenses granted by DENR. The licenses authorize several companies to cut an aggregate area of 3.8 million hectares for commercial logging purposes. The petitioners asserted that the continued allowance of the licensees will result in clearing the remaining forest and cause tremendous environmental degradation. The respondents moved to dismiss the case on the ground of lack of cause of action. The Supreme Court rejected the respondents' argument, finding that the petitioners' complaint sufficiently showed a cause of action for violation of the right to a balanced and healthful ecology. Moreover, the Supreme Court agreed with the petitioners' stance that in filing the case, they were representing not only themselves but also generations yet unborn based on the concept of intergenerational responsibility. This concept obliges every generation to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology. Hence, the petitioners' assertion of their right to a balanced and healthful ecology also translates into their performance of their obligation to ensure the protection of that right for future generations. This doctrine is now enshrined in the citizen suits provision of the Rules of Procedure for Environmental Cases.

*Resident Marine Mammals of the Protected Seascape Tañon Strait, et al. v. Secretary Angelo Reyes, et al.*, G.R. No. 180771/181527, 21 April 2015, applied this citizen suits provision with respect to protecting marine mammals inhabiting the Tañon Strait. The Supreme Court held that said provision in the Rules of Procedure for Environmental Cases, which already allows a Filipino citizen to bring a suit to enforce environmental laws, eliminated the need to give the marine mammals legal standing to bring the case. This is because Filipinos, acting as the stewards of the marine mammals, joined the case as real parties in interest and not just in representation of the resident marine mammals. Since the stewards successfully established the possible violation of laws concerning the habitat of said animals, the Supreme Court recognized the legal standing of these stewards. On the substantive legal issue, the Supreme Court declared the disputed service contract null and void for being in violation of the Constitution and relevant laws.

Justice del Castillo highlighted the Philippine courts' liberal approach to legal standing as just one aspect of the country's judicial framework that encourages environmental PIL. The Rules of Procedure for Environmental Cases also introduced innovations and best practices, such as standards for the application of the precautionary principle, the writ of *kalikasan*, and the defense of strategic lawsuit against public participation (SLAPP), aimed at ensuring the effective enforcement of remedies and redress for violation of environmental laws.

In *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, G.R. No. 194239, 22 November 2011, the West Tower Condominium residents invoked the precautionary principle and argued that the possibility of a leak in the pipeline system leading to catastrophic environmental damage is enough to order the closure of the pipeline's operation. The court said that the precautionary principle was not an issue as it "only applies when the link between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty." But in this case, the pipeline owner did not dispute the link between the petroleum leak and the harm that it caused to the environment and the residents of the affected areas. The controversies centered on the pipeline's compliance with the pipeline structural standards so as to make it fit for purpose. The Supreme Court issued a writ of *kalikasan* ordering the pipeline owner to cease and desist from operating the pipeline until further orders; check the structural integrity of the whole span of 117-kilometer pipeline, while implementing sufficient measures to prevent and avert any untoward incident that may result from any leak of the pipeline; and submit reports thereon.

Lastly, *Paje v. Casiño*, G.R. No. 207257, 3 February 2015, concerned a petition for review on certiorari assailing the Court of Appeals decision and resolution. The assailed decision denied the privilege of the writ of *kalikasan* and the application for an environmental protection order, and declared the environmental compliance certificate, amendments in favor of Redondo Peninsula Energy, and the lease and development agreement all invalid. The challenged resolution denied the motion for reconsideration. The Supreme Court declined to issue a writ of *kalikasan* because the petitioners failed to prove the grave environmental damage caused by the construction and operation of the coal-fired power plant in the area. Moreover, Redondo Peninsula Energy's expert witnesses established the safety of the plant.

Lastly, Justice del Castillo said that an environmental advocate may raise SLAPP as a defense against an action whether civil, criminal, or administrative that is meant to harass, vex, exert undue pressure, or stifle any legal recourse that such advocate has taken or may take in the enforcement of environmental laws or the protection of the environment. By interposing SLAPP, the defendant advocate may, by way of counterclaim, recover damages, attorney's fees, and cost of the suit from the harasser. He remarked that, as of December 2015, the Supreme Court had not yet rendered a decision elucidating the actual potency of the SLAPP defense. But its inscription into the Rules of Procedure for Environmental Cases demonstrates the Philippine Supreme Court's steadfast commitment to advance environmental PIL.

Justice de Leon added that even before the Philippine Supreme Court issued the Rules of Procedure for Environmental Cases, it had already designated certain trial courts as environmental courts.

### India (Video Presentation)

Justice Hima Kohli, judge of the High Court of Delhi, India, by video, discussed PIL in relation to the environment in India. She shared that environmental laws in India developed largely through judicial thinking in the Supreme Court and high courts, as well as deliberations in the National Green Tribunal (NGT). In the course of fulfilling their mandate under Articles 32 and 226 of the India Constitution, both the Supreme Court and the high courts interpreted Article 21 of the Constitution on the right to life in redressing environmental grievances. The courts have evolved indigenous juristic techniques by incorporating various international doctrines relating to environment, such as the public trust doctrine, combined with a liberal view toward ensuring social justice and the protection of human rights, in interpreting the Constitution and the statutes.

Since 1985, a majority of environmental cases in India have been filed as writ petitions, usually by individuals acting on a pro bono basis. PIL evolved as a result of relaxing the locus standi rule and departing from the proof of injury approach. PIL served as an efficient approach for dealing with environmental cases because these cases dealt with the rights of the community rather than the individual.

The judiciary examined constitutional provisions to use as legal basis in addressing specific issues. The courts treated environmental disputes that were normally filed as tort cases in other common law jurisdictions as relating to violations of fundamental rights. Although Part III of the Constitution on fundamental rights does not specifically mention environmental rights, the courts have construed Article 21 as granting citizens the right to invoke the writ jurisdiction of the Supreme Court and the high courts under Articles 32 and 226 of the Constitution. These remedies provide individuals and groups belonging to all social classes direct access to the Supreme Court and high courts and eliminate expenses and delays often associated with ordinary appeals.

The orders and directions of the Supreme Court and state high courts covered various areas including air, water, vehicular and industrial pollution, solid waste, hazardous waste, deforestation, plastic degradation, wildlife conservation, and illegal mining. The Supreme Court also issued several orders to close polluting industries and environmentally harmful aquafarms, mandated cleaner fuel for vehicles, stopped illegal mining activities, protected forests, preserved architectural treasures like the Taj Mahal, and prohibited construction activities in sensitive areas.

She then narrated several landmark environmental cases involving PIL and the evolution of legal principles. First, in *Ratlam Municipal Council v. Vardhichand*, AIR 1980 SC 1622, the Ratlam municipal body failed to perform its duty of ensuring the establishment of a proper drainage system due to lack of funds. The Supreme Court held that a responsible municipal council constituted for the precise purpose of preserving public health cannot renege on performing its primary duty by pleading financial inability.

In *M. C. Mehta and Anr. v. Union of India and Others*, 1987 AIR 1086, an oleum gas leak at an industrial plant caused the death of one person and raised serious public health concerns. The Supreme Court evolved the principle of strict liability and introduced the absolute liability of the user of hazardous material.



In *Tarun Bharat Sangh, Alwar v. Union of India and Others*, AIR 1992 SC 514, Tarun Bharat Sangh, Alwar, a social action group engaged in environmental protection and wildlife preservation, filed a PIL to enforce relevant statutes and notifications in areas declared as reserved forest in Alwar District of the State of Rajasthan. The group questioned the Rajasthan government's issuance of 400 mining privileges allowing various persons to conduct large-scale mining activities inside the protected area; said mining operations destroyed the tiger habitat and drove the tigers to virtual extinction. The Supreme Court appointed a committee, headed by Justice M. L. Jain, former chief justice of the High Court of Delhi, to enforce needed statutory measures and court orders, as well as to prepare a list of mining leases and lessees within the protected area. The Supreme Court also prohibited all mining activities in the Sariska National Park and declared the area as a tiger reserve.

