

SECOND ASEAN CHIEF JUSTICES' ROUNDTABLE ON ENVIRONMENT

THE PROCEEDINGS

EDITORS

KALA K. MULQUEENY
FRANCESSE JOY CORDON



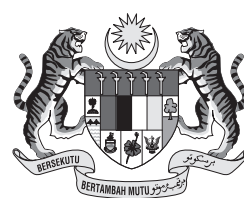
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FOREWORD

The Second Association of Southeast Nations (ASEAN) Chief Justices' Roundtable on the Environment: Environmental Law and Enforcement 2012 is the latest step in efforts to consolidate cooperation among ASEAN judiciaries in the field of environmental protection for the Asia-Pacific region. The Asian Development Bank (ADB) commends the vision of the Right Honorable Tun Arifin and the work led by Tan Sri Dato' Seri Md. Raus Bin Sharif, acting chief justice, Federal Court of Malaysia, and president, Court of Appeal of Malaysia, as well as the Federal Court of Malaysia in advancing work started in Jakarta at the first ASEAN Chief Justices' Roundtable on the Environment.

ADB recognizes that the judiciary serves as a crucial part of the environmental enforcement chain. The long-term strategic framework of ADB, Strategy 2020, identifies environment and climate change as core operational areas, and good governance and capacity development as drivers of change. Thus, ADB has committed to "strengthen...the legal, regulatory, and enforcement capacities of public institutions on environmental considerations." In line with this, ADB strives to build the capacity of judiciaries and all other stakeholders in the environmental enforcement chain; promote the significance of environmental adjudication, good governance, and environmental social safeguards; and advocate sustainable development, while managing the world's finite resources to serve the needs, not only of the present generation, but also of succeeding ones.

This Second ASEAN Chief Justices' Roundtable on the Environment serves as an example of how international and regional cooperation among the various judiciaries can shape an effective rule-of-law system, capable of fostering strong environmental governance. Recommendations include the formation of a working group to incorporate the ASEAN judiciaries' commitment to operationalize such cooperation and to emphasize their efforts toward achieving environmental justice. The roundtable's success has also led to further collaboration among ADB, its partner institutions, and the chief justices and senior members of the Supreme Administrative Court of Thailand and the Supreme People's Court of Viet Nam, who offered to host the roundtables in 2013 and 2014.

This volume records the proceedings of the roundtable. After key resource speakers discussed the common environmental challenges facing the region, the ASEAN judiciaries shared the means by which their respective institutions have responded to these challenges and the obstacles that they must overcome in strengthening their rule-of-law systems. This publication may serve as a reference point for further understanding environmental justice and jurisprudence in the ASEAN region, as a basis for environmental justice, governance, and rule of law in the ASEAN and the Asia and Pacific region, and implementing the Jakarta Common Vision on Environment for ASEAN Judiciaries.

Christopher L. Stephens
General Counsel
Office of the General Counsel

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Many staff members at the Asian Development Bank (ADB) and its development partners worked diligently to make the Second ASEAN Chief Justices' Roundtable on the Environment: Environmental Law and Enforcement 2012 a success.

ADB's development partners provided fundamental support in assembling the Association of Southeast Asian Nations (ASEAN) chief justices and senior judiciaries, resource speakers, and key stakeholders to share their findings, experiences, and concerns in addressing the region's common environmental challenges.

The Federal Court of Malaysia, led by its acting chief justice, Tan Sri Dato' Seri Md. Raus Bin Sharif, graciously served as the roundtable's host and formally opened the roundtable discussions. Acting Chief Justice and Court of Appeal President Tan Sri Dato' Seri Md. Raus Bin Sharif, Abdull Hamid Embong, and Hasan bin Lah, judges, Federal Court of Malaysia; Ramly Ali, Zaharah Ibrahim, and Azahar bin Mohamed, judges, Court of Appeal of Malaysia; and Dr. Kala K. Mulqueeny, principal counsel, ADB, were among those who served as session chairs and facilitated the panel discussions.

From the ADB Office of the General Counsel, Deputy General Counsel Marie-Anne Birken gave the welcome remarks. Principal Counsel Kala Mulqueeny convened the roundtable and moderated the discussions, with the backing of an exceptional team comprising Rita Marie Mesina, Kristine Melanie Rada, and Ma. Celeste Saniel-Gois, who rendered important administrative, secretariat, and research support.

Kala K. Mulqueeny and Francesse Joy J. 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
ASEAN-WEN	– ASEAN Wildlife Enforcement Network
CBD	– Convention on Biological Diversity
CITES	– Convention on International Trade in Endangered Species of Wild Fauna and Flora
INTERPOL	– International Criminal Police Organization
NEA	– National Environment Agency

EXECUTIVE SUMMARY

The Asian Development Bank (ADB) and the Federal Court of Malaysia hosted the Second Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment: Environmental Law and Enforcement 2012 from 7 to 10 December 2012 at the Philea Resort and Spa, Melaka, Malaysia. The roundtable is part of ADB's continuing efforts to assist ASEAN judiciaries in combating environmental crime and addressing environmental challenges to promote sustainable development, improve environmental quality, and ensure environmental justice. The roundtable was composed of chief justices and their designees, comprising the senior judiciary and/or their designees of the Supreme Court of Brunei Darussalam, Supreme Court of Cambodia, Supreme Court of the Republic of Indonesia, People's Supreme Court of the Lao People's Democratic Republic, Federal Court of Malaysia, Supreme Court of the Union of Myanmar, Supreme Court of the Philippines, Supreme Court of Singapore, Supreme Court of Thailand, and Supreme People's Court of Viet Nam.

Distinguished experts discussed common ASEAN environmental challenges. Representatives of each ASEAN judiciary then shared their experiences in handling environmental challenges, including legal and institutional challenges that they have commonly faced and the measures that they have implemented to address these challenges.

There were twelve sessions. In Session 1, ASEAN Environmental Challenges: Green Issues, one resource speaker discussed biodiversity and access and benefit sharing. She suggested that all countries should draft and regularly update their own national biodiversity strategies and action plans to implement the provisions of the Convention on Biological Diversity in line with the Strategic Plan for Biodiversity, 2011–2020 and the Aichi Biodiversity Targets. She also presented the ideas of (i) considering the economic valuation of environmental damage as part of compensation in environmental cases; (ii) including scientists in seminars for judges and prosecutors on national Convention on Biological Diversity-related legislation; (iii) incorporating environmental law in law school curricula; (iv) promoting continuous dialogue among ASEAN countries on the implementation of national laws; and (v) fostering international cooperation in addressing transboundary issues. Another talked about the ASEAN Wildlife Enforcement Network (ASEAN-WEN) and its role in implementing ASEAN enforcement policies and laws in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The last speaker linked the gravity of the illegal wildlife trade issue to national security and stability, drug trade, and environmental and global health. During the **question and answer time**, the judicial participants acknowledged their role in environmental law enforcement. A participant pointed out that efforts at enhancing environmental governance, such as drafting model laws with effective penalties to deter further commission of environmental crimes, should be harmonized given that environmental crimes are well organized and cross-border in nature. Another added that consultations among stakeholders should be conducted to create credible standards in drafting such model laws.

In Session 2, ASEAN Environmental Challenges: Blue Issues, one speaker stressed the need for a change in mindset from a wasteful one to one that prefers sustainable use of the world's finite resources. Another discussed Malaysia's efforts to fulfill its state obligations pursuant to the United Nations Convention on the Law of the Sea and other international environmental protection treaties and conventions. During the **question and answer time**, a participant asserted that the initiative for change should come from the enforcement and executive branches, bearing in mind the cross-border nature of blue issues, while another opined that the judiciary should be the last actor in the environmental enforcement chain and should not overstep its powers and functions in advocating environmental justice.

In Session 3, ASEAN Environmental Challenges: Brown Issues, the first speaker highlighted the dangerous effects of particulate matter that worsen as these particles get smaller and go deeper into the lungs. She also presented studies establishing a causal link between air pollution, particularly air pollution from traffic, and impaired lung function, as well as respiratory and cardiovascular diseases and death, and proposed having better-planned Asian cities with public transport and walking and cycling facilities. The next speaker traced environmental degradation to changes in lifestyle and consumption patterns and suggested the creation of standards against which environmental quality and damage should be measured, which should then be applied by the judicial branch in adjudicating environmental cases.

In Session 4, Judicial Reforms to Respond to Environmental Challenges: Institutionalizing Environmental Expertise through Specialization and Environmental Courts, one speaker detailed a practice direction in Malaysia that serves as a guideline in establishing environmental courts, particularly at the sessions and magistrates court level. The next one discussed the Office of the Supreme Court of Thailand's study on environmental cases in the courts of justice; obstacles faced with respect to legal matters and judges' lack of expertise; and resulting establishment of environmental divisions in the Supreme Court, Court of Appeal, and Courts of First Instance. The third speaker recounted the establishment of environmental divisions and the consequent decrease in the environmental case docket, while the fourth one discussed the Philippine judiciary's progress in the field of environmental law. The last speaker explained the Indonesia Supreme Court's certification program for environmental judges.

In Session 5, ASEAN Environmental Law Challenge: Development Planning and Environmental Impact Assessments, the Lao People's Democratic Republic speaker discussed the measures implemented in the country to deal with environmental degradation in collaboration with local communities and international organizations. During the **question and answer time**, the important features of an environmental impact assessment, namely: (i) a feasibility study, which includes an assessment of the environmental risks and impacts the project may pose; (ii) a study of the various options available, particularly a cost-benefit analysis of the project and the effect if the project is not implemented; and (iii) a public consultation process with the local communities that may be affected by the project, have been discussed. Most importantly, the results of these assessments should be conveyed to the public, especially indigenous communities, in a way that they can understand and appreciate, in order to have effective public consultation.

In Session 6, Common Challenges for ASEAN Justices: Key Legal Issue #1: *Locus Standi* in Environmental Cases, the liberal *locus standi* rules in environmental cases of the Philippines and Thailand have been discussed. During the **question and answer time**, the participants discussed the implications of loosening the *locus standi* requirement in environmental cases. One chief justice opined that the looser the standing rules are, the less concerned judges are with the private or personal rights of the individual litigants and the more they are concerned with issues of governance in a particular state. This also means that less judicial resources are given to other fundamental access-to-justice issues. The participants also deliberated on whether there is a direct causal relationship between the relaxation of *locus standi* rules and the floodgates argument. The Philippine delegation commented that while the Supreme Court has relaxed its approach to *locus standi* since 1993, the number of environmental cases has not increased dramatically, owing to the limited number of lawyers willing to handle environmental cases and the cost of litigation.

In Session 7, Common Challenges for ASEAN Justices: Key Legal Issue #2: Remedies and Principles of Sentencing in Environmental Cases, the participants talked about the nature, enforceability, and effectiveness of the appropriate penalties to be imposed as a deterrent to further commission of environmental crimes. In Viet Nam, the penalties depend on the kind of offense committed. In Thailand, the penalties can be in the form of a warning and pecuniary penalty in administrative cases, and fine, imprisonment, and disqualification from the practice of certain occupations in criminal cases. Sentencing in criminal cases is aimed at punishing the wrongdoing, avoiding recurrence, and deterring further crime. So far, the Thailand judiciary is concerned with a lack of alternative punishments and a wide range of sanctioning instruments in criminal cases, as well as standing, class action, burden of proof, expert witnesses, and civil penalties in civil cases. During the **question and answer time**, the issues of proper assessment of the environmental damage, evaluation of evidence, and imposition of penalties were raised. One participant pointed out that appropriate sanctions,

commensurate to the consequences of such breaches, should be imposed and victim impact statements, to emphasize the suffering inflicted by environmental crimes, can be considered by judges in imposing the appropriate penalty.

In Session 8, Common Challenges for ASEAN Justices: Key Legal Issue #3: Delays and Case Backlog in Environmental Cases, the speakers tackled the problems faced by the judiciaries in deciding environmental cases and the measures that they have undertaken to solve these problems. In addition, the Indonesia delegate stated that the Indonesia judiciary aims to (i) deliver justice through the most efficient process of litigation, (ii) ensure legal consistency and certainty in decision making, and (iii) strengthen access to justice. The Singapore delegate, on the other hand, explained how they were able to manage having zero backlog for environmental cases through the public's active engagement, diversionary measures, and court-based measures, among others. During the **question and answer time**, the participants discussed how judges' performance reports can be used as a shame mechanism and moral persuasion for the poorly performing justices to improve, while the Singapore delegates expounded on their strategies in effectively managing their case docket.

In Session 9, Common Challenges for ASEAN Justices: Key Legal Issue #4: Expert Witness and Scientific Evidence in Environmental Cases, the speakers discussed the use and evaluation of scientific evidence and expert testimony on scientific and technical matters in environmental cases. During the **question and answer time**, the participants talked about how they should approach expert witnesses, especially when they render conflicting opinions. One participant shared that dealing with expert witnesses in an adversarial manner is inadvisable and related how Singapore courts consider expert witnesses as court aides and encourage them to at least communicate with each other to isolate and explain any conflicting opinions and to submit a joint expert report.

In Session 10, Alternative Dispute Resolution (ADR) in Environmental Cases, the first speaker explained how environmental disputes in Indonesia can be settled through court or out-of-court avenues, with mediation being the most widely used alternative dispute resolution mechanism. The next speaker discussed the many advantages and disadvantages of Thailand's compulsory mediation. The last speaker explained how ADR can be helpful in resolving disputes, including environmental disputes, and even transboundary disputes, which domestic judiciaries are ill-equipped to address due to issues of jurisdiction, justiciability, and enforceability. During the **question and answer time**, other delegations were given the opportunity to ask questions and share their insights on ADR. Significantly, the Philippine delegates shared how judges in the Philippines help settle disputes by conducting judicial dispute resolution, a process akin to mediation, wherein judges give an early neutral evaluation of the case, informing the parties of the merits of their arguments.

In Session 11, Common Challenges for ASEAN Justices: Key Capacity and Governance Issues, the attorney general of Brunei Darussalam, emphasized the significance of access to justice in environmental governance, and access to information in deciding which changes must be made for sustainable development. She added that based on the current environmental caseload of their courts, environmental awareness and the enforcement of environmental legislation are sorely lacking. As soon as their new environmental laws have taken effect, courts must consider the mechanisms to implement environmental justice. Thereafter, the Myanmar representative discussed Myanmar's Environmental Conservation Law and the Environmental Conservation Committee to be formed to spearhead the country's environmental conservation efforts.

Lastly, the participants discussed the draft Melaka Memorandum of Understanding for Cooperation among ASEAN Courts, which aims to provide an operational framework for environmental cooperation among the ASEAN judiciaries. It proposes a process of collaboration in advocating environmental protection and sustainable development, and for the judiciary to lead the legal profession and law enforcement community toward stronger, more credible rule-of-law systems with integrity and promotion of environmental sustainability. The ASEAN judiciaries agreed to establish a technical working group of judges from each ASEAN judiciary and chaired by the chair of the succeeding ASEAN Chief Justices' Roundtable on the Environment to formulate a consensus on the terms of the memorandum of understanding toward attaining the Jakarta Common Vision (with the support of ADB).

ROUNDTABLE HIGHLIGHTS

■ OPENING CEREMONY

■ Opening Remarks

Tan Sri Dato' Seri Md. Raus Bin Sharif, acting chief justice, Federal Court of Malaysia, and president, Court of Appeal of Malaysia, welcomed the speakers, participants, and guests to the Second Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on the Environment: Environmental Law and Enforcement 2012. He emphasized the importance of the rule of law and the role of the judiciary in the implementation, development, and enforcement of environmental law, and acknowledged the efforts of the Asian Development Bank (ADB) and the United Nations Environment Programme in bringing together the chief justices as well as the region's leading public interest lawyers to chart the agenda for the rule of law on the environment in the ASEAN region.

The acting chief justice stated that the goal is a series of discussions on issues relating to environmental justice and the development of ASEAN environmental laws. The roundtable hoped to address the common challenges faced by the chief justices, with a focus on environmental jurisprudence and scientific evidence. He expressed the judiciary of Malaysia's hope that this roundtable would lead to further conferences aimed at reaching consensus.

Acting Chief Justice Tan Sri Raus Shiraf concluded by calling upon judicial participants to set the agenda for change and to lead by example.

■ Welcome Remarks

Marie-Anne Birken, deputy general counsel, ADB, welcomed everyone to this second roundtable. On behalf of ADB, Ms. Birken expressed appreciation to the Federal Court of Malaysia for providing the opportunity to discuss environmental adjudication and governance. She also noted Malaysia's significant role in Asia, especially in prioritizing regional cooperation. She acknowledged the Federal Court of Malaysia's success in establishing its environmental courts in September 2012 and initiating its first judicial seminar on green courts in November 2012 as an outcome of the first ASEAN Chief Justices' Roundtable on the Environment. These efforts encouraged the trial courts to impose strong penalties in environmental cases, where appropriate.

Ms. Birken emphasized the significant role that the judiciary plays in addressing the region's common environmental challenges. The judiciary's role in environment enforcement consists of making environmental decisions, developing environmental jurisprudence, establishing environmental courts, and leading the rest of the legal profession toward credible rule-of-law systems for environmental justice.

From the First ASEAN Chief Justices' Roundtable on the Environment, Ms. Birken emphasized three messages:

- (i) Southeast Asia encounters environmental challenges resulting from economic development, including climate change, biodiversity loss, deforestation, illegal fishing, and illegal wildlife trade;

- (ii) ADB helps address these challenges, including by formulating its Strategy 2020 to address these environmental concerns, developing strong governance policies and environmental social safeguards, partnering with Southeast Asian countries, and supporting the environmental programs of the judiciaries; and
- (iii) The roundtable could examine specific measures on how the judiciaries could cooperate in addressing these challenges and setting an example for the other regions in the world.