Justice Kohli also informed the participants of the Supreme Court's creation of a "forest bench" dealing with cases relating to environment and forests in India in 1996. This bench was rechristened as the Green Bench in 2013. To date, the Green Bench oversees matters relating to sanctuaries and national parks, as these do not fall within the jurisdiction of the recently established NGT.

The Indian judiciary must also strike a careful balance between environmental concerns and developments that generate employment and add to the national wealth. Keeping this duty in mind, the Supreme Court, in *Vellore Citizens Welfare Forum v. Union of India and Others*, AIR 1996 5 SCC 647, invoked the polluter pays principle. Here, the Vellore Citizens Welfare Forum filed a PIL against the enormous discharge of untreated effluents by tanneries and other industries into the Palar River, which serves as the main water source of Vellore City residents. The Supreme Court held that the absolute liability principle covers not just the compensation of victims, but also the cost of environmental rehabilitation.

In *Research Foundation for Science Technology and Natural Resource Policy v. Union of India and Others*, AIR 2007 8 SCC 583, petitioners filed a PIL before the Supreme Court invoking the fundamental right to life under Article 21 of the India Constitution and asking the court to prevent the French ship *Clemenceau* from entering the Alang ship-breaking yard in Gujarat because the ship's disposal posed a threat to the marine environment. The Supreme Court issued a direction preventing the ship from docking at the yard to be dismantled, formed a committee of technical experts to make recommendations on the various aspects of ship-breaking, and directed the Government of India to enact a law on the matter. As an interim relief measure, the court prescribed a set of guidelines for mitigating environmental harm caused by ship-breaking. Among others, the guidelines required those engaged in this enterprise to decontaminate ships before dismantling them, and classified the waste generated in the process into hazardous and nonhazardous waste.

The last case Justice Kohli discussed was *Him Privesh Environment Protection Society and Others v. State of Himachal Pradesh and Others*, CWP No. 586 of 2010 along with CWPIL No. 15 of 2009 decided on 4 May 2012. Him Privesh Environmental Protection Society and others filed writ petitions to challenge the setting up of a cement plant by Jai Parkash Associates in Solan, Himachal Pradesh, in breach of environmental laws, especially the EIA notifications. The plant demolished a huge part of the forest area and grabbed lands from nearby villages without holding a proper public hearing. The High Court of Himachal Pradesh Shimla was aware that passing a closure or demolition order in respect of the already constructed cement plant would adversely affect the livelihood of thousands of innocent citizens. It thus invoked the polluter pays principle and imposed damages on the cement plant owner amounting to

Rs1 billion (about \$214,431) or roughly 25% of the total project value. The cement plant owner appealed the decision to the Supreme Court, which dismissed the appeal in 2013.

In 2010, the government established the NGT under the National Green Tribunal Act to effectively and expediently dispose cases pertaining to environmental protection and forest conservation. The tribunal exercises jurisdiction over all civil cases relating to forests, air, water, the environment, and biodiversity. Litigants dissatisfied with NGT decisions may file an appeal with the Supreme Court. As shown by the cases Justice Kohli described, the Indian judiciary has proven itself to be a strategic partner in promoting good environmental governance; upholding the rule of law; and ensuring the fair balance between environmental protection, social commitments, and developmental considerations in India.

Justice de Leon complimented the Indian judiciary for introducing the doctrine of absolute liability, which does not yet apply in the Philippines. He then opened the floor for questions and comments.

## Discussion

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Justice Malalgoda shared the Sri Lankan judiciary's experience on PIL. They also have several PIL cases filed before the Supreme Court and the Court of Appeal. For instance, in *Sugathapala Mendis and Another v. Chandrika Bandaranaike Kumarathunga and Others*, which he mentioned the day before, the Supreme Court of Sri Lanka linked the Directive Principles of State Policy under the Sri Lanka Constitution to the public trust principle. The court allowed the fundamental rights application and cancelled the grant of land to a private person for the construction of a golf course, declaring that the public trust is more important than all the other principles.

Judge Sokha asked Judge Wright if their statutes require a particular number of plaintiffs to file a class action. The latter replied that class actions can involve any number of people in the class. Essentially, too many people are in the affected class for all of them to easily come into the court, which is why the courts allow the filing of a class action. Judge Wright was not aware of any minimum requirement, but there was no maximum.

Prof. Boer added to Judge Wright's discussion of the PIL developments in the PRC. Since 2007, the PRC judiciary has created over 300 environmental courts at the city, county, and provincial levels throughout the PRC. In 2014, they also set up a green bench, comprising very senior judges, in the Supreme Court. These advancements mean that about 21% of the global population now have greater judicial function and judicial capacity to deal with the many cases that may be filed under the 2014 Environment Protection Law of [the People's Republic of] China. He then stated his hope of witnessing the PRC sharing its experiences in enforcing this new law and the judges in the PRC learning more from what is happening in ASEAN and the judges in the PRC learning more from the experiences of ASEAN and SAARC judges.

Chief Justice Dith closed the seventh session and immediately opened the next one.



▲ Chief Justice Dith Munty of the Supreme Court of Cambodia as Session 8 chair, Justice Vijith K. Malalgoda of the Court of Appeal of Sri Lanka as speaker, and Prof. Ben Boer of the IUCN World Commission on Environmental Law as facilitator

## ■ SESSION 8 Mutual Assistance in Responding to Transnational Environmental Challenges

Prof. Ben Boer, deputy chair of the IUCN World Commission on Environmental Law, distinguished professor at the Research Institute of Environmental Law of Wuhan University, and emeritus professor at University of Sydney, framed the session by highlighting how ASEAN judiciaries can learn from one another's experiences in dealing with PIL and class actions. Indonesia, for instance, has an environmental statute encouraging the filing of PIL. Malaysia is witnessing a relaxation of rules on locus standi. The participants can also look at developments in South Asia, particularly India, Nepal, Pakistan, and Sri Lanka. Each country has the potential to greatly affect each other, as evidenced by the region's terrestrial, marine, and avian transboundary issues. But Prof. Boer would rather call these issues transboundary opportunities, rather than challenges, with the first transboundary opportunity being cross-fertilization of legal and judicial processes.

He also pointed out that the legal framework of each ASEAN country differs from that of another ASEAN country. Many ASEAN countries also have fragmented legal frameworks, with a different environment law governing each aspect of the environment. Judges should apply the same considerations and principles in deciding environmental cases. Such consistency is almost impossible if the legislation is fragmented.

Prof. Boer also observed that some environmental statutes in the region are already outdated and need to be revised. He suggested that the participants look at the environmental laws and jurisprudence of other countries as well as the relevant ASEAN treaties, declarations, and accords when providing inputs to the drafting of new environmental laws and rendering judgments. In this respect, they can use the AJNE website ([www.asianjudges.org](http://www.asianjudges.org)), which features a database of each ASEAN and South Asian Association for Regional Cooperation country's environmental laws and landmark environmental jurisprudence.

He further recommended that the ASEAN countries harmonize their laws and standards on the conduct of environmental assessments and broaden these assessments to cover the complete range of environmental and social impacts; the cumulative impacts—that is, all possible impacts of a proposed project, along with the impacts of other activities that will be carried out in connection with the project; transboundary impacts; human rights impacts, or the impacts on the environmental rights of people affected by a particular development; and health impacts.