■ Keynote Address

Zakri Abdul Hamid, professor emeritus and science advisor to the prime minister of Malaysia, noted that the aspirations of the Rio Declaration on Environment and Development and the action plan laid down in Agenda 21 have not been achieved. Dr. Zakri described the status of the global environment, underscoring the key indicators of environmental degradation, and likened the status of the environment to a very sick human being.

Dr. Zakri stressed that the time to minimize and reverse the adverse effects of human activities on the earth is running out. However, humans are now at the point where they have attained a decent understanding of global environmental challenges and are better able to address such challenges. The 2004 Report of the United Nations Secretary-General identified the rule of law as a key component in global environmental governance. In the 21st century, environmental law creation and enforcement are vital in achieving sustainable development. Furthermore, respect for human rights is central to the very concept of rule of law.

The United Nations Environment Programme is at the forefront of developing international environmental treaties and norms, all of which affect international legal systems. There is a need, however, to focus on implementing environmental law at the national level and to present its benefits for society and the economy. Rule of law; good governance; and effective, transparent, accountable, and democratic institutions are vital in achieving environmental sustainability. Environmental law is crucial in protecting natural resources and ecosystems, and reflects the best hope for humankind's future.

Dr. Zakri concluded by asking the audience, particularly the judiciary, to reflect on the issue of sustainable development. The judiciaries' presence in this roundtable shows their commitment, will, and wisdom to be a part of building the necessary systems to promote environmental sustainability for future generations.

■ INTRODUCTORY AND OVERVIEW SESSION

Saving ASEAN's Natural Resources Video Presentation

A video from the ASEAN Centre for Biodiversity, *Saving ASEAN's Natural Treasures*, was presented. The video emphasized the richness of Southeast Asia's biodiversity, the importance of protecting this biodiversity, and its bleak status, given humankind's wasteful consumption of natural resources and unwise introduction of invasive alien species into ecosystems. It observed that along with food insecurity, climate change, management of protected areas, lack of funding, and other critical support problems, biodiversity loss is among the largest threats to the people of Southeast Asia. According to the Millennium Ecosystem Assessment, humans have increased the current extinction rate by up to 1,000 times the fossil record, and the projected future extinction rate by more than 10 times the current rate.

Facing the critical problem of meeting the population's ever-growing demands with ever-shrinking natural resources, the 10 ASEAN member states have started to collaborate to protect their biodiversity. All have responded in their own way by becoming signatories to various international instruments, including the Convention on Biological Diversity (CBD); becoming members of several conservation programs; and establishing their own networks of protected areas. This recognition of the shared responsibility in protecting the region's biodiversity led to the establishment of the ASEAN Regional Centre for Biodiversity Conservation, which bridged the conservation efforts of the various ASEAN governments, and those of the ASEAN with the European Union. The regional center promoted the adoption of common standards, best practices, and sound policies in all matters of biodiversity management, and helped revitalize the concept of ASEAN heritage parks to generate greater awareness, appreciation, and conservation of the region's rich natural heritage.

During the Ninth Informal ASEAN Ministerial Meeting held on 27 September 2005, the ASEAN Centre for Biodiversity Conservation was launched as a continuation of the ASEAN Regional Centre for Biodiversity Conservation. The ASEAN Centre for Biodiversity Conservation contributes to enhancing the region's collaboration efforts, strengthening the capacities of ASEAN member states and biodiversity stakeholders, coordinating program development and policy formulation, developing human and institutional capacity, managing biodiversity information, and raising public and leadership awareness of biodiversity values and sustainable financing mechanisms. It focuses on the principle of equitable and sustainable sharing of the ASEAN biodiversity for the common economic, social, and environmental well-being of the member states.

■ Overview: Justice, Governance, and the Rule of Law for Environmental Sustainability

From the video, **Kala Mulqueeny**, principal counsel, ADB, highlighted the tension between the environment and development, the importance of sustainable development, and the ensuing multitude of environmental issues that can be properly addressed by the political process. While the political process deals with legislation, the judiciary serves as an indispensable element of the enforcement chain.

Dr. Mulqueeny discussed ADB's role in promoting environmental justice, which began at the request of Indonesia's Ministry of Environment and Supreme Court. ADB responded by providing technical assistance and organizing the 2010 Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, which served as a forum for sharing best practices on environmental adjudication and culminated in a symposium statement. She then explained the Asian Judges Network on Environment (AJNE) and the structure of the roundtable topics in the context of the ASEAN Chief Justices' Roundtable on Environment, which concluded with A Common Vision on Environment for ASEAN Judiciaries (or the Jakarta Common Vision).

As a prelude to the succeeding topics, Dr. Mulqueeny enumerated the various global environmental challenges today, emphasizing the adverse effects of climate change and potential cases that could be brought before the courts. She also stressed the role of the judiciary in addressing these challenges by setting precedents, issuing rules for the lower courts to follow in adjudicating environmental cases, and generating awareness amongst the legal community as a whole. She encouraged the delegates to engage in a collaborative and interactive discussion on how these issues could be addressed in the roundtable, and how the ASEAN judiciaries could advance the Jakarta Common Vision.

■ Jakarta Common Vision on Environment for ASEAN Judiciaries

At this juncture, the various delegations introduced themselves and gave key updates on their efforts toward attaining the Jakarta Common Vision.

Indonesia

Paulus E. Lotulung, deputy chief justice, Supreme Court of the Republic of Indonesia, shared the following achievements of Indonesia's judiciary in realizing the Jakarta Common Vision:

- (i) conducting certification training for Indonesian judges, which had been agreed at the first roundtable;
- (ii) improving Indonesia's alternative dispute resolution (ADR) mechanism in handling environmental cases;
- (iii) drafting a handbook for environmental judges to assist them in developing the best advice and solutions to common problems;
- (iv) ensuring the consistency of judgments as part of the judiciary's efforts to promote public trust and confidence; and
- (v) making environmental law a compulsory subject in all law schools.

Brunei Darussalam

Paduka Haji Kifrawi, chief justice, Supreme Court of Brunei Darussalam, expressed the country's commitment to address environmental challenges. Despite not having been present during the first roundtable, Brunei Darussalam looked forward to the interesting presentations and discussions during this roundtable.

Lao People's Democratic Republic

Khamphanh Sitthidampha, president, People's Supreme Court of the Lao People's Democratic Republic, described how the government and judiciary had tackled environmental problems through environmental legislation, raising public awareness, and mobilizing masses. He expressed interest in sharing how to successfully implement environmental laws.

Myanmar

Tun Tun Oo, chief justice, Supreme Court of the Union of Myanmar, described how the government has promoted the rule of law and increased the judiciary's role in the enforcement of environmental laws, including conducting information dissemination and judicial training. There are environmental cases that had not been brought before the courts; hence, effective rules of procedure for environmental cases and environmental penal statutes are needed.

Philippines

Maria Lourdes Sereno, chief justice, Supreme Court of the Philippines, introduced the representatives of the Philippines delegation and shared how the Philippines had endeavored to achieve the Jakarta Common Vision by promulgating the Rules of Procedure for Environmental Cases in 2010, which led to increased filing of environmental cases before trial courts, stronger environmental decisions, and more than 30 training sessions in 2012 for lawyers and judges spearheaded by the Philippine Judicial Academy. Also, law schools are required to include environmental law as part of their curriculum.

Singapore

Sundaresh Menon, chief justice, Supreme Court of Singapore, noted that the situation of each country, as well as the challenges that they face, is unique. Second, the priorities set by each country regarding environmental law is something it must determine for itself. Third, the environmental challenges may be expansive and expensive, and responding to these challenges will require a considerable amount of finite resources. These three points are important in determining which particular priorities must first be addressed.

Chief Justice Menon agreed that the judiciary plays a key role in generating collaborative solutions to environmental problems. However, he indicated that this was only a supportive role, which comes into play in the enforcement stage. Judicial overreach could pose a problem. Hence, the Singapore judiciary would need to first consult with its other government agencies before they would sign this roundtable's outcome agreement.

Chief Justice Menon updated the audience on the government's focus on legal education, especially in the field of environmental law, with the establishment of the Asia-Pacific Centre for Environmental Law and the training offered by the Singapore Environment Institute. Moreover, Singapore has implemented new, innovative ways to present evidence in environmental cases.

Malaysia

Tan Sri Dato' Seri Md. Raus Bin Sharif, acting chief justice, Federal Court of Malaysia, and president, Court of Appeal of Malaysia noted that Parliament enacted the Environment Quality (Amendment) Act 2012, which paved the way for a more effective enforcement system for environmental law. A new section was inserted to empower the director general to arrest and issue stop work orders to persons conducting activities posing environmental harm. The director general can also protect and reward informers for their assistance in detecting offenses under this act. Second, environmental courts were established to handle cases involving environmental issues. Third, an ADR system was put in place. Several training programs for judges were also conducted.

ASEAN Regional Cooperation on the Environment

Halimah Binti Hassan, director general, Department of Environment of Malaysia presented the speech prepared by **Douglas Uggah Embas**, Minister of Natural Resources and Environment, Malaysia on the progress of ASEAN regional cooperation on environmental conservation and restoration.

ASEAN member states have recognized that environmental cooperation is essential for sustainable development and regional integration. At present, such collaboration focuses on the following 10 priority areas of regional importance, as reflected in the Blueprint for the ASEAN Socio-Cultural Community, 2009–2015:

- (i) addressing global environmental issues;
- (ii) managing and preventing transboundary environmental pollution including transboundary haze pollution, and transboundary movement of hazardous waste;
- (iii) promoting sustainable development through environmental education and public participation;
- (iv) promoting environmentally sound technology;
- (v) promoting quality living standards in ASEAN cities and urban areas;

- (vi) harmonizing environmental policies and databases;
- (vii) promoting the sustainable use of coastal and marine environments;
- (viii) promoting sustainable management of natural resources and biodiversity;
- (ix) promoting the sustainability of freshwater resources; and
- (x) responding to climate change and addressing its impacts.

Guided by this blueprint, together with the ASEAN Political-Security Community Blueprint, the ASEAN Economic Community Blueprint, and the Initiative for ASEAN Integration, ASEAN member states have made significant progress in realizing the ASEAN Community 2015. ASEAN developed various agreements and initiatives; organized training, working groups, and networks; and adopted policies, criteria, and action plans to resolve each of these priority transboundary issues. To harmonize its environmental policies and databases internally and with the rest of the world, ASEAN published several reports on its progress in addressing these environmental concerns, with the last one published in 2009. Further, to promote collaboration in resolving biodiversity loss, the ASEAN Centre for Biodiversity was established in 2005.

Ms. Halimah Binti Hassan concluded by emphasizing the need for collective action in solving ever-growing environmental issues and in better enforcing environmental laws.

■ SESSION 1 ASEAN Environmental Challenges: Green Issues—Deforestation and Illegal Logging, Biodiversity, and the Illegal Wildlife Trade

Environmental Crime: Our Planet, Our Problem Video Presentation

A short video, *Environmental Crime: Our Planet, Our Problem*, was played. This video helped frame succeeding discussions by stressing that environmental crime is transnational organized crime, committed by humans and leading to human victims. The consequences are diverse: increased conflict and suffering, intensified climate change, and species extinction. All ASEAN members can take action against it by committing to real international cooperation, creating national environmental crime units, and combating criminal networks.

Resource speakers then gave a brief background on the current state of green issues, particularly deforestation and illegal logging, biodiversity, and the illegal wildlife trade.

Clarissa C. Arida, director, ASEAN Centre for Biodiversity's Program Development and Implementation Division, tackled the concept of biodiversity and access and benefit sharing, as espoused by the Convention on Biological Diversity (CBD), and traced the drivers of biodiversity loss in Southeast Asia to habitat change, climate change, introduction of invasive alien species, overexploitation of natural resources, pollution, and poverty.

With respect to the efforts of ASEAN member states in addressing green issues, all countries must draft their own national biodiversity strategies and action plans for CBD implementation at the national level. All countries must regularly update the plans in line with the Strategic Plan for Biodiversity, 2011–2020 and the Aichi Biodiversity Targets, which include significantly reducing biodiversity loss, environmental degradation and fragmentation, and the extinction of known threatened species. Some countries, like the Philippines and Malaysia, have enacted laws in line with the principle of access and benefit sharing. On the regional level, 32 ASEAN Heritage Parks have been identified and are being maintained, while several regional and subregional agreements have been signed. Information dissemination, training, and capacity-building programs are being implemented.

Ms. Arida proposed that justices consider the economic valuation of environmental damage in determining compensation in environmental cases; scientists hold seminars and training for judges and prosecutors on national CBD-related legislation; environmental law be required as part of the curriculum of law schools; ASEAN member states have continuous dialogues regarding CBD-related implementation of national laws; and neighboring countries cooperate on transboundary issues.

Manop Lauprasert, senior officer, ASEAN Wildlife Enforcement Network (ASEAN-WEN) Program Coordination Unit, briefed the audience on the background of ASEAN-WEN, especially its role in the implementation of ASEAN enforcement policies and legislation pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Membership in ASEAN-WEN is targeted at officials from CITES authorities, customs, police, prosecutors, specialized governmental wildlife law enforcement organizations, and other relevant law enforcement agencies. The network primarily assists in establishing and strengthening national task forces and interagency cooperation on wildlife enforcement; raising public awareness on wildlife crime and illicit trade in wild fauna and flora; organizing capacity building through wildlife trade regulation courses, species identification and protected areas enforcement training, investigation and wildlife forensics training, judicial awareness workshops, and public and leadership awareness seminars; and improving collaboration, cooperation, and information exchange among law enforcement agencies and national task forces. Aside from working with national enforcement agencies, ASEAN-WEN also coordinates with international organizations, e.g., the CITES Secretariat, International Criminal Police Organization (INTERPOL), and World Customs Organization, and receives financial and technical support from the Asia's Regional Response to Endangered Species Trafficking Program, TRAFFIC Southeast Asia, and TRACE through its secretariat, the ASEAN-WEN Program Coordination Unit located in Bangkok, Thailand.

Presently, increased capacity, awareness, and commitment in ASEAN member states has led to hundreds of wildlife enforcement actions. These actions have resulted in related arrests and convictions; the rescue and recovery of tens of thousands of protected live animals, as well as dead animals, parts, and derivatives; retrieval of 100 tons of wild fauna; thousands of pounds of illegally logged timber; and wild plants, parts, and derivatives, all worth millions of dollars on the black market.

Chris R. Shepherd, deputy regional director, TRAFFIC Southeast Asia, stressed the need to consider illegal wildlife trade as a serious issue due to its threat to national security and stability, the link to the drug trade, and the risk to the environment and global health. The illegal wildlife trade is particularly attractive to criminal syndicates because it is very lucrative, and the risk of conviction is very low.

Dr. Shepherd noted that while the general perception is that only the poor are involved, in reality, the illegal wildlife trade is propelled by the demand created by those with money. The bulk of the profits derived from this criminal activity go to brokers, exporters, and retailers. However, those who usually get caught are the ones most visibly engaged in this trade, such as poachers, hunters, and transporters of illegal wildlife. There have been instances in which large seizures of illegal wildlife products are returned to the black market due to corrupt public officials. These factors make illegal wildlife trade deterrence extremely difficult and an urgent issue for the judiciaries' consideration.

During the **question and answer time**, the significance of creating public awareness of these environmental challenges was recognized. The judges noted their role in the enforcement mechanism, but observed that legislative effort was also vital given that the judiciary can only act in accordance with the law penalizing the environmental crimes involved in a given case.

Chief Justice Menon of the Supreme Court of Singapore suggested that ASEAN countries harmonize their efforts, such as in drafting model laws with effective penalties for deterrence of environmental crimes. He also observed that these environmental crimes are well organized and cross-border in nature; in response, Chief Justice Sereno of the Supreme Court of the Philippines said that intense consultations must first be conducted among the stakeholders to attain credible standards in drafting such model laws.

■ SESSION 2 ASEAN Environmental Challenges: Blue Issues—Ocean Destruction, Illegal Fishing, Marine Pollution, Freshwater Pollution, and Flooding

Ocean Destruction and Illegal Fishing

Antonio Oposa, president, Law of Nature Foundation, and a Ramon Magsaysay awardee, began by narrating *The Story of the King*, through which he illustrated two important lessons: (i) one must still see and utilize opportunities during a crisis, and (ii) one cannot solve a problem with the same mind-set that created the problem in the first place. In other words, to counter environmental degradation, humans need a change in mind-set, from wasteful use to use that is wise and sustainable. Mr. Oposa stressed that the environment is the land, air, and water (LAW) of life, so instead of destroying the environment, we should conserve, protect, and restore it.

Mr. Oposa remarked that the center of marine life is in the area that includes most of Indonesia, Malaysia, and especially the Philippines, or what is sometimes called the “East Indies Diversity Triangle.” However, this rich biodiversity is threatened by blast fishing, cyanide fishing, commercial fishing in prohibited municipal waters, shark finning, illegal trade in endangered marine species, water pollution, and climate change or ocean acidification. There are also insidious threats brought about by ASEAN neighbors claiming exclusive ownership of the ASEAN seas. Fortunately, there has already been some progress in terms of countering these threats. Several years ago, the Philippines judiciary ordered Manila Bay to be cleaned up, and in 2012, fish returned to the bay. Large amounts of dynamite, detonators, and explosives used in dynamite fishing have been seized, while dynamite fishers have been arrested. Creative penology, converting some illegal fishers into fish wardens, has also been introduced.

Mr. Oposa noted that global warming and climate change pose the gravest threats to humankind and present the greatest opportunity. In this regard, he mentioned the Global Legal Action on Climate Change project to initiate global litigation to hold this generation, represented by governments, responsible for intergenerational damages. He then ended by reiterating that the environment is the law of life and calling the audience to stop talking and start acting.