## ■ Presentations

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### Malaysia

Justice YA Tan Sri Ahmad Bin Haji Maarop, judge of the Federal Court of Malaysia, first discussed the law governing mutual assistance in Malaysia at the domestic, regional, and international level. At the domestic level, the Mutual Assistance in Criminal Matters Act 2002 aims to enable Malaysia to provide and obtain international assistance in criminal matters and allows the provision of assistance through informal channels. But, as Justice Maarop observed, the law applies more to serious offenses, or offenses punishable by the death penalty or at least 1 year's imprisonment. Thus, he doubted the applicability of this act to environmental crimes, where the imposable penalty is less than 1 year.

To illustrate the application of this law, Justice Maarop narrated the cases of *Wong Keng Liang v. Public Prosecutor*. Wong Keng Liang (more popularly known as Anson Wong or the “Lizard King”) was arrested for illegally exporting 95 boa constrictors and indicted for violating Section 10 of the International Trade in Endangered Species Act 2008. Mr. Wong pleaded guilty and the Sepang Sessions Court sentenced him to 6 months' imprisonment and a fine of RM190,000 (about \$47,258). The prosecution appealed for a harsher penalty.

Pending appeal, an online search revealed that Mr. Wong also faced prosecution in the US. He pleaded guilty to 40 felony charges stemming from 1998 and 1992 indictments for trafficking some of the rarest and most endangered reptile species in the world. The federal court in San Francisco sentenced him to 71 months' imprisonment and a fine of \$60,000. The Malaysian government wrote a letter to the

US Department of Justice requesting the department to transmit documents related to the case before the San Francisco federal court. The latter granted the request and sent the documents to the Attorney General's Chambers.

Eventually, the High Court raised Mr. Wong's prison sentence of 6 months to 5 years. Mr. Wong appealed to the Court of Appeal, which reduced the prison sentence to 17 months and 15 days on the ground that the High Court erroneously considered facts outside the charge in imposing the harsher penalty.

To illustrate another form of mutual assistance in prosecuting wildlife crimes, Justice Maarop also talked about the Royal Malaysian Customs Department's seizure of 14 rhinoceros horns in Kuala Lumpur International Airport on 9 December 2014. The department discovered that the consignment came from Kenya and transferred it to the Department of Wildlife and National Parks. Law enforcement officers investigated the case under the Wildlife Conservation Act 2010 and the International Trade in Endangered Species Act 2008. Moreover, the department notified the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat about the seizure pursuant to CITES Decision 16.84.

Meanwhile, the Environmental Security Unit of the International Criminal Police Organization (INTERPOL) e-mailed the Malaysia Department of Wildlife and National Parks requesting information and confirmation about the subject seizure. Through the INTERPOL National Central Bureau for Malaysia, the department confirmed the information and also informed the governments of Kenya and Mozambique of the seizure. INTERPOL offered its assistance in investigating the case because of the involvement of an international syndicate and the department accepted.

Justice Maarop thereafter discussed mutual assistance between Malaysia and the rest of the ASEAN countries. In 2002, Malaysia signed the ASEAN Agreement on Transboundary Haze Pollution, which requires all parties to cooperate in developing and implementing measures to prevent, monitor, and mitigate transboundary haze pollution. This is done by controlling sources of land or forest fires, for example, by developing monitoring, assessment, and early warning systems; exchanging information and technology; and providing mutual assistance.

Malaysia supports Indonesia's plan of action in dealing with the haze and hotspot target reduction, and assists Indonesia during regional meetings, including meetings of the Sub-Regional Ministerial Steering Committee on Transboundary Haze Pollution. Malaysia and Indonesia are now finalizing a draft memorandum of understanding on haze prevention. Under this agreement, the two countries will cooperate in building their capacity, sharing information and expertise in related law and enforcement, transmitting haze early warnings and monitoring, implementing zero burning practices, sustainably managing peatlands, and suppressing fire.

Justice Maarop commented that at the moment, Malaysia's Environmental Quality Act does not expressly allow the government to take action against any individual or company causing transboundary haze pollution. An amendment is needed to enforce the law against Malaysian individuals or companies guilty of open burning abroad.



Lastly, he updated the participants that the Indonesian and Philippine judiciaries agreed to train Malaysian judges on environmental matters. Thus, Malaysia had sent some of its judges to Indonesia to attend training sessions on the environment.

Prof. Boer remarked that Singapore's Transboundary Haze Pollution Act 2014 extends to any conduct or thing outside Singapore that causes or contributes to any haze pollution in Singapore. He suggested that Singapore's delegation share any further comments they have on this with the roundtable participants.

### *Viet Nam*

Justice Dang Xuan Dao, justice of the Supreme People's Court of Viet Nam, first thanked the Supreme Court of Cambodia and ADB for convening the Fifth Roundtable. He then highlighted how ASEAN countries have actively promoted international cooperation in solving environmental problems in the region. Such cooperation had been especially important given the transboundary environmental challenges confronting the region.

First, Justice Dang talked about the importance of mutual assistance in resolving environmental disputes. According to him, environmental offenders face administrative or criminal penalties, while environmental cases are usually resolved in court. Different courts exercising jurisdiction over different types of cases hear these cases. Resolving environmental cases with facets lying in more than one jurisdiction is complicated by the fact that more than one court exercises jurisdiction over these cases. This complexity requires mutual judicial assistance among the courts concerned, particularly in serving case-related documents, taking the statement of witnesses, gathering pieces of evidence, and extraditing criminals. But so far, ASEAN judicial cooperation on environmental issues has been confined to environmental twinning programs and exchange of experts to strengthen judges' capacity to decide environmental cases.

ASEAN judiciaries must promote mutual legal assistance to improve their efficiency in deciding environmental cases. This means that they must help each other analyze civil and criminal matters. Respect for each state's independence, sovereignty and noninterference, national territorial integrity, equality, and mutuality must underlie this assistance, in line with relevant international treaties and domestic laws.

Second, he elaborated on Viet Nam's Law on Mutual Legal Assistance, which was enacted on 14 December 2007. It provides the legal basis for ensuring the implementation of the mutual legal assistance requests in Viet Nam. It establishes the principles, competence, order, and procedures for such assistance in civil and criminal cases, extradition, and the transfer of persons serving prison sentences.

Under Article 10 of this law, the scope of legal assistance in civil matters includes service of papers, dossiers, and documents relating to civil legal assistance; summons of witnesses and experts; collection and supply of evidence; and other requests for civil assistance. Under Article 13, competent bodies in Viet Nam can request their counterparts in the state where any of the parties, witnesses, experts, persons, or pieces of evidence related to the case are located. Articles 15 and 16 outline the procedure for receiving and handling civil legal mandates of foreign authorities. The requesting country must bear the costs of rendering such assistance, unless otherwise agreed.

Mutual legal assistance in criminal matters includes service of papers, dossiers, and documents relating to criminal legal assistance; summons of witnesses and experts; collection and supply of evidence; penal liability examination; information sharing; and other requests for civil assistance.

Under this law, the relevant local authorities may request competent foreign authorities to extradite to Viet Nam offenders or criminally convicted persons whose judgments have already taken legal effect with regard to criminal prosecution or enforcement of the judgment. Likewise, the law authorizes competent authorities to extradite foreigners in Viet Nam to the requesting state for criminal prosecution or enforcement of judgment. The law provides detailed steps on the filing of extradition requests and on receiving and handling such requests.

The Law on Mutual Legal Assistance also governs the transfer of persons facing imprisonment to the state where they must serve their prison sentence.

Lastly, Justice Dang enumerated the proposals made to strengthen mutual legal assistance on environmental adjudication among ASEAN countries. He noted the increased need for intraregional judicial cooperation in hearing and deciding cross-border pollution, illegal wildlife trade, and illegal logging and timber trade cases. He suggested that the participants promote and agree on a mechanism to efficiently implement requests for legal assistance in settling environmental cases and avoid situations where there is either delayed or no response to requests for legal assistance from the requested judiciary or authority.