Coastal and Marine Pollution

Sharina Shaukat, fellow and head, Centre for Ocean Law and Policy at the Maritime Institute of Malaysia, first described Malaysian waters, the marine environment, and their significance on Malaysian culture and the economy. She noted Malaysia’s accession to several international environmental protection treaties and conventions, including the United Nations Convention on the Law of the Sea and its efforts to fulfill its state obligations pursuant to these instruments. Such efforts include the (i) enactment of enabling laws; (ii) establishment of implementing agencies; (iii) setting up, in cooperation with Indonesia, Singapore, and Thailand, the Eyes in the Sky project, which is a joint maritime air patrol initiative aimed at surveying and securing the Singapore and Malacca Straits; (iv) implementation of a routing system, coupled with surveillance and monitoring, to prevent accidental ship discharges; and (v) enactment of the Marine Pollution Act to prevent intentional ship discharges. Malaysia is currently preparing for the implementation

of marine spatial planning for the proper management of its marine environment to satisfy the needs of and for marine transport, economic development, energy, environmental quality, marine protected areas, fisheries, aquaculture, and the military. Nonetheless, there are still gaps in terms of formulating a comprehensive national program and regional instrument, as well as controlling the introduction of alien species into Malaysian waters.

During the **question and answer time**, Mr. Oposa noted that the judiciaries are in a difficult situation, but the courts can be examples of change and can take environmental cases seriously. He cited Singapore, wherein there is very little need, if any, for ordinary citizens to file environmental cases in court, as the executive branch actively protects the environment.

After expressing his appreciation for the Government of Singapore's initiative to maintain and protect the environment, Chief Justice Menon emphasized the need for the initiative to come from the enforcement and executive branches because of the multinational nature of blue issues. In response, Chief Justice Sereno expressed that the main concern of the Philippines is in regard to domestic enforcement, which is linked to corruption in the country. She then opined that the judiciary is inherently supposed to be the last actor in the chain of events, and it should not cross the fine line demarcating the powers and functions of the judiciary from those of the other governmental institutions.

■ **SESSION 3** ASEAN Environmental Challenges: Brown Issues—Urbanization and Land and Air Pollution

Air Pollution Challenges in Southeast Asia

Glynda Bathan-Baterina, deputy executive director, Clean Air Asia, spoke on the state of air pollution and its adverse effect on human health. Specifically, particulate matter, a complex mixture of extremely small particles, is harmful, because the smaller these particles are, the deeper they go into the lungs. Studies show a causal relation between air pollution, especially air pollution from traffic, and impaired lung function, as well as respiratory and cardiovascular diseases and death. Worse, a rapidly growing economy leads to increased exposure to air pollution, illnesses, and death due to increased motorization and dieselization of vehicles. Migration to cities of up to 1.1 billion people in the next 30 years is expected.

For Ms. Bathan-Baterina, regulating vehicle use and emissions is the key to solving the particulate matter problem. Thus, she suggested the creation of better-planned Asian cities with public transport and walking and cycling facilities. Otherwise, future economic development will only bring in more congestion, air pollution, and more people sick from and dying of cardiovascular diseases. She then ended by calling the judiciaries, as leaders, to contribute toward making Asian cities more breathable and livable by influencing the members of their own organizations and the entire legal profession.

Environmental Degradation and Pollution

Rosa Vivien Ratnawati, assistant deputy minister, Ministry of Environment of the Republic of Indonesia, briefed the audience on the current state of air and water pollution in Indonesia. She began by showing PowerPoint slides depicting how lifestyle changes and consumption patterns contribute to environmental degradation. Ms. Ratnawati recommended that the executive branch come up with standards against which environmental quality and damage should be measured, which should then be applied by the judicial branch in adjudicating environmental cases. In closing, she asked the audience to use their heart, conscience, and awareness in addressing environmental issues.

The PowerPoint presentation highlighted vehicles, industries, and forest fires as main sources of air pollution in Indonesia, where environmental pollution is newly defined under the Environmental Protection and Management Act 2009 as “a process wherein creatures, substances, energy and/or other components come into or are included into the environment by human activity, thus exceeding the environmental quality standard.” The presentation also contained flow charts on environmental pollution measurement and environmental impact assessments as development planning tools, as well as a diagram on the three functions of environmental law enforcement: (i) administrative, in preventing and correcting wrongful performance of environmental enforcement duties; (ii) criminal, in deterring the commission of environmental crimes; and (iii) civil, in assessing compensation and environmental recovery measures.

■ SESSION 4 Judicial Reforms to Respond to Environmental Challenges: Institutionalizing Environmental Expertise through Specialization and Environmental Courts

At this stage, Dr. Mulqueeny invited the leading judiciaries of Malaysia, Thailand, the Philippines, and Indonesia to share their judiciary’s approach to dealing with environmental challenges.

Malaysia

Jeffrey Tan Kok Wha, judge, Federal Court of Malaysia, noted that while Malaysia had enacted much legislation dealing with environmental issues, the country still lacked specialized environmental courts. While recognizing the benefits of having a centralized court, Judge Tan Kok Wha also enumerated the challenges preventing its establishment. Hence, districts that have at least one sessions court have one that is designated as an environmental court; in districts that have no sessions courts, but have at least one magistrate’s court, one magistrate’s court is designated as an environmental court. In environmental cases originating from the magistrates’ courts, appeals may be made to the high courts. For those originating from the sessions courts, appeals may be made to the high courts, and then to the Court of Appeal; and for those originating from the high courts, appeals may be made to the Court of Appeal, and then to the Federal Court.

To develop consistency of environmental decision making, to aid in the development of environmental laws, and to improve predictability and quality of decisions, the chief justice of Malaysia issued the Chief Registrar Practice Direction No. 3 of 2012, which provides guidelines on the establishment of environmental courts, particularly at the session and magistrate court levels.

Thailand

Rungravee Sokhuma, chief judge and research justice, Environmental Division of the Supreme Court of Thailand, first gave background on Thailand’s judicial system, environmental laws, and ADR systems and the jurisdiction of the Court of Justice vis-à-vis the Administrative Court on environmental disputes.

Chief Judge Sokhuma referred to the Bangkok Statement, which resulted from the Mekong Chief Justices and Senior Judges Needs Assessment and Planning Meeting held in Bangkok, Thailand from 17 to 18 June 2003. The meeting convened 15 chief justices, deputy chief justices, and justices from Cambodia, the Lao People’s Democratic Republic, Myanmar, Thailand, and Viet Nam to conduct a regional and national needs assessment to serve as a guide for future capacity-building activities for judges, lawyers, law enforcement officers, and other legal stakeholders in environmental law.

Pursuant to the Bangkok Statement, the Office of the Supreme Court of Thailand conducted a study on environmental cases in the courts and the obstacles faced with respect to legal matters and judges’ lack

of expertise to resolve these cases. As a result, the office discovered that environmental cases are unique and should be decided by judges with the necessary training and expertise. Hence, in October 2005, the Environmental Division was established in the Supreme Court, followed in 2011 by the setting up of a similar Environmental Division in the Court of Appeal and in the Courts of First Instance. The environmental divisions face two critical issues: (i) the proper weighing of environmental values versus personal freedom; and (ii) the correct environmental damage assessment given in Section 97 of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535, which only requires the violator to compensate the state for the “total value of the natural resources so destroyed, lost or damaged by such an unlawful act or omission.”

Kasem Comsatyadham, vice president, Supreme Administrative Court of Thailand, described the history, structure, jurisdiction, and characteristics of the Thailand administrative judicial system. An environmental division was established within the Administrative Courts of First Instance and the Supreme Administrative Court on 5 July 2011. Since then, the number of administrative cases admissible in the administrative courts shrunk from 9,390 cases (of which 1,847 cases remained pending and 7,543 were finalized) to 986 cases (of which 927 cases remained pending and 59 cases were finalized). Evidently, the creation of specialized environmental divisions helped clear the environmental cases docket.

Philippines

Maria Lourdes Sereno, chief justice, Supreme Court of the Philippines, noted that the Philippines Constitution guarantees environmental justice and discussed six significant advances that the Philippines judiciary had achieved in the field of environmental law.

- (i) Philippines environmental jurisprudence is now marked by two significant decisions, demonstrating judicial activism in protecting the environment: *Oposa v. Factoran*, decided in 1993, wherein the Supreme Court ruled that minors can file a class action suit for themselves, for others of their generation, and for those unborn based on their intergenerational right to a balanced and healthful ecology; and *Metro Manila Development Authority v. Concerned Residents of Manila Bay*, decided in 2008, wherein the Supreme Court ordered the government agencies concerned to fulfill their ministerial duty to clean up and restore Manila Bay. Significantly, it was in this case that the Supreme Court issued the very first writ of *continuing mandamus*, forcing these agencies to indefinitely perform their respective duties to clean up Manila Bay.
- (ii) In January 2008, the Supreme Court designated 117 trial courts as green courts, where environmental cases can be heard.
- (iii) On 13 April 2010, the Supreme Court promulgated the Rules of Procedure for Environmental Cases, which provides the guidelines for the manner of filing, hearing, and deciding civil, criminal, and special civil actions concerning environmental cases. These rules relaxed the doctrine of legal standing in terms of who can file these environmental cases, as well as the rule on admissibility of evidence, and prohibited the filing of certain pleadings to avoid delay. The rules further extended the use of pretrial proceedings in clarifying and simplifying issues, limited the period for resolving environmental cases to 1 year, allowed courts to issue a writ of *kalikasan* and a writ of *continuing mandamus* to immediately protect the environment and the environmental rights of affected communities, and mandated the performance by a government agency of a ministerial duty. Lastly, the rules also contain a citizen's suit provision, which empowers communities to petition for the suspension or cessation of destructive environmental and development activities.
- (iv) Since the promulgation of the Rules of Procedure for Environmental Cases, the Supreme Court, through the Philippine Judicial Academy, has conducted multisector capacity building on the new Rules of Procedure and other environmental rules nationwide for the duty-bearers and claim-holders in the justice sector.

- (v) Materials have been prepared and published for judges and other stakeholders. These include a sourcebook on environmental justice to address all environmental policy gaps entitled *Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies*, *Capacity Assessment Report of the Pillars of the Criminal Justice System*, and *Citizen's Handbook on Environmental Justice* to increase citizens' awareness of their environmental rights and remedies, and to guide them on possible courses of action against violations.
- (vi) Lastly, in the last quarter of 2011, a workshop was conducted to develop a road map toward strengthening the implementation of environmental justice in the country by reviewing the experiences of key environmental justice stakeholders, and identifying and filling gaps in the effective delivery of environmental justice. In the last quarter of 2012, the Rules of Procedure for Environmental Cases as well as the status of the environmental cases in all courts nationwide were being reviewed by the Philippine Judicial Academy.

Chief Justice Sereno also remarked that foreign corporations, who are parties to environmental cases in the Philippines, can be served summons even if they are based abroad. She then discussed the recently promulgated Efficient Use of Paper Rule, which prescribed the format and style of (i) all pleadings, motions, and similar legal documents to be filed with the court or any quasi-judicial body under the administrative supervision of the Supreme Court; (ii) decisions, resolutions, and orders to be issued by courts and such quasi-judicial bodies; (iii) reports submitted to the courts; and (iv) transcripts of stenographic notes, to reduce paper. Chief Justice Sereno said that the Philippines judiciary hopes to establish the Efficient Use of Paper Rule as a precursor to the e-filing system that they will soon be implementing.

Indonesia

Paulus E. Lotulung, deputy chief justice, Supreme Court of the Republic of Indonesia, explained the certification program for environmental judges in Indonesia. He explained that the Indonesia judiciary recognized the difference between the quality of the decisions rendered and the speed by which cases are disposed by judges with special knowledge of environmental law as against those without such special knowledge. Thus, the country realized the need to subject judges at all levels to a certification program to equip them with special competence. The program is aimed at ensuring that these judges can and will protect the environment.

■ SESSION 5 ASEAN Environmental Law Challenge: Development Planning and Environmental Impact Assessment

Khamphanh Sitthidampha, president, People's Supreme Court of the Lao People's Democratic Republic, discussed the various changes the country has implemented to address environmental degradation, in collaboration with local communities and international organizations. Aside from ratifying several multilateral environmental instruments, the Lao People's Democratic Republic enacted laws and implemented decrees aimed at improving environmental management and created committees to facilitate coordination among agencies and provinces, as well as a governance mechanism to ensure proper resource allocation among competing needs. It also conducts nationwide capacity-building activities to enforce its environmental laws and policies, promotes basic awareness on priority environmental issues, undertakes studies on environmental management, and promotes the active participation of the private sector in environmental endeavors. Since the Lao People's Democratic Republic has not yet established specialized environmental courts, general courts hear and decide environmental cases.

During the **question and answer time**, Dr. Mulqueeny detailed environmental impact assessments in the Lao People's Democratic Republic in relation to several major projects undertaken in the country.

She then highlighted three important features of an environmental impact assessment. The first stage is a feasibility study, which includes an assessment of the environmental risks and impacts the project may pose. The second stage involves a study of the various options available, particularly a cost-benefit analysis of the project and the effect if the project is not implemented. Finally, there must be a public consultation process with the local communities that may be affected by the project. Giving the public an opportunity to participate in the decision-making process pertaining to the project, and conducting the assessment at an early stage, are both vital to the success of the environmental impact assessment.

Dr. Mulqueeny cited the conduct of an environmental impact assessment for a power plant in the Philippines and a water treatment facility in Thailand. Afterwards, the other delegations shared their countries' experiences on environmental impact assessments. For the Thailand delegation, an environmental impact assessment must also involve an assessment of the project's social and health impact. For Indonesia, should an environmental impact assessment prove to be inadequate, anyone can sue the government official who approved the assessment before an administrative court. The Philippines shared how public involvement, before a project is implemented, can succeed in stopping a project with tremendous adverse environmental impact. Finally, Singapore discussed that in lieu of environmental impact assessments, Singapore develops different comprehensive long-term plans, which do not only evaluate the environmental impact of certain projects, but also look into other possible consequences. Dr. Mulqueeny noted that to have effective public consultation, the project assessment must be conveyed to communities, especially indigenous communities, in a way that they can understand and appreciate.

■ SESSION 6 Common Challenges for ASEAN Justices: Key Legal Issue #1: *Locus Standi* in Environmental Cases

At this juncture, representatives from the Philippines and Thailand were invited to discuss their judiciary's prevailing rules on *locus standi*, or standing to sue, in environmental cases.

Philippines

Raul B. Villanueva, deputy court administrator, Office of the Court Administrator, Supreme Court of the Philippines, began by discussing the constitutional right of Filipinos to a balanced and healthful ecology, which was recognized by the Supreme Court in the landmark case of *Oposa v. Factoran*, G.R. No. 10108, 30 July 1993, as a fundamental right. Citing Philippines jurisprudence on *locus standi*, or standing to sue, both in ordinary cases and in environmental cases, he then stressed that while the Supreme Court has established a very high standard in granting parties *locus standi* in ordinary cases, it has established a very liberal standard when it comes to *locus standi* in environmental cases. As a matter of fact, even sea creatures, represented by humans, can file environmental cases, as seen in the case of *Resident Marine Mammals of the Protected Seascape Tanon Strait, et al. v. Secretary Angelo Reyes, et al.*, G.R. No. 180771, 24 April 2012. Under the Rules of Procedure for Environmental Cases, he stated that in the Philippines:

- (a) any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law; and
- (b) any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws.

Likewise, “any offended party, peace officer or any public officer charged with the enforcement of an environmental law may file a complaint before the proper officer in accordance with the Rules of Court.” In conclusion, Mr. Villanueva pointed out that *locus standi* in environmental cases in the Philippines assists advocates and legitimate parties in environmental preservation.

Thailand

Judge Pairoj Minden, president, Chamber of the Central Administrative Court, and spokesperson, Thailand Administrative Court, first explained the jurisdiction and features of a Thailand administrative court. The standing requirement applicable in ordinary administrative cases is strict, i.e., one needs to be an aggrieved or injured person or one will inevitably be an aggrieved or injured person as a consequence of an improper exercise of administrative power, a wrongful act, breach of an administrative contract, and/or neglect or delay by an official in performing his/her official duties. On the other hand, the standing requirement to file an environmental case before an administrative court has been relaxed. The plaintiff in an environmental case can be an injured person or an affected or interested community, private organization, or nongovernment organization, taking into consideration the organization's objectives and area of operation and the public interest being served. In addition, such plaintiff need not prove personal injury, it being sufficient that the plaintiff can establish that he, she, or they may be inevitably aggrieved as a consequence of the defendant's act or omission, and the action is significant, instituted in good faith, and aimed at the protection and restoration of the environment.

During the **question and answer time**, Chief Justice Menon shared his perspective on the policy issue of loosening the standing requirement in environmental cases. He stressed that the question is not whether it is right to loosen the standing requirement, for each option has its own positive and negative consequences, but that loosening this requirement must be a conscious decision of the judiciary to expand the role of the courts in addressing environmental issues. Loosening the standing requirement could lead to increased environmental litigation. However, given the courts' finite resources, how must they then prioritize between competing claims for their attention? The looser the standing rules are, the less concerned judges are with the private or personal rights of the individual litigant and the more they are concerned with issues bordering on governance in a particular state. Courts cannot loosen their standing requirement without making a conscious effort to divert their finite resources from other fundamental access-to-justice issues. Inevitably, the matter entails value judgments about which concerns must be prioritized, and this is something to be decided by each country. In response, Deputy Chief Justice Lotulung shared Indonesia's experience on the relaxation of *locus standi*. For him, judges must exercise more judicial activism, lest they fail to protect the environment.

Dr. Mulqueeney then asked the participants whether there is a direct causal relationship between the relaxation of *locus standi* rules and the floodgates argument, given that in the Philippines, the Supreme Court has relaxed its approach to *locus standi* since 1993, yet the number of environmental cases has not increased dramatically. To answer this question, the Philippines delegation mentioned that in the Philippines, two natural safety valves exist to control the floodgate: (i) the availability of lawyers willing to handle environmental cases; and (ii) the cost of litigation in terms of photocopying, transport expenses, and time. It is only now that the caseload of environmental litigation is increasing, because citizens are becoming aware of the impact of environmental degradation. Nonetheless, the relaxation of *locus standi* rules in environmental cases was a policy decision that the Supreme Court made. Indeed, a causal relationship between such relaxation and the increasing caseload exists, but the increase in environmental cases is a welcome consequence for the Philippines judiciary.

■ SESSION 7 Common Challenges for ASEAN Justices: Key Legal Issue #2: Remedies and Principles of Sentencing in Environmental Cases

Zaharah Ibrahim, judge, Court of Appeal of Malaysia, posed the main issues for this session:

- (i) what administrative, criminal, and civil penalties can be imposed in environmental cases;
- (ii) whether these can be implemented in ASEAN countries;
- (iii) the effectiveness of these penalties as deterrence to environmental offenses;
- (iv) whether strict liability should be imposed on offenses committed by corporate bodies;
- (v) whether officers having control of or responsible for corporate affairs should be liable; and
- (vi) what alternative penalties can be imposed.

Viet Nam

Dang Quang Phuong, permanent deputy chief justice, Supreme People's Court of Viet Nam, began by introducing the legal and enforcement framework of Viet Nam with respect to environmental protection, including its environmental legislation and environmental police. He then explained that the imposable penalties depend on the nature of the offense committed. Violations of an administrative nature, such as infringement of environmental impact assessments and violations of environmental regulations on waste management, importation, and tourism merit administrative sanctions primarily in the form of a warning and pecuniary penalty of up to D500 million (\$23,500). Additional punishments, such as revocation of licenses and confiscation of the object of the crime, may also be imposed.

Committing any environmental crime by causing environmental pollution; breaching regulations on causing harmful waste, prevention of environmental incidents, protection of precious and rare wild animals that are under special protection, and natural resources management; importing waste and dangerous epidemics; spreading damages to humans, plants, and animals; or destroying forests and aquatic resources is punishable by a fine of up to D1 billion (\$47,000), imprisonment of up to 12 years, and disqualification from the practice of certain occupations of up to 5 years. Compensation and repair of the environmental damage caused by the wrongful act or omission as civil penalty may also be imposed.

Thailand

Rungravee Sokhuma, chief judge and research justice, Environmental Division of the Supreme Court of Thailand, discussed that Thailand courts can order the payment of three kinds of damages: compensatory damages, punitive damages, and natural resources damages in environmental cases.

Notably, Thailand penalizes the owner or possessor of any object or point source of pollution whose leakage or contamination has caused death, bodily harm, or health injury to anyone or any kind of damage to the property of any private person or of the state, irrespective of whether said leakage or contamination was the result of a willful or negligent act of the owner or possessor. The only exception is if it can be proven that the leakage or contamination was caused by force, war, an act done in compliance with the order of the government or state authorities, or an act or omission of the person who sustains the injury or damage, or of any third party who is directly or indirectly responsible for said leakage or contamination. Compensation or damages to be paid by the owner or possessor of the point source of pollution includes all expenses actually incurred for the cleanup of the pollution arising from the leakage or contamination. Moreover, the person who commits any unlawful act or omission resulting in the destruction, loss, or damage to natural resources owned by the state or belonging to the public dominion must compensate the state in an amount equivalent to the total value of the natural resources so destroyed, lost, or damaged.

With respect to the principle of sentencing, Judge Sokhuma explained that in Thailand, sentencing in criminal cases is aimed at punishing the wrongdoing, avoiding a recurrence, and deterring further crime. So far, the Thailand judiciary is concerned with a lack of alternative punishments and a wide range of sanctioning instruments in criminal cases, as well as standing, class action, burden of proof, expert witnesses, and a wide range of civil penalties in civil cases. Defined rules of procedure for environmental cases, as well as ADR, have been identified as solutions to these problems.

During the **question and answer time**, the issues of proper assessment of the environmental damage, evaluation of evidence, and imposition of penalties were raised. Mr. Villanueva shared that under the Philippines Rules of Procedure for Environmental Cases, violators can be required to prepare a program for repairing the environmental damages caused by the wrongful act or omission and/or to establish a trust fund for such a purpose. The rules also allow the filing of a strategic lawsuit against public participation, which can be filed against those enforcing environmental laws; the defense here is to establish that the case is filed merely to trouble the implementation of environmental laws.

Chief Justice Menon drew the attention of the participants to the judiciary's lack of awareness on the consequences of environmental cases and the tendency to perceive breaches of environmental laws as nothing serious. There is a need to impose appropriate sanctions that are commensurate to the consequences of such breaches, and the growing use of victim impact statements to emphasize the suffering inflicted by environmental crimes can be considered by judges in imposing the appropriate penalty. This is one area in which the preparation of impact statements, stressing the downstream consequences of an environmental breach, would be very helpful in terms of making good decisions in environmental cases.

Judge Ibrahim shared that Malaysia's National Forestry Act includes extensive provisions for punishment and raised the issue of proper assessment of the damages. Dr. Mulqueeny highlighted the need to come up with a comprehensive assessment of environmental damages, including the possible long-term effects of environmental crimes and the need for experts to assist in the calculation of damages.

Finally, Chief Justice Menon referred to Singapore's practice of imposing a corrective work order on litterbugs as a form of community service and suggested the possibility of ordering offenders to undertake restoration projects to redress the environment.

■ SESSION 8 Common Challenges for ASEAN Justices: Key Legal Issue #3: Delays and Case Backlog in Environmental Cases

In this session, Judge Ibrahim stressed two important matters with respect to case management: (i) the problems faced by the judiciaries in adjudicating environmental cases, and (ii) the measures that they have undertaken to solve these problems.

Indonesia

Takdir Rahmadi, justice, Supreme Court of the Republic of Indonesia, discussed three mandated goals of the Indonesia judiciary:

- (i) deliver justice through the most efficient process of litigation,
- (ii) ensure legal consistency and certainty in decision making, and
- (iii) strengthen access to justice.

First, to deliver justice through the most efficient process of litigation, the chief justice of Indonesia issued in 2008 a circular directing Courts of First Instance and justices of the Court of Appeals to render decisions in civil and criminal cases within a period of 6 months from the time a panel of judges is constituted to handle a particular case and receives all pertinent documents. Should the panel fail to meet this standard, it must explain why. Environmental cases, especially those involving illegal logging, must be prioritized on court calendars. Moreover, environmental cases of a civil nature must first undergo court-annexed mediation, which usually takes an extendable period of 40 days, before proceeding to trial.

In 2010, the chief justice issued a decree requiring all justices in the Supreme Court to render decisions and transmit the same to the Court of First Instance within 1 year from the time the cases have been filed before the Supreme Court. Should the panel of justices handling a given case fail to comply with this directive, the case would be considered a backlog case, which the chief justice could withdraw from the panel initially assigned and transfer it to a special task force. Likewise, chief judges of Courts of First Instance and justices of the Court of Appeals also have to send soft copies of cassation cases (or appeals, essentially assailing the interpretation of the law in a given case) and related documents to the Supreme Court.

Reports on the performance of each justice in deciding cases are submitted on a monthly basis, and those poorly performing are expected to improve their performance.

Second, to ensure legal consistency and certainty in decision making, the chief justice issued a decree in 2011 assigning environmental cases of a civil, criminal, and administrative nature to the Civil Chamber, Criminal Chamber, and Administrative Chamber of the Supreme Court, respectively.

Lastly, to strengthen access to justice, a working group on environmental certification was set up and tasked to formulate guidelines for the proper handling of environmental cases and unanimous interpretation of perceived ambiguities in environmental legislation.

Justice Rahmadi ended by stating the need for a special code or category of environmental cases, which should be heard and decided by certified judges at all levels of their judiciary, as well as the need for all decisions rendered in these cases to be uploaded on their website for ease of evaluation and monitoring.

Singapore

Woo Bih Li, justice, Supreme Court of Singapore, announced that Singapore does not have a backlog for environmental cases, given that it takes an average of 4–6 months to conclude cases in the night courts, and should the case proceed to trial, another 1–2 months to finish trial. This efficiency and zero backlog can be attributed to the public's active engagement, diversionary measures, and court-based measures.

- (i) To actively engage and educate the public, Singapore's National Environment Agency (NEA) conducts public awareness campaigns and encourages the public to adopt an environmentally friendly lifestyle and businesses to operate in an environmentally sustainable manner, compliant with pertinent guidelines.
- (ii) Diversionary measures include the setting up of the Environmental Enforcement Management System at NEA to handle regulatory offenses like smoking, littering, unlicensed hawking, mosquito breeding, and noise pollution, which are compoundable, in lieu of prosecution. Composition fines meted by NEA can be paid online via the NEA website or at any of the over 800 kiosks nationwide, thereby removing the need for court attendance. This procedure enables the offender to settle the case conveniently and in a timely manner.
- (iii) Lastly, court-based measures include NEA's own special team of prosecutors within its Legal Department with the necessary knowledge to handle and expedite the investigation and prosecution of environmental offenses, and the establishment of night courts to tackle the high volume of regulatory and traffic offenses, as well as environmental cases, being heard in the subordinate courts. Should the offender choose not to plead guilty at the first instance, the case is then transferred to a dedicated court, which deals with regulatory offenses, including those prosecuted by NEA.

Justice Li further stated that the Singapore judiciary's general case management of both civil and criminal cases utilizes a combination of diversionary measures, facilitative measures, technology, monitoring and control mechanisms, and helpful performance indicators, as described below.

- (i) Diversionary measures are measures that seek to avoid cases going to court, and instead be resolved in another forum. These include the increasing use of ADR.
- (ii) Facilitative measures are measures that support the efficient disposal of cases. These include maintaining a sufficient number of judicial officers to hear cases; emphasizing written advocacy, such as affidavits of the evidence-in-chief, opening statements, and written submissions; and listing registrars and judges to hear and decide urgent applications. A system for court-appointed *amicus curiae* and assessors has also been instituted.
- (iii) Technology has been indispensable in facilitating the disposal of certain matters. An electronic filing system is already in place, and will be complemented by an integrated electronic litigation system (or e-litigation).
- (iv) Monitoring and control mechanisms allow courts to proactively manage cases and enforce compliance with the directions and timelines that they give the parties. These include pre-trial conferences, peremptory orders, "unless orders," and cost orders. To prevent backlogs, Singapore's Rules of Court provide for automatic discontinuance of cases, wherein the parties have been inactive in the proceedings.
- (v) Finally, to prevent backlogs and to ensure the effectiveness of the foregoing strategies, regular statistical reports are gauged against three key benchmarks: clearance rate, disposal timelines, and trial date availability.

With these measures in place, the Singapore judiciary has succeeded in achieving these benchmarks.

During the **question and answer time**, Dr. Mulqueeny asked Justice Rahmadi if the justices, who incur delays in deciding a case, are penalized and if the transfer of the case from the first panel to a special task force facilitates decision making or only aggravates the delay, considering the repetition of what the first panel had already done. In response, Justice Rahmadi said there are no monetary incentives for those who do well, nor are there adverse consequences for those who do not. Reports on the performances of justices are published to serve as a shame mechanism and moral persuasion for the poorly performing justices to improve. Regarding the transfer of a case from a panel of justices, the handling of the case is expected to improve, since it will then be reassigned to better-performing justices.

Similarly, Dr. Mulqueeny requested Justice Li expound on Singapore's "unless orders," and to discuss any court-imposed delays in handling cases. Justice Li explained that an "unless order" is an order courts impose on parties who fail to comply with the guidelines given. It is an order requiring performance of a specified act within a particular period; otherwise, an attached conditional sanction is imposed for failure to comply. The purpose of issuing this kind of order is to ensure compliance with the court's guidelines. On the other hand, court-imposed delays are very minimal. The delays are usually caused by the litigants or their counsel.

Chief Justice Menon shared that the strategy of Singapore's judiciary rests on three primary foundations: (i) increased resources, (ii) willingness to extend resources, and (iii) a mind-set to proactively manage cases. The bench should be responsive to the parties' concerns and the evidence that they present, and it must not be influenced by any particular counsel. The lawyers must understand that courts mean business.

■ **SESSION 9** Common Challenges for ASEAN Justices: Key Legal Issue #4: Expert Witness and Scientific Evidence in Environmental Cases

Jenny Lind Aldecoa-Delorino, deputy court administrator, Office of the Court Administrator, Supreme Court of the Philippines, and Judge Prapot Klaisuban, judge, Central Administrative Court of Thailand, were invited to discuss their respective judiciary's prevailing rules on the evaluation of expert witnesses and scientific evidence in environmental cases.

Philippines

Jenny Lind Aldecoa-Delorino, deputy court administrator, Office of the Court Administrator, Supreme Court of the Philippines, discussed that given the suppletory application of the Rules of Court in environmental cases, the provisions of the Rules of Court allowing the presentation of scientific evidence and expert testimony on scientific and technical matters are also applicable in environmental cases. While the opinion of a witness is generally inadmissible in evidence, courts may admit the opinion of an expert witness on a particular matter or issue requiring special knowledge, skills, experience, or training, which such witness must be first shown to possess.

There is no exact standard by which the expert witness's competence is first gauged to qualify him or her as an expert witness. It is sufficient, however, that his or her expertise is corroborated by education and training, detailed and first-hand familiarity with the facts of the case, and citation of authorities or standards as the basis for his or her opinion. The evaluation of both his or her credibility and the probative value of the witness's testimony is left to the trial court's discretion. Thus, an expert witness may be impeached and/or the probative value of his or her opinion may be diminished by the opposing party's presentation of contrary evidence, contradictions in the expert witness's testimony, and testimony of other experts on the matter. Faced with conflicting expert opinions, the court must give more weight and credence to the opinion that is

more complete, thorough, and scientific. Given the fact that the expert witness is usually paid by the party who procured his or her testimony, such testimony should be received with caution.

Courts are reminded to regard expert opinions as merely advisory in nature, but they cannot just arbitrarily disregard the expert opinion. There are instances when expert opinion can be given conclusive effect, such as when common knowledge is inadequate and all attending facts have been considered. In giving weight and credence to expert opinion, the court considers

- (i) the ability and character of the expert witness;
- (ii) his or her actions on the witness stand;
- (iii) the weight and process of the reasoning by which he or has supported his or her opinion;
- (iv) the expert witness's possible bias in favor of the side for which he or she testifies;
- (v) the fact that he or she is a paid witness;
- (vi) the relative opportunities for study and observation of the matters about which he or she testifies; and
- (vii) any other matter, which deserves to illuminate his statement.

In deciding environmental cases, scientific or technical evidence is important, especially in examining evidence that cannot be properly, safely, and/or adequately evaluated by the senses. This kind of evidence can be object or real evidence, documentary evidence, or testimonial evidence. When the actual object or real evidence cannot be brought before the court, the Rules of Procedure for Environmental Cases allows courts to admit into evidence photographs, videos, and other similar evidence of events, acts, transactions over wildlife, wildlife by-products or derivatives, forest products, or mineral resources, once these have been authenticated by the person who took the photograph or video, by someone who was present when the evidence was taken, or by any other person who can competently testify to the accuracy. Documentary evidence can consist of permits, licenses, records, scientific publications, analyses, and environmental impact assessments when offered as proof of their contents; testimonial evidence can be oral or written, such as affidavits in question-and-answer form.

Finally, in evaluating the weight of scientific or technical evidence, the standards established in American jurisprudence have been persuasive to a certain degree. The *Frye-Schwartz* and *Daubert-Kumho* standards, which have been cited in Philippines jurisprudence in assessing scientific or technical evidence, particularly DNA evidence, mandate trial judges to conduct a preliminary assessment of the relevance, competence, and materiality of the evidence. Essentially, courts look first to whether the reasoning and methodology of the scientific or technical evidence is valid, and whether such reasoning and methodology can be properly applied to the facts of the case. Citing the landmark case of *Herrera vs. Alba*, G.R. No. 148220, 15 June 2005, Ms. Aldecoa-Delorino mentioned that the restrictive tests for admissibility established by *Frye-Schwartz* and *Daubert-Kumho* go into the very weight of scientific or technical evidence. Hence, in assessing the probative value, credibility, or reliability of scientific or technical evidence, the courts must consider

- (i) how the samples were collected;
- (ii) how they were handled or the chain of custody;
- (iii) possibility of contamination of the samples;
- (iv) testing methodology or procedure followed in analyzing the samples;
- (v) whether the proper standards and procedures were followed in conducting the tests;
- (vi) the qualification of the analyst who conducted the tests; and

- (vii) the reliability of the test results, taking into consideration whether the theory or methods used can be and has been tested and subjected to peer review and publication, and general acceptance of the standards and controls to ensure the correctness of the data generated.

Based on the Philippines experience, the gathering of evidence can be difficult given that investigating agencies, officers, and prosecutors must overcome significant hurdles including the killing of witnesses and investigators to avoid them presenting evidence, lack of support from the local government units, non-receptiveness of the local community, contaminated samples, forged documents, and disappearance of evidence. Some pieces of evidence are also difficult, if not impossible, to be taken into custody and presented before the public prosecutor or judge. The Department of Environment and Natural Resources is the primary government agency tasked to enforce environmental laws, apprehend violators, and gather evidence for the use of the prosecutors and the appreciation of the courts in environmental cases. As such, the Supreme Court has held that before courts can render a decision, the department's determination of the presence of pollution, in some cases, is necessary. Courts must rely on the scientific and technical expertise of other branches of government. Hence, adequate training of, and close coordination among, enforcement agencies and prosecutors are indispensable in securing the availability and integrity of the evidence.