Justice Dang looked forward to learning from their fellow participants' experiences and best practices on mutual legal assistance in environmental adjudication.

Prof. Boer emphasized Justice Dang's point on the need for a specific mechanism by which ASEAN countries can sufficiently exchange information in both civil and criminal cases. Prof. Boer also suggested that the ASEAN Secretariat, particularly during the meetings of the ASEAN Senior Officials on Environment, and ADB can assist in setting up this mechanism.

## Philippines

Justice Magdangal M. de Leon, associate justice of the Court of Appeals of the Philippines, traced the ASEAN Agreement on Transboundary Haze Pollution to the 1997 regional haze crisis that originated from the logging of palm plantations in Indonesia. The agreement aims to prevent and monitor transboundary haze pollution as a result of land or forest fires it proposed to be mitigated through concerted national efforts and intensified regional and international cooperation. Member states bind themselves to prevent and monitor fires, extinguish fires, ensure the availability of resources to mitigate impacts, and communicate data on fire-prone areas. They may request assistance from other members in putting out fires and addressing haze pollution, and members are required to extend assistance when requested to do so. Lastly, they must develop strategies and response plans to identify, manage, and control risks to human health and the environment due to land or forest fires and the resulting haze pollution.

The ASEAN Coordinating Centre for Transboundary Haze Pollution Control, created under this agreement, facilitates cooperation and coordination in managing the impact of land or forest fires and any consequent haze pollution. It also helps in the enforcement of the ASEAN Cooperation Plan on Transboundary Haze Pollution and the Regional Haze Action Plan.

With respect to Indonesia, Justice de Leon pointed out that Indonesia has issued a zero burning policy and has formed a fire brigade to avoid the damage caused by fires in plantations and logging operations. Indonesia also submitted a plan of action for dealing with haze and joined the Sub-Regional Ministerial Steering Committee on Transboundary Haze Pollution. Following this plan, Indonesia has cooperated with Singapore in mitigating the haze caused by fires in Jambi Province in Indonesia.

Justice de Leon next discussed the actions taken by the Philippine government to address air pollution. Even before the Philippines ratified the ASEAN Agreement on Transboundary Haze Pollution, it had already enacted Republic Act No. 8749, or the Philippine Clean Air Act of 1999. This law promotes a clean habitat and environment by providing an integrated air quality improvement framework. The framework implements a management and control program aimed at reducing emissions and preventing air pollution. It also provides for an air quality control action plan, which includes the adoption of methods, systems, and measures to ensure clean air. The law is also aligned with Chapters 3 and 5 of the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources.

To end, he mentioned the forest fire in Indonesia, which cleared about 2 million hectares of forest land, released 1.75 tons of greenhouse gases, and caused economic losses amounting to \$47 billion. He noted that environmentalists often blame plantation owners, who in turn tend to blame the locals. As such, the situation depicts a tug of war between economic interests and environmental priorities that, for years, has set back attempts to arrive at a global climate accord.

Prof. Boer clarified that Indonesia became a member of the ASEAN Agreement on Transboundary Haze Pollution in September 2014.<sup>23</sup> Prof. Boer then commented that what he finds to be a more pressing issue is how far a party will go to comply with its obligations under the agreement. Indonesia is not the only source of significant air pollution. Significant forest fires also happen in Malaysia and Thailand.

### Sri Lanka

Justice Vijith K. Malalgoda, president's counsel, and justice and president of the Court of Appeal of Sri Lanka, told the participants that this roundtable allows the judiciaries involved to reexamine their roles in the resolution of environmental conflicts. Judges hearing environmental cases must properly frame the issues so that litigants can consider new ways of resolving their conflict.

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<sup>23</sup> Indonesia ratified the ASEAN Agreement on Transboundary Haze Pollution on 16 September 2014 and deposited its instrument of ratification on 20 January 2015. See ASEAN Haze Action Online. *Status of Ratification*. <http://haze.asean.org/status-of-ratification/>

According to Justice Malalgoda, jurisprudence and precedent are both key elements in advancing environmental justice. As such, they feature in international deliberations and conferences, including this roundtable. These conferences provide a platform for participants to exchange ideas on the different disputes they have handled and the challenges they are facing. The opportunity the participants provide each other to learn from their experiences is already mutual assistance in itself.

Through the years, judges worldwide have recognized the need to strengthen their role in law enforcement and harmonizing their judicial reasoning. Thus, they started collating jurisprudence within their respective jurisdictions. Justice Malalgoda expressed his hope that the legal and judicial fraternity will promote the expansion of the existing global database and gateway for environmental law. To foster such expansion, he deemed that participants should continue sharing their environmental jurisprudence and opinions, and their new legislation, with the global legal fraternity—an endeavor that requires mutual assistance and commitment on the part of the participants.

The Fifth Roundtable is very timely. The participants are convened at the same time as world leaders are meeting at COP21 to decide on whether to bind their states to a low-carbon future. Climate change has long-term disastrous consequences and requires a global effort to decrease the high risk of these disastrous consequences occurring.

Southeast Asia is susceptible to the effects of climate change and must effectively respond to the challenges that changing climatic conditions have been producing. The majority of these challenges are transnational. The region has experienced rapid changes, including population growth, rapid urbanization, economic development, and improvements in infrastructure.

The same risks posed by climate change exist in South Asia. As Justice Malalgoda highlighted, the Intergovernmental Panel on Climate Change (IPCC), in its fifth report, identified several major environmental challenges continuously confronting South Asia. These challenges include more temperature extremes, variable rainfall patterns, accelerated sea level rise and its impact on fresh and seawater ecosystems, and food and water shortage. Moreover, the IPCC predicted climate change will affect the sustainable development capabilities of most Asian developing countries by aggravating pressures on natural resources and environment.

These foreboding predictions emphasize the need for the Southeast Asian and South Asian judiciaries to discern how best they can benefit from one other's experiences in dealing with transboundary environmental challenges. These judiciaries must use the full extent of their policies and tools in fostering a coordinated and comprehensive approach. Countries sign treaties and conventions, while the participants at these roundtables sign declarations and action plans to be implemented within the region.

Justice Malalgoda ended by urging the participants to strengthen their endorsement of the Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment with transnational judicial assistance. He then pleaded for continuous engagement within the region's judiciaries. He expressed confidence that the roundtable will promote judicial cooperation and beneficial infusion of their fellow judiciaries' jurisprudence.

## Discussion

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Justice Rahmadi commented that indeed Indonesia has exported haze pollution to its neighboring countries. He also stated that although Indonesia has environmental statutes, law enforcement is weak because the country's economy relies on natural resource extraction. He referred to the concept of payment for ecosystem services, which requires countries that benefit from the preservation of forests in another country to compensate the latter. He also reminded the participants of Dr. Jones' presentation on environmental damage assessment.

According to Justice Majid, Singapore's Transboundary Haze Pollution Act 2014 is interesting. He asked if a company that causes transboundary haze pollution in Indonesia should first incorporate in Singapore in order for the penal provisions to apply to it. Prof. Boer answered that this law applies regardless of whether the offending corporation is registered in Singapore or not.

District Judge San added that pursuant to the Transboundary Haze Pollution Act 2014, Singapore's National Environment Agency has issued preventive measure notices against six Indonesian companies. These measures fall within the domain of the Executive. The act prescribes for both civil and criminal liability. Singapore has not had any prosecutions or civil actions brought to the court at this stage.

He highlighted that based on the act, features such as presumptions, which rely on maps and satellite imagery, are useful in court. These are areas where it can be foreseen that jurisdictions would have to cooperate. He added that there have been academic articles, such as one by Professor Alan Khee Jin Tan, regarding the collection of evidence and other challenges in trying to mount a prosecution against a company outside Singapore that is alleged to contribute to the haze in Singapore. Other challenges may include procuring witnesses to testify and getting their statements. Investigators and prosecutors will be faced with such issues when they try to bring such a case to court.

Prof. Boer mentioned the remote sensing center in Singapore that has been following the hotspots in various countries via satellite and asked whether the center's findings can be used as evidence in the courts. District Judge San replied that the presumptions are there but they are rebuttable presumptions and the defense is entitled to argue the case to the fullest extent allowed by the law.

Justice Khotcharit raised the possibility of creating a special tribunal that will exercise jurisdiction over many countries in the region. This will resolve problems with respect to sovereignty and questions regarding the admissibility of evidence such as remote sensing and satellite images. Prof. Boer advised that the participants consider the possibility of setting up an independent ombudsperson-type office that will only investigate allegations of causing transboundary haze pollution, collect evidence, and make recommendations. This may be a good alternative to having a regional court. He then invited feedback from the other participants on the establishment of a regional dispute resolution mechanism that can be linked with the obligations under the 1995 Mekong Agreement.

Justice Maarop commented that the rebuttable presumptions under Singapore's Transboundary Haze Pollution Act 2014 are useful. But what he finds more important is the law's extraterritorial application; there seems to be no need for a company to be registered in Singapore for it to be prosecuted under this law.

Chief Justice Dith thanked Prof. Boer for facilitating the session and closed it.





▲ Deputy Chief Justice Mohammad Saleh and Justice Takdir Rahmadi of the Supreme Court of Indonesia

## ■ SESSION 9 Review and Endorsement of the “Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment”

Chief Justice Dith Munty, president of the Supreme Court of Cambodia, opened the ninth session and called on Mr. Christopher Stephens, general counsel of ADB, to cochair the session with him and present the Proposed Angkor Statement of Commitment to the ASEAN Judicial Cooperation on the Environment.

Mr. Stephens asked the participants to provide comments on, and endorse, the statement. He emphasized that it is not a legally binding document and that none of the participants were being requested to sign it. It is merely a statement of commitment to environmental jurisprudence and justice as described. He also noted Singapore’s proposal to add an attachment similar to the attachment to the Hanoi Action Plan stating:

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

Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, judge at the High Court of Brunei Darussalam, stated that Brunei Darussalam would like to adopt Singapore’s comment and that it be placed on record that they made the same comment with respect to the Hanoi Action Plan.

No other delegation made any further comment or expressed any objection. Thus, Mr. Stephens announced the unanimous endorsement of the Angkor Statement.



▲ ADB General Counsel Christopher Stephens, Chief Justice Dith Muntty of the Supreme Court of Cambodia, Chief Justice Tun Ariffin bin Zakaria of the Federal Court of Malaysia and the ASEAN Heads of Delegation at the close of the roundtable

## CLOSING OF THE FIFTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT

### Closing Remarks

Chief Justice Dith Muntty, president of the Supreme Court of Cambodia, once again acknowledged the presence of Chief Justice Tun Ariffin bin Zakaria, chief justice of the Federal Court of Malaysia; the ASEAN judicial delegations; Mr. Christopher Stephens, general counsel of ADB; and all attending judges, prosecutors, and guests. On behalf of the Supreme Court of Cambodia, Chief Justice Dith expressed honor in hosting the Fifth Roundtable and gratitude to the participants for their time and active participation in the roundtable.

He also lauded their strong commitment to tackle the region's common environmental challenges to protect the environment; their activities and progress toward achieving the Jakarta Common Vision and realizing the Hanoi Action Plan demonstrate this commitment. He stated his optimism in how each ASEAN judiciary's efforts on environmental protection can address environmental issues worldwide today and in the future. He likewise thanked ADB for its technical and financial support. He concluded by wishing everyone good health and success in performing their responsibilities. He then declared the Fifth Roundtable closed.

### Concluding Remarks

Mr. Christopher Stephens, general counsel of ADB, thanked Chief Justice Dith and Deputy Chief Judge Keng for convening the roundtable and all the participants and experts for contributing their time and resources to ensure the success of the event. He commended the ASEAN judiciaries for their unanimous endorsement of the Angkor Statement. Citing Chief Justice Dith, Mr. Stephens said that the last 2 days confirmed the ASEAN region's capacity to be a world-leading region in progressive environmental jurisprudence and strong environmental justice.

Mr. Stephens commented that the participants are leading the region's environmental protection initiatives as environmental justice champions. Each participant judiciary alluded to cases applying environmental justice principles and strengthening the environmental rule of law in their country, and demonstrated the value of knowledge sharing. Referring to comments made by Prof. Boer, Mr. Stephens emphasized that many of the SDGs focus on issues relating to environmental justice. The challenge lies in ensuring the implementation of the SDGs at the national and regional levels through national legislation that is properly interpreted and applied by the courts.

He reminded the participants of the new term ascribed to them by Justice Antonio Herman Benjamin, justice of the National High Court of Brazil and chair of the IUCN World Commission on Environmental Law—that is “planetary judges.” Mr. Stephens deemed the term befitting of the participants on account of the transboundary environmental issues they face. The success stories shared by the participants during the last 2 days illustrate their progress in realizing the Hanoi Action Plan and there is a growing, continuing regional commitment to environmental justice. But the participants must still address several complex issues, such as assessing environmental damage and costs for remediation, restitution, and monitoring; imposing statutory penalties; and difficulties in instituting public interest litigation, particularly when the aggrieved party is the public or representing individual private or commercial interests.

He recognized that the job of planetary judges is not easy. They must address hundreds of environmental and non-environmental issues, including completely novel issues that do not yet have a basis in law to help provide guidance, and oversee thousands of judges and staff. Collaboration and knowledge sharing are crucial to navigating these issues and creating an enabling environment for the ASEAN judiciaries to be world-leading environmental justice champions. As the participants demonstrated through their commitment and involvement in the roundtable, environmental justice is a high priority. He encouraged the participants to continue their dialogue with their neighbors and collaborate in promoting environmental justice. Mr. Stephens then commented that he is looking forward to continuously partnering with them, specifically under ADB's Environmental Justice TA and Train-the-Trainers TA.

Finally, on behalf of ADB and all the participants, he thanked the Supreme Court of Cambodia, Chief Justice Dith, Deputy Chief Judge Keng, and the staff of the Supreme Court of Cambodia who meticulously arranged all the details of the roundtable and accommodated its participants. He congratulated the Supreme Court of Cambodia and wished everyone a safe journey home.

## Souvenir Presentation

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On behalf of the Supreme Court of Cambodia, Chief Justice Dith Munty presented the heads of the ASEAN delegations and of the ADB Office of the General Counsel with souvenirs. On behalf of their respective delegations, Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, Deputy Chief Justice Mohammad Saleh, Deputy Chief Justice Khampha Sengdara, Chief Justice Tun Arifin bin Zakaria, Justice Aung Zaw Thein, Justice Mariano C. del Castillo, Judge Edwin San Ong Kyar, Permanent Deputy Chief Justice Bui Ngoc Hoa, Justice Chalis Sawasditat, and Mr. Christopher Stephens received the Supreme Court of Cambodia's tokens of appreciation.