Thailand

Prapot Klaisuban, judge, Central Administrative Court of Thailand, explained that pursuant to the law and rules, a Thailand administrative court can inquire into the facts of a given case by using the pleadings and other procedures, including questioning the parties and the witnesses; examining the documents or objects submitted; appointing an expert witness; inspecting the place, person, or any other object in relation to the case; and transferring an issue to another administrative court to study the evidence.

Furthermore, the administrative court can consider the following qualifications in appointing an expert witness to examine the evidence presented in an environmental case: impartiality, knowledge, experience, working record, principle and theory presented by the expert to a reasonable extent, and conflict of interest. However, since the expert's opinion can be both convincing and misleading, the court must carefully assess the expert's qualifications and opinion.

Judge Klaisuban concluded by mentioning two problems that Thailand administrative courts must address: low rates allowed by the courts for expert witness fees and the issue of whether there should be registered expert witnesses for Thailand's courts.

During the **question and answer time**, Chief Justice Menon opined that since expert witnesses work in fields that are new or unfamiliar to most judges, questioning such witnesses, particularly during cross-examinations, can be difficult. Experts tend to think of themselves as extensions of a party's team, so they perceive the opposing party as enemies. Within this context, Chief Justice Menon discussed interesting philosophical ideas underlying Singapore's approach to using expert evidence. First, it is important to emphasize to the experts the need for them to approach their job with the mind-set, not of an advocate of any specific party, but rather of a court aide. Second, courts must encourage the experts to agree, or to at least communicate, with each other as much as possible, with the view toward isolating the points, wherein they digress in opinion and which they must be allowed to explain before the court and in the presence of each other. In case of difficulty, the courts, armed with some familiarity with the subject matter, must guide the process of having the experts argue their findings and/or opinions, and where possible, comment on each other's opinion. In addition, courts should encourage the experts to meet and submit a joint expert report, containing the portions wherein they digress in opinion.

Ms. Aldecoa-Delorino agreed with Chief Justice Menon that there are some disadvantages to an adversarial approach to resolving environmental cases. In the Philippines, judges are allowed to consult their own expert, especially when the experts presented by the parties offer conflicting opinions and the judges are confused about which opinion is correct.

Dr. Mulqueeny added that in other countries with environmental courts, commissioners, who are not judges, are also appointed to help judges understand some of the technical issues. Yet, having specialist judges, who are able to grasp technical environmental issues better than ordinary judges, is the objective of having environmental courts.

Justice Lotulung shared that in Indonesia, judges should adopt the polluters-pay principle in favor of environmental protection in cases involving grave environmental impact.

Chief Justice Menon added that an inquisitorial approach to resolving environmental cases may be better than an adversarial one considering the nature of the issues involved, which may best be resolved by judges asking the experts about the issues, and the fact that there is no particular interested plaintiff in these cases.

■ SESSION 10 Alternative Dispute Resolution in Environmental Cases

In this session, representatives from Indonesia, Thailand, and Singapore judiciaries were asked to share their judiciary's experience in using ADR as another means of resolving environmental cases.

Indonesia

Takdir Rahmadi, justice, Supreme Court of the Republic of Indonesia, cited Indonesia's Environmental Statute of 1997 and Environmental Statute of 1999, which provide that parties involved in an environmental dispute can settle their differences through court or out-of-court avenues, which include negotiation, mediation, and arbitration. Based on a 2011 study conducted by Leiden University and the National Development Planning Agency, mediation is the most often used among these three.

Significantly, even courts use mediation as a compulsory mode of dispute resolution before judges begin hearing civil cases. Under the Supreme Court's rules on court-annexed mediation, the parties can choose their mediator from a list of mediators available in each court of first instance. These mediators, who must all be certified, include hearing judges; nonhearing judges; university lecturers; advocates; practicing lawyers; and members of the nonlegal profession, such as medical doctors, economists, sociologists, and anthropologists. While judges-mediators do not charge any fee for their services as mediators, the others may charge for conducting the mediation based on what the parties may have agreed. The mediation process takes 40 working days, extendible by mutual consent of the parties. If mediation is successful, the mediation agreement can be incorporated into the court's decision. Otherwise, the case is remanded to the court for further proceedings. In any event, the parties may thereafter request the court at any time to refer the case back to mediation.

To end, Justice Rahmadi noted that court-annexed mediation only has a limited chance of success because many advocates are reluctant to encourage their clients to use mediation, which they believe would result in a diminution of their professional fees. Litigants themselves are also unwilling to pay the fees of nonjudge mediators. They prefer to use judge mediators, who are, however, preoccupied with hearing cases and rendering decisions. Given these obstacles, the Research and Development Center

of Indonesia's Supreme Court had been planning to study the effectiveness of court-annexed mediation and revise the rules to include a provision penalizing parties who refuse to undergo mediation without any justifiable cause.

Thailand

Rungravee Sokhuma, chief judge and research justice, Environmental Division of the Supreme Court of Thailand, discussed Thailand's compulsory mediation for all environmental disputes filed or pending before any court level. This is to allow for enhanced access to justice by permitting wider public participation, lowered standing barriers, reduced time and costs in resolving the environmental dispute through ordinary court processes, better outcome due to parties' involvement in the resolution of their dispute, reduced case load, and creative solutions. Recognized disadvantages include uncertain standards, the parties' fear of receiving a premature resolution (pre-litigation or pre-arbitration) of their dispute, forced disclosure of arguments, failure of the process to realize the parties' expected cost savings, the requirement that a reasonably good relationship still exists between the parties, and the possibility that the outcome is not binding between the parties. At present, the Alternative Dispute Resolution Office facilitates out-of-court mediation, while the Mediation Center facilitates court-annexed mediation.

Judge Sokhuma then elaborated on court-annexed mediation. After the parties submit a written request for mediation to the Mediation Center of the court where their case is pending, the court's chief judge appoints the mediator. Thereafter, the Mediation Center contacts the parties, their counsel, and the mediator regarding the mediation date. In the end, if the mediation is successful, either the mediation agreement forms part of the judgment, or the complaint is withdrawn. On the other hand, if the mediation is unsuccessful, the case proceeds to trial.

Singapore

Sundaresh Menon, chief justice, Supreme Court of Singapore, mentioned that Singapore has had no experience in conducting ADR to resolve environmental disputes at the domestic level because (i) Singapore is geographically a small country, so it does not face typical environmental problems due to exploitation of natural resources that other countries do; and (ii) Singapore is a highly urbanized city-state. Nonetheless, he expressed Singapore's belief that ADR is helpful in resolving disputes, including environmental disputes. If used in resolving environmental disputes, mediation can create an opportunity to preserve relationships among parties, who need to continue to work and/or live together; produce pragmatic and/or creative solutions, outside of those prescribed by law; provide for processes more suited to determining complex issues; yield time and cost savings; and give parties more control over the outcome. He briefly mentioned the success Singapore has had in resolving other cases through mediation.

On the international sphere, Chief Justice Menon gave insight as to how ADR can help resolve transboundary disputes, which domestic judiciaries are ill-equipped to address due to issues of jurisdiction, justiciability, and enforceability. Keen on the inclusion of ADR mechanisms in several multilateral agreements that Singapore had signed, as well as the emphasis on consensus building and cooperative programs regarding ASEAN regional cooperation, the chief justice remarked that conciliation and consultation to settle disputes between ASEAN states can reduce tension and avoid conflicts.

Chief Justice Menon concluded by reaffirming Singapore's belief in the importance of consultation and negotiation at all levels of the environmental dispute chain, as well as in the advantages of resorting to ADR, particularly in arriving at solutions that both parties own. Given their positive experience so far, Singapore intends to continue to use ADR.

During the **question and answer time**, the other delegations were given the opportunity to ask questions and share their insights on ADR. Deputy Chief Justice Lotulung (from Indonesia) expressed particular interest on whether the Thailand administrative courts can mediate between the parties. This is because Indonesia's administrative courts cannot mediate between the parties in view of the limited jurisdiction and competence of the courts. Mr. Villanueva and Ms. Aldecoa-Delorino commented that in the Philippines, cases undergo court-annexed mediation, which is conducted by a third-party mediator certified by the Philippine Mediation Center. Should the parties fail to arrive at an amicable settlement before the mediator, the dispute is then submitted before the judge, who then conducts judicial dispute resolution. During this stage, the judge gives an early neutral evaluation of the case, informing the parties of the merits of their arguments. The parties then decide whether the case should proceed to trial to be conducted by the same judge, or given to another judge for further proceedings.

■ **SESSION 11** Common Challenges for ASEAN Justices: Key Capacity and Governance Issues

At this stage, representatives from Brunei Darussalam and Myanmar were invited to discuss their judiciaries' efforts in addressing the key capacity and governance issues identified in the Jakarta Declaration and the Asian Judges Statement.

Brunei Darussalam

Datin Hjh Hayati, attorney general, Brunei Darussalam, emphasized the significance of access to justice in environmental governance and access to information in deciding which changes must be made for sustainable development. She noted the relatively few environmental cases being filed in the country, so the establishment of green benches is not an immediate priority for Brunei Darussalam.

Knowing judicial integrity to be critical in good governance, Ms. Hayati remarked that given Brunei Darussalam's small geography, its courts' judicial integrity remains intact. The country's main concern is environmental enforcement, and to ensure environmental justice, Brunei must conduct capacity-building exercises to ensure that magistrates and judges can adequately deal with environmental cases, strengthen their enforcement mechanism, and examine legislation.

In conclusion, Ms. Hayati noted that the environmental caseload of courts indicates that environmental awareness and the enforcement of environmental legislation are lacking. Once their new laws have taken effect, courts must consider the mechanisms to implement environmental justice. On this note, the Brunei Darussalam judiciary should look at judicial specialization and update environmental laws to secure good environmental governance. Simultaneously, the government should aim to raise environmental awareness among the people.

Myanmar

Paw Khine Than, director, Research Department of the Supreme Court of the Union of Myanmar, discussed Myanmar's Environmental Conservation Law, which aims to implement the country's national environmental policy, set basic principles and guidelines for the sustainable use of natural resources, and restore the environment and conserve the natural and cultural heritage for the benefit of present and future generations. An environmental conservation committee is to be formed to spearhead the country's environmental conservation efforts, such as conducting public awareness campaigns and

prohibiting government agencies from proceeding with plans of action that may cause environmental damage. Guided by this committee, the Ministry of Environmental Conservation and Forestry will then maintain a comprehensive monitoring system and enforce the Environmental Conservation Law. Violations of environmental laws or of regulations, orders, or directives issued pursuant thereto are punishable by fines and/or imprisonment.

Significantly, law enforcement are faced with the challenge of getting the prior approval of the Ministry of Environmental Conservation and Forestry to institute legal proceedings against the offenders and completing the investigation within 30 days. Should the enforcers fail to get the approval prior to filing the case against the offenders, the offenders are to be discharged, and the case must be refiled with the sanction of the ministry. Myanmar expects to increase its efforts and to coordinate with the enforcement officials and agencies of its neighboring countries to effectively suppress any violation of this new law.

■ SESSION 12 General Discussion

Dr. Mulqueeny drew the participants' attention to the AJNE, opened the floor for comments on the draft Melaka Memorandum of Understanding for Cooperation among ASEAN Judiciaries, and set the date for the next roundtable.

■ Asian Judges' Network on Environment

The AJNE was proposed at the successful Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, held in Manila in July 2010. The AJNE will serve as a network, wherein judges can meet face-to-face, access additional materials online, consolidate their efforts in formulating a curriculum on environmental training, and share ideas on environmental justice. It is the umbrella Asia-wide regional network under which the ASEAN Chief Justices' Roundtable and South Asia Conference on Environmental Justice have been established and regional work continued.

■ Draft Melaka Memorandum of Understanding for Cooperation among ASEAN Courts

Dr. Mulqueeny asked the participants if they have any suggestions on how they can advance previous agreements and declarations on environmental protection. The participants then discussed the draft Melaka Memorandum of Understanding for Cooperation among ASEAN Courts. The principles and concepts were taken from the Jakarta Common Vision, the first two roundtables, and the Asian Judges Statement.

The challenges and principles declared in the draft were considered during the roundtable. The chief justice of the Republic of Indonesia indicated willingness to sign the draft at that time. In contrast, Chief Justice Menon urged the drafting of a more limited document and proposed the formation of a working group chaired by the judges from each jurisdiction to work on a mutually acceptable memorandum of understanding to be considered at the next roundtable. Hence, the draft Melaka memorandum was not adopted, and Dr. Mulqueeny asked each ASEAN judiciary to nominate a contact point to the working group for the purpose of drafting a mutually acceptable memorandum of understanding for discussion during the next roundtable.

With this, the ASEAN judiciaries agreed to establish a working group to formulate a memorandum of understanding on their cooperation toward attaining the Jakarta Common Vision with the assistance of ADB.

■ Third ASEAN Chief Justices' Roundtable on the Environment—Venue and Agenda Items

The Thailand Supreme Administrative Court formally offered to host the next roundtable, to be held at the end of November 2013, together with associated hosting duties. The Supreme People's Court of Viet Nam offered to host the roundtable in 2014.

■ CLOSING CEREMONY

■ Closing Remarks

Tan Sri Dato' Seri Md. Raus Bin Sharif, acting chief justice, Federal Court of Malaysia, and president, Court of Appeal of Malaysia, thanked all of the ASEAN chief justices and senior judiciary for their participation. Indeed, many topics were discussed during the roundtable, and he encouraged everyone to cooperate in terms of sustainably using natural resources and ensuring environmental justice.

Kala Mulqueeny, principal counsel, ADB, thanked the delegations for taking the time to attend the roundtable and actively participating in the discussions, and encouraged them to think about environmental cooperation at the national level and on the international level, to address environmental disputes, and administrative issues and to combat environmental crimes and to address the common challenges faced by every judiciary. To that end, she expressed ADB's openness to continue working with the ASEAN judiciaries on these issues and she also thanked the ADB team and the Malaysia judiciary for making the roundtable a success.

APPENDIX 1

Program Agenda

DAY 1: Friday, 7 December 2012

3:00–5:00 p.m.	Arrival and Registration of Participants	Lobby
8:00–9:30 p.m.	Dinner Hosted by the Malaysia Judiciary Attire: <ul style="list-style-type: none"> • Men: Lounge suit • Women: Appropriate 	

DAY 2: Saturday, 8 December 2012

7:00 a.m.	Breakfast (Checked-In Participants)	Coffee House A, Philea Resort and Spa
7:30–8:15 a.m.	Registration	Foyer Grand Ballroom

Opening Ceremony

8:30–8:45 a.m.	Opening Remarks <ul style="list-style-type: none"> • The Rt. Hon. Tan Sri Dato' Seri Md. Raus Bin Sharif, Acting Chief Justice, Federal Court of Malaysia, and President, Court of Appeal of Malaysia
8:45–8:55 a.m.	Welcome Remarks <ul style="list-style-type: none"> • Marie-Anne Birken, Deputy General Counsel, Asian Development Bank
8:55–9:10 a.m.	Keynote Address #1: <ul style="list-style-type: none"> • Zakri Abdul Hamid, Professor Emeritus, and Science Advisor to the Prime Minister of Malaysia

Introductory and Overview Session

Morning Chair: Tan Sri Dato' Seri Md. Raus Bin Sharif, Acting Chief Justice, Federal Court of Malaysia, and President, Court of Appeal of Malaysia

9:10–9:40 a.m.	Southeast Asia: The State of the Environment (video) <i>Saving ASEAN's Natural Treasures</i>
9:40–10:00 a.m.	Overview: Justice, Governance, and the Rule of Law for Environmental Sustainability and Planetary Boundaries <ul style="list-style-type: none"> • Dr. Kala Mulqueeny, Principal Counsel, Asian Development Bank
10:00–10:15 a.m.	Coffee Break
10:15–11:00 a.m.	Jakarta Common Vision on Environment for ASEAN Judiciaries <ul style="list-style-type: none"> • Hon. Paulus E. Lotulung, Deputy Chief Justice, Supreme Court of the Republic of Indonesia <p><i>Indonesia will present the Jakarta Common Vision on Environment for ASEAN Judiciaries. Each head of delegation will introduce their representatives and give very short key updates (5–10 minutes) on the Jakarta Declaration, which will be expanded upon in later discussions and presentations.</i></p>

11:00–11:45 a.m.	ASEAN Regional Cooperation on the Environment <ul style="list-style-type: none"> • Hon. Halimah Binti Hassan, Director General, Department of Environment of Malaysia to read the speech of Hon. Dato' Sri Douglas Uggah Embas, Minister of Natural Resources and Environment of Malaysia (15–20 minutes) <p>Questions and Answers (20 minutes)</p> <p><i>The speaker will explain the context of ASEAN cooperation on the environment to date.</i></p> <p>Giving of Tokens of Appreciation to Zakri Abdul Hamid and Halimah Binti Hassan</p>
11:45–12:00 p.m.	Photo Session
12:00–1:00 p.m.	Lunch