# APPENDIX 1

## Program of The Fifth ASEAN Chief Justices' Roundtable on Environment “ASEAN Judicial Cooperation on the Environment”

4-5 December 2015

Hotel Sofitel Angkor Phokeethra, Siem Reap, Cambodia

### Thursday, 3 December 2015

Throughout the day	<p><b>Arrival of the ASEAN Judicial Delegates</b>  <i>Welcome and pick-up of all participants are to be arranged by the Supreme Court of Cambodia Vice-President and/or Secretary General and Protocol Officers</i></p> <p><b>Optional sightseeing of Siem Reap for all participants</b>  <i>(sponsored by Supreme Court of Cambodia)</i></p>
6 p.m.–9 p.m.	<p><b>Welcome and Buffet Dinner</b>  <i>Sponsored by the Supreme Court of Cambodia – Hotel Sofitel Angkor Phokeethra</i></p>

### Friday, 4 December 2015

7 a.m.–8 a.m.	<b>Breakfast</b>
8 a.m.–8:45 a.m.	<b>Registration of Participants – Ballroom</b>
8:45 a.m.–8:55 a.m.	<b>Arrival of the Guests of Honor</b>
8:55 a.m.–9 a.m.	<b>Arrival of the President of the Supreme Court of Cambodia and ASEAN Chief Justices</b>
9 a.m.–9:10 a.m.	<b>Photo Session</b>

### OPENING CEREMONY

9:10 a.m.–9:20 a.m.	<p><b>Welcome Remarks</b> (10 minutes)</p> <ul style="list-style-type: none"> <li>• Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> </ul>
9:20 a.m.–9:30 a.m.	<p><b>Opening Remarks</b> (10 minutes)</p> <ul style="list-style-type: none"> <li>• Mr. Christopher Stephens, General Counsel, Asian Development Bank</li> </ul>
9:30 a.m.–9:45 a.m.	<p><b>Overview: Asian Judges' Network on Environment (AJNE)</b> (15 minutes)</p> <ul style="list-style-type: none"> <li>• Ms. Atsuko Hirose, Advisor, Office of the General Counsel, Asian Development Bank</li> </ul>
9:45 a.m.–10 a.m.	<b>Introduction of Delegates of Each ASEAN Judiciary</b> (15 minutes)

### PART I: Progress of the ASEAN Chief Justices' Roundtable on Environment

10 a.m.–11:10 a.m.	<p><b>Session 1: Introduction and Progress Report on the Jakarta Common Vision, the Hanoi Action Plan, and the Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> </ul> <p><b>Session Facilitator:</b> Justice Takdir Rahmadi, Justice, Civil Chamber, Supreme Court of Indonesia</p> <p><b>Speakers:</b> Each judiciary will report on their progress under the Jakarta Common Vision and the Hanoi Action Plan.</p>
11:10 a.m.–11:25 a.m.	<b>Coffee Break</b>

## PART II: National and Transboundary Environmental Challenges

11:25 a.m.–12:45 p.m. **Session 2: Balancing Economic Development and Environmental Protection**

- **Chair:** Chief Justice Dith Muntty, President, Supreme Court of Cambodia

**Session Facilitator:** Prof. Ben Boer, Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney

**Video Presentation:** Justice Antonio Herman Benjamin, Justice, National High Court of Brazil; and Chair, IUCN World Commission on Environmental Law

### Speakers:

- Justice Magdangal M. de Leon, Associate Justice, Court of Appeals, Philippines (10 minutes)
- Judge Kong Tarachhath, Judge, Supreme Court of Cambodia (10 minutes)
- Justice Vijith K. Malalgoda, President's Counsel, and Justice and President, Court of Appeal, Sri Lanka (10 minutes)
- Prof. Ben Boer, Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney (10 minutes)
- Question and Answer

*The session will start with a video presentation from Justice Antonio Herman Benjamin who will introduce the challenges faced by courts in dealing with national and transnational environmental challenges and speak to the important role of judges as environmental decision makers.*

*The facilitator will frame key challenges in balancing economic development with environmental protection, and thereby furthering environmental justice outcomes. The speakers will then present on their country's experiences in addressing the often inherent conflict between economic and environmental interests, with a focus on environmental impact assessment processes and the role of the judiciary in this regard.*

12:45 p.m.–1:40 p.m. **Lunch**

1:40 p.m.–2:50 p.m. **Session 3: Environmental Damage Assessment**

- **Chair:** Chief Justice Dith Muntty, President, Supreme Court of Cambodia
- **Honorary Chair:** Deputy Chief Justice Khampha Sengdara, Deputy Chief Justice, People's Supreme Court of the Lao People's Democratic Republic

**Session Facilitator:** Mr. John Pendergrass, Acting Vice-President, Research and Policy, Environmental Law Institute

### Speakers:

- Justice Mariano C. del Castillo, Associate Justice, Supreme Court of the Philippines (10 minutes)
- Justice Chirawan Khotcharit, Judge, Environmental Division, Supreme Court of Thailand (10 minutes)
- Dr. Carol Adaire Jones, Visiting Scholar, Environmental Law Institute (10 minutes)
- Mr. John Pendergrass, Acting Vice-President, Research and Policy, Environmental Law Institute (10 minutes)
- Question and Answer

*The speakers will discuss methods to assess environmental damages, the value of proper environmental damage assessment in deciding environmental cases, and progress and challenges experienced by the courts in this regard.*

2:50 p.m.–3:10 p.m. **Coffee Break**



3:10 p.m.–4:20 p.m.	<p><b>Session 4: Statutory Penalties for Environmental Violations</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Honorary Chair:</b> Chief Justice Tun Arifin bin Zakaria, Chief Justice, Federal Court of Malaysia</li> </ul> <p><b>Session Facilitator:</b> Judge Merideth Wright, Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011)</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• Chief Justice Tun Arifin bin Zakaria, Chief Justice, Federal Court of Malaysia (10 minutes)</li> <li>• Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice, Supreme People’s Court of Viet Nam (10 minutes)</li> <li>• Deputy Chief Justice Khampha Sengdara, Deputy Chief Justice, People’s Supreme Court of the Lao People’s Democratic Republic (10 minutes)</li> <li>• Judge Merideth Wright, Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011) (10 minutes)</li> <li>• Question and Answer</li> </ul> <p><i>The facilitator will frame the challenges relating to implementing and enforcing statutory penalties for environmental violations. The speakers will share their thoughts on the strengths and/or weaknesses of penalties prescribed under their national laws, and the impact of alternative sentencing or creative penology in deterring environmental crime.</i></p>
4:20 p.m.–5:30 p.m.	<p><b>Session 5: Cleanup and Restoration</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Honorary Chair:</b> Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, Judge, High Court of Brunei Darussalam</li> </ul> <p><b>Session Facilitator:</b> Justice Chirawan Khotcharit, Judge, Environmental Division, Supreme Court of Thailand</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• Justice YA Tan Sri Ahmad Bin Haji Maarop, Judge, Federal Court of Malaysia (10 minutes)</li> <li>• Justice Magdangal M. de Leon, Associate Justice, Court of Appeals, Philippines, presenting for Justice Estela M. Perlas-Bernabe, Associate Justice, Supreme Court of the Philippines (10 minutes)</li> <li>• Dr. Carol Adaire Jones, Visiting Scholar, Environmental Law Institute (10 minutes)</li> <li>• Judge Merideth Wright, Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011) (10 minutes)</li> <li>• Justice Hima Kohli, Judge, High Court of Delhi, India (10 minutes)</li> <li>• Question and Answer</li> </ul> <p><i>The facilitator will frame the key issues facing judges in respect of cleanup and restoration of environmental damage. The speakers will discuss landmark cases on cleanup and restoration within their respective jurisdictions.</i></p>
6 p.m.–7 p.m.	Dinner sponsored by the Supreme Court of Cambodia – Hotel Sofitel Angkor Phukeetra
7:15 p.m.	Prompt Departure to Smile Angkor Theater to watch the Historical Cultural Show scheduled at 7:30 p.m.

### Saturday, 5 December 2015

7 a.m.–8 a.m.	Breakfast
8 a.m.–8:20 a.m.	Registration of Participants – Ballroom
8:20 a.m.–8:25 a.m.	Arrival of the Guests of Honor
8:25 a.m.–8:30 a.m.	Arrival of the President of the Supreme Court of Cambodia and ASEAN Chief Justices
8:30 a.m.–9:40 a.m.	<p><b>Session 6: Overview of Domestic and Transboundary Environmental Issues</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Honorary Chair:</b> Justice Dato Paduka Haji Hairol Arni bin Haji Abdul Majid, Judge, High Court of Brunei Darussalam</li> </ul> <p><b>Session Facilitator:</b> Mr. John Pendergrass, Acting Vice-President, Research and Policy, Environmental Law Institute</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• Deputy Chief Judge Chiv Keng, Vice-President, Supreme Court of Cambodia (10 minutes)</li> <li>• Justice Aung Zaw Thein, Justice, Supreme Court of the Union of Myanmar (10 minutes)</li> <li>• Justice Takdir Rahmadi, Justice, Civil Chamber, Supreme Court of Indonesia (10 minutes)</li> <li>• Prof. Ben Boer, Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney (10 minutes)</li> <li>• Mr. John Pendergrass, Acting Vice-President, Research and Policy, Environmental Law Institute (10 minutes)</li> <li>• Question and Answer</li> </ul> <p><i>The facilitator will frame the session by highlighting various domestic and transboundary environmental challenges confronting the region. He will then invite the speakers to share their experiences in dealing with these challenges within their respective jurisdictions.</i></p>
9:40 a.m.–10 a.m.	Coffee Break
10 a.m.–11:10 a.m.	<p><b>Session 7: Public Interest Litigation in Environmental Cases</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Honorary Chair:</b> Justice Chalis Sawasditat, Justice, Supreme Court of Thailand</li> </ul> <p><b>Session Facilitator:</b> Justice Magdangal M. de Leon, Associate Justice, Court of Appeals, Philippines</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• Justice YA Tan Sri Ahmad Bin Haji Maarop, Judge, Federal Court of Malaysia (10 minutes)</li> <li>• Justice Takdir Rahmadi, Justice, Civil Chamber, Supreme Court of Indonesia (10 minutes)</li> <li>• Judge Merideth Wright, Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011) (10 minutes)</li> <li>• Justice Mariano C. del Castillo, Associate Justice, Supreme Court of the Philippines, presenting for Justice Estela Perlas-Bernabe, Supreme Court of the Philippines (10 minutes)</li> <li>• Justice Hima Kohli, Judge, High Court of Delhi, India (10 minutes)</li> <li>• Question and Answer</li> </ul> <p><i>The facilitator will identify the benefits of environmental public interest litigation as well as the difficulties faced by many jurisdictions in bringing successful public interest cases. The speakers will discuss landmark environmental public interest cases in their respective jurisdictions, highlighting successes and challenges.</i></p>
11:10 a.m.–11:25 a.m.	Coffee Break

11:25 a.m.–12:35 p.m.	<p><b>Session 8: Mutual Assistance in Responding to Transnational Environmental Challenges</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Honorary Chair:</b> Permanent Deputy Chief Justice Bui Ngoc Hoa, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam. (Note: Excused)</li> </ul> <p><b>Session Facilitator:</b> Prof. Ben Boer, Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney</p> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• Justice YA Tan Sri Ahmad Bin Haji Maarop, Judge, Federal Court of Malaysia (10 minutes)</li> <li>• Justice Magdangal M. de Leon, Associate Justice, Court of Appeals, Philippines (10 minutes)</li> <li>• Justice Dang Xuan Dao, Justice, Supreme People's Court of Viet Nam (10 minutes)</li> <li>• Justice Vijith K. Malalgoda, President's Counsel, and Justice and President, Court of Appeal, Sri Lanka (10 minutes)</li> <li>• <b>Question and Answer</b></li> </ul> <p><i>The facilitator will frame the benefits of providing mutual legal assistance among judiciaries to address transboundary environmental challenges and handling environmental cases impacting more than one jurisdiction. The speakers will present their insights on transboundary environmental challenges requiring judicial cooperation on environment, and their experience working with other judiciaries in the region.</i></p>
12:35 p.m.–1:30 p.m.	<b>Lunch</b>
1:30 p.m.–1:50 p.m.	<p><b>Session 9: Review and Endorsement of the “Proposed Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment”</b></p> <ul style="list-style-type: none"> <li>• <b>Chair:</b> Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> <li>• <b>Co-Chair:</b> Mr. Christopher Stephens, General Counsel, Asian Development Bank</li> <li>• <b>Endorsement</b></li> </ul> <p><i>All participants will be invited to provide their comments and endorsement of the proposed Angkor Statement.</i></p>

### Closing of the Fifth ASEAN Chief Justices' Roundtable on Environment

1:50 p.m.–2 p.m.	<p><b>Closing Remarks</b></p> <ul style="list-style-type: none"> <li>• Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> </ul>
2 p.m.–2:10 p.m.	<p><b>Concluding Remarks</b></p> <ul style="list-style-type: none"> <li>• Mr. Christopher Stephens, General Counsel, Asian Development Bank</li> </ul>
2:10 p.m.–2:30 p.m.	<p><b>Souvenir Presentation</b></p> <ul style="list-style-type: none"> <li>• Chief Justice Dith Munty, President, Supreme Court of Cambodia</li> </ul>
2:45 p.m.	<p>Departure for visit to Angkor Wat Temples (all participants are invited) <i>Organized by SCC</i></p>
6:30 p.m.–10 p.m.	<p>Farewell Dinner – Poll Site, Sofitel Angkor Phokeetra <i>Hosted by Chief Justice Dith Munty, President, Supreme Court of Cambodia</i> <i>Smart Casual or Traditional Dress</i></p>

### Sunday, 6 December 2015

Checkout and Departure of Participants

# APPENDIX 2

## List of Resource Persons

Resource Person	Designation, Agency
Benjamin, Antonio Herman	Justice, National High Court of Brazil; and Chair, IUCN World Commission on Environmental Law
Boer, Ben	Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney
Bui, Ngoc Hoa	Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam
Dang, Xuan Dao	Justice, Supreme People's Court of Viet Nam
De Leon, Magdangal M.	Associate Justice, Court of Appeals, Philippines
Del Castillo, Mariano C.	Associate Justice, Supreme Court of the Philippines
Dith, Munty	President, Supreme Court of Cambodia
Hirose, Atsuko	Advisor, Office of the General Counsel, Asian Development Bank
Jones, Carol Adaire	Visiting Scholar, Environmental Law Institute
Keng, Chiv	Vice-President, Supreme Court of Cambodia
Khotcharit, Chirawan	Judge, Environmental Division, Supreme Court of Thailand
Kohli, Hima	Judge, High Court of Delhi, India
Kong, Tarachhath	Judge, Supreme Court of Cambodia
Maarop, YA Tan Sri Ahmad Bin Haji	Judge, Federal Court of Malaysia
Majid, Dato Paduka Haji Hairol Arni bin Haji Abdul	Judge, High Court of Brunei Darussalam
Malalgoda, Vijith K.	President's Counsel, and Justice and President, Court of Appeal, Sri Lanka
Rahmadi, Takdir	Justice, Civil Chamber, Supreme Court of Indonesia
Pendergrass, John	Acting Vice-President, Research and Policy, Environmental Law Institute
Sawasditat, Chalis	Justice, Environmental Division, Supreme Court of Thailand
Sengdara, Khampha	Deputy Chief Justice, People's Supreme Court of the Lao People's Democratic Republic
Somsanith, Atsanay	Judge, People's Supreme Court of the Lao People's Democratic Republic
Stephens, Christopher	General Counsel, Asian Development Bank
Thein, Aung Zaw	Justice, Supreme Court of the Union of Myanmar
Wright, Merideth	Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011)
Zakaria, Tun Arifin bin Zakaria	Chief Justice, Federal Court of Malaysia