Afternoon Session

Afternoon Chair: **Hon. Abdull Hamid Embong**, Judge, Federal Court of Malaysia

1:00–2:00 p.m.	Session 1: ASEAN Environmental Challenges: Green Issues—Deforestation and Illegal Logging, Biodiversity, and the Illegal Wildlife Trade <p>Background:</p> <ul style="list-style-type: none"> • Clarissa C. Arida, Director, Program Development and Implementation, ASEAN Centre for Biodiversity (10 minutes) • Manop Lauprasert, Senior Officer, ASEAN Wildlife Enforcement Network (ASEAN-WEN) Program Coordination Unit (10 minutes) • Dr. Chris Shepherd, Deputy Regional Director, TRAFFIC Southeast Asia (10 minutes) <p>Questions and Answers (20 minutes)</p> <p><i>The resource persons will give short presentations on the current state of the environment in ASEAN countries, focusing on green issues. The chair will then frame the issues and invite the delegations to share their country experiences on these issues and to identify problems in deciding and resolving related cases.</i></p>
2:00–3:00 p.m.	Session 2: ASEAN Environmental Challenges: Blue Issues—Ocean Destruction, Illegal Fishing, Marine Pollution, Freshwater Pollution, and Flooding <p>Background:</p> <ul style="list-style-type: none"> • Ocean Destruction and Illegal Fishing Antonio Oposa, President, Law of Nature Foundation, and Ramon Magsaysay Awardee (10 minutes) • Coastal and Marine Pollution Sharina Shaukat, Fellow and Head, Centre for Ocean Law and Policy, Maritime Institute of Malaysia (10 minutes) <p>Questions and Answers (30 minutes)</p> <p><i>The resource persons will give short presentations on the current state of the environment in ASEAN countries, focusing on blue issues. The chair will then frame the issues and invite the delegations to share their country experiences on these issues and to identify problems in deciding and resolving related cases.</i></p>
3:00–3:15 p.m.	Coffee Break

Afternoon Chair: Hon. Ramly Ali, Judge, Court of Appeal of Malaysia

3:00–4:00 p.m.	<p>Session 3: ASEAN Environmental Challenges: Brown Issues—Urbanization and Land and Air Pollution</p> <p>Background:</p> <ul style="list-style-type: none"> • Glynda Bathan-Baterina, Deputy Executive Director, Clean Air Asia (10 minutes) • Rosa Vivien Ratnawati, Assistant Deputy Minister, Ministry of Environment, Republic of Indonesia (10 minutes) <p><i>The resource persons will give short presentations on the current state of the environment in ASEAN countries, focusing on brown issues, specifically on the effects of urbanization on land and air pollution (as an alternative, a short video will be played). The chair will then frame the issues and invite the delegations to share their country experiences on these issues and to identify problems in deciding and resolving related cases.</i></p>
4:00–5:30 p.m.	<p>Session 4: Judicial Reforms to Respond to Environmental Challenges: Institutionalizing Environmental Expertise through Specialization and Environmental Courts</p> <p>Session Facilitator: Dr. Kala Mulqueeny, Principal Counsel, Asian Development Bank</p> <ul style="list-style-type: none"> • Malaysia Hon. Jeffrey Tan Kok Wha, Judge, Federal Court of Malaysia (10 minutes) • Thailand Hon. Rungravee Sokhuma, Chief Judge and Research Justice, Environmental Division, Supreme Court of Thailand (10 minutes) Hon. Kasem Comsatyadham, Vice President, Supreme Administrative Court of Thailand (10 minutes) • Philippines Hon. Maria Lourdes Sereno, Chief Justice, Supreme Court of the Philippines (10 minutes) • Indonesia Hon. Paulus E. Lotulung, Deputy Chief Justice, Supreme Court of the Republic of Indonesia (10 minutes) <p><i>The facilitator will introduce and frame the key issues. Each presenter will share the Supreme Court's approach to institutionalizing environmental expertise: Thailand (green bench and green appeals court), Philippines (green trial courts), and Indonesia (green judges' certification). The delegations will then be invited to share.</i></p>
6:30–8:15 p.m.	Dinner
8:15–10:00 p.m.	Excursion: Malacca River Cruise

DAY 3: Sunday, 9 December 2012

7:00–8:00 a.m.	Breakfast
Morning Session	
Chair: Hon. Hasan bin Lah , Judge, Federal Court of Malaysia	
8:30–9:15 a.m.	<p>Session 5: ASEAN Environmental Law Challenges: Development Planning and Environmental Impact Assessment</p> <ul style="list-style-type: none"> • Lao People's Democratic Republic Hon. Khamphanh Sitthidampha, President, People's Supreme Court of the Lao People's Democratic Republic (10 minutes) <p><i>The chair will introduce and frame the key issues regarding planning and environmental impact assessments in ASEAN countries, and the noted delegation will briefly share its approaches to these issues. The rest of the delegations will then be invited to share their experiences.</i></p>

9:15–10:00 a.m.	<p>Session 6: Common Challenges for ASEAN Justices: Key Legal Issue #1: <i>Locus Standi</i> in Environmental Cases</p> <ul style="list-style-type: none"> Philippines Raul B. Villanueva, Deputy Court Administrator, Office of the Court Administrator, Supreme Court of the Philippines (10 minutes) Thailand Hon. Pairoj Minden, President, Chamber of the Central Administrative Court, and Spokesperson, Thailand Administrative Court (10 minutes) <p><i>The chair will frame the issues on standing in initiating environmental cases in court. After the noted delegations speak, other delegations will be invited to discuss their experiences in approaching locus standi, and how these approaches have been addressed in local jurisprudence.</i></p>
10:00–10:25 a.m.	<p>Coffee Break</p> <p>Chair: Zaharah Ibrahim, Judge, Court of Appeal of Malaysia</p>
10:25–11:15 a.m.	<p>Session 7: Common Challenges for ASEAN Justices: Key Legal Issue #2: Remedies and Principles of Sentencing (Administrative, Criminal, and Civil Penalties) in Environmental Cases</p> <ul style="list-style-type: none"> Viet Nam Hon. Dang Quang Phuong, Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam (10 minutes) Thailand Hon. Rungravee Sokhuma, Chief Judge and Research Justice, Environmental Division, Supreme Court of Thailand (10 minutes) <p><i>The chair will frame the issues on remedies and principles of sentencing in environmental cases, with emphasis on the administrative, criminal, and civil aspects in the form of damages. After the noted delegations speak, each delegation will be asked to share its experiences on these issues and to comment on the issues of imposing strict liability in environmental cases, the doctrine of responsible corporate officers, and the feasibility of innovative penalties.</i></p>
11:15–12:00 p.m.	<p>Session 8: Common Challenges for ASEAN Justices: Key Legal Issue #3: Delays and Case Backlog in Environmental Cases</p> <ul style="list-style-type: none"> Indonesia Takdir Rahmadi, Justice, Supreme Court of the Republic of Indonesia (10 minutes) Singapore Woo Bih Li, Justice, Supreme Court of Singapore (10 minutes) <p><i>The chair will frame the key issues on efficiency and expediency in deciding environmental cases. Each delegation will be asked to share its experiences on court docket congestion and delays in the disposition of environmental cases and to comment on these issues.</i></p>
12:00–1:00 p.m.	<p>Lunch</p>

Afternoon Session

Chair: Hon. Dato' Azahar bin Mohamed, Judge, Court of Appeal of Malaysia

1:00–1:45 p.m.	<p>Session 9: Common Challenges for ASEAN Justices: Key Legal Issue #4: Expert Witnesses and Scientific Evidence in Environmental Cases</p> <ul style="list-style-type: none"> • Philippines Jenny Lind Aldecoa-Delorino, Deputy Court Administrator, Office of the Court Administrator, Supreme Court of the Philippines (10 minutes) • Thailand Hon. Prapot Klaisuban, Judge, Supreme Administrative Court of Thailand (10 minutes) <p><i>This session will emphasize the standardization of environmental experts' credentials and verification of their credibility, including the use of scientific evidence in environmental trials and the availability of scientific evidence, its admissibility, reliability, and conclusiveness. After the noted delegations speak, others will be asked to share their experiences and to comment on these issues.</i></p>
1:45–2:30 p.m.	<p>Session 10: Alternative Dispute Resolution in Environmental Cases</p> <ul style="list-style-type: none"> • Indonesia Takdir Rahmadi, Justice, Supreme Court of the Republic of Indonesia (10 minutes) • Thailand Rungravee Sokhuma, Chief Judge and Research Justice, Environmental Division, Supreme Court of Thailand (10 minutes) • Singapore Sundaresh Menon, Chief Justice, Supreme Court of Singapore (10 minutes) <p><i>This session will focus on comparative alternative dispute resolution, regarding the environment, in selected jurisdictions. Each delegation will be asked to share its experiences and to comment on the feasibility, advantages, and disadvantages of pursuing alternative dispute resolution mechanisms in resolving environmental cases.</i></p>
2:30–2:45 p.m.	Coffee Break
2:45–3:45 p.m.	<p>Session 11: Common Challenges for ASEAN Justices: Key Capacity and Governance Issues</p> <p>Session Chair: Federal Court of Malaysia and Asian Development Bank</p> <ul style="list-style-type: none"> • Brunei Datin Hj H Hayati, Attorney General, Brunei Darussalam (10 minutes) • Myanmar Paw Khine Than, Director, Research Department, Supreme Court of the Union of Myanmar (10 minutes) <p><i>In this session, the chair will frame the key capacity and governance issues identified in the Jakarta Declaration on the Asian Judges Statement. These include:</i></p> <ul style="list-style-type: none"> • <i>lower court capacity and substantive knowledge on environmental law,</i> • <i>general governance and integrity issues within the environmental enforcement chain,</i> • <i>a lack of environmental cases, and</i> • <i>judicial training processes and whether and how environmental law could be included.</i> <p><i>Each delegation will be asked to share its experiences on key capacity and governance issues in dealing with environmental cases, and whether there are additional issues. A video message on court innovations in environmental law will be played.</i></p> <p>Adalberto Carim Antonio, Judge Titular, Court of the Environment and Agrarian Issues, State of Amazonas, Brazil, video presentation on the experience of a first-level environmental court.</p>

3:45–5:45 p.m.	<p>Session 12: General Discussion</p> <p>Session Facilitator: Dr. Kala Mulqueeny, Principal Counsel, Asian Development Bank</p> <p><i>This session will consider (i) the Asian Judges Network on Environment and the needs of ASEAN judiciaries; (ii) a subregional memorandum of understanding of cooperation among the ASEAN judiciaries; and (iii) the venue and agenda of the 2013 ASEAN Chief Justices' Roundtable.</i></p>
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Closing Ceremony

5:45 p.m.	<p>Closing Remarks:</p> <ul style="list-style-type: none"> • The Rt. Hon. Tun Arifin Zakaria, Chief Justice (retired), Federal Court of Malaysia • Dr. Kala Mulqueeny, Principal Counsel, Asian Development Bank
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DAY 4: Monday, 10 December 2012

12:00 p.m.	Check Out
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APPENDIX 2

List of Resource Persons

Resource Person	Designation, Agency
Aldecoa-Delorino, Jenny Lind	Deputy Court Administrator, Office of the Court Administrator, Supreme Court of the Philippines
Antonio, Adalberto Carim	Judge Titular, Court of the Environment and Agrarian Issues, State of Amazonas, Brazil
Arida, Clarissa C.	Director of Program Development and Implementation, ASEAN Centre for Biodiversity
Azahar Mohamed	Judge, Court of Appeal of Malaysia
Bathan-Baterina, Glynda	Deputy Executive Director, Clean Air Asia
Birken, Marie-Anne	Deputy General Counsel, Asian Development Bank
Comsatyadham, Kasem	Vice President, Supreme Administrative Court of Thailand
Dang Quang Phuong	Permanent Deputy Chief Justice, Supreme People's Court of Viet Nam
Hasan bin Lah	Judge, Federal Court of Malaysia
Hassan, Halimah Binti	Director General, Department of Environment of Malaysia
Hayati, Datin Hj	Attorney General, Brunei Darussalam
Klaisuban, Prapot	Judge, Supreme Administrative Court of Thailand
Lauprasert, Manop	Senior Officer, ASEAN Wildlife Enforcement Network (ASEAN-WEN) Program Coordination Unit
Li, Woo Bih	Justice, Supreme Court of Singapore
Lotulung, Paulus E.	Deputy Chief Justice, Supreme Court of the Republic of Indonesia
Menon, Sundaresh	Chief Justice, Supreme Court of Singapore
Minden, Pairoj	President, Chamber of the Central Administrative Court, and Spokesperson, Thailand Administrative Court
Mulqueeney, Kala	Principal Counsel, Asian Development Bank
Oposa, Antonio	President, Law of Nature Foundation, and Ramon Magsaysay Awardee
Paduka Haji Kifrawi	Chief Justice, Supreme Court of Brunei Darussalam
Rahmadi, Takdir	Justice, Supreme Court of the Republic of Indonesia
Ratnawati, Rosa Vivien	Assistant Deputy Minister, Ministry of Environment of the Republic of Indonesia
Sereno, Maria Lourdes	Chief Justice, Supreme Court of the Philippines
Sharif, Raus Bin	Acting Chief Justice, Federal Court of Malaysia, and President, Court of Appeal of Malaysia
Sharina Shaukat	Fellow, Centre for Ocean Law and Policy, Maritime Institute of Malaysia

Resource Person	Designation, Agency
Shepherd, Chris	Deputy Regional Director, TRAFFIC Southeast Asia
Sitthidampha, Khamphanh	President, People's Supreme Court of the Lao People's Democratic Republic
Sokhuma, Rungravee	Chief Judge, Research Justice Environmental Division, Supreme Court of Thailand
Tan Kok Wha, Jeffrey	Judge, Federal Court of Malaysia
Than, Paw Khine	Director, Research Department, Supreme Court of the Union of Myanmar
Tun Tun Oo	Chief Justice, Supreme Court of the Union of Myanmar
Uggah Embas Douglas	Minister, Department of Natural Resources and Environment of Malaysia
Villanueva, Raul B.	Deputy Court Administrator, Office of the Court Administrator, Supreme Court of the Philippines
Zaharah, Ibrahim	Judge, Court of Appeal of Malaysia
Zakaria, Arifin	Chief Justice (retired), Federal Court of Malaysia
Zakri, Abdul Hamid	Professor Emeritus and Science Advisor to the Prime Minister of Malaysia

APPENDIX 3

Draft Melaka Memorandum of Understanding for Cooperation among ASEAN Judiciaries¹

The Chief Justices of the Supreme Court of Brunei Darussalam, the Supreme Court of Cambodia, the Supreme Court of the Republic of Indonesia, the People's Supreme Court of the Lao People's Democratic Republic, the Federal Court of Malaysia, the Supreme Court of the Union of Myanmar, the Supreme Court of the Philippines, the Supreme Court of Singapore, the Supreme Court of Thailand, and the Supreme People's Court of Viet Nam, and designees from their respective highest courts (hereafter "the ASEAN Chief Justices and Senior Judiciary"), gathered at the Second ASEAN Chief Justices' Roundtable on the Environment held in Melaka, Malaysia from 7 to 10 December 2012.

The ASEAN Chief Justices and Senior Judiciary hereby:

Recognize that Southeast Asia faces common Environmental Challenges that threaten the path to sustainable development; these Environmental Challenges require good governance to resolve; and the foundation of good governance is the rule of law;

Recall that judges, over time, have agreed on various declarations on environmental cooperation and good governance, including:

- (a) the Johannesburg Principles on the Role of Law and Sustainable Development, agreed at the first Global Judges Symposium at Johannesburg, South Africa in August 2002;
- (b) the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices at The Hague, Netherlands, on 25–26 November 2002;
- (c) the Statement of Asian Judges (the "Asian Judges Statement") agreed at the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice in Manila, Philippines, on 28–29 July 2010;
- (d) the Jakarta Common Vision on Environment for ASEAN Judiciaries (the "Jakarta Vision") agreed at the ASEAN Chief Justices' Roundtable on the Environment held in Jakarta, Indonesia, on 5–7 December 2011;
- (e) the Bhurban Declaration agreed at the South Asia Conference on Environmental Justice held in Bhurban, Pakistan, on 24–25 March 2012; and
- (f) the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, agreed at the World Congress on Justice, Governance and Law for Environmental Sustainability held in Rio de Janeiro, Brazil, on 17–20 June 2012.

¹ This document was not agreed upon and subject to different views among the ASEAN judiciaries with some willing to sign and others wanting a substantially reduced document.

Compelled by a common desire to establish and implement an operational framework for environmental cooperation among the judiciary in ASEAN countries, the ASEAN Chief Justices and Senior Judiciary, as champions and guarantors of the rule of law, set out the framework to operationalize the principles contained in the Asian Judges Statement and the Jakarta Vision through this Memorandum of Understanding.

PART I

DEFINITIONS

For the purposes of this Memorandum of Understanding:

1. **“Environmental Laws”** mean the body of international, regional, and national laws, codes, implementing rules, regulations, executive decrees, and other regulatory measures to protect and preserve the environment; or related to energy and other natural resources; air, water, noise, and land quality and pollution; forests and forestry; wildlife; and biodiversity. They can impose penalties for environmental harm or damage.
2. **“Environmental Challenges”** mean the common environmental challenges for Southeast Asian countries set out in Part II (A) below, and include any new global, regional, or national environmental challenges that may arise from time to time.
3. **“Environmental Legal Challenges”** mean the key legal and capacity challenges identified in Part II (B) below, and include any new common legal and capacity issues that affect the efficiency and effectiveness of environmental adjudication and enforcement in Southeast Asia.
4. **“Environmental Information”** means all legal information that relates to the preservation, protection, and conservation of the environment, including (a) Environmental Challenges and Environmental Legal Challenges; (b) best practices in environmental decision making and adjudication; (c) judicial decisions on environmental cases; (d) basic curricula on environmental law for training the legal profession and law enforcement community, and in text materials used at law schools; and (e) any commentary regarding the implementation and enforcement of such laws.

PART II

COMMON ASEAN CHALLENGES

A. ENVIRONMENTAL CHALLENGES

The ASEAN Chief Justices and Senior Judiciary recognize the common environmental challenges of the Southeast Asian region and the challenges that they bring to the legal system:

1. **Climate Change.** Southeast Asia is highly vulnerable to climate change, and is increasingly a significant contributor to global greenhouse gas emissions. Heat waves, droughts, floods, and tropical cyclones have been more intense and frequent, causing extensive damage to property, other assets, and human life. Climate change is expected to worsen all pre-existing environmental problems within Asian countries, with Southeast Asia being especially vulnerable to climate change due to the concentration of its population along coastlines, dependence on agriculture for livelihood, and high poverty levels. Climate change also poses the highest risk to biodiversity in Southeast Asia. Increasing heat and water stresses, extreme weather events, and climate-associated pests and diseases have all contributed to biodiversity loss and decline in agricultural and fisheries production potential in many parts of the region.

2. **Deforestation and Illegal Logging.** Southeast Asia is one of the world's more densely forested areas. Deforestation and illegal logging thus present a critical environmental challenge. Deforestation is driven by conversion of forests to agriculture such as rubber and palm oil and shrimp fishing; infrastructure development, particularly roads; and population growth. Illegal logging also remains a significant cause of deforestation, and massive illegal logging trade causes government and market revenue losses. There are no international mechanisms that address illegal logging, but ASEAN countries are required to protect certain timber products as endangered under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3. **Biodiversity Loss and Illegal Wildlife Trade.** Southeast Asia is one of the most biodiverse regions in the world, with three countries considered “megadiverse.” Wildlife trade escalates into an environmental crisis when it is overexploited, unsustainable, and illegal. The illegal trade includes exchange of endangered flora and fauna, and poaching of animal parts for decoration, as ingredients for traditional medicine, aphrodisiacs, and wild meat. Several factors drive illegal wildlife and flora trade—such as food, cultural medicine, religion, and collections—but the primary driving factor is simply economic. The value of the global illegal wildlife trade is \$10 billion–\$20 billion per year. If biodiversity continues to be overexploited against this figure, scientists estimate that up to 42% of Southeast Asia’s animal and plant species will become extinct within this century. While all ASEAN countries are parties to the CITES and have national laws to protect biodiversity and prevent illegal wildlife trade, increasing affluence, low penalties, and lack of enforcement have resulted in rampant illegal wildlife trade across the region.

4. **Ocean Destruction, Illegal Fishing, and Marine Pollution.** Southeast Asia is endowed with the world’s richest and most diverse marine resources. Maintaining these resources is vital because they support livelihoods and maintain food security and nutrition for Southeast Asia’s coastal communities. Overfishing and illegal fishing practices adversely affect many Southeast Asian countries, posing serious threats to the sustainability of fish stocks. Harmful fishing practices, such as trawling and dynamite fishing, directly contribute to ocean habitat destruction, damaging coral reefs as nursery grounds for marine wildlife. Marine biodiversity is also threatened by the increase in coastal development, agricultural run-off, and discharge of untreated sewage into near-shore waters, leading to a variety of marine pollutants.

5. **Development Planning and Environmental Impact Assessment.** Industrial development in the regional economy continues to come at an environmental cost to Southeast Asia, particularly due to increasing carbon and pollution emissions, high incidence of deforestation, and pollution and biodiversity loss. The failure to implement effective environmental impact assessments and to engage the public in decision making in development project choices early in the decision-making process worsens existing environmental challenges.

6. **Freshwater Pollution.** Southeast Asia is endowed with abundant freshwater resources for raw food and water supply. Despite regional abundance, there are dry spells in certain regions of countries, and raw water is limited by pollution. Because of increased industrial activity, water quality has also suffered from contamination resulting from dumping untreated waste into freshwater sources. Overextraction of freshwater resources, such as groundwater, leads to negative effects including the permanent lowering of the water table, deterioration of water quality, and saline intrusion in the coastal area.

7. **Urbanization and Air Pollution.** Southeast Asia hosts developed and increasingly urbanized cities, but is also home to highly congested metropolitan areas as a result of exponential rural-to-urban movements. Rapid urbanization places stress on existing urban infrastructure and services, which in most developing countries are not adequate for current urban dwellers. A range of environmental challenges stem from the combination of urbanization and poverty: the provision of clean water and clean sanitation, air and water pollution, greenhouse gas emissions, and mass consumption leading to excessive solid waste.

B. CHALLENGES OF ASEAN JUDICIARIES

The ASEAN Chief Justices and Senior Judiciary acknowledge the common legal and institutional challenges in environmental adjudication that exist across jurisdictions:

1. **Legal and Evidentiary Challenges.** Recognizing the role of the judiciary as champion and guarantor of the rule of law, resolving environmental disputes and applying and interpreting Environmental Laws present challenges to judicial decision making. These challenges involve the following issues:

- (a) **Standing rules.** Traditional standing rules require a plaintiff to have a sufficient or personal stake in the outcome of a case, traceable to the defendant, to distinguish the individual from other persons or the public at large. This traditional principle poses a challenge to judges, especially in environmental cases where the right to bring suit is not completely confined to a limited number of persons-in-interest, but has been relaxed in many jurisdictions across the world, including some in Southeast Asia.
- (b) **Burden of proof and the application of the precautionary principle.** Setting a standard for the burden of proof in proving claims in environmental cases is a key challenge for judges, given the availability and complexity of evidence and uncertainty inherent in all scientific evidence. The precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat. In resolving environmental cases, judges are faced with a need to apply the precautionary principle and shift the burden of proof to establish a causal link between an alleged environmental law violation and its adverse effects.
- (c) **Damages.** The damages caused by environmental pollution are often hidden and accumulated, and the effects of pollution are delayed. This poses challenges for judges in quantifying the risks and damages of environmental pollution. Also, judges are faced with complications in the assessment of environmental damages in economic terms. Awarding pecuniary damages does not ensure that the environmental injury is repaired. Other environmental situations present additional challenges to evaluating damages.
- (d) **Expert and scientific evidence.** Understanding scientific and expert evidence, and weighing and evaluating such complex evidence particularly when expert evidence conflicts, is a key challenge encountered by judges in decision making. Long delays in trials often result from failure to grasp scientific and expert testimonies that arise more often in environmental cases.
- (e) **Sanctions and penalties.** Sanctioning environmental violations should have the effect of deterring future environmental crimes, but sanctions currently being imposed are often not significant. Additional challenges include ensuring consistency in applying sanctions and context for the imposition of creative penalties for specific environmental crimes across trial and appellate courts.
- (f) **Enforcement.** Judicial authorities face noncompliance with judgments in environmental cases. Strengthening the power of the courts to hold parties in contempt should be addressed to uphold the integrity of Environmental Laws and judgments rendered under them.
- (g) **Alternative environmental dispute resolution (AEDR).** While seen as an expeditious means of resolving cases out of court, AEDR mechanisms may not be ideal for all types of environmental disputes. In cases where they are applicable, actual implementation of the mechanisms poses further challenges.

2. **Capacity and Governance Challenges.** Southeast Asian generalist and environmental courts and judges recognize that they also face institutional challenges to ensure effective environmental adjudication and decision making. These capacity and governance challenges are the following:

- (a) **Access to environmental justice.** Access to justice is a key pillar of environmental governance in Principle 10 of the Rio Declaration. Ensuring access to justice is often conceptualized as expanding the ability of citizen access to courts, and expanding the rights of public interest litigants to bring cases to courts. This access to the formal legal system remains a challenge, especially in cases involving indigent litigants most affected by environmental damage who live in rural areas, but a range of challenges also arise in allowing them to access informal systems of environmental justice.
- (b) **Judicial capacity.** The judiciary must have the human and financial resources consistently and sufficiently available to effectively discharge its mandate. The judiciary should have sufficient numbers of judges competent in the field of environmental law (including forest, wildlife conservation, marine preservation, land law, and related matters) to reasonably and effectively carry out the caseload of cases without an undue caseload burden on any individual judge. The judiciary must also have access to and the ability to manage adequate financial resources to effectively administer a system of justice that includes environmental protection and sustainable development.
- (c) **Judicial education.** The judiciary should ensure that all judges have some elementary knowledge of environmental and natural resources law and that certain judges are dedicated to environmental and natural resource cases, and these judges need to have training. Yet not all judicial institutes are able to convey their knowledge, and even when they can, demand for such training is always large.
- (d) **Threats to integrity.** Integrity within the entire chain of environmental enforcement and within the justice system is critical to ensuring effective environmental enforcement. Economic reasons motivate the commission of many environmental crimes, which may lead parties to resort to corrupt practices to secure favorable decisions. Resistance to these threats to integrity is a key challenge for judges, because justice will be thwarted if there is corruption anywhere in the system.

PART III

ASEAN EXECUTIVE COOPERATION

A. The ASEAN Chief Justices and Senior Judiciary recognize that the ASEAN Ministerial Meetings on the Environment and ASEAN Senior Officials Meetings on the Environment have produced many efforts at environmental cooperation on sustainable natural resources management. These include the ASEAN Agreement on Transboundary Haze Pollution, Agreement on the Establishment of the ASEAN Centre for Biodiversity, ASEAN Regional Action Plan on Trade in Wild Fauna and Flora, establishment of the ASEAN Wildlife Enforcement Network, the Joint Statement of ASEAN Environment Ministers for the Eleventh Meeting of the Conference of the Parties to the Convention on Biological Diversity, and other matters in **Appendix 1**. The ASEAN Chief Justices and Senior Judiciary acknowledge that these efforts must be strengthened to fully attain an effective environmental enforcement chain.

B. The ASEAN Chief Justices and Senior Judiciary observe that the ASEAN Agreement on Nature Conservation of 1985 was agreed on 27 years ago, but has still not been fully ratified.² They call on member countries to ratify the Agreement, and then update it as needed to address new Environmental Challenges that have arisen since it was agreed.

² To date, only three of the six signatory member states (Indonesia, the Philippines, and Thailand) have ratified the Agreement.

PART IV

ASEAN CHIEF JUSTICES AND SENIOR JUDICIARY COOPERATION

A. The ASEAN Chief Justices and Senior Judiciary recognize that the judiciary has a critical role in championing environmental protection and sustainable development, and leading the legal profession and law enforcement community toward stronger, more credible rule-of-law systems that have integrity and promote environmental sustainability.

B. The ASEAN Chief Justices and Senior Judiciary recognize the importance of ASEAN regional cooperation to address the common environmental and legal challenges that they share.

C. The ASEAN Chief Justices and Senior Judiciary will collaborate among themselves, and as appropriate, collaborate and/or engage with others in the environmental enforcement process to significantly improve the development, implementation, enforcement, and compliance with environmental laws.

D. The ASEAN Chief Justices and Senior Judiciary agree to collaborate and institute concrete measures in the following areas:

1. **Standing Rules.** The ASEAN Chief Justices and Senior Judiciary will seek to allow the substance of an environmental matter to be litigated and not barred by procedural standing constraints. They will seek to ensure that standing rules in environmental cases are expanded to allow litigants to defend the public interest.

2. **Burden of Proof and the Precautionary Principle.** The ASEAN Chief Justices and Senior Judiciary will ensure the application of standards of burden of proof in environmental cases that do not limit application of the precautionary principle. The precautionary principle will be applied in cases where there is a lack of full scientific certainty in establishing a causal link between human activity and adverse environmental effects.

3. **Scientific and Expert Evidence.** The ASEAN Chief Justices and Senior Judiciary will consider innovative ways to appreciate and evaluate the weight of scientific and expert evidence in environmental cases, including the following:

- (a) Drafting internal guidelines on assessing the credibility of experts to assist judges in appraising their expertise;
- (b) Appointing committees of experts to study environmental cases and give recommendations to the courts;
- (c) Partnering with academic and scientific communities to tap scientists and researchers as experts in court cases;
- (d) Including scientific and technical matters in environmental adjudication for judges in their continuing professional development courses;
- (e) Appointing in-house technical experts to advise the court on scientific and technical matters; and
- (f) Compiling a register of experts from government scientific and technical institutions who could be tapped as experts in environmental cases.

4. **Penalties and Innovative Sanctions.** The ASEAN Chief Justices and Senior Judiciary will impose sanctions and penalties in accordance with their respective laws as appropriate to the scale of the environmental case or crime. The ASEAN Chief Justices and Senior Judiciary will also consider innovative sanctions for environmental cases such as (a) community service with restorative environmental conditions; (b) environmental training for the offender; (c) environmental audit to identify past, present, and

potential compliance with Environmental Laws; (d) restoration of or establishment of alternative habitat; or (e) community probation.

5. **Enforcement of Environmental Judgments.** The ASEAN Chief Justices and Senior Judiciary will seek to ensure that final judgments in environmental cases will be properly enforced. They will seek to ensure that the power of courts to hold parties in contempt or their implementation of existing powers will be strengthened to uphold the integrity of environmental laws and cases decided under them.

6. **Environmental Courts and “Green” Benches.** The ASEAN Chief Justices and Senior Judiciary will strengthen specialized environmental courts, tribunals, benches, and specialization programs (such as environmental certification) where they exist; consider establishing effective environmental judicial training programs for generalist courts where they do not exist; and should, at least, address the various challenges set out in Part II, Sections A and B of this Memorandum of Understanding.

7. **Environmental Rules of Procedure.** The ASEAN Chief Justices and Senior Judiciary will implement rules of procedure for environmental cases where they already exist and consider developing them where they do not exist, which should, at least, address the various challenges set out in Part II, Sections A and B of this Memorandum of Understanding. These special procedural rules may include (a) special rules of evidence for environmental cases, (b) time limits to expedite environmental cases; (c) special remedies; (d) injunctive relief; and (e) other innovative environmental processes, such as writs of nature.

8. **Environmental Remedies and Environmental Damages.** The ASEAN Chief Justices and Senior Judiciary will apply environmental remedies in law where they exist, and consider developing them where they do not exist, which should, at least, address the various challenges set out in Part II, Sections A and B of this Memorandum of Understanding. Examples of these environmental remedies may include special civil actions for continuing *mandamus*, rolling judgments, environmental protection orders, and other ancillary writs. The ASEAN Chief Justices and Senior Judiciary will incorporate environmental principles, such as the precautionary principle and the polluter-pays principle to make the party responsible for producing pollution accountable for paying for the damage done to the natural environment.

9. **Alternative Environmental Dispute Resolution.** The ASEAN Chief Justices and Senior Judiciary will implement special rules for alternative environmental dispute resolution (AEDR) in environmental cases where these already exist, and consider developing them where they do not exist. AEDR rules may include:

- (a) Conferring power to environmental and generalist courts to refer environmental matters to AEDR;
- (b) Designating AEDR as an integral part of case management of civil and administrative environmental disputes;
- (c) Carrying out AEDR through a “problem-solving” approach to achieve appropriate environmental outcomes;
- (d) Making AEDR services be free of charge, especially in cases of indigent litigants; and
- (e) Ensuring that AEDR mediators or arbitrators have sufficient training and expertise in environmental disputes.

10. **Environmental Education.** The ASEAN Chief Justices and Senior Judiciary acknowledge that the judiciary plays a pivotal role in improving environmental education, not only through their judicial functions, but also through leading the entire legal profession and law enforcement community to develop the knowledge to ensure environmental protection and sustainable development.

In this regard, they will seek to ensure that Environmental Information is collected, and compiled, and to the extent possible integrated into an appropriate environmental sourcebook for the use of the legal profession and law enforcement community.

- (a) **The judiciary.** The ASEAN Chief Justices and Senior Judiciary will ensure that timely and appropriate training on Environmental Challenges, Environmental Legal Challenges, and Environmental Information is available and designed for (i) cadre or candidate judges; (ii) continuing legal education; and (iii) environmental law specialist judges, and included in training programs conducted by judicial institutions where they exist.
- (b) **Law schools.** The ASEAN Chief Justices and Senior Judiciary will encourage law schools to include Environmental Challenges, Environmental Legal Challenges, and Environmental Information in their respective curricula. They will also encourage law centers to establish environmental law centers to develop sourcebooks, compilations, or other databases on environmental legal materials, where possible.
- (c) **Bar councils.** The ASEAN Chief Justices and Senior Judiciary will encourage legal professional associations and bar councils to include Environmental Challenges, Environmental Legal Challenges, and Environmental Information in continuing legal education.
- (d) **Environmental law enforcement community.** The ASEAN Chief Justices and Senior Judiciary will encourage the police force, prosecutors, public interest litigants, environmental lawyers, and other members of civil society and the environmental enforcement chain to obtain training and develop a knowledge and base on Environmental Challenges, Environmental Legal Challenges, and Environmental Information, where applicable.
- (e) **Environmental lawmakers.** The ASEAN Chief Justices and Senior Judiciary will seek to encourage members of the legislative branch to obtain training and develop a knowledge base on Environmental Challenges, Environmental Legal Challenges, and Environmental Information to assist them in crafting integrated and comprehensive environmental legislation.
- (f) **Public and public interest environmental lawyers.** The ASEAN Chief Justices and Senior Judiciary will seek to encourage the general public, public interest lawyers, and civil society to obtain an awareness and develop a knowledge base on Environmental Challenges, Environmental Legal Challenges, and literacy on Environmental Information.

11. **Environmental Enforcement.** The ASEAN Chief Justices and Senior Judiciary recognize that effective environmental enforcement requires integration of and effective cooperation among the entire environmental enforcement chain. They also recognize the need to call on the entire environmental enforcement chain to develop positive mechanisms to enhance environmental protection within their respective functions.