# APPENDIX 3

## List of Participants

Country/Organization	Participant
Asian Development Bank (ADB)	<b>Christopher Stephens</b> General Counsel cstephens@adb.org
	<b>Atsuko Hirose</b> Advisor Office of the General Counsel ahirose@adb.org
	<b>Ma. Celeste Grace A. Saniel-Gois</b> Legal Operations Officer Office of the General Counsel mcgsanielgois@adb.org
	<b>Stephanie Venuti</b> Environmental Lawyer and Project Coordinator (Consultant) svenuti.consultant@adb.org
	<b>Ma. Imelda T. Alcala</b> LJD Operations Analyst (Consultant) mialcala.consultant@adb.org
Brunei Darussalam	<b>Muhammed Faisal bin Pehin Dato Kefli</b> Chief Magistrate and Acting Intermediate Court Judge Magistrates' Court
	<b>Dato Paduka Haji Hairol Arni bin Haji Abdul Majid</b> Judge High Court
Cambodia	<b>Dith Muntty</b> President Supreme Court
	<b>Chiv Keng</b> Vice-President Supreme Court
	<b>You Ottara</b> Vice-President Supreme Court
	<b>Ben Visnow</b> Secretary General Supreme Court Administration

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Country/Organization	Participant
Cambodia	<b>Seng Neang</b> Judge Supreme Court
	<b>Soeung Pahnnavuth</b> Judge Supreme Court
	<b>Heng Preya</b> Judge Supreme Court
	<b>Chan Rainsey</b> Judge Supreme Court
	<b>Sem Sakola</b> Judge Supreme Court
	<b>Oeung Sieng</b> Judge Supreme Court
	<b>Chaing Sinath</b> Judge Supreme Court
	<b>Khiev Sokha</b> Judge Supreme Court
	<b>Kong Tarachhath</b> Judge Supreme Court
	<b>Nouv Monychot</b> Prosecutor General Prosecution Office attached to the Supreme Court
	<b>Phann Vanrath</b> Chief Prosecutor First Instance Court of Banteay Meanchey Province
	<b>Synn Sovannrath</b> Judge First Instance Court of Siem Reap Province
	<b>Mong Mony Sophea</b> Judge First Instance Court of Phnom Penh Capital

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Country/Organization	Participant
Indonesia	<p><b>Mohammad Saleh</b> Deputy Chief Justice for Judicial Matters Supreme Court</p> <p><b>Takdir Rahmadi</b> Justice Civil Chamber, Supreme Court</p>
Lao People's Democratic Republic	<p><b>Khampha Sengdara</b> Deputy Chief Justice People's Supreme Court of the Lao People's Democratic Republic</p> <p><b>Atsanay Somsanith</b> Judge People's Supreme Court of the Lao People's Democratic Republic</p>
Malaysia	<p><b>Tun Arifin bin Zakaria</b> Chief Justice Federal Court of Malaysia</p> <p><b>YA Tan Sri Ahmad Bin Haji Maarop</b> Judge Federal Court of Malaysia</p> <p><b>Zulqarnain bin Hassan</b> Sessions Court Judge</p>
Myanmar	<p><b>Aung Zaw Thein</b> Justice Supreme Court</p> <p><b>Hla Hla Yee</b> Judge High Court of the Mandalay Region</p> <p><b>Myo Kyaw Aung</b> Staff Officer International Relations and Research Department, Supreme Court</p>
Philippines	<p><b>Mariano C. del Castillo</b> Associate Justice Supreme Court</p> <p><b>Magdangal M. de Leon</b> Associate Justice Court of Appeals</p>
Singapore	<p><b>Edwin San Ong Kyar</b> District Judge and Assistant Registrar Supreme Court</p> <p><b>Lee Mei Teng</b> Assistant Director Strategic Planning and Policy Directorate, Supreme Court</p>

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Country/Organization	Participant
Thailand	<p><b>Chirawan Khotcharit</b> Judge Environmental Division, Supreme Court of Thailand</p> <p><b>Chalis Sawasditat</b> Justice Environmental Division, Supreme Court of Thailand</p>
Viet Nam	<p><b>Bui Ngoc Hoa</b> Permanent Deputy Chief Justice Supreme People's Court</p> <p><b>Dang Xuan Dao</b> Justice Supreme People's Court</p> <p><b>Ha Tuan Hiep</b> Official Department of International Cooperation, Supreme People's Court</p>
Other Partner Agencies and Institutions	<p><b>Antonio Herman Benjamin</b> Justice, National High Court of Brazil; and Chair, IUCN World Commission on Environmental Law</p> <p><b>Ben Boer</b> Deputy Chair, IUCN World Commission on Environmental Law; Distinguished Professor, Research Institute of Environmental Law, Wuhan University; and Emeritus Professor, University of Sydney</p> <p><b>Carol Adaire Jones</b> Visiting Scholar Environmental Law Institute</p> <p><b>Hima Kohli</b> Judge High Court of Delhi, India</p> <p><b>Monika Kamille B. Limpo</b> Third Secretary and Vice-Consul Embassy of the Philippines, Cambodia</p> <p><b>Vijith K. Malalgoda</b> President's Counsel; and Justice and President, Court of Appeal, Sri Lanka</p> <p><b>John Pendergrass</b> Acting Vice-President Research and Policy, Environmental Law Institute</p> <p><b>Merideth Wright</b> Distinguished Judicial Scholar, Environmental Law Institute; and former Judge, Vermont Environmental Court (1990–2011)</p>

# APPENDIX 4



## Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment

### Preamble

The Fifth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment was held from 4 to 5 December 2015 in Siem Reap Province, Kingdom of Cambodia.

Supreme Court Chief Justices and senior representatives from the ASEAN judiciaries of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam attended the roundtable. Each judiciary is a Party to the Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment (the Angkor Statement).

The roundtable was organized by the Supreme Court of Cambodia in collaboration with the Asian Development Bank.

The Parties to the Angkor Statement:

**Recognized** the broad spectrum and severity of the environmental challenges facing the ASEAN region, including transboundary environmental issues;

**Renewed** their commitment to cooperate in the achievement of the Hanoi Action Plan to Implement the Jakarta Common Vision;

**Reaffirmed** the need for, and importance of, sharing information; and

**Further reaffirmed** the need for, and importance of, continuing environmental law education.

**NOW THEREFORE**, the Parties to the Angkor Statement, in the spirit of unity, agree and reaffirm their commitment to:

- (1) Continue to cooperate in the achievement of the Hanoi Action Plan to Implement the Jakarta Common Vision;
- (2) Share information amongst ASEAN judiciaries in combating environmental challenges facing the region, including information on jurisprudence, environmental laws and specific environmental penalties; and
- (3) Promote environmental law education and training in law schools and judicial training institutes.

## Attachment 1

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

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



## APPENDIX 5

### THE FIFTH ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT IN PHOTOS









## ARRIVAL OF THE ASEAN JUDICIAL DELEGATES



## ROUNDTABLE PROPER





# SOUVENIR PRESENTATION





# NETWORKING













# SIGHTSEEING















## **Fifth ASEAN Chief Justices' Roundtable on Environment**

### *ASEAN Judicial Cooperation on the Environment: The Proceedings*

The Fifth Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment provided a platform for leaders of ASEAN judiciaries to discuss, share experiences, and decide on how to further strengthen collective action in addressing transboundary environmental challenges. Climate change knows no limits—geographical, judicial, or administrative. The fifth roundtable began with a clear focus on the importance of cooperation and collaboration between judiciaries and the benefit of judicial networks. Each session addressed this objective with specific discussions looking at mutual legal assistance between jurisdictions, the role of soft and hard environmental laws in the ASEAN region, and the potential for harmonized legal frameworks to deal with transboundary environmental concerns.

### **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.



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