- (a) **The judiciary.** The ASEAN Chief Justices and Senior Judiciary will ensure that environmental cases filed before the courts are decided in a timely and expeditious manner, and seek to ensure environmental judgments are enforced without delay. They will consistently monitor court dockets to ensure that environmental cases in their respective judiciaries are given priority in adjudication.
- (b) **Law schools.** The ASEAN Chief Justices and Senior Judiciary will encourage law schools to strengthen their respective clinical legal aid programs to include environmental cases and serve environmental plaintiffs, where they exist, and consider establishing clinical legal aid programs that address environmental cases and serve environmental plaintiffs where they do not exist.
- (c) **Bar councils.** The ASEAN Chief Justices and Senior Judiciary will encourage legal professional associations and bar councils to develop professional interest groups on environmental cases.

- (d) **Environmental law enforcement community.** The ASEAN Chief Justices and Senior Judiciary will (i) lead their respective legal and enforcement communities in raising awareness of Environmental Challenges, Environmental Legal Challenges, and Environmental Information and ensuring strict compliance with and enforcement of existing Environmental Laws; and (ii) work on the nationalization of international environmental laws by encouraging the entire environmental enforcement chain to comply with Environmental Laws and multilateral environmental conventions, where appropriate.
- (e) **Environmental lawmakers.** The ASEAN Chief Justices and Senior Judiciary note that it is the role of the members of the legislative branch to review existing environmental laws to ensure that they are integrated and comprehensive and to legislate new environmental laws where necessary. In many ASEAN states, more needs to be done in this regard.
- (f) **Public and public interest environmental lawyers.** The ASEAN Chief Justices and Senior Judiciary will seek to encourage improvement in the level of public participation in environmental decision making, access to justice for the settlement of environmental disputes and the defense and enforcement of environmental rights, and public access to relevant information.

12. **Resilience to Integrity Threats.** The ASEAN Chief Justices and Senior Judiciary (a) recall and affirm the Bangalore Principles of Judicial Conduct as the international norm for independence, impartiality, integrity, competence, and diligence of the judiciary; and (b) will abide by these principles and strengthen anticorruption enforcement measures in their respective jurisdictions.

13. **Exchange of Information.** The ASEAN Chief Justices and Senior Judiciary recognize that effective cooperation depends on open, comprehensive, and regular exchange of information. They agree to share Environmental Information with each other, and among legal professionals, law schools, and the general public, by making it available on the Asian Judges Network on Environment (AJNE) website.

14. **Continuing Cooperation.** The ASEAN Chief Justices and Senior Judiciary acknowledge the role of the Asian Judges Network on Environment in bringing judges across Asia together to share experience, and agree to

- (a) hold an ASEAN Chief Justices' Roundtable on Environment annually to further enhance cooperation on the environment, as a subregional event of the Asian Judges Network on Environment;
- (b) at the ASEAN Chief Justices Roundtable on the Environment, choose the venue for the next succeeding Roundtable, with the Chief Justice or President of the Supreme Court hosting such next succeeding Roundtable serving as Chair of the Roundtable for the next succeeding year, and presiding over the Roundtable event;
- (c) hold discussions at each ASEAN Chief Justice's Roundtable on the Environment to provide any necessary updates on environmental law and enforcement in their respective jurisdictions, and where appropriate, update this Memorandum of Understanding to reflect changes in Environmental Challenges and Environmental Legal Challenges, or any other factor;
- (d) submit to the ASEAN Secretariat, and seek the ASEAN Chief Justice's Roundtable's endorsement as a formal body of the Association of Southeast Asian Nations; and
- (e) affirm the principles in the Jakarta Vision and the cooperation provisions of this Memorandum of Understanding, as well as any subsequent declarations agreed upon in the future, unless expressly excluded, and agree to share these documents with their respective countries and disclosed in the AJNE website.

PART V

MISCELLANEOUS PROVISIONS

A. CONTACT POINTS

Each ASEAN Judiciary has designated a contact point for the purposes of this Memorandum of Understanding, and will update such contact point if it changes. The current contact point list is attached as **Appendix 2**. The respective focal points will be responsible for:

- (a) establishing effective communication and liaising with other focal points;
- (b) facilitating the implementation of all aspects of this Memorandum of Understanding;
- (c) promoting this Memorandum of Understanding and the cooperation activities within their respective judiciaries and, as appropriate, with external partners;
- (d) convening the periodic consultations agreed to be held in accordance with this Memorandum of Understanding; and
- (e) monitoring the implementation of this Memorandum of Understanding and jointly evaluating the cooperation activities that are undertaken among the judiciaries.

B. TERM, AMENDMENT, AND TERMINATION

This Memorandum of Understanding shall take effect from the date it has been signed by the authorized representatives of the ASEAN Chief Justices and Senior Judiciary. It shall be effective indefinitely. This Memorandum of Understanding may be terminated by mutual agreement, following 6 months' prior notification in writing by one or more contact point(s) to all of the other contact points. This Memorandum of Understanding may be amended upon mutual written consent of the ASEAN Judiciaries.

C. DEALING WITH CHALLENGES

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

D. NATURE OF UNDERSTANDING

1. This Memorandum of Understanding is not intended to create legal relations between the ASEAN Chief Justices and Senior Judiciary or to impose formal obligations on them.

2. No provision of this Memorandum of Understanding shall be construed so as to interfere in any way with the sovereignty and independent decision-making autonomy of the ASEAN Judiciaries with regard to their respective affairs.

This Memorandum of Understanding is signed by the duly authorized representatives of the Judiciaries in English [insert any other languages if the MoU will be translated], all texts being equally authentic. In the case of any inconsistency, the text in the English language, in which the Memorandum of Understanding was drawn up, shall prevail.

Hon. Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli

Chief Justice

For the Supreme Court of Brunei Darussalam

Date: _____

Hon. Dr. H. Muhammad Hatta Ali, SH.MH

Chief Justice

For the Supreme Court of the Republic of Indonesia

Date: _____

Rt. Hon. Tun Arifin Zakaria

Chief Justice

For the Federal Court of Malaysia

Date: _____

Hon. Maria Lourdes P.A. Sereno

Chief Justice

For the Supreme Court of the Philippines

Date: _____

Justice Teerawat Phatranawat

Senior Justice

For Hon. Pairoj Wayuparb

Chief Justice

For the Supreme Court of Thailand

Date: _____

Hon. Mr. Dith Muntty

President of the Supreme Court

For the Supreme Court of Cambodia

Date: _____

Hon. Mr. Khamphan Shitthidampha

President

For the People's Supreme Court of the

Lao People's Democratic Republic

Date: _____

Hon. H.E. Myint Aung

Justice

For Hon. U Tun Tun Oo

Chief Justice

For the Supreme Court of the

Union of Myanmar

Date: _____

Hon. Sundaresh Menon

Chief Justice

For the Supreme Court of Singapore

Date: _____

Hon. Dang Quang Phuong

Permanent Deputy Chief Justice

For the Supreme People's Court of Viet Nam

Date: _____

Table A3.1
ASEAN Environmental Cooperation
 (Updated as of November 2011)

	Priority initiative	Status update
1	Fully implement the ASEAN Cooperation Plan on Transboundary Pollution emphasizing the Regional Haze Action Plan by 2001	On track, regular working-level meetings have been held, with Singapore in charge of monitoring fire and haze pollution under the Regional Haze Action Plan put in place in December 1997, as well as Immediate Action Plan Field Training Exercises undertaken in hot spots such as Kalimantan and Sumatra.
2	Strengthen the ASEAN Specialized Meteorological Centre by 2001	On track, regular activities undertaken by Meteorological Centre under the ASEAN Science and Technology cooperation track, including quarterly reports on studies and research.
3	Establish the ASEAN Regional Research and Training Centre for Land and Forest Fire Management by 2004	Pending further action at working level
4	Strengthen the ASEAN Regional Centre for Biodiversity Conservation by 2001	Work in progress. The centre, established since 1999, has continued to focus on networking and institutional building initiatives, including training, research and development, and database management. One of the key policy deliverables is the Framework Agreement on Access to Genetic and Biological Resources, which is still in drafting process by ASEAN Senior Officials on the Environment (ASOEN).
5	Promote regional coordination for the protection of the ASEAN Heritage Parks and Reserves	On track, recent ASEAN Ministers Meeting on Environment (AMME) saw two additional parks in Philippines and Singapore added to the list of Heritage Parks and Reserves, making it a total of 30 ASEAN parks on the conservation list.
6	Develop a framework and improve regional coordination for integrated protection and management of coastal zones by 2001	Work in progress. The ASEAN Working Group on Coastal and Marine Environment is still in the process of developing a specific action plan to focus on marine life conservation, management of solid and liquid waste, ecotourism, and coastal erosion.
7	Strengthen institutional and legal capacities to implement Agenda 21 and other international environmental agreements by 2001	Work in progress, under the purview of the ASOEN, reporting to ASEAN Ministers Meeting on Environment (AMME) (no updates available)
8	Harmonize the environmental databases of Member Countries by 2001	Work in progress, undertaken by ASOEN in conjunction with ASEAN Heads of Statistical Offices Meeting (AHSOM); the regular publication of the State of Environment Report every 3 years has also created a comprehensive compilation of environmental statistics in the region, albeit funded by external sources.
9	Implement an ASEAN regional water conservation program by 2001	Developed in 2005 with AusAID funding, the ASEAN Strategic Plan of Action on Water Resources Management features access to safe, adequate, and affordable water for food security, sanitation, and economic growth, as well as protection of the water environment.
10	Establish a regional center or network for the promotion of environmentally sound technologies by 2004	Work in progress, undertaken by ASOEN with support from dialogue partners such as the United States and Japan regarding feasibility studies.

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Table A3.1 *continued*

	Priority initiative	Status update
11	Formulate and adopt an ASEAN Protocol on access to genetic resources by 2004	Work in progress, to be undertaken by ASOEN
12	Develop the Regional Action Plan for the Protection of the Marine Environment from Land-based and Sea-based Activities by 2004	Work in progress, undertaken by the ASEAN Working Group on Coastal and Marine Environment
13	Implement the Framework to Achieve Long-Term Environmental Goals for Ambient Air and River Water Qualities for ASEAN Countries	Work in progress, undertaken by the ASEAN Working Group on Environmental Management, with a proposal for a draft framework submitted to ASOEN for discussion
14	Enhance regional efforts in addressing climatic change	Work in progress, requires cross-sector coordination and overseen by ASEAN Leaders' Summit on regional climate change issues
15	Enhance public information and education in awareness of and participation in environmental and sustainable development issues	Work in progress, undertaken by ASOEN

Table A3.2
List of ASEAN Judiciary Contact Points

<p>For the Supreme Court of Brunei Darussalam:</p> <p>Pengiran Hajah Rostaina Pengiran Haji Duraman Chief Registrar Tel.: +673 222 5853 Fax: +673 224 1984</p> <p>For the Supreme Court of Cambodia:</p> <p>Judge Sathavy Kim Email: Sathavy.k@camnet.com.kh</p> <p>For the Supreme Court of the Republic of Indonesia:</p> <p>Justice Takdir Rahmadi Email: takdir_rahmadi@yahoo.com</p> <p>For the People's Supreme Court of the Lao People's Democratic Republic:</p> <p>Hon. Mr. Khamphan Shitthidampha Sengsouliya Phouangphet Chief of Protocol and International Cooperation Division Supreme Court of the Lao People's Democratic Republic Email: sengsouliya7@yahoo.com</p> <p>For the Federal Court of Malaysia:</p> <p>Chief Registrar's Office Federal Court of Malaysia Palace of Justice, Precinct 3 62506 Putrajaya, Malaysia Tel.: 603 8880 3500/603 8880 3900 Email: webmaster@kehakiman.gov.my</p> <p>For the Supreme Court of the Union of Myanmar:</p> <p>Mr. Sein Than Supreme Court of the Union Republic of the Union of Myanmar Fax: 956 743 0304 Tel.: 956 743 0344 Email: dgscunion@mptmail.net.mm</p>	<p>For the Supreme Court of the Philippines:</p> <p>Ms. Lida Pilapil Office of Chief Justice Email: lidapilapil@yahoo.com Tel.: 02 523 4179</p> <p>For the Supreme Court of Singapore:</p> <p>Ms. Serene Lim Head, Human Resources and Administration Serene_LIM@supcourt.gov.sg Tel.: 65 6 332 1003 Fax: 65 6 337 9450 Email: Serene_LIM@supcourt.gov.sg</p> <p>For the Supreme Court of Thailand:</p> <p>Justice Winai Ruangsri Senior Research Justice The Environmental Division The Supreme Court Tel.: +66 2 224 6625 (direct) Fax: +66 2 226 6005 Email: towinai@yahoo.com</p> <p>The Office of the Administrative Courts of Thailand 120 Moo 3 Chaeng Wattana Rd. Laksi, Bangkok 10210 Tel.: +66 2 141 1111 Hotline: 1355</p> <p>For the Supreme People's Court of Viet Nam:</p> <p>Ms. Hang Thu Pham Official, Department of International Cooperation The Supreme People's Court of Viet Nam Email: tatc.htqt@toaan.gov.vn</p>
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APPENDIX 4

Draft Melaka Memorandum of Understanding for Cooperation among ASEAN Judiciaries: Reference Table for Substantive Provisions

Melaka Memorandum of Understanding	Basis and Source of Provisions in Melaka Memorandum of Understanding	Comments
Whereas Provisions	2nd opening paragraph, <i>ASEAN Common Vision</i>	
Part II (A) ASEAN Environmental Challenges	Background Paper (ASEAN Chief Justices Roundtable)	Note that this section presents the common challenges discussed and accepted at the first roundtable.
Part II (B) (1) (a)	Session on Challenges in Environmental Justice: Access to Justice (v); <i>Asian Judges Statement</i>	
Part II (B) (1) (b) to (g)	Background Paper (ASEAN Chief Justices Roundtable)	Note that this section presents the common challenges discussed and accepted at the first roundtable.
Part II (B) (2) (a)	Statement of Key Messages on the Role of the Judiciary in Environmental Enforcement and Promoting Environmental Justice ("Statement of Key Messages") (8), <i>Asian Judges Statement</i>	
Part II (B) (2) (b)	Background Paper (ASEAN Chief Justices Roundtable)	Note that this section presents the principles discussed and accepted at the first roundtable.
Part II (B) (2) (c)	Statement of Key Messages (6); <i>Asian Judges Statement</i>	
Part II (B) (2) (d)	Statement of Key Messages (7); <i>Asian Judges Statement</i>	
Part III (ASEAN Executive Cooperation) (A)	Background Paper (ASEAN Chief Justices Roundtable)	Note that this section expands the principles discussed and accepted at the first roundtable.
Part III (B)	Background Paper (ASEAN Chief Justices Roundtable) Recommendation made during the Malaysia Seminar on Green Courts	

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Melaka Memorandum of Understanding	Basis and Source of Provisions in Melaka Memorandum of Understanding	Comments
Part IV (A)	Statement of Key Messages (3), <i>Asian Judges Statement</i>	
Part IV (B)	2nd opening paragraph, <i>ASEAN Common Vision</i>	
Part IV (C)	Para (i), <i>ASEAN Common Vision</i>	
Part IV (D) (1)	Para (vi), <i>ASEAN Common Vision</i>	
Part IV (D) (2)	Background Paper (Asian Judges Symposium)	Note that this section expands the principles discussed and accepted at the Asian Judges Symposium.
Part IV (D) (3)	Session on Challenges in Environmental Decision Making – Expert Evidence, <i>Asian Judges Statement</i>	
Part IV (D) (4)	Para. (iv), <i>ASEAN Common Vision</i>	
Part IV (D) (5)	Background Paper (ASEAN Chief Justices Roundtable)	Note that this section expands the principles discussed and accepted at the first roundtable.
Part IV (D) (6)	Para. (v), <i>ASEAN Common Vision</i>	
Part IV (D) (7)	Para. (vi), <i>ASEAN Common Vision</i>	
Part IV (D) (8)	Session on Challenges in Environmental Decision Making – Remedies, <i>Asian Judges Statement</i>	
Part IV (D) (9)	Session on Challenges in Dispute Resolution, <i>Asian Judges Statement</i> ; Para. (vii) <i>ASEAN Common Vision</i>	
Part IV (D) (10)	Para. (vii) to (x), <i>ASEAN Common Vision</i> ; Para. (b) of the Johannesburg Principles	
Part IV (D) (11)	Para. (i), <i>ASEAN Common Vision</i> ; Para. (b) and (e) of the Johannesburg Principles	
Part IV (D) (12)	Background Paper (ASEAN Chief Justices Roundtable) Session on Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity, <i>Asian Judges Statement</i>	Note that this section expands the principles discussed and accepted at the first roundtable.
Part IV (D) (13)	Para. (ii) to (iii), <i>ASEAN Common Vision</i>	
Part IV (D) (14)	Para. (ix), <i>ASEAN Common Vision</i> ; Session on Strengthening Judicial Capacity to Decide Environmental Cases and Resisting Threats to Integrity – Need for a Judges Network, <i>Asian Judges Statement</i>	

Second ASEAN Chief Justices' Roundtable on Environment

The Proceedings

From 7–10 December 2012, Association of Southeast Asian Nations (ASEAN) chief justices and their designees convened in Melaka, Malaysia for their second roundtable on environment. The roundtable provided a forum for experts to discuss common ASEAN environmental challenges and for ASEAN judges to share their experiences in handling environmental challenges. Towards the end, the participants discussed the draft Melaka Memorandum of Understanding for Cooperation among ASEAN Courts, which aims to provide an operational framework for environmental cooperation among the ASEAN judiciaries, and agreed to establish a technical working group of judges to formulate the terms of the memorandum of understanding toward attaining the Jakarta Common Vision with the support of the Asian Development Bank.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.7 billion people who live on less than \$2 a day, with 828 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

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

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